

Chapter 9

Zoning & Land Use
Recommendations



CHAPTER 9: Zoning & Land Use Recommendations

A. Overview of Zoning Concepts

As stated in Chapter 2, Stow's Zoning Bylaw was adopted in 1949 and plays a fundamental role in defining and maintaining the kind of community that residents have chosen in terms of what parcels of land can be used for what kinds of purposes.

Some communities, including Stow, use visual representation in the form of a map to stipulate zoning requirements; other communities rely on written descriptions of areas and sectors to define zoning parameters. Whichever method is used, the Zoning Bylaw not only determines which parts of town are residential and which are commercial but also how nonresidential space may be used.

For situations in which a town believes it is in its best interest to make a change to the Zoning Bylaw, there are various means in which to do this. One way is by creating an overlay district, which does not revoke the previous zoning applied to an area but puts additional options on it. For example, an area zoned for retail can take on a mixed use overlay, which would allow residential and commercial uses to co-exist in the same facility. Overlay districts are typically reserved for unique uses that are less common but still appropriate for the underlying zone. Other common examples of overlays include "wireless communications" (or cell tower) zones, "over-55" housing districts, "adult entertainment," and more. There is no limit to how many overlays a community can layer over a zone.

A town's Planning Board can invoke additional control over development decisions by requiring site plan approval or other regulatory procedures or by designating certain types of uses to be done through a special permit application. This enables the Planning Board to condition approvals based on requirements that mitigate issues such as traffic, parking, light spillover, noise, landscape screening, etc.

B. Broader Statewide Context – Zoning Reform

During the time of the writing of this Master Plan, a broader statewide dialogue has been taking place regarding zoning reform in Massachusetts. The present gubernatorial administration under Deval Patrick has established zoning reform as a key policy element on which to focus. Prior to the Deval Patrick administration, the Land Use Reform Act (LURA) was released to the legislature but failed to garner enough support to make its way through the legislature. Following up on this work, when Gov. Patrick took office, he created a Zoning Reform Task Force with the objective of introducing new legislation in 2009.

The Task Force was charged with the difficult goal of trying to simplify the State's zoning laws which underlie all local zoning bylaws. Unlike previous attempts at reform, there was a considerable effort to involve the development community to understand its point of view, while also involving municipalities in this dialog. Not surprisingly, cities and towns cited lack of control around approval not required (ANR) subdivisions and a worry that reform would undermine local control. Developers generally sounded the concern that bylaws differ from one community to the next and the overall permit approval process just takes too long. While this is an oversimplification of what is a complex law, it is nonetheless important to note that this area is being looked at for comprehensive reform.

Around the same time, and working at similar objectives in parallel to the governor's task force, another group of legislators and municipal officials established the Zoning Reform Working Group. This second group started with LURA as its basis and further evolved the legislation to what is now generally known as CPA II or the Community Planning Act. Concurrently, the governor's Zoning Reform Task Force began consideration of LUPA – the Land Use Partnership Act – in the fall of 2008. Now in conference committee, various proponents of these two separate measures are working to integrate the best approaches from each bill to come up with a compromise position that will ultimately garner enough support to pass the legislature.

In this context, it is important for Stow to stay up to date on these zoning reforms, as the final legislation may require modifications to Stow's current zoning rules or regulations in order to maintain compliance with state law. Alternatively, the legislation may present some opportunities and benefits for the so-called "opt-in" communities which agree by local option to modify some zoning provisions in exchange for key benefits pertaining to things such as grandfathering provisions and/or control over "approval not required" (ANR) lot creation.

The Town of Stow has been thus far following the debate and issued a comprehensive letter about its concerns with the two pieces of legislation. That letter can be found in the appendix.^{bbb}

For more on zoning reform, see the following websites:

LUPA

<http://www.mass.gov/?pageID=eheadsubtopic&L=5&L0=Home&L1=Economic+Analysis&L2=Executive+Office+of+Housing+and+Economic+Development&L3=Massachusetts+Permit+Regulatory+Office&L4=Zoning+Reform&sid=Ehed>^{ccc}

CPA 2

<http://www.massmunilaw.org/zoning.htm?sid=60> – click on Zoning Reform

As has been stated elsewhere, it is important to note that this document cannot by itself modify zoning. Zoning changes should always, where possible, be preceded by meaningful public deliberation and broad-based community consensus. For some of the suggestions below, additional study or professional expertise may be needed in developing appropriate bylaw language or in evaluating the impacts of a proposed change.

Furthermore, it is important to understand how zoning provisions are modified in practice. A zoning change presently requires a two-thirds super-majority vote of the legislative body, which in Stow's case is its Open Town Meeting (at which only registered voters can participate). Annual Town Meeting Warrants containing the language of all Articles to be voted upon are mailed to each household in Stow at least seven days prior to the Town Meeting. The body responsible for calling the Town Meeting and setting its date is the Board of Selectmen. Warrant articles can be submitted in one of three ways: by a property owner with an interest in the property to which the zoning change applies, by a department head or other local leader, or by Citizen's Petition. The Town Clerk can guide any resident interested in learning more about Citizen's Petitions.

Once a warrant article has been filed for each zoning article, the Planning Board must conduct a public hearing at least 21 days in advance of Town Meeting. From the results of that Public Hearing, the Planning Board then makes a recommendation to Town Meeting on the zoning article in question.

For more information on the local process surrounding zoning modifications, contact the Town Clerk and/or the Board of Selectmen's offices, or read the zoning section on Stow's website at http://www.stow-ma.gov/pages/StowMA_Planning/Zoning%20Bylaw%20-%20Amended%20through%20May%206,%202008.pdf

C. Opportunities for New Zoning Tools

The town of Stow has done an excellent job of updating its local zoning code to keep abreast of changing standards. The Planning Board, Planning Coordinator, Selectmen, and other key leaders are to be commended for their ongoing efforts to update bylaws and embrace new zoning concepts. For this reason, unlike many other communities, Stow is in the enviable position of not needing to overhaul local zoning in order to modernize practices. However, there are always areas that can be improved upon. This section puts forth some options and new ideas that the community might wish to explore.

1. Adaptive Reuse Bylaws

Adaptive reuse bylaws are special provisions intended to help encourage the reuse of unusual structures in town. They are sometimes called mill reuse overlay districts, historic structures reuse bylaws, etc. Typically, but not always, adaptive reuse bylaws are applied as an overlay district to existing areas of town in which the community wants to encourage new uses to emerge. Thus, a community seeking to encourage small business incubator space might apply an overlay of this sort to old retail areas of town, giving the overlay area the additional zoning uses of office space, light manufacturing, etc.

In Stow's case, the Master Plan Committee is very interested in pursuing an Adaptive Reuse Overlay for the Gleasondale Mill complex of structures.



The present concept for this site is that it be redeveloped to allow a combination of both residential and commercial activity. It is not yet clear whether the site would lend itself best to the uses being segregated by building within the same parcel or whether the buildings themselves could support mixed uses. In order to further develop this concept, some additional study would likely be required.



The town should gather more data on the site itself and compile examples of zoning bylaws it might wish to emulate. Once it has a clear vision for how the uses would be mixed and at what proposed density, along with data on the site itself, and a sample bylaw drafted, targeted outreach to nearby neighbors and residents should then be conducted. Following positive feedback on the concept plan, it would be appropriate to bring a bylaw to Town Meeting for its approval. Refer to Chapter 4 for more information and recommendations.

Some links on this topic including sample bylaws from various communities are below:

Smart growth toolkit (model bylaw)

http://www.mass.gov/envir/smart_growth_toolkit/bylaws/MRD-Incremental-Bylaw.pdf

Town of Millbury - [http://www.millbury-](http://www.millbury-ma.org/Public_Documents/MillburyMA_ZoningBylaws/new/section27adaptive%20reuseover)

[ma.org/Public_Documents/MillburyMA_ZoningBylaws/new/section27adaptive%20reuseover](http://www.millbury-ma.org/Public_Documents/MillburyMA_ZoningBylaws/new/section27adaptive%20reuseover)

Town of Hudson -

http://www.townofhudson.org/Public_Documents/HudsonMA_WebDocs/Zoning%20By-Laws%20May08-AppendixA.pdf

2. Mixed Use Zoning Bylaw

Somewhat similar to Adaptive Reuse is the concept of mixed use zoning overlay districts. In practice, actual mixed-use bylaws can differ dramatically from one community to another. Nonetheless, in its simplest sense, a mixed use overlay is a zoning provision that allows more than one use to be conducted on the same parcel of land. While adaptive reuse can often allow mixed uses, it differs from straight mixed use in that it requires a structure to be reused or redeveloped. That is not always the case for a mixed use district, which offers the possibility of a combination of uses within one or more new construction buildings. Nonetheless, despite this mix of uses which an overlay might grant to an area, the zoning provision can be crafted to enable the community to encourage exactly what type of mixed use it wishes to see evolve. Height and density restrictions can be applied, as can overall floor area ratios, maximum percentage of each type of use, and even building construction type. This type of zoning tool can provide great flexibility and control for the local community.

In a variety of forums, a number of Stow boards and committees have been exploring a desire to encourage village center zoning. However, interpretations of that concept might differ. The Master Plan Committee has refined its vision to include a desire to promote the rezoning of some parts of town that are presently commercial to allow residential apartments or condominiums to be constructed upstairs at the same retail or commercial site. Village-style zoning can often include the stipulation that parking be in the rear, while the structure itself is located relatively close to the front of the parcel. This encourages buildings of the sort that one would have found being developed one hundred or more years ago in a traditional New England town.

The Master Plan Committee believes this would encourage more diversity of housing types, allow for residential dwellings in close proximity to services (thus reducing vehicle trips), and help to bolster the local economy as residents who live close to retail will often patronize those nearby establishments. Mixed use is generally accepted as a smart growth tool for these reasons and more:

- Encourages diversity in the town's housing stock
- Provides design guidelines to promote village-style redevelopment with a mixture of uses
- Encourages revitalization of existing commercial uses and historic buildings
- Provides a focal point for pedestrian-related uses
- Reduces roadway congestion
- Promotes a greater sense of community

Prior to advancing this type of zoning bylaw, the town would need to carefully define the areas of town to which the bylaw will apply. It might be sensible to start with a relatively few areas of town to test the concept before implementing it elsewhere in town. Currently, the areas where this is being considered are Lower Village and the Gleasondale Mill.

Then, design guidelines should be developed concurrently with the bylaw to enable residents to understand the desired outcomes of the zoning district. Additional public meetings may need to be conducted in order to gauge residents' sentiments relative to the suggested zoning boundaries and to refine program objectives.

3. Municipal Buildings reuse

As Stow has a number of municipal buildings that may become obsolete as new schools are built or older buildings replaced, it may behoove the Town to consider creating a municipal buildings zoning overlay. Such an ordinance could give the Town the maximum options available for redevelopment of these structures and potentially yield a better return if the Town pursues sale or lease of the property to an outside party. This type of overlay zoning bylaw could establish in advance the permissible and non-permissible uses that will be allowed within these structures. It could also establish whether all or part of the existing buildings can or can not be demolished, and whether expansion of the structures will be allowed.

D. Low Impact Development

Low Impact Development (LID) is a smart growth tool that employs an ecosystem-based approach. It allows for greater development potential with less environmental impact. This is done through the use of smarter designs and advanced technologies that achieve a better balance between conservation, growth, and ecosystem protection, and public health and quality of life. Along with protecting wildlife corridors to the extent possible, LID uses the natural terrain and manages runoff at its source. Examples include swales and rain gardens, pervious pavement, and multi-purpose landscaping and vegetation. The state's Stormwater Management Guidelines, which promote LID techniques, have been incorporated into Stow's Subdivision Rules and Regulations and into the policy handbook of the Planning Board.

(For more information on Low Impact Development, see the Executive Office of Energy and Environmental Affairs website at www.mass.gov.)

E. Areas for Potential Zoning Change

1. Mandatory OSRD

Open Space Residential Design (OSRD) is the term commonly used for residential zoning that enables houses to be built on smaller lots, clustered closer together, while larger acreage, often 51% or more is left as undisturbed open space. In Stow this type of zoning is called *Planned Conservation Development (PCD)*.

The general rules in Stow for this overlay district are as follows:

- Minimum Tract Size – to utilize this zoning subdivision option, the parcel must have at least ten acres and be located in a Residential District
- Permitted Uses –
 - Single-family dwellings, single-family dwellings with accessory apartments
 - Multi-family dwellings (not more than 25% of the total number of dwelling units to be constructed under the PCD subdivision and no more than four dwelling units per building)
 - Accessory uses and structures incidental to principal uses indicated above are allowed as long as they are not the primary use
- Number of Lots - The number of lots allowed in the PCD shall be the number of lots into which the parcel could be divided and built upon under the normally applicable dimensional requirements and land use regulations.
- The minimum lot area per dwelling is 20,000 sq. ft.
- Minimum frontage - 100 feet (this requirement may be reduced to 50 feet if the lot is served by a common drive)
- Minimum front, rear and side yard setbacks of 20 feet
- Open Land - A minimum of 60% of the total area of the tract of land shall be designated as open land dedicated and used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses
 - Open land shall not contain more than 50% wetlands
 - Wells and sewage disposal areas or facilities may be located on the Open Land as permitted or regulated by Title 5 or local Board of Health regulations, if these facilities are serving the PCD
- No building shall be located within 100 feet of an existing public way or within 50 feet of the boundary line of the PCD or the Open Land set aside as part of the subdivision

As described in Chapter 6, the benefits of OSRD are numerous and include reduced impervious areas, reduced municipal maintenance of roads (shorter plowing routes), reduced lawn area (leading to reduced pesticides and fertilizer being discharged), increased undisturbed natural habitat, etc. With all of the positive outcomes of OSRD, Stow might consider making this type of residential subdivision the norm with by-right subdivision submission and eliminate the

option of building a conventional subdivision as-of-right. In so doing, it could retain the conventional option by Special Permit. Whenever a town makes one type of permit easier to get and increases the difficulty of another, this is a clear signal to developers indicating which type of development the municipality prefers.

Since there are relatively few advantages, if any, of a conventional subdivision, the Master Plan Committee feels that long term, OSRD is the preferred residential zoning strategy for Stow. Again, depending on public sentiment which should be gauged in a variety of public venues, the town might implement such a change on an area basis before going entirely to this new approach. It may also require additional planning staff or professional peer review consultants to assist the town in reviewing the OSRD. This is because the OSRD requires the developer to demonstrate how many lots can be obtained for a subdivision, after subtracting wetlands and other unbuildable areas. This yield number is then utilized to determine how many units are permissible under the OSRD. Since this extra step somewhat increases the complexity of the OSRD filing, it may be worthwhile for Stow to explore other means to simplify the unit yield calculation and enable a more streamlined filing system.

In the past, there has been some confusion and disagreement in Stow as to how open space created through OSRD should be utilized by the town. This is a key issue and one which can generate controversy. Some have suggested that the newly preserved spaces be established through a permanent bylaw change as lands available for passive recreation only. However, the MPC recommends a different approach. It suggests that the Planning Board evaluate carefully, within the context of its public hearings on each OSRD subdivision, what uses are appropriate and allowable for these open space areas. This determination should then become a special condition permanently attached to the subdivision approval permit. Such a methodology will establish clarity and forestall confusion later on. Down the road, should a neighborhood or developer wish to change the open space use designation, it would have to do so in the context of a change to its subdivision permit which would open a public hearing requirement and enable a fair public participation process in order to make such a change.

2. Golf Courses

As discussed in several earlier chapters, the five golf courses in Stow present a concern from an open space perspective, should the present owners decide to sell the land for development. In some cases, the large sections of golf course abutting major routes make them key view sheds in the community. It is incumbent upon the town to find ways to either protect these major parcels or to ensure that if they are developed, the type of development is conducive to Stow's long term vision of maintaining its rural character. Since the golf courses themselves offer key vistas and natural settings the Master Plan Committee recommends the town explore zoning tools that might help preserve these areas. Similar to the OSRD discussion above, zoning constraints the Town might want to consider include mandatory preservation areas or land set-asides of key vistas in exchange for higher density on the inland portions of the parcels with a lot yield equal to or greater than that which the owner could develop under a conventional

subdivision. The town could then go further and consider density bonuses for developments that include greater percentages of open space. However, unlike OSRD, in the case of the golf courses the town might want to consider pre-designating the preservation areas. Such a process would of course require careful evaluation, study, public process, and frank and open dialogue with property owners.

4. Demolition Delay Bylaw

As stated in the 1996 Master Plan, residents clearly want to preserve historic buildings and sites; however based on past experiences when historic districts were proposed, it is unclear if they would be willing to approve the additional level of regulation that can often be associated with official adoption of historic districts. We should consider passing a Demolition Delay bylaw as an alternative measure for historic preservation. The purpose of a Demolition Delay bylaw is to postpone demolition permits for a specified period of time while requiring interested parties to evaluate all alternatives to the demolition of a structure. Such a bylaw must first identify the structures to which it should apply and that designation becomes part of the bylaw considered by Town Meeting. Thus, it is possible to create a narrowly targeted bylaw to avoid over regulating structures that would not need to be included in this bylaw . The Town could in this fashion strategically focus on only those properties most worthy of preservation.

5. Historic Structure Reuse

One of the ways to prevent demolition of important historic structures and agricultural facilities is to expand the range of reuse options available to owners. Stow is fortunate to have such tools already built into its bylaws for many of the zoning districts in town. For example, Section 3.2.3.5 of the Zoning Bylaw spells out that as follows:

Uses not otherwise permitted in the Residential District, if such uses preserve historic and/or culturally significant BUILDINGS and STRUCTURES, provided that the historic and/or cultural character of the site, and BUILDING or STRUCTURE, in the opinion of the Special Permit Granting Authority, is not significantly altered, and the Special Permit Granting Authority finds that such uses, with any necessary mitigation measures, are in harmony with the character and uses permitted in the Residential District. This Section shall not eliminate the requirements of Section 3.2.2.5, which shall remain intact as written.

While the above clause does allow many uses inside historic structures, it does so by requiring a Special Permit which adds time, money, and costs to a normal project. Furthermore, there are several zoning districts which do not include the above provision. To ease the process of permitting and encourage reuse of historic structures, it may be worth developing pre-approved uses and establishing them as a “by-right” provision within the bylaw. As mentioned above, many developers and homeowners are still reluctant to seek a Special Permit. With such a change, the town could, for instance, consider allowing only in-law apartments or home offices as of right in the bylaw. Or, it could go further and even stand-alone housing units

(condominiums or apartments) to be constructed inside these structures in a way that preserves the character of the exterior of structure and the neighborhood.

It is important to publicize the availability of this zoning tool and the building department and planning departments should go out of their way to advise people of this option if they come in inquiring about building demolition. The Town's historic society could also publish a pamphlet describing some of these zoning options to encourage building reuse.

F. Districts to consider restricting building permits

1. Lake Boon area

As septic systems continue to fail and water wells potentially become compromised, the town may eventually find itself in a situation where it must limit annual building permits in the Lake Boon area. This approach could help the town limit



growth by slowing the number of expansions, tear-downs, and new development near the lake. Making it harder for summer residences to be converted to year-round use is another by-product of rationing building permits. Although it might seem a draconian approach, it may be the necessary step the town will have to take to protect the health of residents presently dwelling in this neighborhood. As described elsewhere, this area needs further study and zoning and building permit restrictions are just one tool the town might consider as it further evaluates the needs of this area.

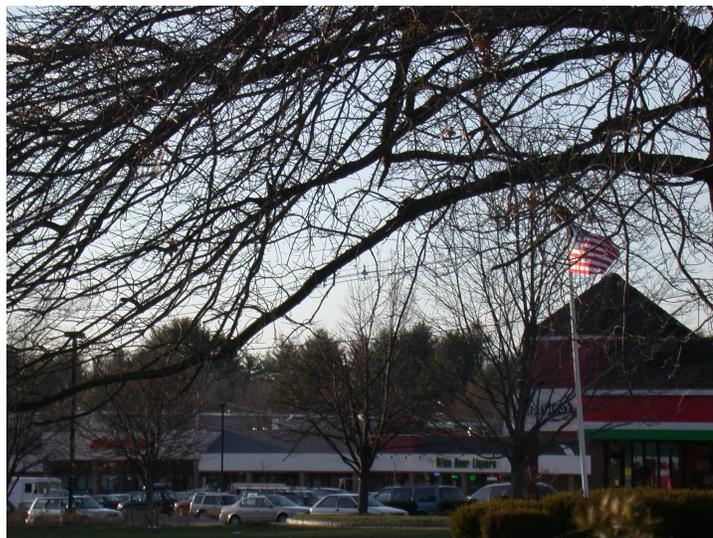
2. Other areas where growth is not smart

Similar to the Lake Boon watershed, Stow is ripe with sensitive environmental areas near the Assabet River, wetlands, and other water bodies described in the Natural Resources section. As a matter of policy, the town might want to limit development in this areas by restricting building permits or expanding its Wetlands Protection By-law making it more difficult to build in proximity to wetlands, rivers, streams, in floodplain, etc.

G. Commercial Areas

1. Promote “village-style”

Old historic New England villages had structures built close to the street with services located in the rear (parking and stockpiling of goods behind buildings). These villages often had residential upper floors and were sited very close together. Our current notions of commercial development discourage this type of development and encourage, instead, large parking fields in front with buildings set so far back it is hard to identify the stores from the road. An example of this is shown to the right. From the road,



this strip mall is non-descript and unimaginative. However, there are still key commercial areas along major routes in Stow that have yet to be fully developed. Before they are carved up into strip-mall style development, the town might want to consider modifying the development constraints in the by-law to encourage a more traditional style of buildings set closer to the road with parking servicing those buildings set behind.

Other development constraints could dictate the type and style of building architecture, signage guidelines, lighting, and other elements that if controlled could help promote a village-feel to future buildings. This type of development is often more pedestrian friendly with large front sidewalks and other connecting linkages between parcels and tends to discourage large parking fields:



FIGURE: 28 Existing Retail in Town



2. Expand allowable commercial uses

It has been a while since the town has evaluated its allowable commercial uses permitted in existing retail zones. Discussions around the Master Plan Committee table suggested there is an opportunity for the town to examine present uses and perhaps add some new additional uses that were not previously permissible.^{ddd} This is a task appropriate for the Economic Development Committee should it be created and also a task for the Planning Board.