

Town of Cohasset
Zoning Bylaw Working Group - Master Plan Implementation Committee
February 17, 2021 – Virtual Meeting via Zoom

A meeting of the Zoning Bylaw Working Group was held at 10:30 am on February 17, 2021 virtually on Zoom.

In attendance were:

Katie Dugan, MPIC representative
Cassie Malatesta, MPIC representative
Tom Callahan, Planning Board representative
Woody Chittick, Zoning Board of Appeals representative
Peter Pescatore, Open Space & Recreation representative
Jen Oram, Assistant Director of Permits & Inspections
John Hallin, Building Commissioner & Zoning Officer

Absent:

Jack Creighton, Cohasset Select Board representative
Paul Colleary, Planning Board representative

The meeting was called to order at 10:30 am.

Minutes

The working group approved the Zoning Bylaw Working Group minutes from January 26, 2021 and February 2, 2021. Katie Dugan will send copies to Town Clerk to post on the Town website.

Update on Residential Zoning

Cassie Malatesta updated the Zoning Bylaw Working Group on the group's requested follow up regarding the use of Floor Area Ratio (FAR) in residential zoning. John McDermitt of Brooks & Derensis provided the committee with a short opinion on the following question: "Can floor area ratio be used as a regulatory measure for the size of residential structures (in place of lot coverage/footprint) in light of state zoning law's general prohibition against regulating sq. ft. of residential buildings. FAR is presently used in Cohasset in mixed use settings." Below is a short summary of the opinion circulated to the working group and discussed at the meeting:

- As detailed in or prior letter to the ZBWG dated January 26, 2021, the **uniformity provision** of the Zoning Enabling Act G.L. c. 40A Section 4 envisions the type of uniformity or consistency which exists in the present residential districts under the current Cohasset Zoning By-Law, and in the corresponding current Table of Use and Table of Area Regulations as to allowable uses and dimensional standards for each such use within each district.
- We understand that the ZBWG has additionally inquired as relates to the application of FAR in residential zoning context. This matter has been previously raised and reviewed in a similar context in the Attorney General's decision in "Rockport Special Town Meeting of September 9, 2015 - Case # 7742 Warrant Article # 6 (Q) (Zoning)." In this case, the Town of Rockport desired to **incorporate regulation of "Gross Floor Area" in residential structures.**
 - "The Zoning Act's prohibition against regulation of interior space: **"No zoning ordinance or by-law shall regulate or restrict the interior area of a single-family residential building..."**

G.L. c. 40A, § 3. However, the GFA limitation in Section IV.A.11 mirrors the “maximum floor-to-area ratio” upheld by the court in 81 Spooner Road LLC v. Town of Brookline, 452 Mass. 109 (2008). The Brookline by-law at issue in 81 Spooner Road defined “gross floor area” as “the sum of the areas of the several floors of a building” and limited the ratio of gross floor area to lot area to various maximum levels by district. Id. at 110-111, n.2 and n.5. **The court determined that because G.L. c. 40A, § 3, authorizes “reasonable regulations concerning the bulk and height of structures,” the statute 3 “permits consideration of interior area in bulk regulation,” id. at 115, and the by-law’s floor-to area ratio limitation did not violate the statute: “The plain language of [Section 3] permits a zoning bylaw to regulate single-family residences through devices that operate against the exterior of such structures, and such regulation necessarily will affect its interior area.” 81 Spooner Road, 452 Mass. at 113.**

- Therefore, were the Town of Cohasset to propose such a similar change to the Zoning By-Law, there is a chance the Attorney General may ultimately review and approve in a similar fashion. We believe that, if the ZBWG and the Town ultimately desire to regulate bulk density of residential structures, that this type of proposal may achieve the Town’s desired goals without taking such a measure as rescinding each of the residential zoning districts.

The working group asked Cassie Malatesta to follow up directly with the Rockport Planning Board for additional context regarding their regulation of GFA limitations and how they were applied to residential districts in Rockport, MA. She will also contact the MAPC to find out if there are additional Towns who have utilized GFA, FAR, or other mechanisms to regulate “bulk density of residential structures”.

The working group discussed how the committee could use Assessor’s data to further assess Gross Floor Area (GFA) of homes in our existing residential district (RA, RB and RC). Katie Dugan believes there is a way to approximate some of the zoning measurements such as (i) lot coverage, (ii) FAR and (iii) GFA from the Assessor’s data. Katie Dugan will request updated set of data from Mary Quill (Town Assessor) for 2017-2021 to assist in this process. Jen Oram will also complete her work on several area of regulation metrics from Large Home Review applications since 2017 (height, Residential Gross Floor Area (RGFA) and lot size). Cassie and Katie will make some recommendations at a future meeting regarding metrics and observations about residential metrics at a future meeting.

Finally, Jen Oram and John Hallin presented a draft memo on Policy & Procedure for Height Measurement based on the current definition of height in the zoning bylaws. This policy would be utilized to review Building Permits and Special Permits to ensure application of tools for determination of pre-construction elevation. The working group provided comments on the memo and diagram. Jen Oram will revise the document and circulate to the working group for final comment. The Policy & Procedure for Height Measurement will then be posted on the Town website on Building & Inspection Department page and circulated to the Planning Board.

Update on Harbor Zoning

Peter Pescatore presented to the working group a draft memo which summarized some observations related to Harbor Zoning. This work was based on project discussion by Peter Pescatore, Jack Creighton and Paul Colleary and is part of an ongoing dialogue to draft a strategy statement and list of issues/recommendations related to Harbor Zoning for further consideration by the working group. In

addition, the group considered work and input provided to the full working group on Harbor zoning from Woody Chittick and Tom Callahan.

The following is a summary of the observations made to the working group.

- The Town needs to update the governing articles for the harbor area to provide a template that will serve the community for the next 25 – 50 years.
- The primary goal of the working group is to understand the desires of the citizens regarding the future allowable usage of the landside properties bordering the Cohasset Harbor from Whitehead to Otis Avenue and the bylaws governing the usage of said property.
- The Town is fortunate to have 3 major municipal plans for Cohasset, The Master Plan, The Open Space & Recreation Plan and the Harbor Plan that were all completed and adopted by the town during 2019 and 2020. These plans form the basis to inform the working group regarding desired usages as ascertained from the process that each of the plans were required to follow in order to be approved by the Massachusetts DOD.
- Each of these major strategic plans were required to conduct citizen opinion polls on a broad spectrum of the physical, cultural and participatory aspects of public interaction in the town. In addition, lengthy public forums executed by the MAPC were held where citizens could register their opinion and extensive public communication campaigns were held to ensure that all stakeholders were aware and could participate.

Peter further described several approaches that could be utilized to rationalize the varied zoning challenges for the Harbor Area. The working group continues to work on the details behind all these of draft concepts.

- Create a Harbor Overlay Zone that will preserve the existing district lines while allowing other usage. Define additional usages allowed by the Overlay District.
- Create a Harbor Business District that would require rescinding the existing district lines to establish one harmonious district. Rights of existing usages and allowable usage under the new district will need to be determined.
- Consolidate the 6 existing districts into 2 or 3 districts that reflect the predominate usages. Rights of existing usages and allowable usage under the new districts will need to be determined.
- Create a Historic District that would fall under the existing Historic Commission for management or under a consolidated Government Island/Harbor Committee authority. Rights of existing usages and allowable usage under the new district will need to be determined.

The working group suggested that Peter Pescatore work directly with Tom Callahan, who has studied the topic, to further understand the legal implications of re-zoning or changing zoning districts of parcels around the Harbor. The working group will continue this discussion and potentially need to access Town Counsel in order to ensure that ultimate recommendations would be approved by state Attorney General.

Land Alteration

The working group reviewed two warrant articles related to Land Alteration. Option 1 prepared by Tom Callahan based on revisions to 2017 citizen petitions and input from the committee and Framingham Land Disturbance bylaw. Options 2 prepared Katie Dugan was based on further refinement of Option 1 to focus specifically on the cases of land alteration on undeveloped land or the redevelopment or subdivision of larger developed residential parcels. The working group discussed the proposals and agreed that it would proceed forward with Option 2 for ATM.

The working group authorized Katie Dugan to request review of Use Variance, Land Alteration Option 2 and the sunset of the Senior Multifamily Residential Overlay District (SMROD) by Town Counsel. She will contact Town Manager's office to receive permission to utilize Town Counsel and report back to the working group with comments on the three articles at the next meeting.

Annual Town Meeting – Articles for Town Warrant

Katie Dugan distributed to the working group a preliminary calendar of meetings for the approval process for the three ZBWG articles to be placed on the Town Warrant. The Planning Board will vote to move the proposed articles to the Select Board on Wednesday, February 24th. The Select Board will vote to place the warrant articles on the Town Warrant on Tuesday, March 9th (separate from specific recommendation vote on the articles themselves in April). The ZBWG will attend Planning Board meeting on Wednesday, March 24th to open the public hearings on zoning related warrant articles. Katie Dugan will reach out to confirm dates for meeting with Advisory Committee and their vote to recommend ZBWG articles at ATM.

Administrative

The working group agreed that the next meeting will be on Wednesday, March 3rd at 10:30 am.

Adjourn

The meeting adjourned at 1:00 pm.

Documents

New Zoning Outline_01.26.21
Land Alteration Cover Memo_02.02.21_Option 1
Land Alteration_02.02.21_Option 1
BD Counsel Opinion_Cohasset Zoning Working Group Update_02.11.21
DHCD Preliminary Guidance MBTA Communities_01.29.21
Gloucester Housing Choice Article
Draft Height Policy
Harbor Bylaw Working Group Position Paper
Land Alteration Memo_02.12.21_Option 2
Land Alteration_02.12.21_Option 2
Residential Definitions_Types
Rockport Zoning Bylaws
Undersized vs. Buildable Harbor Lots by District & Streets