

ZWG 1 – Deletion of Section 8.3B and 8.3C:

MOVED, that the Town vote to its Zoning Bylaws, Chapter 300, Article 8: Nonconforming Uses, Structures and Lots of the Cohasset Zoning Bylaws that Section 8.3: Single Lot Exemption, by deleting subsection B and subsection C.

State law provides significant protection to existing structures or uses under MGL 40A, Section 6. In addition, this statute provides additional protection for single and two-family residential use on undeveloped lots : (1) one for a lot not held in common ownership and (2) another for multiple lots held in common ownership.

- A lot not held in common ownership with "any adjoining land" is exempt if it conformed to then-existing zoning requirements at the time of recording in the Registry of Deeds or when registered in District Land Court; and it had at least 5,000 SF of area and 50 feet of frontage.
- Multiple lots held in common ownership are exempt for 5 years after new zoning requirements go into effect, provided that such lots were recorded or registered, and conformed to the existing zoning requirements in effect on January 1, 1976; and also had at least 7,500 SF of area and 75 feet of frontage. Such exemptions are limited to not more than three adjoining lots held in common ownership.

The proposed bylaw changes do NOT eliminate these statutory protections in Section 8.2 and Section 8.3A of the Cohasset zoning bylaws.

Both subsections 8.3 B & C however, are unique provisions to Cohasset and go back more than 50 years. These two sections of the bylaw address currently non-conforming undeveloped lots, allowing single family and "other lawful buildings" on now non-conforming undeveloped lots to be developed in perpetuity, subject to almost no oversight by the Planning Board or the Zoning Board of Appeals. These provisions each have the effect of allowing development that the State's zoning laws neither envision nor support. The Zoning Bylaw Working Group's research reveals that the vast majority of town bylaws in the Commonwealth do not allow such blanket exemptions. Rather the majority chose to limit exceptions to only what is required under narrow 5,000 sq. ft. or 7,500 sq. ft. lot exemptions under MGL 40A, Section 6 (as referenced above).

As our permitting boards increasingly confront developers seeking to utilize non-conforming loopholes, the merits of being able to unambiguously rely on protections found in state law and associated case law can be extremely important in preventing the further overdevelopment of Cohasset. Not eliminating Section 8.3 B & C would have three potentially detrimental land use implications:

- Subsection 8.3.B allows there to be common ownership of an unlimited number of adjoining non-conforming undeveloped parcels capable of large-scale development, a far more liberal exemption than any found in State zoning laws and sets up a direct conflict with the State's long-established merger doctrine where two or more undersized contiguous vacant parcels in common ownership must be merged (MGL 40 A, Section 6, c. 808).
- Subsection 8.3C freezes the dimensions of undersized undeveloped lots in definitive subdivision plans in perpetuity, which directly conflicts with the 8-year zoning freeze limitation allowed in the State's Subdivision Control law (MGL 41, Section 81P and repeated as Cohasset Bylaw 300:8.4). Such non-conforming lots are allowed, almost uniquely, to be held in common ownership, and not subject to the merger doctrine.
- Finally, contrary to conventional belief, 8.3 is not limited to single lots, or to single-family residential dwellings, or even to residential districts; it is silent on each of those structures. 8.3 B & C allow exemptions from general dimensional bylaws to non-residential uses as disparate as bed-and-breakfast houses, 3-4 (or larger) family establishments, and retail stores (depending on districts).

As a result of the discussion above, the Zoning Bylaw Working Group recommends the deletion of subsection 8.3B and 8.3C from the Cohasset Zoning Bylaws.