

MEMORANDUM

TO: Planning Board, Town of Plymouth;
Director of Planning and Development

FROM: Elizabeth A. Lane

DATE: January 23, 2014

RE: Zoning Bylaw Amendment: Report on Diagnosis and Annotated Version

INTRODUCTION

This memorandum will report on the results of the initial phase of the amendment of the present Town of Plymouth Zoning Bylaw (“the Bylaw”). As envisioned, this project is in several phases, the first of which was the meeting with the Planning Board held on October 7, 2013, at which public comment was invited and there was a general discussion and overview of the amendment process. Since that time, I have reviewed the Bylaw closely for purposes of providing a Diagnosis and Annotated Outline as called for in the project description. Performing this review and diagnosis inevitably involves overlapping diagnosis, critiques and suggestions for amendments.

Attached hereto is an edited version of the Bylaw, intended to provide diagnostic information to the Board concerning limitations of the present Bylaw, and to provide suggestions for deletions, substitutions and additions, and to provide a basis for more in-depth discussion with the Board as to the choices and priorities for making more significant amendments to the Bylaw. To date, in consultation with the Director of Planning and Development, the following work has been undertaken:

Consistency of terminology has been improved (zone/district; building inspector/building commissioner) and imprecise language has been replaced by more accurate descriptions and more measurable performance goals and standards;

Duplication of similar or identical standards, goals and procedures, now scattered throughout the Bylaw, has been significantly, but not yet totally, decreased by consolidation in sections with wider application;

Several unused sections have been eliminated, thus significantly decreasing the number of pages of the ZBL from its impressive current 261 pages of text; and

Other sections have been identified for discussion with the Planning Board for possible elimination or combination with other partially overlapping provisions.

Given the impressive size to which the Bylaw has swelled, making it more compact and “user friendly” is a high priority, and there is more work yet to be done towards this goal. The following is an overview of the critique and suggestions for further tasks.

I. Types of Amendments

A. Consistency of Terms throughout the Bylaw

Purpose: to avoid confusion by use of similar terms for one concept

E.g.: As noted above, currently a zoning district is variously referred to as a “zone” and a “district.” I propose, and the attached draft shows, substitution of “district” for “zone.” Similarly, “Building Inspector” has been replaced with the term “Building Commissioner.” These and other amendments are noted throughout the revisions made to date.

B. Legality – Constitutionality/Chapter 40A/Court Decisions

The following are examples of amendments required to comply with court decisions and changes to Zoning Act since the time these provisions were included in the current Bylaw:

- Agricultural uses – the definition has been broadened considerably through amendments to Chapter 40A;
- Group homes/educational facilities – the educational use exemption has also been expanded to include more forms of group residences;
- Nonconforming structures – appellate court decisions have both clarified and confused the scope of entitlement to by-right expansions of single- and two-family residences; and
- Signs – as for nearly every zoning bylaw in the Commonwealth, amendments are needed in order to allow for the Constitutional preference for noncommercial messages.

C. Clarity

The Bylaw will be improved, and the threat of litigation will be diminished by amendments that clearly identify and distinguish what is mandatory from what is permissive. Terms such as “should” are being eliminated, and other terms such as “must,” “may,” and “shall” are being substituted where appropriate. Similarly, the proposed amendments will state standards and requirements and avoid the inadvertent use of terms such as “guideline,” where the intent is to impose an actual requirement.

D. Specificity (avoiding vague terms)

The following are a few examples of terms that invite dispute and therefore should be eliminated or modified:

§205-22 A. 2 – “Major streets”; § 22. D. (1) – “important streets”

In addition, other terms which are open to debate, such as “appropriate” are being replaced with words indicating more measurable standards.

E. Convenience of Use of the Bylaw

The Bylaw will benefit immensely from the development of Use Tables to indicate what principal uses (and possible, accessory uses, as well) in each of the Town’s zoning districts. Dimensional and parking requirements will also benefit from better organization.

F. Practicality of Administration

Before proceeding with recommendations for amendments, the following questions are presented:

- Zoning permit procedure - is it workable, accomplishing the desired goal?
- Site plan review- similar questions
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It is recommended that the Board ask the same questions as to many other provisions in the current Bylaw, as a springboard to developing goals for the next phase of this project.

G. Current Concepts and Terminology

Many of the sections stating the intent and purpose of districts or other requirements need to be reduced in length and modified to remove “non-zoning” issues and concerns, or use standards that have been ruled as outside the scope of zoning by appellate courts, such as particular benefit to current residents.

H. Brevity/Compactness – Some suggestions for amendments for this purpose are:

Delete restatements of Open Meeting and Public Records requirements.

Delete unnecessary repetition.
Application provisions
Standards for plans

Delete unused provisions – Consider the continuing utility of the following sections, among others:

205-17 H. Front setback in residential zones. In order to prevent visual monotony in residential areas, no more than three contiguous lots shall have principal residential structures set back the same distance from the street. No principal structure shall be built closer to the street than the minimum dimension prescribed.

205-22. Street classification and related standards. Overly long: what provisions are relevant and useful?

§ 205-68. Residential development phasing. No longer of use

Consolidate provisions requiring Environmental Design Conditions, by use of footnotes to a new Table of Uses or other method of centralizing the references.

II. Outstanding Questions For Discussion with the Planning Board

What parts of the Bylaw work well, not so well and not at all? For example, the list below, intended to be non-exclusive, contains sections of the Bylaw that, among their other notable features, appear to overlap with one another in terms of goals and issues addressed.

- §205-5 Zoning Permit
- §205-Site Plan Review
- §205-12 Design Review Board/Appearance Code
- § 205-9. C Special Permit Environmental Design Conditions

In the interest of efficiency, both for the general public who must comply with these provisions, and for the Town officers and Boards who perform the duties called for under each Bylaw section, it would appear worthwhile to consider whether the Town can and should streamline or omit all or parts of these and/or other sections of the current Bylaw.

I look forward to a more intensive discussion of these and any other issues of concern to the Board at the Board's upcoming meeting, and to continuing to work with the Board toward an improved, more modern and efficient Zoning Bylaw.