

Zoning for Beginners

This overview should give you a basic understanding of zoning, its role in shaping local land use decisions, and the role of the Planning Board and Zoning Board of Appeals in administering zoning. In Massachusetts, zoning is upheld by Massachusetts General Laws, Chapter 40 A (MGL Ch. 40A).

Zoning is the way a community regulates the use of land.

Zoning regulations allow a community to control where different uses occur and under what circumstances. *Zoning groups land uses according to their compatibility and separates them to protect the health, safety and general well being of the community.*

Police Power of zoning allows government, in protecting the public interest, to apply certain limitations to the use and development of private land without the need to compensate for the owner's loss due to the limitations.



However, if the limitations are so restrictive that the land loses its development possibility then the government must pay reasonable compensation.

More...

- Zoning is a restriction of private property rights. As a result, it is subject to careful judicial scrutiny to see that the restriction is both legally necessary and reasonable.
- Zoning also includes restrictions in different zoning areas, such as height of buildings, use of green space, density (number of structures in a certain area), use of lots, and types of businesses, etc.
- Zoning is a constraint on undesirable activity, not a producer of desirable activity; it can inhibit, encourage, or channelize development, but it *cannot* make plans happen.

What is the Andover Zoning Bylaw?



Massachusetts's municipalities determine their own zoning under something called home rule (meaning each town's governing authority decides its fate) so long as it is not in conflict with state law (in the case of zoning it is M.G. L. Chapter 40A).

The Zoning Bylaw is the whole body of zoning regulations that have been adopted by Andover Town Meeting. It includes the Zoning Map, land use chart, dimensional regulations, definitions and other regulations pertaining to zoning districts.

Brief History of Zoning

New York City adopted the first ever zoning code in 1916 due to health, safety, and economic concerns.

In the 1920's two events occurred that upheld the legal status of zoning.

- 1.) The **Standard Zoning Enabling Act** was passed and then in 1926, and
- 2.) The **United States Supreme Court** decided that zoning ordinances based on the protection and promotion of the *public interest* did not exceed the boundary of *police power* under the Constitution.

Andover created its first Planning Board in 1926 and adopted its first Zoning Bylaw in 1936.

All elements of the existing Andover Zoning Bylaws were adopted at Andover Town Meeting by a minimum of a 2/3 vote.

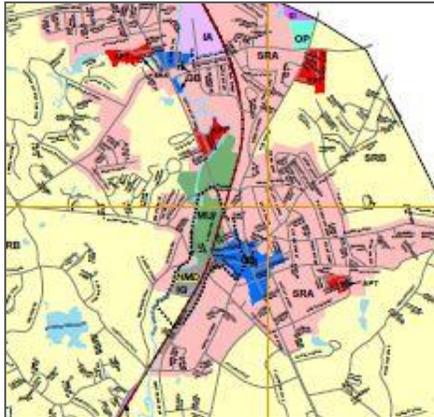
How are land uses regulated by zoning in Andover?

Andover has several **zoning districts**. In a given district, each type of use is shown on the use chart in the Appendix of the zoning bylaw as being one of the following:

1. Allowed use **By Right** (In Massachusetts, all districts **must** allow some uses “by right”) (**Y**).
2. Allowed with a **Special Permit (PB or BA)** a use that is compatible with the underlying by right use.
3. **Prohibited (N)** or not allowed without special authorization also known as a variance.

Andover’s Zoning Districts: See Appendix A, Table 1, Table of Use Restrictions for allowed uses.

Single Residence A
Single Residence B
Single Residence C
Apartment
Limited Service
Office Park
General Business
Mixed Use
Industrial G
Industrial A
Industrial D
Industrial D2



A full **Andover Zoning Map** can be obtained by the Community Development and Planning Office, 36 Bartlet Street, Andover, MA or can be viewed online at www.andoverma.gov

What is a Special Permit?

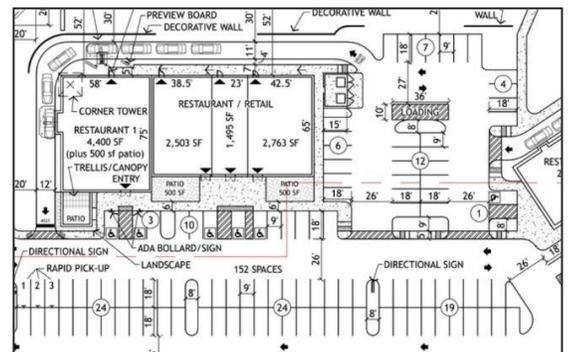
A Special Permit regulates the middle tier of land uses, that is, uses between incompatible to the safety, health and general wellbeing of neighbors and uses that are allowed as a matter by right.

When a particular use is *neither* prohibited nor allowed by right, it is shown on the use chart as requiring a Special Permit. This means that the owner cannot proceed with that use without permission from the Special Permit Granting Authority (SPGA), in Andover that means by either the Zoning Board of Appeals (BA) or the Planning Board (PB).

What is a Site Plan Review?

Some uses that are allowed by right, may also require a Site Plan Review.

The Site Plan Review process requires a public meeting before the Planning Board. The Planning Board reviews the site and items such as parking, lighting, drainage, etc. The Planning Board *cannot disallow* the use entirely, but it can attach conditions, also known as restrictions, to the permit for a given project. These conditions are intended to minimize any negative impacts.



In Massachusetts (MGL Chapter 40A §3) educational uses, religious uses, and childcare facilities are allowed by right in any zone, however sometimes they may go through a Site Plan Review process.

How are the Planning and Zoning Board's decision conditions or restrictions enforced?



Any construction within Andover requires a building permit, which must be obtained from the Andover Building Division. *If the applicant has not followed the proper procedures as outlined in the Zoning Bylaw, then they will not receive a building permit.* There are municipal inspectors that have site and building inspection authority to ensure that the rules are followed.

How can the Zoning Bylaw be changed?

Yes, changes can be made (also called amendments). In Andover, changes must be presented to and approved by the governing authority, i.e. Town Meeting. All zoning amendments must be approved by a 2/3 vote.

There are numerous ways to place a zoning amendment on the Town Meeting warrant, known as the docket that outlines all Town Meeting items. The Board of Selectmen, Planning Board, Zoning Board, other town committees, landowners, or by ten registered voters may bring an amendment forward (via the Town Clerk's office). The Planning Board holds a public hearing on all proposed zoning amendments and makes a recommendation to the voters attending the Town Meeting.

What are the responsibilities of the Planning Board?

- ◆ Adopting a master plan and official map of the town.
- ◆ Conducting studies, and, when necessary, preparing plans of the resources, possibilities and needs of the town for submittal to the Selectmen for their consideration.
- ◆ Serving as the local authority for the Subdivision Control Act; adopting Rules and Regulations governing the subdivision of land in the Town of Andover; reviewing all preliminary and definitive plan submittals.
- ◆ Drafting and submitting zoning amendments for consideration by the municipality. When a zoning amendment has been put forward, the Planning Board holds the public hearing and may also report its recommendation to the local legislature.
- ◆ Serving, in some instances, as the Special Permit Granting Authority (SPGA) for example, under Section 7.1 in the Zoning Bylaw, a Special Permit is needed by the Planning Board for Residential Cluster Development.
- ◆ Reviewing and approving acceptance of streets as Town public ways, with recommendation to the Town Meeting.



What are the responsibilities of the Zoning Board of Appeals?

- ◆ Reviews and decides on Special Permit requests.
- ◆ Reviews variances from the bylaw where a hardship is presented.
- ◆ Serves as the appeals board for decisions made by the Inspector of Buildings.
- ◆ Reviews all MGL Chapter 40 B applications.