



**CITY of MALDEN PLANNING BOARD  
NOTICE of DECISION**

CASE NUMBER 19-05

LOCATION of SUBJECT PROPERTY 84 Linden Avenue, Malden, MA

NAME of PETITIONER Raymond Snow

NAMES of OWNERS Raymond A. and Mary E. Snow

DATES of PUBLIC HEARING September 11, 2019 and October 9, 2019

DATE of DECISION October 9, 2019

DATE of FILING DECISION with CITY CLERK October 23, 2019

DATE of NOTIFICATION to BUILDING INSPECTOR October 23, 2019

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT November 12, 2019

*[Any appeal must be made pursuant to M.G.L. c. 40A, §17 and filed within 20 days after date this Notice is filed with City Clerk.]*

**PROCEDURAL HISTORY (Case #19-05):**

1. Petitioner is Raymond Snow, 42 Richdale Avenue, Somerville, MA; petitioner and his wife, Mary E. Snow, are the owners.
2. At the public hearing, petitioner was represented by Patrick P. MacDonald, Law Office of Christopher G. Fallon, 477 Eastern Avenue, Malden, MA, its attorney, and Dennis Murphy, 25 College Ave, Medford, MA, its property manager.
3. The petition seeks a special permit under §700.1.3.1, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to change use of a preexisting nonconforming property in the Residence B zoning district from multifamily dwelling with five units to multifamily dwelling with eight units.
4. The following plans were submitted in support of the petition: "Site Plan of Land Located at 84 Linden Avenue Malden, MA," dated March 13, 2019, prepared by Boston Survey, Inc., Charlestown, MA; and set of plans, "84 Linden Ave. Malden, MA," dated February 27, 2019, prepared by Amy Nastasi, Architect, Lexington, MA, that includes Basement Plan, First Floor Plan, Second Floor Plan, Third Floor Plan.
5. The property is the subject of prior petitions to the Board of Appeal to increase the number of dwelling units, namely, the 1939 petition for a variance to convert the property from a five-family to a six-family dwelling, which was denied; the 1980 petition for a variance to legalize use of the property for seven units, which was granted, subject to the following conditions: an approved fire detection system be installed; parking be created on the south side to the rear lot line, a minimum of seven approved size "hot topped" spaces must be made; the basement apartment must be removed; water supply must conform to all applicable codes; and a second means of egress must be created for the third floor apartment connected to a common passageway providing egress to the ground floor; and the December 2018 administrative appeal of the Building Commissioner's decision dated October 4, 2018 that the legal use of the property is a five-family dwelling, which was allowed to be withdrawn without prejudice.
6. The 1980 variance decision was never recorded as required by law and all conditions of the variance were not met.
7. On September 11, 2019, the Planning Board opened the public hearing; received testimony from petitioner and members of the public; and tabled the hearing and its decision, with the requirement that petitioner provide additional information about the condition of the property; and petitioner allow access by the Building Commissioner to do an inspection, specifically, regarding the fire system, violations, condition of exterior, egress and water supply; to do an evaluation of the overall condition of the property and of compliance with conditions of the prior decision (1980 variance); and to provide recommendations to bring the property up to code; and for a Rental Unit Inspection.
8. The public hearings complied with the notice requirements of Massachusetts General Laws, Chapter 40A, §11, and in additional, notice of the second public hearing on October 9, 2019 was sent to abutters.

**FINDINGS of FACT (Case #19-05):**

The City of Malden Planning Board finds the following facts:

1. There is a 2 ½- story dwelling on the property that is currently configured and being used as a multifamily dwelling with eight units and a total of eight bedrooms: three units on the first floor, three units on the second floor, one unit on the third floor, and one unit in the basement; four units are studio and four have one bedroom, as depicted on the floor plans.
2. The proposal involves no construction and seeks to legalize the existing use of the property.
3. As stated in correspondence dated October 4, 2018, the Building Commissioner has determined that the current legal use of the property is a five-family dwelling, which is also known as a multifamily dwelling with five units.
4. The property is currently being used for eight dwelling units, illegally and without proper permits.
5. The property is located in the Residence B zoning district.
6. The multifamily dwelling use with five units is a preexisting nonconforming use that predates the current Ordinance and is prohibited in this district, per §§300.3.2.5 and 700.1.1 of the Ordinance.
7. The proposal expands the prohibited multifamily dwelling use, however, may be allowed by special permit as a conversion or extension of a preexisting nonconforming use, per §700.1.3.1 of the Ordinance.
8. The direct abutter to the north is a four-family dwelling; to the west, a four-family dwelling and a multifamily dwelling with ten units; to the south, a single-family dwelling; and to the west, on the other side of Linden Avenue, two two-family dwellings and a three-family dwelling.
9. Surrounding land uses are residential dwellings, the US Post Office and Coytemore Lea Park.

10. The building was constructed before 1934, grossly violates most dimensional controls for a multifamily dwelling, up to three stories, with five units, and the property is preexisting nonconforming, per §§400.1.2.5 and 700.1.1 of the Ordinance.
11. The proposal exacerbates the existing violations of density from 11% to 44 %; creates a new violation of open space of 10%; and maintains all other nonconformities.
12. The proposal requires eight parking spaces, or one space per studio or bedroom, per §500.1.2.3 of the Ordinance.
13. The site plan depicts the existing nonconforming parking layout with eight parking spaces onsite, configured as four parallel parking spaces located in a driveway that runs along the southern property line, two head-on spaces at the end of this driveway and two head-on spaces at the rear of the dwelling, accessed via this driveway; access aisles and driveway of deficient widths and lack of snow storage, per §§500.2.2, 500.2.3 and 500.2.14 of the Ordinance.
14. As stated in correspondence dated September 24, 2019 from Nelson Miller, Building Commissioner and Kevin Finn, Fire Chief, the Building Commissioner and Fire Department inspected the property on September 18, 2019 and recommend the following: 1) The basement unit shall be removed in its entirety; the common laundry may remain for use by the tenants; 2) The entire building shall be protected by an automatic sprinkler system installed in compliance with 780 CMR The Massachusetts State Building Code and NFPA 13; 3) The entire building shall be protected by a fire alarm system installed in compliance with 780 CMR The Massachusetts State Building Code and NFPA 13; and 4) The egress stairs and ladder accessed from the third floor unit are to be removed in their entirety; the balcony outside the third floor unit is to be evaluated for structural stability and repair or removed accordingly.
15. As stated in email correspondence dated October 1, 2019 from Nelson Miller, Building Commissioner, Rental Unit Inspections of the units, in accordance with the City ordinances, are not warranted at this time.
16. According to petitioner, since purchasing the property in 1981, petitioner has used the property for seven dwelling units, and at times, has used the eighth dwelling unit in the basement, based on his “good faith” belief that these uses were permissible.
17. Petitioner submitted records that indicate that he has maintained a fire alarm system at the property.
18. Petitioner intends to sell the property, and upon being informed by the City that the legal use of the property is for five dwelling units, petitioner proceeded to seek City approvals to change this.
19. The Ward 4 City Councilor and one of three City Councilors at Large support the proposal, as modified by the conditions.
20. There is no public opposition to the proposal, as modified by the conditions.
21. The proposal will not be more detrimental to the neighborhood, as modified by the proposed conditions.
22. Petitioner consents to all conditions of the special permit.

DECISION (Case #19-05):

On September 11, 2019, the Planning Board tabled the public hearing and its decision, with the requirement that petitioner provide additional information about the condition of the property; and petitioner allow access by the Building Commissioner to do an inspection, specifically, regarding the fire system, violations, condition of exterior, egress and water supply; to do an evaluation of the overall condition of the property and of compliance with conditions of the prior decision (1980 variance); and to provide recommendations to bring the property up to code; and for a Rental Unit Inspection.

On October 9, 2019, pursuant to the foregoing Findings of Fact, the Planning Board granted a special permit to allow use of the property for a multifamily dwelling with seven units, subject to the following eight conditions: 1) All development shall be as per plans except as modified by these conditions; 2) The basement unit shall be removed in its entirety; the common laundry may remain for use by the tenants; 3) The entire building shall be protected by an automatic sprinkler system installed in compliance with 780 CMR The Massachusetts State Building Code and NFPA 13; 4) The entire building shall be protected by a fire alarm system installed in compliance with 780 CMR The Massachusetts State Building Code and NFPA 13; 5) The egress stairs and ladder accessed from the third floor unit are to be removed in their entirety; the balcony outside the third floor unit is to be evaluated for structural stability and repair or removed accordingly; the balcony may not be used as a second means of egress; 6) Domestic water supply service must be adequate, subject to approval of City Engineer; 7) All work must have proper permits; and 8) Obtain an occupancy permit for seven units within one year from the date of granting of this special permit.

RECORD of VOTES (Case #19-05):

On September 11, 2019, the vote on the motion to table the public hearing and decision was eight in favor, one opposed, and the motion passed (8-1):

Antonucci, yes; Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, no.

*Motion by Fitzgerald, seconded by Antonucci.*

*Present but not voting: Ferguson.*

On October 9, 2019, the vote on the motion to grant the special permit with conditions was seven in favor, two opposed, and the motion passed (7-2):

Antonucci, yes; Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, no; Soucy, yes; Ioven, no.

*Motion by Antonucci, seconded by Chuha.*

*Present but not voting: Ferguson.*

*I, Michelle A. Romero, City Planner for the City of Malden, hereby certify that the above is a true copy of the decision of the Malden Planning Board.*

By: \_\_\_\_\_  
Michelle A. Romero, City Planner