#### **Outline of Presentation**

- 1. Planning and Zoning Basics
- 2. Variances and Special Permits
- 3. Exemptions
- 4. Site Plan Review
- 5. Reading Subdivision Plan

#### **Zoning History**

- 1867- NYC establishes regulations for light and air (Tenement House Law)
- 1892- Boston sets first height regulations
- 1909- Upheld by the Supreme Court
- 1916- NYC enacts 1<sup>st</sup> comprehensive zoning
- 1926- Standard State (Zoning) Enabling Act adopted, providing a model for many states
- 1926- Comprehensive zoning upheld by Supreme Court (Euclid v. Ambler Realty)

#### Massachusetts' Zoning Laws

- 1933 Adopts Standard State Zoning Enabling Act
- 1954- Statute was rewritten and codified (Chapter 40A)
- 1975- Chapter 808 Acts of 1975

## **The Planning Team**

- Planning Board
  - Special Permit Granting Authority
- Zoning Board of Appeals

   Special Permit Granting Authority
- City Council
- Zoning Administrator
- Planning Staff

## Long Range Planning

The Comprehensive or Master Plan

"A Planning Board established in any city or town <u>shall</u> make a master plan of such city of town ... as said board may deem advisable and from time to time may extend or perfect such a plan."

1913: Massachusetts the first state to make local planning mandatory!!!

# A Comprehensive or Master Plan is...

...a policy document outlining a the current situation and desired future. It is a document of legal standing and should guide municipal decisions.

It addresses:

- Future land use patterns
- Provision of services



• Relationship between housing, business, open space and transportation.

### **Other Plans**

- Open Space and Recreation Plan
- Community Development Plan
- Area or Neighborhood Plans









#### **Purpose of Zoning**

"Ordinance or bylaws, adopted by cities and towns to regulate the use of land, buildings and structures to protect the <u>health</u>, <u>safety and general welfare</u> of their present and future inhabitants."

# **Zoning Districts**

- Uniformity required
- Zoning Map required
- Overlay Districts



### How uses are permitted

- By-Right
- Special Permit
  - Finding
- Variance
- Site Plan Approval
- Comprehensive Permit

# Zoning

#### Some Definitions:

- Special Permit Granting Authority (SPGA)
- Site Plan Review (SPR)
- Variance
- Special Permit
- Findings

## **Planning Board**

- 5-9 members
- Associate members allowed under zoning (40A)
- 3-5 years staggered terms
- Elected or appointed

### **Zoning Board of Appeals**

- 3-5 members
- Associate members allowed
- Appointed or elected

## **Planning Board role**

- Comprehensive and Study Plans
- Zoning amendment public hearings
- Make recommendations on zoning changes
- Act as SPGA (in most cases)
- Conduct site plan review
- Write subdivision regulations
- Subdivision review

## **Zoning Board role**

- Administrative appeals of decisions of the Building Inspector
- Special permit applications when SPGA
- Findings
- Variances
- Comprehensive Permits

## **Special Permits**

- For uses identified & in harmony with Zoning
- SPGA may impose conditions
- •Zoning must provide standards for issuance or denial

•Board may **not refuse** to issue permit for reasons **unrelated** to zoning standards

Board may consider future effects

## **Special Permits**

- Increase in density
- Multi-family in non-residentially zoned areas
- Cluster and open space developments
- Adult entertainment
- ANY THING ELSE DEFINED IN ZONING

## **Special Permit Decision**

•Must make an affirmative finding as to the existence of each condition of the zoning

•If the board finds any permissible reason to deny the application, its decision will be sustained

## **Condition of Ownership**

A special permit, unlike a variance, may be conditioned by limiting its duration to the term of ownership or use by the applicant.

### **Delegation of Authority**

Conditions that attempt to delegate or defer decisions have been rejected.

## Variances

- A variance from the terms of the Zoning
- USE variances must be authorized by Zoning
- Three required findings:
  - 1. Soil conditions, shape, or topography
  - 2. Hardship
  - 3. Public Good
  - All three conditions required for variance!
- Can include reasonable conditions

## Site Plan Approval

- Fit projects into the community
- Criteria for layout, scale, appearance, safety and environmental impacts
- Focus on parking, traffic, drainage, roadway construction, signage, utilities, landscaping and screening, lighting
- Often used with special permit or variance
- May not deny based on the use

### **Zoning Act Silent**

- The Zoning Act contains *no* reference to Site Plan Review
- The Site Plan Review process has been created by local zoning and approved by the courts

## **Comparison to Special Permit**

- "Regulation of use, rather than its prohibition"
- Site plan review can only be used to shape a project; cannot be used to deny a project, except in rare circumstances

# **Conditions an approval of Site Plan may include:**

- Maintenance guarantees
- Landscaping requirements
- Parking spaces
- Dust control
- Sewer connection
- Bond or performance guarantee
- Hours of operation
- Police details during heavy traffic periods

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#### **Procedures for Vote**

- Majority vote of those present, unless specified otherwise in local zoning bylaw
- If proceedings are continued to various sessions, upon municipal acceptance of M.G.L. c 39, s23D, a member may miss one session and still vote if that member certifies in writing that he/she has reviewed all evidence from the missed session.

## **Constructive Approval of Site Plan**

- No court decisions to provide guidance
- Good practice to state in local zoning bylaw a period after which plans are constructively approved
- Also good practice to state in local zoning bylaw that the time period for decision may be extended upon agreement of the parties

#### **Site Plan and Vested Rights**

• A lower court has held that the freeze provision of M.G.L. chapter 40A, section 6 does not apply to site plan approval

## **Appeal of Site Plan Decisions**

- Where SPR connected to Special Permit or Variance, site plan decision should be appealed directly to court
- Where SPR connected to building permit, appealable decision is the issuance of the building permit

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#### **Subdivision Control Law**

"The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of cities and towns in which it is, or may be, put into effect by requiring the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not yet become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas."

## **Subdivision- Definition**

- "Subdivision ...division of a tract of land..."
  Except Approval Not Required (ANR):
  •A public way or a way which the city clerk certifies is maintained and used as a public way, or
  •A way shown on a plan therefore approved and endorsed in accordance with the Subdivision Control Law, or
- •A way in existence when the Subdivision Control Law became effective in the city in which the land lies

 The lots have minimum frontage on legal ways (above) •Planning Board finds vital access: Adequacy of the road way Adequacy of the access from the way

#### **Cluster Development**

Also known as Creative Design, Open Space Development, Conservation Subdivision, or Conservation Design

•Houses are grouped on smaller lots than what is otherwise allowed by zoning on a portion of the parcel;<u>AND</u>

•The remaining land is preserved as protected agricultural, natural, or recreational open space.



#### **Flexible or PUD Zoning**

Allows for variation in lot size and frontage within a new subdivision, while maintaining the overall density of the development according to established standards.

Under flexible zoning, a developer determines how many lots would be allowed for a parcel of land under a conventional development, and then designs a plan for the same density without the limitations of strict frontage and lot requirements.
# Conflict of Interest Law MGL Chapter 268A

What to avoid:

- Actual and perceived conflicts Who is covered?
- Elected/Appointed members
- Paid/Unpaid staff/officials
- Full and part time employees

## **Conflict of Interest Law**

What activities are covered?

- Bribes to influence your decisions
- Extra pay,
- Gifts over \$50



# Conflict of Interest Law – does it apply to you?

- Protect yourself from embarrassment !
- Take the initiative rather than hope for the best!
- Consult with State Ethics Commission
- Advise your Board in advance

# If you are a member with a conflict....

- Cannot count towards quorum
- Cannot vote on the matter
- Rule of Necessity may need to be invoked

## **General Standards of Conduct**

- A Board member may not:
  - Accept other employment which would impair independent judgment
  - Improperly disclose confidential information
  - Use position to gain privileges

## **General Standards of Conduct**

- A Board Member Should
  - Listen to all sides
  - Consider the overall public good
  - Seek out information to help make decisions



## Open Meeting Law MGL Chapter 39 Section 23A-B

Purpose: To conduct government business in full view of the public



#### Holding an "**Open Meeting**" requires Public notice:

- •What (posting)
- •Where (posting)
- Who (minutes)
- Decisions (minutes)
- Physically accessible

## **Open Meeting Law**

- Applies to:
  - Subcommittees and work sessions
- Does not apply to:
  - Site visits
  - Social gatherings

## **Open Meeting Law**

The difference between:

- Public Meeting vs. Public Hearing
- Public Notice vs. Legal Notice

## **Public Meeting Notice**

- Notice must be posted 48 hours in advance
- Give date, time and location of meeting
- Meetings must be accessible to all persons



## **Public Meeting Records**

- There needs to be a record/minutes of the meeting
- Required content: see MGL Chapter 66 section 5A

## **Executive Sessions**

- Very specific and limited reasons
- Very rare for Planning and Zoning boards



## **Voting Requirements**

Quorum: Majority of board Voting (generally): Majority of quorum Voting Special Permits/variances: Super majority

## Who Votes

- Permit– must be present all meetings OR
- Mullen Rule FIX
  - IF audio or video tape or transcript
- Legislative- ok to miss meeting or hearing

#### **Constructive Grant Process**

If your Board fails to meet a time deadline for a specific decision, it can result in an automatic approval. This is called a **Constructive Grant.** 

## **Board Rules and Regulations**

- Election of officers
- Meeting schedules and agendas
- Minutes
- Appointments
- Liaison with other boards and staff

## **Zoning Exemptions**

Home Rule State BUT... Not inconsistent with State law State and Federal Preemption

## State Building Code Exemption

Section 3 precludes a local ordinance or bylaw from regulating or restricting the use of materials or methods of construction of structures regulated by the state building code

## Interior Area of Single-Family Structures

No zoning ordinance or bylaw can regulate or restrict the interior area of a single-family residential building

#### **Agriculture Exemption**

No zoning ordinance or bylaw shall prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture Communities can prohibit agricultural uses on parcels less than five acres

## **Religious and Educational Exemption**

No zoning ordinance or bylaw shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes

Such land or structures may be subject to reasonable regulations

## **Court Decisions Defining Educational Use**

• The court has long recognized "education" as a broad and comprehensive term

• Group Homes

# Not all educational or religious uses protected:

#### Educational

- Nursing home
- Dancing schools

#### **Religious**

- Offices & rooms for psychological counseling
- Leased parking spaces for hospital

## **Regulation of Religious and Educational Uses**

Municipalities may impose reasonable regulations concerning the bulk and height of structures, parking and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

### **Reasonable Regulations**

- The question of reasonableness depends on the facts of each case
- Burden of Proof
- Adopting specific zoning requirements for exempted uses

Reviewing Proposed Educational & Religious Activities

• Special Permits *cannot* be required for religious or educational uses.

## **Bigger Governments Exempt**

#### • State government

- State agencies
- State universities
- Federal government
  - Federal agencies
  - Post Office
  - Veterans Administration

## **Municipal Uses**

Municipal uses are not immune from local zoning regulations

### **Public Service Corporations**

Lands or structures used by a public service corporation may be exempted if:

- the department of telecommunications and energy determines the exemption is required
- finds that the proposed use of the land or structure is reasonably necessary for the convenience and welfare of the public

#### **Child Care Facilities**

A child care facility is a day care or a school age child care program

## **Exemptions for Child Care Facilities**

No zoning ordinance or bylaw can prohibit or require a special permit for the use of land or structures, or the expansion of existing structures, for the primary or accessory purpose of operating a child care facility

Child care facilities may be subject to reasonable regulations

# Exemptions for Family Day Care and Large Family Dare Care Homes

They are protected as a permitted use, unless prohibited or otherwise regulated (e.g. special permit) by the local zoning bylaw or ordinance.

## Housing Discrimination Against Disabled Persons

Local land use and health and safety laws, regulations, practices, ordinances, bylaws and decisions shall not discriminate against a disabled person

#### Handicapped Access Ramps

No dimensional lot requirement, including but not limited to set back, front, side, and rear yards, and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person

#### **Temporary Mobile Homes**

No zoning ordinance or bylaw can prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a mobile home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt
### **Solar Energy Systems**

No zoning ordinance or bylaw can prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare

#### **Amateur Radio Operators**

No zoning ordinance or bylaw can prohibit the construction or use of an antenna by a federally licensed amateur radio operator

#### **Scientific Research Facilities**

Zoning ordinances or bylaws must provide that uses, accessory to activities permitted as a matter of right, which are necessary in connection with scientific research or scientific development, may be permitted upon the issuance of a special permit

#### **Hazardous Waste Facilities**

A hazardous waste facility shall be permitted to be constructed as of right on any locus presently zoned for industrial use provided that all permits and licenses have been issued to the developer and a siting agreement has been established

# **Refuse Treatment And Disposal Facilities**

A solid waste facility which has received a site assignment shall be permitted on any locus zoned for industrial use unless specifically prohibited by the zoning ordinance or bylaw in effect as of July 1, 1987













































# Using a Scale

- Standard 3-sided Engineering Scale
- Two scales per side
  - 10 1 inch=10 feet 20 1 inch=20 feet
  - 30
     1 inch=30 feet
     40
     1 inch=40
  - 50 1 inch=50 feet

40 1 inch=40 feet60 1 inch=60 feet

10 scale can also be used as a 12" ruler

## Using A Scale

• For Other Scales

80 scale (1"=80'), use 40 scale and multiply by 2

100 scale (1"=100'), use the 10 scale and add a zero

200 scale (1'=200'), use the 20 scale and add a zero

#### Exercise

1. Using the 10 scale, determine the length of the line below.

Answer: \_\_\_\_\_feet

2. Using the 40 scale, determine the dimensions of the box below



Using the 20 scale, determine the slopes of the dashed lines below.
 Comment: Slope is the deviation of a surface from the horizontal, and usually expressed in percent or degrees. Slope percent is computed by dividing the vertical distance by the horizontal distance times one hundred.



### Legend For a Plan

• Legends list items shown on a plan and the symbol for each item. A few examples are:

catch basin existing spot elevation x 75.0 water line \_\_\_\_\_\_ contour ---- 104 ---proposed underdrain \_\_\_\_\_

#### Subdivision Details











#### The Plans Before You

- Littles Hill subdivision in Georgetown, MA
- 45 lot subdivision on 130 acres of former pasture land
- Includes an on-site sewer treatment plant
- Soccer field not typical in a subdivision
- We will use the Index, Definitive, Profile and Topographic plans from this subdivision

#### Index Plan

- Usually submitted on larger subdivisions
- Shows the whole project
- Includes the following:



### Definitive Plan

- Shows the lots and roads
- Homeowner uses at the Registry of Deeds for lot description
- Items include the following:
  - Road Layout Lot area
  - Lot lines

Easements

- Lot Numbers
- Bearings, Curves, and Distances



#### Plan & Profile

- Details of road for use mostly with construction
- Shows underground utilities, roads, sidewalks, catch basins, manholes, etc.
- Plan items include the following:

Layout widthPavement widthSidewalkRoad StationingCatch BasinsDrainage manholeDrainage pipeSewer manholeSewer pipeWater mainFire HydrantProposed monuments

## Plan & Profile

• Profile items include the following:

Road stationing Sewer manhole Existing grade for centerline of road Proposed grade for road centerline of road Catch Basin Drainage manhole Drainage pipe & slope Sewer manhole Sewer pipe & slope

# Topographic Plan

- Shows elevations and is vertically oriented
- Items include the following:

Property linesDrywells at house cornersExisting contoursCatch basinsProposed contours Drainage manholeWetlandsWater MainErosion controlFire hydrantTree lineSewer manhole100" buffer to wetlandsFencing