Zoning 101

October 9, 2019
Jeff Levine, AICP
What is Zoning?

• Zoning is a use of municipal police power to protect the health, safety and welfare of the public
• Traditionally based on the separation of uses
• Evolved into a much more complex tool to regulate land use
• Important to understand that zoning is not the same as land use
• Zoning powers are limited- limits depend largely on the nature of your state’s government and how much home rule it allows local government
• Should be based on a Comprehensive or Master Plan
Home Rule in the United States

The Limits of Local Authority (Based on “Home Rule” and “Dillon’s Rule”)

- **Home rule**
- **Types of both**
- **Dillon’s rule**
- **Neither**

[Map of the United States with states colored according to the type of local authority they have.]
Why is Zoning Allowed?

• Village of Euclid v. Ambler Realty Company (272 U.S. 365 (1926)): Supreme Court case upholding the right to zoning as a use of police power to protect the public welfare, within reason.

• MGL c. 40A: Not a “zoning enabling act” but frames the limits of Home Rule. Clear rules on municipal discretion (Variance and Special Permits); grandfathering; and nonconforming uses.

• MGL c. 40B, 40R: Outline additional opportunities and responsibilities with respect to affordable housing (40B) and growth zones (40R). Sets obligation of municipalities to meet affordable housing needs and also of the state to financially support Smart Growth.

• Theoretically should come from a Comprehensive Plan

• Lots of case law
“Euclidean Zoning”

• Euclidean zoning is a zoning by specific and uniform geographical division.

• It is a system of zoning whereby a town or community is divided into areas in which specific uses of land are permitted.

• It is not designed to include illustrations, design guidelines, or excessive flexibility for municipalities.

• By far the most common form of zoning in the US.
Performance[-Based] Zoning

• Imagine a perimeter line outside of a site. What happens on the site is not the issue, it’s what crosses the line
• Traffic, odors, community-wide impacts
• Not widely used in exclusion of Euclidean zoning, though many zoning codes have performance standards.
• Often implemented through Site Plan Review processes

“Rather than establishing specific area and bulk standards within zoning districts to govern development, performance zoning regulates the design and location of a use based on the characteristics of a particular site to support development.
Under performance zoning, municipalities replace conventional zoning districts with performance criteria to guide development.”

Chester County [PA] Planning Commission
Form Based Code

• Emerged from New Urbanism
• Focus on the built form rather than uses
• Dimensions defined by relationship to the street, not the lot
• Many codes use elements of Form Based Code such as design standards
• Few “pure” Form Based Codes
• Use often matters after all

“Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks. The regulations and standards in form-based codes are presented in both words and clearly drawn diagrams and other visuals. They are keyed to a regulating plan that designates the appropriate form and scale (and therefore, character) of development, rather than only distinctions in land-use types.”

Form Based Code Institute
A Continuum

Euclidean Zoning

Design Review

Form Based Code

Site Plan Review

No Use Restrictions

Performance Zoning
Nonconforming Uses and Structures

• Governed in state law under c. 40A s. 6:

“[P]re-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.”
Grandfathering

• Again, c. 40A s. 6:

“Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.”
Special Permits

• This time, c. 40A s. 9:

“Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities.”
Conditional Uses & Variances

• Provide some site-based application of zoning
• Municipal Boards may “[a]pprove the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance …” (Maine)
• Variances have much higher standards to meet, but do not have to be as specifically authorized in local ordinance
Not the only game in town...

• Building Code
• Historic Preservation Bylaws (MGL c. 40C)
• National Environmental Policy Act
• Massachusetts Environmental Policy Act
• Shoreland and Riverfront bylaws
• Wetland Bylaws
• Special Permits
• Environmental Design Review (Site Plan Review)
• Subdivision Regulations – and the Massachusetts zoning freeze
Three Challenges of the Code

1. Code structure is unworkable:
   - Language is unreadable and subject to wide interpretation
   - The code attempts to describe physical form through words
   - Answers to basic questions are scattered across sections
   - Additional districts are cobbled onto code structure
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2. Residential (RA&RB) Districts don’t provide a predictable outcome:
   • Nonconformity is used as a proxy for design review
   • Large by-right lots have no design review
   • Wide ranges of possible outcomes by special permit
   • Larger mixed-income projects permitted, but not often supported
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3. Transit station zoning is not on the map:
   • Future green line station areas are in old industrial zones
   • Neighborhood Squares have limited options for growth
   • Newer zoning in Union Square and Broadway still need work
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4. Problems #2 and #3 cannot be fixed until they fixed #1
Zoning: Based in Best Practices

1. Use Based
2. Performance Based
3. Special District
4. Form Based

New Somerville Zoning Ordinance
SECTION 3.2.1 DISTRICTS ESTABLISHED

To carry out the provisions of this Article, the following zone districts have been established in the Suburban Neighborhood Context and are applied to property as set forth on the Official Map.

**Suburban Neighborhood Context**
- S-SU-A  Single Unit A
- S-SU-D  Single Unit D
- S-SU-F  Single Unit F
- S-SU-Fx Single Unit Fx
- S-SU-F1 Single Unit F1
- S-SU-I  Single Unit I
- S-SU-Ix Single Unit Ix
- S-TH-2.5 Town House 2.5
- S-MU-3  Multi Unit 3
- S-MU-5  Multi Unit 5
- S-MU-8  Multi Unit 8
- S-MU-12 Multi Unit 12
- S-MU-20 Multi Unit 20
How Many Residential Districts

NR
Neighborhood Residential

UR
Urban Residential
City of Somerville, Massachusetts

Proposed Official Zoning Map
(not adopted)
NR: A Residential District
NR: A Residential District

7. Cottage
A small floor plate, detached, residential building type with one dwelling unit. The cottage is the smallest type of detached housing in Somerville. Two variants exist, one with a half-story under pitched roof and another with a full-height second story and a shallow pitched roof or a flat roof.

The following images are examples from Somerville of the cottage building type and are intended only for illustrative purposes.

8. Detached House
A moderate floor plane, detached, residential building type with one dwelling unit or two vertically stacked dwelling units, where each unit typically has its own front door. This house is the most prevalent building type in Somerville. This type is referred to as a “Philly Style” when the second floor is split between the two dwelling units.

The following images are examples from Somerville of the house building type and are intended only for illustrative purposes.
NR: A Residential District

Lot Dimensions
- Width (min) -
- No Driveway Access: 32 ft
- Side or Rear Driveway Access: 22 ft
- Front Driveway Access: 15 ft
- Depth (min): 60 ft

Lot Development
- Lot Coverage (max): 65%
- Green Factor (min): 0.35

Building Setbacks
- Primary Front Setback (min/max): 10 ft / 20 ft
- Secondary Front Setback (min/max): 10 ft / 20 ft
- Side Setback (min): 5 ft
- Rear Setback (min): 20 ft

Parking Setbacks
- Primary Front Setback (min): 20 ft
- Secondary Front Setback (min): 10 ft

Main Body
- Facade Build Out (min): 50%
- Width (min/max): 22 ft / 28 ft
- Depth (min/max): 26 ft / 48 ft
- Building Height (max): 2.5 ft
- Story Height (min/max): 10 ft / 12 ft
- Ground Floor Elevation (min): 2 ft
- Roof Type: Flat, Gable, Mansard

Facade Composition
- Ground Story Fenestration (min/max): 20% / 50%
- Upper Story Fenestration (min/max): 20% / 50%

Use & Occupancy
- Dwelling Units (max): 2
- Outdoor Amenity Space (min): N/A
F. Dormer Window

i. A dormer window is a single window or set of windows that projects vertically from a sloped roof, designed to provide light into and expand the habitable space of a half-story.

<table>
<thead>
<tr>
<th>Dimensions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Width (max)</td>
<td>24 ft or 50% of the eave length of the main roof (whichever is shorter)</td>
</tr>
<tr>
<td>Front &amp; Rear Wall Setback (min)</td>
<td>3 ft 6 in</td>
</tr>
<tr>
<td>Side Wall Setback (min)</td>
<td>1 ft 6 in</td>
</tr>
<tr>
<td>Ridge Line Setback (min)</td>
<td>1 ft</td>
</tr>
<tr>
<td>Roof Slope (min)</td>
<td>4:12 (18.43°)</td>
</tr>
<tr>
<td>Fenestration (min)</td>
<td>70%</td>
</tr>
</tbody>
</table>

ii. Standards

a). Setbacks are strictly enforced regardless of permitted dormer width.

b). The maximum permitted width of a dormer applies to single, multiple, or attached combinations of dormers on each side of a roof.
NR: A Residential District

H. Side Wing

i. A side wing is a multi-story extension from one or more side walls of the main body of a building.

<table>
<thead>
<tr>
<th>Dimensions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Setback from Facade (min)</td>
<td>5 ft</td>
</tr>
<tr>
<td>Floor Plate (max)</td>
<td>4 ft</td>
</tr>
<tr>
<td>Width (max)</td>
<td></td>
</tr>
<tr>
<td>One (1) Story</td>
<td>1/2 of Main Body Width</td>
</tr>
<tr>
<td>Two (2) or More Stories</td>
<td>1/3 of Main Body Width</td>
</tr>
<tr>
<td>Height (max)</td>
<td>Same as Principal Building</td>
</tr>
</tbody>
</table>

ii. Standards
a). Side wings must include a similarly style roof as the Principal Building.
F. Portico
   i. A portico is a frontage type featuring a set of stairs with a landing leading to the entrance of a building and a roof supported by columns, piers, or posts.

G. Projecting Porch
   i. A projecting porch is a frontage type featuring a set of stairs with a landing leading to the entrance of a building and a roof supported by columns, piers, or posts.
TABLE 3.1 NR Permitted Uses

<table>
<thead>
<tr>
<th>Use Category</th>
<th>NR</th>
<th>Use Specific Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household Living</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Group Living (except as follows)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community or Group Residence</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Dormitory, Fraternity, or Sorority</td>
<td>N</td>
<td></td>
</tr>
</tbody>
</table>

TABLE 3.2 Parking

<table>
<thead>
<tr>
<th>Use Category</th>
<th>Short-Term (min)</th>
<th>Long-Term (min)</th>
<th>Within a Transit Area (max)</th>
<th>Outside of a Transit Area (min)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artisan Production</td>
<td>1.0 / 10,000 sf</td>
<td>1.0 / 3,000 sf</td>
<td>n/a</td>
<td>1.0 / 1,000 sf</td>
</tr>
<tr>
<td>Arts &amp; Service</td>
<td>1.0 / 10,000 sf</td>
<td>1.0 / 3,000 sf</td>
<td>n/a</td>
<td>1.0 / 1,000 sf</td>
</tr>
<tr>
<td>Design Services</td>
<td>1.0 / 10,000 sf</td>
<td>1.0 / 3,000 sf</td>
<td>n/a</td>
<td>1.0 / 1,000 sf</td>
</tr>
<tr>
<td>Shared Workspace &amp; Arts Education</td>
<td>1.0 / 10,000 sf</td>
<td>1.0 / 3,000 sf</td>
<td>n/a</td>
<td>1.0 / 650 sf</td>
</tr>
<tr>
<td>Lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>1.0 / 20 rooms</td>
<td>1.0 / 10 rooms</td>
<td>n/a</td>
<td>1 / 4 rooms</td>
</tr>
<tr>
<td>Short Term Rental</td>
<td>1.0 / 20 rooms</td>
<td>1.0 / 10 rooms</td>
<td>n/a</td>
<td>1 / DU</td>
</tr>
<tr>
<td>Industrial</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household Living</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>1 / DU</td>
</tr>
<tr>
<td>Group Living</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>1 / DU</td>
</tr>
<tr>
<td>Retail Sales</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consumer Goods</td>
<td>1.0 / 2,500 sf</td>
<td>1.0 / 10,000 sf</td>
<td>n/a</td>
<td>1 / 1,500 sf</td>
</tr>
<tr>
<td>Food Market or Grocery Store</td>
<td>1.0 / 2,500 sf</td>
<td>1.0 / 10,000 sf</td>
<td>n/a</td>
<td>1 / 1,500 sf</td>
</tr>
</tbody>
</table>

*See Transit Orientation Map for distance to a Transit Station

** sf - Gross Leasable Square Footage ** DU - Dwelling Unit ** RU - Rooming Unit **
UR: The Multi-Family District
UR: The Multi-Family District

9. Multi-Plex (continued)

i. Lot Standards

- Lot Dimensions
  - Width (min): 100 ft
  - Depth (min): 85 ft
- Building Setbacks
  - Primary Front Setback (min/max): 15 ft to 20 ft
  - Secondary Front Setback (min/max): 10 ft to 15 ft
  - Rear Setback (min): 10 ft
  - Side Setback (min): 5 ft
  - Side Yard Access: 46 ft

ii. Building Placement

- Primary Front Setback: 20 ft
- Secondary Front Setback: 10 ft

iii. Uses & Features

- Main Body
  - Facade Build Out (min): 20%
  - Width (min/max): 30 ft to 50 ft
  - Depth (min/max): 44 ft to 68 ft
  - Building Height (min): 3 stories
  - Story Height (min): 10 ft to 12 ft
  - Ground Floor Elevation (min): 3 ft
  - Roof Type: Flat, Gable

- Parcels Composition
  - Ground Story Renovation (min/max): 20% to 50%
  - Upper Story Renovation (min/max): 20% to 50%

- Use & Occupancy
  - Dwelling Units (max): 6
  - Outdoor Amenity Space (max): 1/3 DU
UR: The Multi-Family District

7. Detached Triple Decker
A moderate floor plate, detached, residential building type with three vertically stacked dwelling units. The triple decker...

The following images are examples from Somerville of the detached triple decker building type and are intended only for illustrative purposes.

9. Multi-Plan
A moderate floor plate, detached, residential building type with four to six dwelling units.

The following images are examples from Somerville of the multi-plan building type and are intended only for illustrative purposes.
REZONING PENINSULA NEIGHBORHOODS

* Munjoy Hill * Parkside * West End * Western Bayside * East Bayside * Libbytown * India Street*
R-6 Building Types
R-6 Building Types
Why Re-Zone?

- Reduce non-conformities
- Enable incremental infill
- Enable existing patterns to continue
- “Triple-Deckers By Right”
- Potential to reduce frequent requests for rezoning
- Greater flexibility for existing property owners
- Housing Production
- Code streamlining and simplification
- Documented need for more housing
- Small infill development builds housing organically
R-6 Total Non-Conforming Parcels (by lot size) Under Current Zoning

77%
Dimensional Changes
Reduced & Variable Setbacks
Dimensional Changes

Frontages
Dimensional Changes

Frontages
Public Process: Getting Out Good Information
Outreach to Impacted Neighborhood Associations

- Used many visuals in many low tech, low budget, long conversations
- Changed proposal in response
- Amended side setbacks, retention of large existing units, stepbacks
## Dimensional Changes

**Residential Density**

<table>
<thead>
<tr>
<th>Lot Size</th>
<th>Former R-6 Density (1,000-1200 sf/du)</th>
<th>Amended R-6 Density (725 sf/du)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,000 sf lot</td>
<td>36 du/acre</td>
<td>60 du/acre</td>
</tr>
<tr>
<td>3,000 sf lot</td>
<td>2 units</td>
<td>2 units</td>
</tr>
<tr>
<td>4,500 sf lot</td>
<td>3 units</td>
<td>4 units</td>
</tr>
<tr>
<td></td>
<td>4 units</td>
<td>6 units</td>
</tr>
</tbody>
</table>
Dimensional Changes
Lot Size
RESULTS

➢ 120+ new housing units since 2015
➢ Allows residents to add on space for growing families, aging in place, accessory units
➢ New construction and modifications to existing
➢ Major pushback in 2018-9
➢ Biggest issues—parking, design, massing
RESULTS
"Take away a few more parking spaces."
## Revised Dimensional Standards

<table>
<thead>
<tr>
<th></th>
<th>Base R-6</th>
<th>IPOD</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Height Maximum</strong></td>
<td>45'</td>
<td></td>
<td>35'; 45' for developments of 3 units or more on lots over 2000 sf, or for developments that include at least one workforce housing unit. Rooftop appurtenances other than chimneys shall not exceed permitted heights.</td>
</tr>
<tr>
<td><strong>Side Yard Setback</strong></td>
<td>5', except that a side yard in the R-6 zone may be reduced to zero, provided the cumulative side yard setbacks are not less than 10'. Buildings of height up to 35': As per the underlying zoning.</td>
<td>10' except that one side may be reduced to 5' if the other sides in sumer are increased by the same amount.</td>
<td>Buildings of 35' or more: 20' total for all side yards, small side yards must meet design standards</td>
</tr>
<tr>
<td><strong>Minimum</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Structure Stepbacks</strong></td>
<td>Portions of a structure above 35' shall be no closer than 10' from the side property line and no closer than 15' from the rear property line when such property line abuts a residential zone.</td>
<td>Stepback requirements in the underlying zoning shall not apply to side yards.</td>
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</tr>
<tr>
<td><strong>Side Yard Setback on a Side Street</strong></td>
<td>None</td>
<td>5'; or the minimum depth of the immediately abutting street-facing yard, whichever is less.</td>
<td>5'; or the minimum depth of the immediately abutting street-facing yard, whichever is less. The total setback on both sides must be no less than 15'.</td>
</tr>
<tr>
<td><strong>Minimum</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Rear Yard Setback</strong></td>
<td>10', except that accessory structures with a ground coverage of 144 sf or less: 5'. As measured from a building: 20% of the maximum depth of a lot but no less than 10'.</td>
<td>As measured from rear decks, porches, or similar unenclosed space: 7.5'.</td>
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</tr>
<tr>
<td><strong>Minimum</strong></td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>
Demolition Review: What is it?

- Local ordinance allowing City to “hit the pause button” on a building’s demolition if the building meets certain standards
- Usual delay is between 2 months and 18 months. However, recent research suggests that delays of too short a period do not accomplish their public policy goals, recommends 12-18 months
- Goal is to allow for time for alternatives to demolition to be explored and potentially advanced
- City can lift the delay if a mutually agreeable solution is developed
- While landmark designation is a possible outcome, most often that is not the result
- Good resources here:

Demolition Review Decision Tree

Demolition is Held for Discussion

- Renovation/Addition Proposed
- Property Designated

DEMOLITION APPLICATION SUBMITTED

Is it potentially “Preferably Preserved”?

- Yes
- No

Does applicant appeal staff determination?

- Yes
- No

Does Preservation Board uphold staff determination?

- Yes
- No

Property Designated

- Board and Applicant Agree on Replacement Design

Time Lapses

DEMOLITION PERMIT ISSUED