

ZWG 2- Changes to Residential Zoning Definitions

MOVED, that the Town vote to amend its Zoning Bylaws, Chapter 300, Section 300-2.1: Definitions, by deleting the current definitions of “Lot”, “Frontage”, “Street/Way”, and “Common Driveway” and replacing said definitions with the following new definitions:

LOT

A Parcel, as defined herein, which conforms to the Table of Area Regulations (Section 300-5.3). Only a Lot is eligible to receive a building permit provided that it fully complies with all relevant regulations.

FRONTAGE

The length of the line dividing a Lot or Parcel from the right-of-way of the Street/Way on which it bounds. This is to be measured at the right-of-way boundary and not at the center line of the Street/Way.

STREET/WAY

A public or private way for vehicular use which is commonly used by the public or dedicated to public use as shown on a plan of record, the dimensions and construction of which may be defined by regulations of the Town . A Street/Way includes not only paved surfaces but other contiguous areas assisting in travel such as a footpath, a sidewalk and a bicycle path. A Street, a Roadway, and a Way are synonymous terms as used in this Bylaw.

COMMON DRIVEWAY

A driveway having access over legal frontage and serving no more than three contiguous lots, provided that each lot served is located in a residential district and is in residential use. All lots served must have separate Legal Frontage; no lot using a common driveway for access may use any portion of the driveway for frontage, nor use an abutting lot’s legal frontage as its own. Common Driveways, where allowed, shall be governed by the Planning Board’s regulations then in effect.

In addition, MOVED that in Section 300-2.1: Definitions, the definition of “Parcel”, “Lot, Buildable”, “Way, Qualified”, “Way, Non-Qualified”, “Frontage, Qualified”, and “Access, Adequate” be added to Zoning Bylaw as follows:

PARCEL

An area of Land defined by metes and bounds or boundary lines in a deed or plan recorded in a Registry of Deeds, or registered in the Registry District of Land Court.

WAY, QUALIFIED

A Street/Way as defined by four types of ways under MGL 41, Section 81L: (1) a public way which has been accepted by a Town Meeting vote; (2) a way which the Town Clerk has certified is currently maintained and used as a public way; (3) a way shown on a plan approved and endorsed in accordance with the Subdivision Control Law; and (4) a way in existence before the Subdivision Control Law took effect in Cohasset (February 25, 1954) having in the opinion of the Planning Board, sufficient width, suitable grades, and construction to provide for the needs of

vehicular traffic in relation to the present and proposed use of abutting lots. A Buildable Lot must abut one of four types of Qualified Ways to be eligible for a building permit.

WAY, NON-QUALIFIED

A way not meeting standards under MGL 41, Section 81L. Undeveloped lots on a Non-Qualified Way are ineligible for building permits, unless a Non-Qualified Way is brought up to standards as determined by the Planning Board. Exemptions from current dimensional and construction standards for any non-qualified pre-existing way (“Ancient Ways”) or for a way shown on a plan of record but never constructed (“Paper Ways”) are not **afforded protected status**.

LOT, BUILDABLE

A Lot which conforms with the Table of Area Regulations (Section 300-5.3), has Legal Frontage on a Qualified Way, and has Adequate Access from the Qualified Way to the buildable portion of any such lot.

FRONTAGE, LEGAL

Frontage on a Qualified Way shall provide legal frontage. Frontage is a linear metric and having conforming frontage does not exempt a Lot from other requirements to be considered buildable.

ACCESS, ADEQUATE

A means of entering a Lot suitable for emergency and commercial vehicles, as well as for vehicular traffic as defined in MGL 41, 81L and further defined by regulations of the Town. Access metrics need not be the same for every circumstance, but standards cannot exceed those commonly applied to public ways in similarly-zoned districts. Also known as “Vital Access”. Adequate Access must also meet the following tests as it relates to entering the Lot:

ACCESS, PRINCIPAL - The primary means of entering a Lot must be from the Qualified Way which provides Legal Frontage.

ACCESS, ILLUSORY - The means of entering a Lot must be capable of providing access that is **physically practical**. If it is not, then access is considered “illusory”, such as access over tidal flats or a rock cliff.

ACCESS, PAPER WAYS - The means of entering a Lot must exist in reality “on the ground”, not just on paper. A planned way that has never been constructed, except for definitive Subdivision plans, even if laid out in compliance with Town regulations, does not provide legal frontage until it is actually constructed.

As development expands to more marginal, previously undeveloped land in Cohasset, increasingly land use proposals are made showing frontage and access on private ways or common driveways, or in some cases easements tied to rights of way. The proposed changes to ten definitions in Cohasset’s zoning bylaws will help the Planning Board, Zoning Board of Appeals, and the Town’s Building Inspector ensure that development follows State law and case law related to buildable lots.

In the proposed amendment four of the definitions (“STREET/WAY”; “FRONTAGE”; “LOT”, “COMMON DRIVEWAY”) are being revised and six definitions are being added (“WAY, QUALIFIED”; “WAY, NON-QUALIFIED”, “FRONTAGE, LEGAL”; “PARCEL”, “LOT; BUILDABLE”; “ACCESS, ADEQUATE”).

The Massachusetts Supreme Judicial Court has articulated four standards that must be met for the building of new dwellings. These criteria are generally sequential:

1. Lots must meet all area dimensional requirements in town zoning bylaws, absent a special permit or variance,
2. Such lots must abut a qualified way,
3. All lots must have legal frontage on a qualified way; and
4. Adequate/practical access must exist from the qualified way to each lot.

The proposed new definitions help the Building Inspector and the Town’s permitting boards ensure that lots that are being developed have clear standards to meet statutory requirements for a buildable lot. Land not meeting any of the standards above is termed a “Parcel” and remains unbuildable until/unless deficiencies are resolved.

The proposed new definitions are also designed to address an increasing issue with the adequacy of ways intended to serve as access to new lots as they are created. Ultimately, adequacy of the way is a safety measure for the benefit of any lots to be developed and abutters to the proposed development.

Finally, the change in the definition of Common Driveway is part of a change in the Common Driveway Regulations to decrease the number of lots that can avail themselves access from a single common driveway. The current eight lots is far too generous and some cases has allowed for the skirting the Subdivision Control Law. Based on research conducted by the Zoning Bylaw Working Group, the median number of lots allowed off a common driveway is three in the over twenty municipalities studied by the committee. The proposed amendment brings Cohasset’s definition of Common Driveway more into line with accepted standards throughout the State.

Based on research and discussion with the Town’s Building Inspector and permitting boards, the Zoning Bylaw Working Group recommends the proposed ten changes to residential zoning definitions.