

Zoning Overview **September 22, 2003**

This overview should give you a basic understanding of zoning, its role in shaping local land use decisions, and the role of the Planning Board and Zoning Board of Appeals in administering zoning.

Brief History of Zoning

New York City adopted the first zoning code in 1916 due to health, safety, and economic concerns.

In the 1920's two events occurred that upheld the legal status of zoning. The Standard Zoning Enabling Act was passed and then in 1926 and the United States Supreme Court decided that zoning ordinances based on the protection and promotion of the *public interest* did not exceed the boundary of *police power* under the Constitution.

Zoning is the way a community regulates the use of land. Zoning regulations allow a community to control where different uses occur and under what circumstances.

Zoning is the predominant developmental control in the United States. The rationale for control is for the *public interest*. Zoning groups land uses according to their compatibility and to separate them to protect the *health, safety and general well being* of the community.



Zoning, in conjunction with other developmental controls, is an important part of implementing a Town's Master Plan.

Police Power of zoning allows government, *in protecting the public interest*, to apply certain limitation to the use and development of private land without the need to compensate for the owner's loss due to the limitations.



However, if the limitations are so severe that the land loses its development possibility then the government must pay reasonable compensation. For example, this is why a community cannot rezone land to "open space" unless there are special circumstances surrounding the land.

What are the limitations of Zoning?

1. It is a restriction of private property rights. As a result, it is subject to careful judicial scrutiny to see that the restriction is both legally necessary and reasonable.
2. Zoning is a constraint on undesirable activity, not a producer of desirable activity; it can inhibit, encourage, or channelize development, but it *cannot* make plans happen.
3. Since zoning decisions are legislative in nature (i.e. Town Meeting), popular sentiment and political sensitivity can effect the outcome of prudent land use planning policies.

What is the Zoning Bylaw?



Massachusetts's municipalities determine their own zoning under home rule as long as it is not in conflict with the state law (Chapter 40A).

The Zoning Bylaw is the whole body of zoning regulations that have been adopted by Andover Town Meeting. It includes the Zoning Map, land use chart, dimensional regulations, definitions and other regulations pertaining to zoning districts.

In what ways are land uses regulated by Zoning?

Whether they are allowed and how they are restricted.

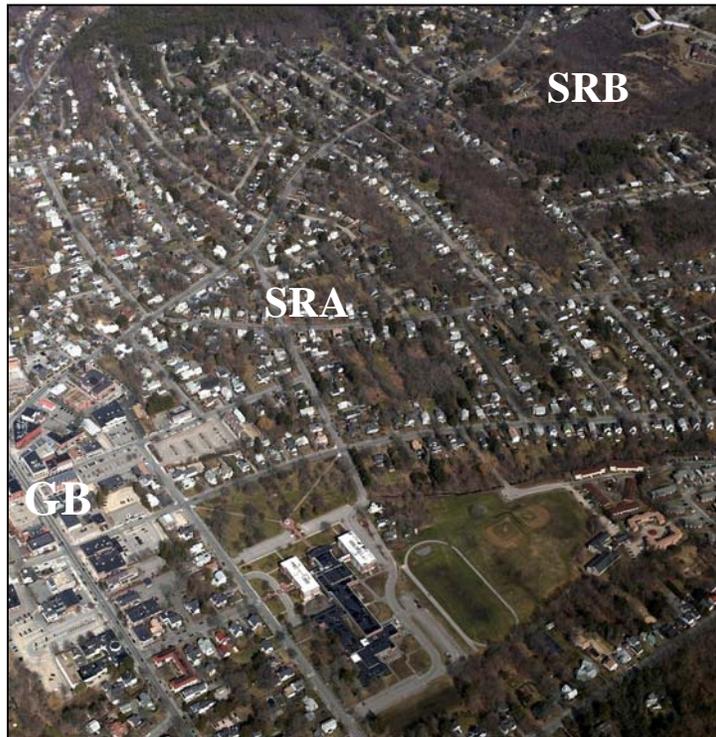
In a given district, each type of use is shown on the use chart (Pages 885-888) as being one of the following:

1. Allowed by right (In Massachusetts, all districts must allow some use by right) (**Y**)
2. Allowed with a Special Permit (**PB or BA**)
3. Allowed by right with a Site Plan Review
4. Prohibited. (**N**)

Note that all uses that involve development are subject to certain minimums of lot size, frontage on roadways, and setbacks. (Page 889)

Andover's Zoning Districts: See Appendix A, Table 1, Table of Use Restrictions for allowed uses. (Pages 885-888)

Single Residence A
Single Residence B
Single Residence C
Apartment
Limited Service
Office Park
General Business
Mixed Use
Industrial G
Industrial A
Industrial D



What is a Special Permit?

When a particular use is neither prohibited nor allowed by right, it is shown on the use chart as requiring a Special Permit.

This means that the owner cannot proceed with that use without the explicit permission of the Special Permit Granting Authority (SPGA), either the Zoning Board of Appeals (BA) or the Planning Board (PB).



What is a Site Plan Review?

Some uses that are allowed by right may require a Site Plan Review.

The Site Plan Review process requires a public meeting before the Planning Board. The Board reviews site items such as parking, lighting, drainage, etc.. The Site Plan must be approved by the Board prior to the issuance of a building permit.

The Planning Board cannot disallow the use entirely, but it can attach conditions to the permit for a given project. These conditions are intended to minimize any negative impacts.

In Massachusetts (MGL Chapter 40A §3) educational uses, religious uses, and childcare facilities are allowed by right in any zone however they may go through a Site Plan Review process as is done by the Planning Board in Andover. (Page 885)

How are restrictions enforced?

Any construction within Andover requires a building permit, which must be obtained from the Town's Building Department. *If the applicant has not followed the proper procedures as outlined in the Zoning Bylaw, then they will not receive a building permit.* There are municipal inspectors that have site and building inspection capabilities to ensure that the rules are followed.

How can the Zoning Bylaw be changed?

According to MGL Chapter 40A, changes must be presented to and approved by the governing authority, i.e. Andover Town Meeting. Zoning amendments must be approved by a 2/3 vote.

There are numerous ways to place an article on the Town Meeting warrant e.g. by the Board of Selectmen, Planning Board, or the Zoning Board, by a landowner, ten registered voters petitioning to bring an amendment forward, or by a Regional Planning Agency such as the Merrimack Valley Planning Commission.

A request for a zoning amendment must be submitted to the Board of Selectmen, which will then submit it to the Planning Board for review.

The Planning Board holds a public hearing on the zoning amendment and makes a recommendation to Town Meeting.

A defeated zoning amendment cannot be brought back to Town Meeting for two years unless approval is recommended by the Planning Board the second time the request is made.

What are the responsibilities of the Planning Board?

- ♦ Adopting a master plan and official map of the town.
- ♦ Conducting studies, and, when necessary, preparing plans of the resources, possibilities and needs of the town for submittal to the Selectmen for their consideration.
- ♦ Serving as the local authority for the Subdivision Control Act; adopting Rules and Regulations governing the subdivision of land in the Town of Andover; reviewing all preliminary and definitive plan submittals.
- ♦ Drafting and submitting zoning amendments for consideration by the municipality. When a zoning amendment has been put forward, the Planning Board holds the public hearing and may also report its recommendation to the local legislature.
- ♦ Serving, in some instances, as the Special Permit Granting Authority (SPGA) for example, under Section 7.1 in the Zoning Bylaw, a Special Permit is need by the Planning Board for Residential Cluster Development.
- ♦ Reviewing and approving acceptance of streets as Town public ways, with recommendation to the Town Meeting.

What are the additional responsibilities of the Zoning Board of Appeals?

- ♦ Reviews and decides on Special Permit requests.
- ♦ Reviews variances from the bylaw where a hardship is presented.
- ♦ Serves as the appeals board for decisions made by the Inspector of Buildings.
- ♦ Reviews all MGL Chapter 40 B applications.

Important Terms (See Zoning Bylaw for additional Definitions)

Abutting – having property or district lines in common.

District – a part, zone, or geographic area within the municipality within which certain zoning or development regulations apply.

Approval Not Required – interpretation by the courts that imposes three standards that must be met including lots shown on such a plan must front on one of three approved types of ways, the lots must meet the minimum frontage requirements, and it is determined that vital access to such lots exists.

Frontage – That side of a lot abutting a street; the front lot line.

Lot Line – A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

Master Plan – A comprehensive, long-range plan intended to guide the growth and development of a community or region.

Permitted Use – any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.

Restriction – A limitation on property that may be created in a property deed, lease, mortgage, through certain zoning or subdivision regulations, or as a condition or approval of an application for development.

Setback – the distance between the building and any lot line.

Setback Line – That line that is the required minimum distance from any lot line and that establishes the area within which the principal structure must be erected or placed.

Spot Zoning – Rezoning of a lot or parcel of land to benefit an owner for use incompatible with surrounding land uses and that does not further the Master Plan.

Subdivision – A division of a lot, tract, or parcel of land into two or more lots, tracts, parcels, or other divisions of land for sale, development or lease.