

Town of Billerica

Zoning Diagnostic Report

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Submitted to:
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Background

In November 2022, the Town of Billerica hired Barrett Planning Group to conduct a review of the Billerica Zoning Bylaw (ZBL). We were asked to review the ZBL for technical issues such as clarity, internal consistency, and organization, and to identify land use regulatory policy issues the Town should consider. The policy analysis considers options for aligning the ZBL with existing plans, notably the 2018 Master Plan, and regulatory practices for being competitive in the regional economy.

We conducted a technical review of the ZBL that involved multiple close readings of the text and a review of the zoning map. We also spoke with Town staff, volunteers, and local professionals who represent applicants – that is, people who frequently use the ZBL and would likely have knowledge of its strengths and deficiencies. These interviews occurred in December 2022 and January 2023. Finally, we reviewed various plans and documents prepared by or on behalf of the Town over the past five years.

The report that follows is divided into two parts. The first identifies and explains technical deficiencies that, while non-substantive, should be corrected to make the ZBL clear and easier to use and understand. The second addresses a range of policy matters. Our recommendation is that the Town focus on fixing technical issues before any policy changes are considered. The issues identified in Part 2 will need to be addressed separately after careful consideration.

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Part I. Technical Review



Structure and Format; Organization

Before tackling major policy changes, the Town should make sure that its Zoning Bylaw starts from a position of clarity, consistency, and usability. A well-organized, user-friendly document will make it easier to adjust regulations, add sections without creating unintended conflicts and inconsistencies, and communicate a clear set of rules that balance private property rights with the public interest.

A well-organized bylaw starts with a strong “skeleton” of clearly defined sections that flow logically as a reader moves through them. Billerica’s current ZBL contains many sections:

- Section 1: Enactment, Purpose, and Objectives
- Section 2: Definitions
- Section 3: Establishment of Districts
- Section 4: Zoning District Boundaries
- Section 5: Regulation of Uses, Buildings, and Structures
- Section 6: Site Plan Approval
- Section 7: Dimensional Regulations
- Section 8: Parking and Loading Regulations
- Section 9: Signs and Lighting
- Section 10: Non-Conforming Uses, Buildings, and Structures
- Section 11: Zoning Board of Appeals
- Section 12: Special Permit Granting Authority
- Section 13: Special Permits
- Section 14: Variances
- Section 15: Administrative Appeals
- Section 16: Administration and Enforcement
- Section 17: Zoning Amendments
- Section 18: Severability
- Section 19: Effective Date

Many of these nineteen sections should be combined to streamline the overall structure of the ZBL. As the ZBL is organized today, there is little consistency or logic to what constitutes a “section.” For example, Sections 17 through 19 fit on a single page, but Section 5 is ninety



pages long. Standardizing the organization of Billerica’s ZBL would go a long way toward making the document easier to use. For example, several items that are scattered throughout Billerica’s ZBL all pertain to the administration of zoning and permitting procedures. Typically, they would be combined into one section so a reader can find all “like” or related content in one place, e.g., special permits and site plan review. An example of how the ZBL could be reorganized in a more intuitive way is shown below.

Table 1: Example Bylaw Reorganization	
Potential New Section	Corresponding Existing Section(s)
Section 1: Purpose and Authority	Section 1
Section 2: Definitions	Section 2
Section 3: Administration and Enforcement	Section 6, Sections 11-19
Section 4: Districts	Sections 3 & 4
Section 5: Use Regulations	Section 5 (substantially revised)
Section 6: Dimensional Regulations	Section 7
Section 7: General Regulations	Sections 8-10
Section 8: Special Use Regulations	Portions of Section 5
Section 9: Special District Regulations	Sections 5.D and 5.E

NUMBERING

Issue:

Billerica’s current numbering system can be difficult to follow from page to page. Each section or subsection has a single-character label that can be combined to create an easily understood reference; for example, Section 5, subsection C, subsection 1 (“Village Residence District”) could be written as Section 5.C.1 – just as Section 5.E.7, Mill Conversion and Reuse Overlay District, is currently formatted.

Consistency in numbering format is also a problem in Billerica. For example, Section 5.G “Wireless Communication Facilities” uses Roman numerals for subsections, while Section 5.E.7 already uses the format change discussed above. By contrast, nothing is numbered under Section 5.E.3, Residential Conservation Cluster, or 5.E.5, Elderly Housing Overlay District.



Suggested Action:

See Attachment A “*Example: reorganization of administration and enforcement*” for an example of a more straightforward method of code numbering. Whatever numbering system the Town prefers, all sections should have uniform numbering.

ILLUSTRATIONS

Issue:

The diagrams in Section 7, “Dimensional Regulations,” are a good idea, and many are helpful. Often, however, their abstract simplicity makes it difficult to quickly parse what is being shown.

Suggested Action:

The Town should consider having the diagrams redrawn and updated and consider where additional images might be helpful. Attachment B is an example of well-drawn illustrations incorporated successfully in a zoning bylaw.



Definitions

PLACEMENT OF DEFINITIONS

Issue:

Section 2 “Definitions” is the first place a reader will look for definitions, but they can be found in various places in the ZBL, such as terms defined in Section 5.G, “Wireless Communication Facilities.”

Suggested Action:

The ZBL will be easier to use and less prone to misinterpretation if all definitions are moved to the “Definitions” section.

SEPARATING DEFINITIONS FROM REGULATION

Issue:

For some uses, Section 2 “Definitions” currently includes regulatory language, where readers may not think to look for it. For example, the definition for “recyclable materials transfer center” describes what kind of facility the term refers to, but it also includes limitations such as setbacks, e.g., the facilities must be at least 500 feet from a residential district and within 1,500 feet of a highway. These regulations are not integral to the definition of a transfer center and may be missed by readers looking for use regulations.

Similar definitions in this category include Alcohol and Drug Rehabilitation Hospital, Manufacturing, Restaurant, and others.

Suggested Action:

All language regulating uses should be moved to Section 5, “Regulation of Uses, Building, and Structures.”

GROUPING RELATED TERMS

Issue:

Similar, specialized definitions would be easier to find and take up less space if they were grouped together under a single heading. The bylaw already takes this approach with “Adult Entertainment Establishments” and “Yard,” with specific types of adult establishments and yards grouped under the main heading.



Suggested Action:

This approach to definitions should be extended to other groups like sign definitions, which could all be grouped under a single heading.

READABILITY

Issue:

Long blocks of text should be divided where possible into numbered or bulleted text for readability. For example, the existing definition of “Fast-Order Food Establishment” is written this way:

FAST-ORDER FOOD ESTABLISHMENT: An establishment whose primary business is the sale of food for consumption on or off the premises which is (a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals; (b) available upon a short waiting time; (c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold; and (d) primarily prepared in advance of a specific order for such food. Establishments that do not provide direct table service to their patrons shall be considered fast-order food establishments. Establishments providing primarily take-out service or delivery service shall be considered fast-order food establishments. Establishments where the patrons order at a counter or window and carry the food order to a table shall be considered fast-order food establishments.

Suggested Action:

The format shown on the next page would be easier for most people to read.

Fast-Order Food Establishment: An establishment whose primary business is the sale of food for consumption on or off the premises which is:

- primarily intended for immediate consumption rather than for use as an ingredient or component of meals;
- available upon a short waiting time;
- packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold; and
- primarily prepared in advance of a specific order for such food.

This term also includes food establishments that:



- Do not provide direct table service to patrons;
- Provide primarily take-out service or delivery service;
- Provide food orders at a counter or window such that patrons carry their food to a table.

DUPLICATING STATE LAW

Issue:

Another practice to avoid is repeating the text of state law. For example, the Town currently defines Child Day Care Center this way:

CHILD DAY CARE CENTER: Any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name which receives children under seven years of age or under 16 years of age if such children have special needs for non-residential custody and care during part or all of the day separated from their parents. Child day care centers shall not include any part of a public school system; any part of a private, organized educational system unless the services of such a system are primarily limited to a kindergarten, nursery, or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home, as defined by M.G.L., ch. 28A, § 9; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefor.

We note that G.L. c. 28A was repealed in 2008 and replaced with an entirely new section of the general laws, G.L. c. 15D, Department of Early Education and Care. The legislature occasionally recodifies and reorganizes state laws, so a superseded reference is easy to cure. Reciting statutes verbatim is a more significant concern. It runs the risk of making a ZBL obsolete or worse still, in conflict in with state law if the law is changed in substantive ways at some point in the future. Below is today's statutory definition in G.L. c. 15D, Section 1A:

"Child care center", a facility operated on a regular basis whether known as a child nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of



common parentage under 7 years of age, or under 16 years of age if those children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Child care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of that system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization in which children are cared for during short periods of time while persons responsible for the children are attending religious services; a family child care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

Suggested Action:

The preferred way to define a term that is subject to state law and licensure is to cite the statute, not to repeat it. Example:

Child Care Center: a facility licensed by the Commonwealth of Massachusetts to provide non-residential, non-custodial day care for children, defined in G.L. c. 15D, Section 1A as may be amended from time to time.

“Family day care” needs a similar update.

RISKS WITH EXEMPLIFICATION

Issue:

The definition of Home Occupation is dated, but it also runs the risk of allowing activities that may have unintended or unwanted consequences for neighbors. Billerica currently defines Home Occupation with examples and negation, and it includes regulatory language that intends to limit the use:

HOME OCCUPATION: The practice or conduct of a profession, trade, service, occupation, or business, other than a retail business, which is customarily incidental to and is conducted in a dwelling unit by the residents thereof as an accessory use, not limited to offices of an accountant, agent, architect, attorney, bookkeeper, broker, consultant, counselor, dentist, physician, registered engineer, sales representative, typist or word processor, barber shop, beauty salon, dressmaker, photographer, tailor, and teacher or tutor. Home occupation



shall not include the operation of a barber shop; beauty salon; commercial kennel or stable; or repairing or servicing of motor vehicles, boats, or contractor's equipment.

The definition implies that some uses are more likely to have a negative impact on nearby neighbors than other uses, but all of this is based on assumptions about the *character or type* of a use and not really *how it is operated*.

Suggested Action:

Today, home occupation is defined by its essential features, and any limitations placed on it to address impacts on the neighborhood fall under the Accessory Use Regulations. Example:

Home Occupation: A business that is clearly secondary and customarily incidental to, and conducted within, a dwelling unit or in a building or other accessory structure by a resident thereof.

ACCESSORY USE REGULATIONS

1. A home occupation as defined in Section 2 is permitted subject to all of the following requirements:
 - 1.1. Not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
 - 1.2. There shall be no change in the exterior appearance of the building or premises or other visible evidence of the commercial activity, other than one non-illuminated sign, not exceeding one square foot in area, and mounted flat against the wall of the principal building;
 - 1.3. There shall be no stock in trade kept nor commodities sold on the premises except for goods produced by the owner of the business or by immediate family members residing on the premises;
 - 1.4. No equipment, machinery, or materials other than types normally found in or compatible with a dwelling shall be allowed;
 - 1.5. No nonresident shall be employed on the premises;



1.6. There shall be no traffic generated in greater volume than normal for a residential neighborhood and any parking generated by the home occupation is located off the street and not located within a required front yard; and

1.7. There shall be no exterior storage of materials or equipment on the premises.

CIVIL RIGHTS

Issue:

Billerica currently defines “family” as follows:

An individual or two or more persons, related by blood, marriage, adoption, or guardianship, or not more than five persons not so related, occupying a dwelling unit and living as a single housekeeping unit.

Billerica’s definition is fairly common, but today, the restrictions found in zoning definitions of “family” raise civil rights concerns. The United States has many types of households, from single people living alone to traditional families (married couples or single parents with children), foster families, two or more long-term cohabiting people with or without children, communal arrangements with unrelated individuals sharing a home and housekeeping responsibilities, or people in transitional housing of some type. Zoning that aims to control who lives in a building based on kinship can infringe on privacy rights and may have an unintended impact on people with disabilities and nontraditional households and families.

Suggested Action:

The definition of “Family” should be reviewed with Town Counsel. The purpose of zoning is to promote and protect the health, safety, and welfare of a community. Whether people living in a dwelling unit are related is not, on its own, a health, safety, and welfare matter. Building and health codes already regulate habitation and occupancy. Perhaps the Town should consider a modest change in the existing definition, such as:

Family: One or more persons occupying a dwelling unit and living as a single housekeeping unit.



MISSING, INCOMPLETE, OR OUTDATED DEFINITIONS

Issue:

A zoning bylaw should define all important terms. It is especially important to define the uses listed in the Table of Use Regulations to avoid issues of interpretation around whether a proposed use is allowed. Examples of terms without definitions or with incomplete definitions include:

- Auto sales are never formally defined.
- The differences between truck parking and truck terminal uses are not clearly explained.
- The definition for “floor area ratio” is an unhelpful restatement of the original term.
- The definition for “heavy manufacturing” refers to the term “manufacturing” without ever clearly defining it.

The definitions for “height” and “story” refer to the State Building Code. While it is appropriate to reference outside sources like the State Building Code, there could be a more helpful citation, e.g., 780 CMR.

As an example of outdated language, the definition for “Adult Bookstore” lists video cassettes as one of the main products such an establishment might carry. Some other terms are defined in an outdated way, such as “elderly,” which Billerica defines as “adults aged 55 or older.” More neutral terms like “older adult” are preferred.

Suggested Action:

Missing definitions should be added, and outdated definitions should be updated. Section 2 could also begin with a preamble along the following lines (note: some of this text is already in Billerica’s bylaw):

For the purpose of this Bylaw and unless the context or usage clearly indicates another meaning, the following terms shall have the following meanings:

- Words used in the present tense include the future.
- The singular includes the plural, and the plural includes the singular.
- The word “and” includes “or” unless the contrary is evident from the text.



- The word “includes” or “including” shall not limit a term to specified examples. It is intended to extend its meaning to all other instances, circumstances, or items of like character or kind.
- The words "used" or "occupied" include the words "designed," "arranged," "intended," or "offered," to be used or occupied; the words "building," "structure," "lot," "land," or "premises" shall be construed as though followed by the words "or any portion thereof"; and the word "shall" is always mandatory and not merely directory.
- Terms and words not defined in this Section 2 or elsewhere in this Bylaw but defined in the State Building Code shall have meanings given there unless a contrary intention clearly appears in this Bylaw. Words not defined in either place shall have the meaning given in the most recent edition of Webster's Unabridged Dictionary.

CONSISTENT USAGE

Issue:

Terms should be used consistently throughout the bylaw. For example. Section 7.K refers to dimensional requirements for Child Daycare Centers, a term slightly different from “Child Day Care Center,” defined in Section 2.

Suggested Action:

Terms that refer to the same concept should be standardized throughout the document.



Districts

ZONING MAP

Issue:

Billerica has a number of “special” districts and overlay districts. While the overlay districts can be found on the Zoning Map, it appears that these four “special districts” are not mapped:

- Refuse Transfer Station Specialty District
- Private and Public Dumping Ground District
- Alcohol & Drug Rehabilitation Hospital District
- Composting District

Unmapped districts are problematic under at least two sections of the Zoning Act, G.L. c. 40A:

- Section 4 requires that all districts “shall be shown on a zoning map in a manner sufficient for identification. Such maps shall be part of zoning ordinances or bylaws.”
- Section 3 includes the following prohibition: “No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.”

We believe – but the ZBL is not clear – that the boundaries of districts classified as “special districts” would be set by Town Meeting following a determination from the Planning Board, but the Zoning Act is clear that all districts shall be shown on a map so they can be identified.

Suggested Action:

The “special districts” raise legal questions, and we recommend that you review them with Town Counsel. It would be best to remove the “special districts” until such time as there is a need to use them and a proposed set of district boundaries for Town Meeting to consider.



Use Regulations

INCONSISTENCIES

Issue:

Billerica's ZBL lists the uses allowed in each use district and overlay district in Section 5.F, "Table of Use Regulations." This straightforward approach is used in most towns today. However, Billerica *also* lists the permitted uses for each district in the body of the ZBL in Section 5.C, reminiscent of the old "pyramid" system that zoning bylaws and ordinances often followed in the past. Repeating the same set of regulations in two different formats in two different locations creates many opportunities for inconsistencies between the two sources, and Billerica has many of these contradictions. For example:

Table 2: Inconsistencies Between Use Table and Text			
Use	District*	Text**	Table
Christmas Tree Sales	NB	Y	N
Fast-Order Food Establishment	NB	Not mentioned	SZ
Garaging of 2 or more heavy commercial vehicles	GB	SZ	Y
Recyclable Materials Transfer Ctr.	I	Not mentioned	SA
Wholesale	C	SZ	N
*NB = Neighborhood Business, GB = General Business, I = Industrial, C = Commercial **Y = allowed by right, N = Prohibited, SZ = Special Permit from ZBA, SA = Special Permit from Planning Board			

The organization of Section 5.C content is visually difficult to follow. From the left margin, the districts are indented once, the classes of use indented twice, "by right uses" and "special permit" uses are indented again, and then "Required Findings" are listed flush left. As a result, the text does not flow logically from subsection to subsection. Furthermore, many of the "required findings" for special permits are the same, but a well-crafted section on special permits would obviate the need for repetitive lists of required findings that appear from one set of uses to the next, or one district to the next.

Some of the provisions called "required findings" in Billerica are actually special regulations for a particular use. For example, the "required findings" for "Assisted Living Residence" (ALR)



include items that essentially determine whether an ALR can even be approved, e.g., a minimum tract of five acres, density of 12 units per acre (which we assume means maximum density even though it is not written that way), maximum frontage and maximum coverage requirements, and so on. These are all use and dimensional regulations, whereas a special permit finding is a statement such as, “Adequate site circulation is provided to and from the site, taking into consideration the adjacent sidewalks and streets and the accessibility of the site and buildings thereon for emergency vehicles.”

Suggested Action:

In our opinion, the highest priority for *any* zoning amendments or revisions in Billerica must be a reorganization and update of Section 5. Notably:

- The Town should eliminate Section 5.C. “Uses, Buildings, and Structures Permitted In the Main Zoning Districts” and focus on updating and reorganizing Section 5.F “Table of Use Regulations.” Sentences like “all uses permitted by right in the Village Residence District are permitted by right in the Multi-Family District” could be deleted because what is allowed in Village Residential will be obvious from a glance at the table.
- Matters regulated by other authorities should be removed from the ZBL wherever possible. For example, Billerica has an exhaustive list of agriculture regulations that are either unnecessary, unrelated to zoning, or either duplicate of or inconsistent with state law. Agriculture, aquaculture, silviculture, floriculture, horticulture, and viticulture are all defined in G.L c. 128, Section 1A, and protected from zoning regulation under G.L. c. 40A, Section 3 when conducted on five or more acres of land. They can be grouped in one exemption rather than listed separately. The keeping of hens or horses is mainly the Board of Health’s purview, though on less than five acres, the Town can impose some zoning limitations. It is important to determine what should be handled as a public health or animal health regulation rather than a land use regulation.

OVERLAY DISTRICTS

Issue:

Billerica includes its overlay districts in the Table of Use Regulations. This is unnecessary because most of the time, the underlying district’s regulations will apply. It is also inadvisable



because it invites errors and inconsistencies. For example, in the Table of Uses Regulations, the Floodplain Overlay District allows fast-order food establishments by special permit. Because overlays supersede underlying districts, there is certainly an unintended consequence here.

A literal reading of the table would allow a fast-food establishment to be proposed in any district as long as the site lies within a floodplain.

Suggested Action:

Overlay districts do not need to have full sets of use regulations as Billerica's do. Overlays are assumed to follow the provisions of the underlying district unless stated otherwise, so only regulations unique to the overlay need to be specified.



Administration

ORGANIZATION

Issue:

Administrative procedures like submittal requirements are scattered throughout Billerica's ZBL. For example, Section 5.E.7(6), specifies a detailed list of information required of applicants seeking to develop in the Mill Conversion Overlay District.

Suggested Action:

Ideally, they should be in one place, organized substantially as follows:

1. Administration and Enforcement
 - 1.1. Building Inspector
 - 1.2. Enforcement
 - 1.3. Appeal
 - 1.4. Zoning Board of Appeals
 - 1.5. Special Permits
 - 1.6. Site Plan Review (or Site Plan Approval)

In addition, some content in the ZBL should be relocated to Rules and Regulations of the Planning Board or Zoning Board of Appeals (as applicable). Normally, submission requirements for various project types should not require Town Meeting approval.

SITE PLAN APPROVAL

Issue:

The Site Plan Approval (SPA) bylaw, Section 6, blurs special permit authority with site plan review. As a result, Billerica does not really have a site plan review process for as-of right uses because the applicant is still required to apply for a special permit. SPA and the special permit have different purposes, they involve different sources of authority, and they present a different set of legal concerns for an applicant.

Unlike special permits, SPA is not found in the Zoning Act or in any other state statute. In Massachusetts, SPA is a creature of home rule powers to protect the public health, welfare, and safety of the community. This means communities have flexibility (within some limits) to



determine the process, timeline, review standards, and so forth, that will be used to review a site plan by a designated board or official. However, it is not a discretionary decision process, and this also sets SPA apart from special permits.

SPA is usually used to review site development and design plans for as-of-right uses, and it usually takes place before a building permit can be used. Sometimes SPA will apply even when no building permit is needed, such as for construction of a parking lot, playing field, or a major site renovation that does not involve any building alteration. Through the SPA bylaw, a reviewing authority can impose reasonable conditions on a project when necessary to further the purposes established in the bylaw. For as-of-right uses, however, the reviewing authority does not have the power to deny a project except under very limited circumstances.

Suggested Action:

The Town should consider which uses should require a discretionary special permit and where the community would be comfortable implementing an SPA process. SPA is most effective when the ZBL provides for objective site and design guidelines and criteria, and comprehensive standards and regulations for issues the community wants to address in a site plan bylaw. To comply with the MBTA Communities law, it will be especially important for the Town to uncouple SPA and the special permit process,



Miscellaneous Clarity and Consistency Issues

LEGALESE

Issue:

Overly wordy, complex, or technical writing can make a bylaw difficult to understand for the average resident. For example, the definition for a change of use is: “an alteration by change of a use in a building heretofore existing to a new use,” a convoluted sentence that does little to aid understanding. Sentences containing “legalese” like “therein,” “said,” and the above-mentioned “heretofore” can be rewritten in plain language to be more concise and understandable. We note that Billerica’s ZBL includes 236 instances of the word “such” and at least forty instances of the word “said.”

It is not necessary to spell out numbers and write the numeral (*e.g., ten thousand [10,000]*). In our experience, it is best to avoid this convention because it creates opportunities for misinterpretation and mistakes.

Suggested Action:

Sentences with convoluted writing and legalese should be revised for clarity, comprehension, and simplicity. Numbers should be written in a single, consistent format- we recommend numerals.

PLAIN LANGUAGE

Issue:

Uncommon terms should be avoided where possible. For example:

- Section 5.C.1.i refers to a “residence that was destroyed by fire or other natural holocaust” when the word “disaster” would be more readily understood. To be sure, the phrase “natural holocaust” comes directly from G.L. c. 40A, Section 3, but it is another example of archaic wording that need not be repeated in a zoning ordinance or bylaw.
- Section 7.D refers to “yard” to describe the minimum distance between a building or structure and the lot line. The term “setback” is more commonly used.



Suggested Action:

These and other potentially confusing terms should be replaced with more easily understood language.

OTHER ITEMS

Issue:

Section 8.C includes a table of minimum parking requirements for various uses. For many nonresidential uses, parking requirements are expressed one space per N square feet of “floor area.” It is not clear until the end of the table that “floor area” means “gross floor area.”

Statements such as Section 12.A, “the purpose of these regulations is to describe the Special Permit Granting Authority under this Zoning By-law” are unnecessary.

When referring to individuals such as the Building Inspector, the ZBL variously uses “he/him” pronouns or the awkward “his/her.”

Suggested Action:

The table of minimum parking requirements should state the requirement plainly, using the correct term from the beginning. Extraneous statements should be removed. Gendered language should be consistent, and the gender-neutral pronoun “they” is preferred.



Part 2. Policy Considerations



Introduction

The items discussed in this section should be addressed *after* the Town completes a recodification and overhaul of the existing ZBL. The recommendations made below are meant to align the language of the ZBL with the stated goals and policies of the Town's Master Plan, the "on-the-ground" reality of existing conditions and opportunities in Billerica and ensuring that Billerica remains competitive in the regional economy.

Districts and Use Regulations

ZONING MAP

Issue:

Billerica has many lots that are split between two or more different zoning districts. According to Section 4.B.7, when a lot is in more than one district, the most restrictive regulations will apply, unless development takes place entirely within the less restrictive district. There may be cases where allowing more of a lot to be used for purposes in the less restrictive district would be to the Town's advantage, but the existing bylaw does not give Billerica the flexibility to address those circumstances. There are many examples of other towns in Eastern Massachusetts with "split lot" regulations that allow for the possibility of some higher-value development or better land use outcomes by taking a less rigid approach.

The Mixed Use Overlay Zoning District is divided into two sub-zones based on location, but based on information available to us, the subdistricts are not differentiated from one another on the official Zoning Map.

Suggested Action:

The Town should consider rezoning lots split between multiple zoning districts to fall entirely within the most appropriate applicable district and noting on the Zoning Map that the two areas of the Mixed Use Overlay have different regulations.



DISTRICT DEFINITIONS

Issue:

The purposes of the existing districts are not clear, and this makes it hard to consider what they should be or what should be allowed within them, and how they should evolve.

In defining districts, the Town should consider whether the Commercial District, covering only two parcels, is a useful district or if it should be phased out.

Section 7.B.11 states that the Mill Conversion and Reuse Overlay District may only have one residential building per lot despite allowing multifamily development. The provisions of this district should be reviewed and updated.

The Floodplain Overlay District references both the national FIRM maps, which are the standard that nearly every municipality uses to delineate floodplains, and the “Green Map” prepared for the Town in the 1970s. It is not necessary to refer to a different map when the Town can (and is supposed to) rely on FEMA data.

Suggested Action:

Holding workshops to discuss and define purpose statements for each zoning district will help Billerica reevaluate district boundaries and possibly update its dimensional and use regulations.

USE REGULATIONS

Issue:

Most residential districts (Village Residence, Neighborhood Residence, and Rural Residence) have identical use regulations. The Town should consider whether it might be appropriate to regulate uses differently depending on the density of the residential district and adjacent uses.

“Other recreational events” are allowed in the Village Residence by right, which seems to mean that there are no use restrictions on any recreational use besides golf courses.

Single-family residential development is allowed by right in the Neighborhood Business and General Business Districts, which may encourage similar development patterns to nearby residential districts. It may also encourage the formation of neighborhoods next to businesses



that may want to grow or diversify – as one might want to see in a General Business District – only to find themselves surrounded by abutter opposition.

Section 5.B states that group homes with six or more residents are “expressly prohibited.” Similar regulations have been found to be in violation of state and federal protections for people with disabilities, including people recovering from substance abuse disorders. This should be reviewed with Town Counsel, along with the definition of “family,” discussed in the previous section of our report.

The Mixed Use Overlay District offers a choice of two density bonuses for developers: one for increasing “pedestrian activity and connectivity between properties” and one for providing initial affordable housing units. While these are both important goals, the ZBL states that “only one density bonus per development project may be utilized.” However, Town Staff report that in practice, mixed-use developments have actually been able to obtain both bonuses. Further, the standards for earning the pedestrian activity bonus are unclear, and developers are already required to facilitate and encourage pedestrian use in the overlay.

Mixed use is also limited to commercial use on the first floor and residential uses on the upper floors, which could limit the viability of some projects. It also complicates (and actually discourages) accessible housing for older adults and people with disabilities – populations served well by ground-floor housing.

Suggested Action:

The Town should consider changing the potentially problematic use regulations listed above.

DIMENSIONAL REGULATIONS

Issue:

All three of the Town’s main residential districts have similar dimensional regulations, with the minimum lot size ranging from 30,000 square feet in the Village Residence District to 50,000 in the Rural Residence District. The dimensional regulations do not seem to match what is practical to build. Attachment C is a map showing every lot in Billerica that does not meet the minimum size for the district in which it is located. The Zoning Board is often asked to grant variances from setback/yard requirements because so many existing lots are nonconforming.



Under Section 7.J of the ZBL, all walls, fences, barriers, retaining walls and the like six feet or taller are considered a structure for zoning purposes and are required to meet minimum yard/setback requirements. As we understand it, many property owners have been required to obtain a variance in order to build a retaining wall or install a fence on their property line. The minimum height of the wall or fence should be revised or whether the retaining wall should be required to meet the minimum yard/setback requirement should be reconsidered.

Suggested Action:

The Town should consider amending dimensional regulations so that they more closely match the realities of the built environment. This will reduce the number of nonconforming lots in Town.



Housing Options

AFFORDABLE HOUSING

Issues:

The ZBL provides for affordable housing on undersized lots that would not otherwise be buildable under zoning. This option is currently limited to a discretionary special permit in the residential districts and allowed as-of-right in the Neighborhood Business District. It could be advantageous to the Town to allow this activity as a permitted use even in the residential districts. Since it costs more to build an affordable unit than a developer would ever be able to recover by selling or leasing the unit, the substandard lot option is only realistic for non-profit developers, a municipal housing trust, or possibly some type of family investment (such as an elder cottage). Billerica has adopted standards to limit impacts on nearby residential properties and also has requirements for ensuring the affordable units remain affordable, so the special permit requirement in residential districts seems unnecessary.

Billerica requires 15 percent affordable units for multi-family, cluster development, and elderly housing projects, but does not specify a minimum size threshold for the requirement to apply.

In-law apartments (sometimes known as accessory dwelling units or ADUs) are restricted to occupants who are related to the occupants of the principal residence. They must be located within the principal structure and cannot exceed 800 square feet in area. The Town may want to revisit these limitations to provide for more types of housing choices at a neighborhood scale.

Suggested Action:

The Town should consider amending the regulations listed above to better encourage the production of housing that serves community needs.

MBTA COMMUNITIES

Issue:

Billerica, like all communities with MBTA stations, is now required to zone for multifamily residential development by right near transit stations. The Mill Conversion and Reuse Overlay District (MCROD) is well-positioned to serve as the basis for a compliant district. The 2018



Master Plan notes that properties like Faulkner and Talbott Mills are high priorities for redevelopment, and the zoning required for MBTA communities could promote that goal.

Suggested Action:

The Town should work to create a zoning district that complies with the MBTA Communities law. Our recommendation is to begin by analyzing districts near the Billerica commuter rail station for their potential to comply.

APPROACH TO OVERLAY DISTRICTS

Issue:

The ZBL identifies five zoning districts where the Elderly Housing Overlay District can be applied. If any of these districts might be appropriate for an elderly housing project, perhaps the use should simply be allowed throughout the district subject to a special permit.

Suggested Action:

Consider amending this and other overlay districts to clearly identify where the appropriate areas for each specialized use are located.



Quality Development

STORMWATER MANAGEMENT

Issue:

Tighe & Bond to prepare a technical memorandum for the Town dated June 27, 2022, with recommendations for how Billerica could amend its local regulations to promote Low Impact Development and reduce impervious area. Zoning bylaw recommendations included, but were not limited to:

- Reduce impervious area by updating parking requirements to set a maximum number of parking spaces or providing additional opportunities for shared parking and shared driveways.
- In low-density areas, consider establishing limits on impervious lot coverage
- Consider adding provisions to the Zoning By-laws to allow for easy siting of LID features on lots, common open space, setback areas, or road rights-of-way and easements. Green infrastructure could count toward fulfillment of landscaping and open space requirements. Examples include allowing an increase in floor area ratio or other developmental incentives for green roofs for commercial development, specifying commercial landscaping requirements for parking areas, and allowing for vegetated areas with bioretention functions in commercial landscaping areas.

Suggested Action:

Town Staff are already preparing a new Stormwater Bylaw based on the Tighe & Bond memo, which should be adopted.

PARKING

Issue:

Requiring two parking spaces per unit for multifamily development often results in required parking lots large enough to make a project infeasible or create significant stormwater runoff issues.



Suggested Action:

The Town should explore the feasibility of reducing parking requirements for multifamily development. This may be especially important to provide for the zoning changes needed to comply with the MBTA Communities law.

SIGNS

Issue:

Section 9.G, "Sign Requirements," is extremely and unnecessarily detailed, describing sixteen distinct sign varieties each with its own dimensional regulations. Such complex requirements place an undue burden on applicants to understand and on the Town to enforce.

Suggested Action:

The Town should develop clear, concise sign regulations that can be applied to most sign types but still result in signs appropriate for the visual character of Billerica.

PROMOTING DESIRED DEVELOPMENT

Issue:

Update zoning to diversify the type and intensity of industrial and office uses for industrial zoning districts while enhancing protection for adjacent residential neighborhoods by addressing issues related to setback, access, buffering, and screening.

Consider adopting town-wide Open Space Residential Design as of right to preserve open spaces while stimulating well-planned development.

Examine and amend zoning along the Route 3A commercial corridor to:

- allow diversified, higher density, and/or mixed use housing development, such as multi-family, townhouses, assisted living or other types of senior housing.
- attract technological, research and development, laboratory, and value-added light industry.
- target needed amenities, such as restaurants, hotels, day care, workforce housing and retail shops.



Suggested Action:

Pursue strategies for encouraging desired development, including revising use and dimensional regulations, exploring expedited permitting, or offering bonuses or incentives for desired development.

SITE PLAN APPROVAL AND SPECIAL PERMITS

Issue:

The zoning bylaw provides for a “site plan special permit,” but requiring a special permit for every instance of site plan approval (SPA) is at odds with how SPA is supposed to be used. We already addressed this in the previous section and there is no need to repeat here what needs to be done to “uncouple” SPA from the special permit. However, there are other SPA improvements Billerica could consider.

Applications can also be classified as “minor” and “major” SPA projects. We raised this concept with the Planning Board on January 30, 2023, and we understand the Board may not be interested in it. Nevertheless, the concept of a “minor” (sometimes called “administrative”) and “major” approach is in place in other towns precisely to simplify the review of small projects and focus the Planning Board’s time and attention on projects that need and benefit from a public review process. Projects under a certain size threshold could be handled by staff review, while larger ones would be handled by the Planning Board as they are now. This approach avoids over-scrutinizing minor projects while maintaining the Town’s jurisdiction over larger ones and establishes a formal review mechanism for projects below 5,000 square feet that might nonetheless benefit from SPA.

Suggested Action:

To improve the SPA process, the Town should first determine which uses should require a special permit and which should be allowed by right but subject to SPA, then consider the division into minor and major projects as described above.



Attachment A

Example: reorganization of administration and enforcement (in part).

Section 1: Administration and Enforcement

1.1. Inspector of Buildings

- A. The Inspector of Buildings shall interpret and enforce this Bylaw.
- B. The Inspector of Buildings may require any plans and specifications as necessary to determine compliance with this Bylaw and applicable laws of the Commonwealth and may request advisory reviews by other Town boards and officials.
- C. Buildings, structures, or signs may not be erected, substantially altered, moved, or changed in use and land may not be substantially altered or changed with regard to size or shape or principal use unless in compliance with this Bylaw, and all necessary permits have been received under federal, state, or local law.
- D. No premises, and no building erected, altered, or in any way changed as to construction or use under a permit or otherwise, shall be occupied or used without a certificate of occupancy or certificate of zoning compliance issued by the Building Inspector. No certificate of occupancy or certificate of zoning compliance shall be issued until the premises, structure, and its uses and accessory uses comply in all respects with this Bylaw. If applicable, a site plan certificate of completion shall be issued.

1.2. Enforcement

- A. If the Inspector of Buildings is informed or has reason to believe that any provision of this Zoning By-law is being violated, he shall investigate the facts and inspect the property where the violation may exist.
- B. If the Inspector of Buildings finds evidence of a violation, they shall give notify the owner and occupant in writing and demand that the violation be abated within a timeframe the Inspector of Buildings deems reasonable. Notices and demand may be given by certified mail, addressed to the owner at the owner's address as it appears on the records of the Board of Assessors, to the occupant at the address of the premises, and to the complainant(s), if any, of record.



- C. If the violation has not been abated within the time specified in the written notice, the Inspector of Buildings shall institute appropriate action or proceedings in the name of the Town to prevent, correct, restrain, or abate such violation of this Bylaw.
- D. Any person who abates a violation but subsequently reinstates it shall be deemed to have never abated the violation, and any proceedings previously commenced by the Inspector of Buildings to prevent, correct, restrain, or abate the violation, including any request for fines or penalties, shall continue from the date on which the Inspector of Buildings first provided notice of the violation by certified mail.

1.3. Appeal

An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of inability to obtain a permit or enforcement action from the Inspector of Buildings, as provided in G.L. c. 40A, § 8, as amended.

1.4. Zoning Board of Appeals

A. Establishment

There shall be a Zoning Board of Appeals (ZBA) consisting of five members and two associate members appointed by the Select Board. The appointment, service, and removal or replacement of members and associate members and other actions of the ZBA shall be as provided for in G.L. c. 40A.

B. Powers. The ZBA shall have the following powers:

1. To hear and decide appeals in accordance with G.L. c. 40A, Section 8, as amended;
2. To hear and decide, in accordance with G.L. c. 40A, Section 9, applications for special permits when designated as the special permit granting authority.
3. To hear and decide, in accordance with G.L. c. 40A, Section 6, requests to change, alter, or extend nonconforming uses or structures.
4. To hear and decide petitions for variances in accordance with G.L. c. 40A, Section 10.
5. To hear and decide applications for comprehensive permits in accordance with G.L. c. 40B, Sections 20-23.



C. Regulations

The ZBA shall adopt rules and regulations to administer its powers and shall file a copy of the regulations with the Town Clerk. The Board's regulations shall include rules and procedures for hiring outside consultants under G.L. c. 44, Section 53G.

D. Fees

The ZBA may adopt reasonable application fees and fees for employing outside consultants to assist the Board with its review of special permits, variances, administrative appeals, and applications for comprehensive permits.



Attachment B

Example of clear, professionally drawn ZBL illustrations

(Source: Town of Andover Zoning Bylaw)

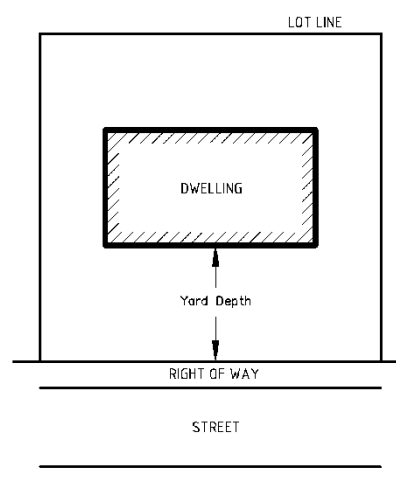


SECTION 4

wide, from a line 20 feet from and parallel with the center line of the traveled way as determined by the Town Engineer.

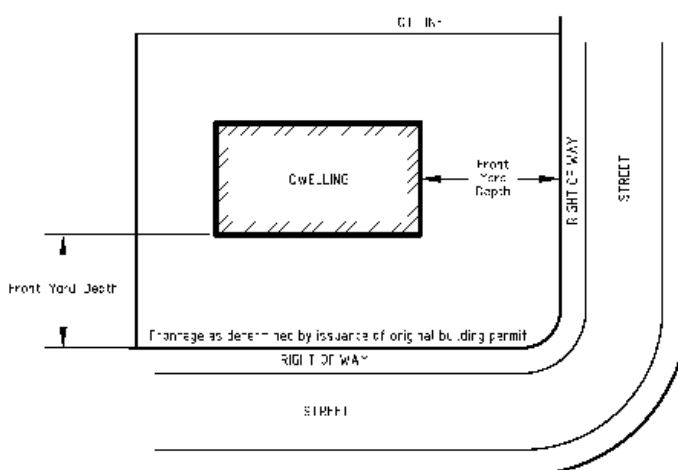
- d. In SRA, SRB, and SRC districts, where other buildings exist within 200 feet on both sides of the lot in question and within the same block and district, the principal structure may extend as near the way as the average setback of the other buildings; but if the other buildings are setback more than 30 feet from the way, the principal structure shall not extend nearer to the way than the average setback of such other buildings.

4.13.2 c



- e. In the case of lots abutting on more than one way, the minimum front yard depth requirement shall apply to each such way, but the lots shall be required to have the minimum required frontage on only one of the ways. In addition, one minimum side yard depth requirement and one minimum rear yard depth requirement shall apply to the lot and determined at the time of building permit issuance.

4.13.2 e



- Lots approved prior to the adoption of this provision and the Rules and Regulations governing the Subdivision of Land in the Town of Andover shall be exempt from this requirement.
- f. In the case of lots that abut on a limited access highway, the minimum yard depth requirement from the highway shall be the same as the applicable side or rear yard minimum depth.
- g. No fence or sign shall be erected or installed and no trees, shrubs or other growth shall be planted or permitted to grow or exist in any district requiring a minimum front yard depth that will dangerously obstruct the view of traffic by operators of vehicles at street intersections. This requirement shall be deemed to include, but not be limited to, any such obstruction that is more than three feet and less than eight feet above the grade of the adjoining way, and is located within an area bounded by the side lines of the intersecting ways and the line joining points on such ways 25 feet from the intersections of such side lines or the intersections of the side lines projected so as to interfere with traffic visibility across the corner.

Attachment C

Map of parcels with nonconforming lot area.



Billerica Parcels in Nonconformance with Minimum Lot Size Standards

