

LAND USE CONTROL THROUGH ZONING

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Hingham regulates the use of land, buildings and structures within its borders through zoning. This critical function affects the health, safety and general welfare of its inhabitants, in addition to the look and feel of a town.

Why, for example, do certain portions of Main Street, Weymouth, (Route 18) appear so different from Main Street, Hingham (Route 228), when the homes built there are from a similar era?

A town's zoning is governed by Chapter 40A, the Zoning Act of the Massachusetts General Laws, which authorizes local governments to have their own zoning rules and by-laws, adopted by voters at Town Meeting.

This local power to regulate zoning has been broadly interpreted by the Massachusetts Supreme Judicial Court, which generally upholds town's decisions.

Some entities are exempt from a town's zoning restrictions, such as public utilities, houses of worship, schools, or structures owned by the state. But towns have a say in those exceptions regarding the bulk and height of structures, yard size, lot area, setbacks, open space, parking and building coverage requirements.

Currently, in Hingham, the South Shore Baptist Church and the zoning and planning boards are negotiating how much parking should be required for the church's proposed expansion. The Hingham Nursery School, to be built on a parcel adjacent to the Hingham Middle School, could be built in any district as long as it met setbacks, parking, height, and other zoning rules. But the town can not stop a church or school from the *use* of land.

Chapter 40B, the so-called anti-snob zoning law, is another example of a use that's been partially exempted from local zoning control. Cities and towns that lack a specific percentage of low income housing of their total housing stock cannot enforce their zoning on 40B projects. A 40B project must set aside a certain number of units for low and moderate income housing. The

Linden Ponds retirement community on Whiting Street is an example. Local land use control through zoning is severely compromised with these projects.

Zoning by-laws typically divide land into districts where certain uses are permitted as a matter of right.

Minimum lot sizes, a certain number of feet of frontage on a public way, sideline setbacks, etc., apply to uses within these districts. Some specific types of uses may only be permitted in specified districts upon the issuance of a special permit, granted by the Zoning Board of Appeals (ZBA), which is designated in the by-law as the special permit granting authority.

The ZBA shares some responsibility with the Planning Board. In some cases the ZBA may ask the Planning Board to do a site plan review and make recommendations before the ZBA makes a decision.

These reviews typically include a traffic study, which includes: ease of access at entrances and exits, and of driveways; safety and adequacy of the driveway layout; adequacy of the proposed water supply; assurance of correct drainage; and compliance with off-street parking requirements.

Zoning issues are complicated, and require experienced citizens to serve on these land use boards, and experienced staff to assist them. Often at town meeting the warrant has several articles seeking to change the town's zoning by-laws. Often these are technical changes that the boards propose to clarify the by-law, or make it more, or less, strict. The Planning Board is required to hold a public hearing on all proposed changes to the zoning by-laws, which they do in January and February prior to town meeting.

Zoning changes require a 2/3 vote of the eligible voters at town meeting. Although zoning articles may not always be controversial, they are always significant. Few decisions that citizens of a town make impact the quality of their life as much as planning and zoning decisions do. Community consensus changes over the years but once development occurs, there are fewer options for protecting open space or planning for future growth. It is remarkable that citizens in towns like Hingham still have the power to design their communities through their zoning decisions made at town meetings.

