DRAFT

LAND USE

INTRODUCTION

Land use refers to the amount and intensity of a community's residential, commercial, industrial, and institutional development, along with roads, open land, and water. Patterns of development vary by the land and water resources that support them, the eras in which growth occurred, and the evolution of a community's transportation infrastructure. The ages of buildings in various parts of a town usually correlate with changes in land use patterns. Similarly, the placement of buildings in relation to the street and to each other tends to be inseparable from their age and whether they were constructed before or after the adoption of zoning. Furthermore, a community's development pattern and shape sometimes hint at its annexation history, or the incorporation of land to or from an adjacent city or town.

Dedham has all of these traits. Its 10.3 sq. mi. land area is the result of numerous boundary changes that occurred over time as large colonial settlements were populated and divided into districts and parishes, and eventually established as new towns. For Dedham, the process of spinning off new towns, annexing and re-annexing land to and from other jurisdictions, and the surveying and setting of new boundaries continued to unfold until the late 1890s. The town's present shape is defined in part by water and in part by old political compromises and choices, and in some ways its development pattern still suggests the once-seamless ties that Dedham had with neighboring communities. Of course, Boston, Dedham, and each of the surrounding towns has regulated land use through zoning for many decades now, and the imprint of zoning can be seen in the more regimented form of newer neighborhoods and commercial projects. What also can be seen in Dedham is a disconnect – sometimes subtle, at other times conspicuous – between its zoning policies, the economic realities of redevelopment, and the market.

EXISTING CONDITIONS & TRENDS

Development Pattern

Dedham has many "faces," each shaped by a different period in the town's physical and economic evolution. Its development pattern can almost be interpreted from an ordinary street map. Definable patterns of use and intensity of use tend to follow major transportation features and they, in turn, tend to relate to major natural features. Dedham center is an unmistakable activity node framed by Church, High, Court, and School Streets and Franklin Square. Similarly, the historic industrial settlement pattern around Mother Brook, early 20th century neighborhoods built along and adjacent to major roads in the north and east sides of town, postwar suburban neighborhoods along the south and southeast sections of town, and large tracts of land to the west are all suggested by Dedham's arrangement and hierarchy of roadways. Land use patterns that seem particularly obvious on a street map include strip development along the Providence Highway, which splices the town in half from north to south, and older industrial areas near the railroad tracks. In general, transportation features serve as dividing lines between dominant land uses and intensity of development in Dedham.

DRAFT

Since the early 1970s, the state has tracked land use change throughout the Commonwealth by interpreting data from aerial photographs. Unlike land use information reported parcel by parcel by city or town assessors, the state's land use studies measure land use by the amount of land "covered" by residential, commercial, industrial, and other uses, including the local streets that support those uses. Dedham gained housing and lost some industrial uses after the aerial flyovers in 1999 – the most recent year for which the photos have been interpreted and reported by the state – but overall, the town's development pattern is not significantly different today than it was a decade ago. However, there has clearly been some reallocation of uses between the primary land use classes reported in Table 1.[1]

Table 1
Land Use Change in Dedham, 1971-1999

	Acres in Use			
Class of Use	**1971**	**1985**	**1999**	**1971-99 Chg.**
Agricultural Uses	86.1	65.0	62.1	-24.0
Forested Land	1,930.7	1,865.5	1,764.7	-166.0
Mining	7.9	7.9	7.9	0.0
Open Land	177.2	64.7	85.8	-91.4
Recreation	182.8	168.6	190.4	7.6
Multi-Family	28.9	37.0	40.7	11.8
Small Lot Residential (<¼ acre)	660.4	666.0	666.0	5.6
Moderate Lot Residential (¼ – ½ acre)	1,340.5	1,356.2	1,379.5	39.0
Larger Lot Residential (> ½ acre)	522.7	541.3	572.1	49.4
Commercial	157.8	191.5	204.7	46.9
Industrial	212.6	356.1	399.0	186.5
Public or Institutional Land	258.8	272.3	230.9	-27.9
Transportation	328.2	325.3	316.8	-11.4
Waste Disposal	23.0	0.0	0.0	-23.0
Non-Forested Wetlands	693.0	693.0	690.5	-2.5
Open Water	222.5	222.5	221.8	-0.7
Total	6,832.9	6,832.9	6,832.9	

Source: MassGIS, "Land Use," January 2002, from aerial photography in 1999; photointerpretation by University of Massachusetts-Amherst Resource Mapping Project.

[1] Note to Master Plan Committee: for reasons that remain unclear to me, the 1971 and 1985 statistics in Table 1 do not match the statistics in the same table in the 1996 Master Plan report (see Land Use Chapter, p. 5). I've checked our information several times against the state data sets on which this table is based and the numbers in our Table 1 are correct.

DRAFT

Dedham is evolving within a framework etched by mature transportation facilities, water, and wetlands. It has attracted redevelopment and intensification of existing development since 1999, both along the Providence Highway's retail corridor and on underutilized land near the Route 128/Route 1/1A interchange (*Map X-1*). It also has seen some incremental development of single-family homes, for despite Dedham's proximity to Boston, it still has pockets of vacant, usable land. At times, recent real estate investments in Dedham have not aligned well with the town's zoning requirements, such as the construction of two large mixed-income rental housing developments in the Research, Development and Office (RDO) District. In addition, Dedham has witnessed some new development on the west side of town, notably construction of a large residential-institutional compound on West Street, NewBridge on the Charles. As a result, even though the town's general development pattern has not changed dramatically, the constellation of land uses within established areas has shifted and the intensity of use in some areas has increased. This is typical of maturely developed suburbs.

Residential Development. Dedham is a residential suburb with an estimated 9,400 housing units. Today, about 2,800 acres of land support some type of housing development in Dedham (Table 2), mainly neighborhoods of single-family homes. However, Dedham has hundreds of two-family homes peppered throughout East Dedham, Oakdale, and Riverdale, along with numerous small multi-family dwellings and some larger apartment buildings. There are also some mixed-use buildings with businesses and one or more housing units, particularly in older, established areas along High Street and West Street, and senior residences with support services. A number of properties in Dedham have two or more free-standing dwellings, such as a large home and a carriage house. These residences tend to be large and quite valuable, typically constructed between the late 19th century and early 20th century, and almost all are located on the west side of town.

Table 2
Acres of Residential Land Use by Class (2007)

Class of Use	Acres
Single-Family	2,054.1
Multiple Residences	249.1
Two-Family & Multi-Family	306.3
Mixed-Use with Residential	286.8

Source: Dedham GIS, 2008.

Commercial Development. Dedham's most visible concentration of commercial space consists of the predominantly retail corridor that extends along the Providence Highway, roughly from Wigwam Pond north to the vicinity of Dedham Mall. The corridor is defined by relatively large "boxy" retail buildings, both free-standing and in strip shopping centers, with the large signs and generous parking lots that characterize highway-oriented businesses. For through traffic using the Providence Highway to reach non-local destinations, the impression formed by this part of town belies Dedham's character and beauty. Ironically, the Providence Highway figured prominently in Dedham's 1996 Master Plan as a source of frustration for Dedham residents and today, it remains one of the town's most crucial land use policy challenges.

By contrast, Dedham's local commercial center – and its civic, social, and cultural center – is Dedham Square, a collection of human-scale historic and newer buildings consistent with a 19th century downtown. Small pockets of neighborhood businesses can be seen in East Dedham and the Sprague, Greenlodge, and Riverdale neighborhoods, too. The town currently has about 470 acres of

DRAFT

commercial development, just under half devoted to various types of retail trade, along with offices, accommodations and food service, entertainment, and quite a bit of commercial flex space and warehouse space. Currently under construction just south of the main retail area, well within the RDO District by the Route 128/Route 1-1A interchange, is a 700,000± sq. ft. retail and entertainment "lifestyle" center, Legacy Place.

Industrial Development. Dedham has a considerable amount of land zoned for industrial development, but far less land actually occupied and used for industrial purposes. According to records from the assessor's office, less than 200 acres support some type of industrial use, much of it for storage, warehousing and distribution and associated offices, with few manufacturers.

Charitable, Educational, and Religious Uses. Dedham is home to several institutional uses, including three private schools: Noble and Greenough School, with a 187-acre campus bound by Route 109, Pine Street, and the Charles River, Ursuline Academy, an all-girls school on a former estate between Lowder Street and Highland Street, and Dedham County Day School, located between Highland Street and Sandy Valley Road. Northeastern University maintains a Dedham campus south of Nobles off Common Street, and MIT operates a conference center at the Endicott Estate on Haven Street. In addition to private educational uses, Dedham has a number of charitable organizations, notably the Dedham Community House at Ames Street and High Street (also a former estate) and the Animal Rescue League of Boston's animal protection and adoption facility on Pine Street, cultural and religious organizations such as the Society of African Missions on Common Street, and numerous churches. Together, these institutional uses occupy approximately 315 acres of land.

Public Uses. "Public use" is a wide-ranging term that includes property owned by federal, state, and local governments and used for a variety of public purposes. In Dedham, public uses include the town's seven public schools, town hall and other municipal facilities, and conservation land owned by the town; the court house, land controlled by the MBTA for railroad lines, and land owned by various agencies of the Commonwealth for open space, conservation, and flood control purposes. A long swath of state- and town-owned land separates the northbound and southbound lanes of I-95/Route 128. In general, most of the town's land east of the Providence Highway tends to be used for some type of public facility – schools, parks, playgrounds and the like – while to the west, both town-owned land and land owned by state or federal agencies is more likely to be used for conservation, forestry, or passive recreation. This, coupled with the presence of some larger institutional holdings and land owned by private conservation organizations west of the Providence Highway, makes for a land use pattern that is quite different from the intensively developed east side of town.

Vacant Land. There is more vacant land in Dedham than one might imagine, though much of it appears to have limited if any development potential. Some 600 acres are currently assessed by the town as vacant land or land in forestry or recreation use, including 434± acres of residential land, as shown in Table 3.

DRAFT

Table 3
Vacant Residential Land (2007)

	Acres of Land by Development Potential			
Zoning District	**Developable**	**Potentially Developable**	**Not Developable**	**Total**
Single Residence A	194.1	2.8	148.4	345.3
Single Residence B	19.7	19.3	24.9	63.9
General Residence	19.1	1.2	3.1	23.4
Local Business	0.6	0.9	0.0	1.5
Total	233.5	24.2	176.5	434.2

Source: Dedham GIS and CAMA database, 2007. Developable, potentially developable, and not developable categories refer to the way land is classified for tax assessment purposes. Land to be occupied by NewBridge on the Charles has been removed from this analysis even though it was vacant or partially vacant in 2007.

By contrast, Dedham has almost no vacant commercial land and only 25 acres of vacant industrial land with some prospect of future development. Dedham's real potential for commercial and industrial development has little to do with vacant land and everything to do with the ongoing redevelopment of parcels with existing businesses. As noted in Dedham's 1996 master plan, it can take many decades for a given parcel to undergo enough redevelopment cycles to reach its "regulatory" buildout capacity, or the maximum amount of development allowed under a community's density and dimensional regulations. For Dedham, the lack of vacant, developable land is not really a barrier to increasing the town's tax base. Instead, the barriers stem from regulatory constraints and in many cases, financial feasibility and market forces that impede the conversion of underused land to higher-value development.

ZONING

The heart of any master plan, and particularly a master plan's land use element, is zoning. Through zoning regulations and a zoning map, a community can exert considerable influence over its physical evolution and the character and quality of its built environment. The Dedham Zoning Bylaw (ZBL) reflects a combination of old and new ideas about regulating land use and development. The town has three fairly conventional residential districts – Single Residence A and B, and General Residence – and the Senior Campus District, created a few years ago in anticipation of Hebrew Senior Life's NewBridge on the Charles project. Dedham also has special regulations for Planned Residential Development (PRD), a type of overlay district that offers the possibility of higher-density development if town meeting approves a concept plan and the Planning Board later grants a special permit. However, Dedham's approach to commercial and industrial development is more complicated, involving eight districts, a "major development" threshold that triggers a special permit based on nonresidential gross floor area, and the possibility of developing otherwise prohibited commercial uses in industrially zoned areas. Some provisions of the ZBL seem fairly innovative, yet

DRAFT

often they rely on broad or ambiguous development review standards and decision criteria. It can be difficult to discern what Dedham really wants by reading the ZBL.

Table 4 lists the town's zoning districts by type (*Map X-2*) and acres allocated to each. Eighty-four percent of the town's total area is zoned for some type of residential use and nearly 16 percent, for commercial or industrial uses.[2]

Table 4
Dedham Zoning Districts

Zoning District	Gross Acres	Pct. Town Area
Residential Districts		
Single Residence A	2,412.7	35.4%
Single Residence B	2,270.8	33.3%
General Residence	914.5	13.4%
Senior Campus	152.2	2.2%
Subtotal	5,750.2	84.3%
Nonresidential Districts		
Central Business	37.0	0.5%
General Business	29.2	0.4%
Local Business	31.8	0.5%
Highway Business	154.6	2.3%
Limited Manufacturing	381.6	5.6%
Limited Manufacturing B	36.3	0.5%
Research, Development & Office	400.6	5.9%
Subtotal	1071.0	15.7%
Total Acres	6,821.3	100.0%

Source: Dedham GIS. Note: the total area in Table 4 differs slightly from that of Table 1 due to the more accurate boundary data used by the town's GIS staff.

1996 Master Plan: Then and Now

Dedham's present ZBL incorporates several land use recommendations from the 1996 Master Plan. At the time, Dedham did not have a Central Business District with regulations tailored to Dedham Square, or a Research, Development & Office (RDO) District. In addition, most of the Providence

[2] Note: Dedham also has an Administrative and Professional District, but it does not appear on the town's GIS zoning map. It does appear in a version of the Dedham Zoning Map published by MassGIS, the state's repository of GIS data. The source for the MassGIS version is Banker and Tradesman. According to the MassGIS map, the AP district consists of a single parcel at the corner of Elm Street and Orchard Street, east of the Providence Highway. This needs confirmation from the town.

DRAFT

Highway was zoned for Limited Manufacturing, yet the corridor's use mix largely consisted of retail development. The 1996 Master Plan recommended rezoning portions of the Providence Highway to a Highway Business District, and Dedham responded in kind. Moreover, the existence and role of the Design Review Advisory Board stem directly from recommendations in the Master Plan. These moves and others show that Dedham made a significant commitment to implementing the Master Plan, yet some provisions of the ZBL suggest that late-stage compromises may have occurred, too. Dedham also had difficulty adopting some recommendations of the 1996 Master Plan, such as enacting a scenic roads bylaw and following through on policy and programmatic initiatives that would be needed to make the new zoning as effective as possible.

Today, Dedham seems to be at a critical juncture in land use planning and zoning. While the present ZBL reflects efforts made more than twelve years ago to carry out major zoning recommendations from the 1996 Master Plan, it needs updating, a host of technical corrections, elimination of inconsistencies, more clarity about what the town wants to achieve as it continues to evolve, more emphasis on guidance to landowners and developers and less reliance on discretionary special permits, and firm grounding in smart development policies. Further, the town needs to think about its approach to planning, zoning administration, and how to make the best possible use of its devoted board members and professional staff. Capacity is no less important for land use planning and zoning than any other municipal function, from management to public works and economic development.

Residential Zoning Districts

Single Residence A and B. The Single Residence A (SRA) and Single Residence B (SRB) districts are what their names suggest: zoning districts that encourage single-family home development. Though governed by different density rules, they share nearly identical use regulations. What Dedham allows in these districts is a function of the use regulations in § 3.0 and the dimensional regulations in § 4.0, and sometimes the overlay district regulations in § 8.0 apply as well. For any uses other than single-family homes, applicants are additionally bound by various provisions of § 7.0, Special Residential Regulations, some of the parking and landscaping requirements in § 5.0, General Regulations, and the special permit requirements contained in § 9.0, Administration and Procedures. Together, the regulations that govern both the SRA and SRB districts prescribe the conventional suburban development that Dedham has tended to attract.

The SRA district covers more than half of the west side of Dedham. Development in the SRA district requires a minimum lot area of 40,000 sq. ft. and, for lots created since 2000, minimum frontage of 150 feet. The SRB district extends easterly along the boundary of the SRA district, providing transitional space between Dedham's lower-density areas, activity centers along neighborhoods roads, and the spine of intensive growth along both sides of the Providence Highway. The SRB district also covers the east-central and southern sections of town, notably the Oakdale and Greenlodge neighborhoods and some of the Sprague neighborhood, too. It provides for moderately dense development, with a minimum lot area of 12,500 sq. ft. and 95 feet of frontage. For the most part, the SRB district follows the boundaries of established single-family house lots, with very few "split lot" configurations, or lots

DRAFT

located in more than one zoning district. A noteworthy exception is the Noble and Greenough School campus, divided almost in half between the SRA and SRB districts.

In both districts, buildings must be set back from the street and from the rear lot line by at least 25 feet, and for the first 25 feet of lot depth measured from the street, the width of the lot must not be less than the minimum required frontage. To impose further regularity on the physical form of residential neighborhoods and presumably to control density, too, Dedham has a lot shape rule that excludes land in awkward lot layouts from the calculation of minimum lot area.[3] In addition, Dedham is one of a handful of Massachusetts towns that regulates the size of single-family dwellings with a *maximum floor area ratio (FAR)*: a metric that caps the total amount of built space on a lot by limiting the allowable floor area to a fraction of the lot area. Ironically, Dedham's FAR regulations make it possible to build a slightly larger home in the SRB district even though the SRA district requires a larger house lot.[4]

Most of Dedham's zoning districts have no statement of purposes or intent, so the purposes have to be inferred by users of the ZBL. The inference drawn from SRA and SRB regulations is that Dedham strongly prefers detached single-family homes on regular lots, and that any other use would be an exception allowed only at the discretion of the Zoning Board of Appeals (ZBA). While Dedham prohibits new two-family homes in the SRA and SRB districts, § 7.2 authorizes the ZBA to grant a special permit to convert an existing single-family home to a two-family home. It would probably be uneconomic for many people to convert, though. A conversion project requires a lot with at least 50 percent more area than the minimum lot required for a new home, i.e., 60,000 sq. ft. in the SRA district and 18,750 sq. ft. in SRB. The bylaw also discourages "anticipatory expansions" of single-family homes, or floor area increases in anticipation of a future conversion permit, by limiting the size of a single-family home expansion within five years of the special permit application. Further, the building must continue to look like a single-family home despite alterations made to accommodate two housing units.[5]

---

[3] Under § 4.8, Dedham discourages irregular lots by eliminating fragments or odd-shaped lot areas from the minimum lot area calculation, as follows: "When the distance between any two points on lot lines is less than 50 feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall be excluded from the computation of the minimum lot area unless the distance along such lot lines between such two points is less than 150 feet." This is a classic example of a dimensional regulation that would be easier for ordinary users to understand if the ZBL included graphic illustration within the body of the ZBL or in an appendix.

[4] In SRA, the maximum FAR requirement is 0.15; in SRB, it is 0.50.

[5] In Table 1, Principal Use Regulations, the ZBL cross-references conversion of an existing single-family home to § 8.1. However, § 8.1 contains regulations for the Flood Plain District. The actual cross-reference is § 7.2, Conversion of Single Family to Two Family Dwelling. This should be corrected in a future ZBL update.

DRAFT

The ZBA has authority to grant special permits for assisted living residences in both districts. In addition, a "Multifamily Residential Complex" is allowable by special permit, but only in the SRB district and only through conversion of buildings that existed as of 1999. As defined in the ZBL, a Multifamily Residential Complex consists of a building or group of buildings with three or more dwelling units. As regulated in § 7.3, however, a Multifamily Residential Complex may not exceed a total of 24 units. To qualify for a special permit, an applicant would need at least 100,000 sq. ft. of land (2.3 acres) and 400 feet of frontage, or more than four times the minimum frontage required for a conventional single-family home. A number of other restrictions apply, too. For example, an eligible existing building (in place as of 1999) is limited to a floor area expansion of 50 percent; 75 percent of all units in a proposed development must be located within a single building; the height of the existing building cannot be increased; and the proponent must provide at least 1.5 parking spaces per unit. One new single-family dwelling unit may be constructed on the same site. While the converted buildings need not meet any particular yard setback requirements, additions to them as well as any new buildings or structures on the property must comply with the ordinary SRB yard setbacks along the portion of the site that abuts an existing residence. It is not clear how many SRB properties could actually meet all of the requirements for a Multifamily Residential Complex special permit.

General Residence. The General Residence (GR) district applies to areas that were developed many years ago. A conforming single-family house lot in the GR district has at least 7,500 sq. ft. and 50 feet of lot frontage, and for a two-family home, a minimum of 11,000 sq. ft. of lot area and 90 feet of lot frontage. A rowhouse dwelling would require at least 5,000 sq. ft. of lot area and 30 feet of lot frontage per unit. Dedham controls lot regularity in this district by two means: the awkward lot rule in § 4.8, which applies in all zoning districts, and in the GR district in particular, there must be as much lot width at the front and rear building lines as the minimum lot frontage required for each type of residential use.

The GR district seems more flexible than SRA and SRB because it allows a slightly different mix of uses. In addition to two-family homes by right, the use regulations for the GR district include medical offices by special permit from the ZBA. However, Dedham prohibits multi-family dwellings in the GR district, which makes all of the existing multi-family dwellings non-conforming uses (and presumably *lawfully pre-existing* nonconforming uses). It is not clear why Dedham would provide for multi-family special permits in the SRB district and not the GR district. It also is not clear why the dimensional regulations provide for a minimum lot area per unit for rowhouse dwellings when the Table of Use Regulations does not permit them. An additional challenge for some lots in the GR district is that even though the district boundaries tend to follow the perimeter of existing lots, pockets of small business zoning tend to coincide with the GR district on Bridge Street, in East Dedham, and the Oakdale area. Split lots abound in these locations, which probably creates more issues for business owners than residents.

Accessory Uses. In most cases, the SRA, SRB, and GR regulations provide for the same *accessory uses*, or uses incidental to and commonly associated with a permitted principal use. Dedham allows some traditional accessory residential uses as of right: a garage for not more than three cars, an accessory structure such as a tennis court, swimming pool, greenhouse, or tool shed, keeping animals or

DRAFT

livestock for non-commercial purposes, renting out rooms to up to three individuals in an owner-occupied house, certain types of home occupations, and "small" day care for children or adults, i.e., up to six children.[6] A garage with space for more than three cars or "large" family day care requires a special permit, and in the SRA and SRB districts only, the ZBA has authority to grant special permits for accessory apartments.

Home Occupations. Dedham's ZBL has very little to say about allowable home occupations. In § 10.0, Definitions, the ZBL describes "home occupation" in these terms:

> The use of a room or rooms in a dwelling or building accessory thereto as an office, studio, or workroom for a lawful home occupation by a person resident on the premises provided that: a) Such use is clearly incidental and secondary to the use of the premises as a dwelling, and b) Not more than one person other than residents of the premises regularly provided paid services in connection with such use, and c) No commodity or service is sold or provided to another person who is on the premises, and d) The public is not invited onto the premises in the usual course of business, and e) No offensive noise, traffic, vibration, smoke, dust, odor, heat, or glare is produced as a result of the home occupation, and f) There is no exterior display or exterior sign except as permitted under the Sign Code, and g) There is no exterior storage of materials or equipment (including the exterior parking of more than one commercial vehicle), and no other exterior indication of such use or variation from the residential character of the premises, and h) All parking for such home occupation, other than for residents of the premises, shall be provided off the street. Adequate off-street parking shall be provided in accordance with the provisions of the Zoning By-Laws, and i) Such use has been approved in writing by the Building Commissioner.

A literal reading of Dedham's home occupation definition suggests that a professional conducting business entirely by telephone, email, or internet, or a tradesperson who simply maintains a commercial vehicle at home and performs all services off-site, would qualify for a permit, but not a music teacher offering instrumental or voice lessons at home, or a custom cabinetmaker, tailor, quilter, or painter wishing to sell merchandise from a home-based shop. There does not appear to be any authority for the ZBA or Planning Board to grant a special permit for home occupations that meet most but not all of the requirements listed in the definition. In an era when home-based

---

[6] The terms "family day care home" and "large family day care home" are defined in M.G.L. c. 28A as private residences in which child care during normal daytime hours is provided to up to (a) six and (b) seven to ten children respectively. Dedham appears to be applying the same standards to "adult day care." However, adult day care is a different type of use and typically not one that is accessory to a private residence. Adult day care is more likely to be accessory to an assisted living residence or continuing care community. In a few communities, adult day care programs are attached to municipal senior centers and public housing for the elderly. Furthermore, the general law standards for defining "small" and "large" day care apply only to homes licensed by the Office for Children as family day care homes for children.

businesses have become increasingly common and work commutes so expensive, it seems that Dedham may inadvertently discourage some types of working at home that could be accommodated through a special permit process and special conditions. Presumably the town already does this by allowing "large" family day care by special permit.

Accessory Dwellings. Dedham allows accessory apartments in the SRA and SRB districts, but not the GR district, by special permit from the ZBA. Like most towns, Dedham limits accessory apartments to one per single-family residence and requires the residence to maintain the appearance of a single-family home despite renovations for the accessory unit. Dedham also imposes a floor area limit on accessory units: a minimum of 350 sq. ft. and a maximum of 1,000 sq. ft. or 33 percent of the total size of the building in which the unit is located, whichever is greater. The town requires a dedicated, appropriately screened parking space for the accessory unit, too. These are fairly common requirements in other communities. However, some of Dedham's requirements seem relatively onerous and others are unclear.

According to § 7.7, accessory units can be approved only in buildings that existed when the accessory apartment provision was adopted by Town Meeting, but the ZBL does not identify the effective date. In fact, many provisions of Dedham's ZBL refer to unstated effective dates, which makes it difficult for users to determine what they can do with their property. The recipient of an accessory apartment special permit must renew it every three years, and the special permit is not transferrable to a future homebuyer. In addition, § 7.7 implies that accessory units can be located within a single-family dwelling or in an accessory structure on the same lot, but this is not clear.[7] In order to be eligible for an accessory apartment special permit, the homeowner's lot must be at least 10 percent larger than the minimum lot area required in the zoning district, i.e., at least 44,000 sq. ft. in the SRA district and 13,750 sq. ft. in the SRB district. Further, the accessory unit is limited to two occupants.[8]

Senior Campus District. The Senior Campus (SC) district is an overlay district that can include a parcel or contiguous parcels with at least 100 acres in the SRA district, subject to approval by town meeting. Its stated purpose is to create an intergenerational community through the provision of

---

[7] § 7.7 contains a number of text errors that should be corrected in a future ZBL update. For example, ¶ j states: "Alterations to the building dwelling unit [*sic*] shall be designed to be compatible with…" It seems that the text printed in the ZBL was imported from a redline version of an earlier draft, but the final edits were never consolidated.

[8] In Table 1, Accessory Use Regulations, Subpart I, Accessory Regulations-Residential, the ZBL cross-references "accessory dwelling unit" to § 7.4. However, § 7.4 governs "subsidiary units" in commercial districts. A "subsidiary unit" is a housing unit in a single-family residence located in a commercial district or in a commercial building. Unlike "accessory dwelling unit" a subsidiary unit is classified as a principal use in the Table of Use Regulations, though by definition in § 10.0, a subsidiary unit is clearly accessory. In a future ZBL update, the town should correct the "accessory dwelling unit" cross-reference to § 7.7, Special Residential Regulations, which contains the regulations for accessory dwelling units in the SRA and SRB districts.

DRAFT

housing and supportive services for seniors and a school for children. Dedham has placed one tract of land in the SC district: 152 acres on West Street, currently under construction for NewBridge on the Charles. Since the SC district is an overlay, it incorporates both its own rules in § 7.6 of the ZBL and the regulations that normally apply in the SRA district. However, the SC regulations supersede other requirements.

The SC district's use regulations provide for uses allowed in the underlying SRA district, "senior supportive housing," or age-restricted dwelling units with on-site services, and various accessory uses such as recreation facilities, food services, personal services, a coffee shop, and similar amenities for residents and employees of a development. For uses unique to the SC district, Dedham controls density with minimum lot area and minimum land area per unit requirements and a lot coverage restriction. The SC district is the only zoning district in Dedham that allows buildings to exceed a height of 40 feet. The bylaw was carefully written to exempt the overlay district from most other provisions of the Dedham ZBL and to create a consolidated special permit, site plan, and parking plan approval process specifically for uses in the SC district. Though modeled after the submission requirements for a Major Nonresidential Project special permit, neither site plan review nor a special permit in the SC district is bound by the same kinds of "required" and "recommended" standards that govern MNP decisions. Instead, SC permits have to meet the district's site plan standards in § 7.6 and a set of basic special permit granting criteria in § 9.3.

Planned Residential Development

Dedham has established a mechanism for developers to propose higher-density residential uses. The mechanism is a *floating zone*: a type of zoning district with written regulations but no boundaries on a zoning map unless town meeting places land in the district at the request of a proponent, who is typically required to submit a sketch plan illustrating what will be built on the property. Under § 7.1 of the ZBL, Town Meeting can authorize a Planned Residential Development (PRD) if the Planning Board recommends a concept plan for a proposed site. The concept plan must show the proposed uses and density and the approximate location of the required open space, which must be at least 20 percent of the site. According to the 1996 Master Plan, a PRD's purpose is to "preserve significant tracts of open/wooded land…to retain the town's overall open space image and its more rural character predominant in the western part of town."[9] In most communities with a PRD bylaw, the minimum open space requirement would be as high as 50 percent, even without sewer service.

The regulations that govern PRD submissions are rather unclear. Dedham does not specifically define "Planned Residential Development," so a prospective developer must seek guidance in various sections of the ZBL. According to the Table of Principal Use Regulations (ZBL § 3.0, Table 1), a PRD is limited to detached single-family dwellings and two-family dwellings, both allowed as of right. However, the special regulations in § 7.1 suggest that a PRD can include other types of housing units

[9] Vision and Goals, *Dedham Master Plan* (1996), 1-4.

DRAFT

as well, for a PRD "is intended to accommodate dwelling units for small households in a variety of dwelling types, all in a planned setting." Unfortunately, the remaining regulations in § 7.1 do not describe the variety of dwelling types that will actually be permitted in a PRD, or whether dwelling units other than single-family or two-family homes would require a special permit. Further, the ZBL implies that a PRD is intended for empty-nesters and other childless households and that units will be size-restricted, but this, too, is unclear because "small household" is fairly ambiguous. A two-person household could include a married couple whose adult children have moved on, two unrelated people sharing the same living quarters, or a single parent with a dependent child.

A PRD is subject to a density cap of 1.5 times the density allowed under conventional zoning. In addition, the regulations for a PRD seem to assume that at the detailed plan stage, permitting will fall under subdivision control, i.e., the proposed site would be divided into individual house lots. In such cases, the area dedicated as open space would constitute one or more parcels on the same subdivision plan, recorded as unbuildable lots. Often, however, true planned developments are designed for condominium ownership or single-family dwellings or townhomes with exclusive use areas, and all of the remaining land is held in common by the residents. Presumably Dedham would require developments of this type to undergo detailed plan approval under § 9.5, Site Plan Review, but this, too, is unclear. Although the ZBL does not explicitly limit eligible tracts of land to residential districts, it would be difficult to meet PRD requirements in any district that prohibits housing because the maximum allowable density depends on the rules that apply in the underlying zone. In Dedham, the presumably eligible districts include SRA, SRB, GR, and two business districts: Local Business, and General Business.

Commercial Districts

Dedham has four districts intended primarily or exclusively for commercial uses. The Central Business (CB) district includes Dedham Square and extends across the Providence Highway approximately 600 feet along the north side of High Street to Churchill Street. It also includes the rotary and land just to the north along the VFW Parkway and Washington Street, generally as recommended in the 1996 Master Plan. The General Business (GB) and Local Business (LB) districts occur in scattered locations throughout town, typically within or along the periphery of the GR and SRB districts. Finally, the Highway Business (HB) district includes approximately 155 acres of land along the east side of Providence Highway from Wigwam Pond north to the vicinity of Eastern Avenue, and again along northern Washington Street where the Dedham Mall is located. A smaller pocket of HB zoning extends northerly along the west side of the Providence Highway for about 1,800 feet, roughly opposite Wigwam Pond.

Central Business, General Business, and Local Business. Dedham's smallest commercial zones include the CB, GB, and LB districts. While they have some common regulations, Dedham seems to have thought about these districts and tailored many of the use regulations to the characteristics of each area. The CB and GB districts offer the greatest dimensional flexibility, with no minimum

DRAFT

requirements for lot frontage, lot area, lot width, or yard setbacks. However, in some locations these districts are extremely shallow, extending just 100± feet from the street sideline, the result being numerous split lots coinciding with the GR and SRB districts (*Map X-3*).[10] Maximum lot coverage and floor area ratios apply in all three small business districts, and the town also has a uniform building height limit of 40 feet in all nonresidential zones (commercial and industrial). Overall, Dedham's dimensional regulations suggest a preference for preservation of historic buildings and similar height and bulk in any new buildings constructed in Dedham Square, a moderate scale of development and intensity of use in the GB district, and small buildings for very small, neighborhood-oriented businesses in the LB district.

Dedham allows single-family homes by right in the LB and GB districts, but not in the CB district. Animal hospitals can be built in the LB and GB districts, but not in CB, and an unusually broad class of use – "general service establishment" – is permitted by right in the CB and GB districts and prohibited in LB.[11] Dedham allows traditional business uses such as offices, banks, personal services, and retail space by right in all three districts, but the LB district rules clearly favor small retail shops and discourage larger stores. The town divides "retail" into two classes: small retail, up to 10,000 sq. ft. of floor area and retail business, over 10,000 sq. ft. Small retail and retail businesses are allowed in the CB and GB districts, but in the LB district, "small retail" is subject to a low floor area cap of 1,500 sq. ft. except by special permit from the ZBA. Similar distinctions apply to food service establishments. Dedham prohibits drive-through facilities in all three districts.

The Table of Use Regulations includes two types of residential uses in mixed use buildings: "buildings containing dwelling units in combination with stores or other permitted uses," and "subsidiary units." The ZBL does not provide a clear distinction between them, yet the former is allowed in all three districts while the latter is restricted to the CB and GB districts. According to a footnote to the Table of Use Regulations, a two-unit maximum applies to "buildings containing dwelling units in combination with stores or other permitted uses" in the CB, LB, and GB districts.[12]

---

[10] For lots divided by a zoning district boundary, Dedham allows the entire lot area to be counted toward the minimum lot area for the principal use of the land. However, the principal use and accessory uses are confined to the portion of the lot that lies in the district where the use is permitted, plus 10 feet into the adjacent district, unless the ZBA grants a special permit to extend the uses beyond 10 feet. This is an unusually restrictive split lot rule.

[11] As defined in § 10.0, a general service establishment includes: "nonexempt business or trade school, blueprinting or copying establishment, catering service, clothing rental establishment, dancing or music school, meeting hall for hire, funeral home, repair shops for bicycles, typewriters, televisions, electronic and household appliances, or like enterprise." These are quite different uses combined into a single definition. For example, most zoning bylaws would separate a funeral home from uses such as repair shops or a catering service.

[12] The same footnote number appears under Limited Manufacturing and Limited Manufacturing B. If the two-unit maximum does not apply in these districts, the footnote reference should be removed from the Table of Use Regulations.

DRAFT

However, no unit cap and no specific density regulation applies to "subsidiary units" in § 7.4 or § 4.1. Instead, they must meet several conditions in order to qualify for an occupancy permit: upper-story location, a one-bedroom size limit, occupancy by not more than two adults, access to off-street parking, and compliance with the State Building Code. Presumably, "non-subsidiary" dwelling units are exempt from many of these conditions (except, of course, the State Building Code), but the ZBL does not identify any special conditions or requirements for these units other than the two-unit cap per building. Some underlying policy differences between subsidiary and non-subsidiary dwelling units can be gleaned from the regulations, but ZBL should be more instructive. Leaving less to the imagination of property owners and developers means fewer problems for the Building Inspector.

Highway Business. Prior to the 1996 Master Plan, land currently located in the HB district was zoned for industrial uses. At the time, the Limited Manufacturing (LMA) district covered most of the Providence Highway and the area now contained in the Research, Development and Office (RDO) district. The HB district differs significantly from Dedham's smaller commercial zones. By virtue of its shape and dimensional regulations, the HB district encourages suburban-scale commercial strip development, with a minimum lot area of one acre and minimum lot frontage of 200 feet, a minimum front setback of 30 feet, side and rear yard setbacks of 20 and 25 feet respectively, and a maximum floor area ratio of 0.35. The HB minimum frontage of 200 feet is Dedham's most demanding lot frontage requirement. It appears to have been chosen to encourage parcel assembly and consolidate curb cuts as properties redevelop over time. This makes sense in light of 1996 Master Plan recommendations that Dedham should encourage retail redevelopment along the Providence Highway in order to strengthen the taxable value of land in this area and simultaneously improve public safety and reduce traffic conflicts.

The HB district has no provisions for residential uses except an accessory watchman's or caretaker's residence on the premises of a commercial use. Dedham allows a wide variety of commercial uses by right in the HB district, from professional and medical offices and banks to retail, auto sales, personal services and general service establishments, commercial parking lots, printing establishments, wholesale showrooms, and hospitals, outpatient care facilities, nursing homes, and charitable institutions. While auto repair and auto body shops are permitted as of right, gasoline stations require a special permit from the ZBA. The town allows several other uses by special permit as well, such as hotels, restaurants, motion picture theatres, kennels, drive-through facilities, and warehouses, and some industrial uses: limited manufacturing, and research laboratories. Furthermore, light manufacturing as an accessory use is permitted as of right as long as the manufacturing use occupies no more than 25 percent of the total floor area in a project and meets some additional conditions.[13] In short, the HB district can accommodate many activities with remarkably few restrictions.

---

[13] The provision for accessory manufacturing is erroneously listed in the residential portion of the Accessory Use Table. This should be corrected when the town updates the ZBL, i.e., by relocating accessory industry or manufacturing to Part II of the Table, Accessory Uses - Nonresidential.

DRAFT

The seemingly liberal use regulations that apply in the HB district do not present a complete picture of the requirements that must be met in order to obtain a building permit for a project on a conforming lot. Almost any noticeable change that occurs in the HB district triggers Dedham's site plan review bylaw, § 9.5, which requires an application to the Planning Board with detailed site construction, landscaping, and parking plans, and in many cases a separate submission to the Design Review Advisory Board. Through these and other permitting mechanisms, the Planning Board has tried to improve conditions along the Providence Highway on a project-by-project basis. Moreover, any project involving 25,000 sq. ft. or more of new construction or expansion space or 100 or more parking spaces requires a Major Nonresidential Project (MNP) special permit from the Planning Board. While the MNP special permit thresholds apply in the other commercial districts, development in the HB district is more likely to trigger the MNP process simply because the district is intended for larger-scale projects.

Industrial Districts

Four zoning districts in Dedham provide land primarily intended for office, industrial, and related uses: the Administrative and Professional Office (AP) district, the Limited Manufacturing (LMA) district, the Limited Manufacturing Type B (LMB) district, and Research, Development, and Office (RDO) district. In the very small AP district, Dedham allows only a few uses – offices and banks – and a private country club or tennis club. The town's larger office and industrial zones provide for many other uses and in doing so, they sometimes create the potential for significant use conflicts.

Limited Manufacturing (LMA and LMB). Dedham has two Limited Manufacturing districts. The larger district, LMA, encompasses about 5.6 percent of the town's total area. The extent of LMA is deceptive, however, because Dedham has zoned a large amount of protected open space – the Neponset River Reservation – for manufacturing uses that will never be built. Excluding the Department of Conservation and Recreation's (DCR) holding along the Neponset River and some other parcels owned by the town itself, the amount of land meaningfully zoned for LMA purposes is much less: about 140 acres. Much of this land extends along the railroad tracks in East Dedham, intertwined with the GR and GB districts, and also includes the Readville Yards off Sprague Street. Until the birth of the HB district, land currently zoned for retail development along the Providence Highway was located in the LMA district, too. Not surprisingly, there are some similarities in the use regulations that apply in the HB and LMA districts. By contrast, the LMB district includes just one property near the Dedham-Boston-Milton line: the Stop and Shop warehouse site that lies just east of the railroad tracks.

In both the LMA and LMB districts, developments must have at least one acre of land and at least 150 feet of frontage. The lot width and yard setbacks are similar to the HB district, except that in LMA and LMB, the side yard setback is 15 feet instead of 20 feet. A lot in the manufacturing zones is also subject to a maximum lot coverage requirement of 50 percent and the conventional suburban FAR of 0.35. It is unclear how a project could achieve both the coverage and FAR limits, however, since a one-story manufacturing building covering 50 percent of the lot would exceed the maximum FAR of 0.35.

DRAFT

The use regulations for the LMA and LMB districts are very similar. Sometimes it is difficult to distinguish them from the HB district. Important differences include by-right development of retail space in the HB district while retail uses in the two manufacturing zones require a special permit. Significantly, Dedham does not prohibit retail in these districts. In both the LMA and LMB districts, buildings containing dwellings associated with other permitted nonresidential uses are allowed by special permit, along with food service establishments and conference centers. By right, Dedham allows development of professional and medical offices, hospitals and nursing homes, auto sales, personal services, general service establishments, animal hospitals and kennels, shops for trade contractors, wholesale showrooms, commercial storage facilities, gasoline stations and auto repair shops, and research laboratories. The most obvious distinction between the two manufacturing districts is that ironically, Dedham allows manufacturing uses – both intensive and "limited" – by right in the LMB district but only by special permit in the LMA district. In addition, Dedham allows warehouses and bottling companies by right in the LMB district and prohibits them in the LMA district. In some ways, the LMA district, much like the HB district, has a confusing identity due to the wide range of uses that could be constructed on usable land within this zone. The same could be said about the LMB district, but since it includes only one property, the potential for use conflicts with abutting land is significantly reduced.

Research, Development, and Office (RDO). The RDO district is a product of the 1996 Master Plan. Its intent was to promote higher-value office, research and technology businesses on land with highway and commuter rail access. Interestingly, though, the RDO district is governed by the same dimensional regulations that apply in the LMA and LMB districts – including a maximum height restriction of 40 feet, which would be a disincentive for some high-tech companies. The only substantive difference in dimensional rules for the RDO district is that by special permit, the Planning Board can approve a maximum FAR increase to 0.40 for projects with highway frontage or that involve consolidation of two or more parcels. This district contains a number of split lots, particularly along its eastern boundary with the SRB district, and east of the Providence Highway where the HB and RDO districts converge.

The RDO district differs from the LMA and LMB districts in that many uses allowed by right or by special permit in the latter are prohibited in the former. On one level, the RDO use regulations suggest that in this part of Dedham – some 400 acres of land along the lower end of Providence Highway near the Route 1/1-A and I-95 interchange – the town prefers research and development companies and corporate offices, as promoted in the Master Plan and specifically provided for in the Table of Uses. Still, the regulations contain other features that seem to conflict with the district's implied purposes. For example, Dedham allows a detached single-family dwelling by special permit in the RDO district, which seems odd given that the town prohibits single-family homes in the other industrial districts as well as the HB district. Dedham also allows, by special permit, some uses that could work against the district's desirability to high-end developments for specialized tenants: commercial storage, auto repair facilities, commercial boat rentals, and drive-throughs. Limited manufacturing is allowed by special permit, which does make sense for some types of industry clusters.

DRAFT

Dedham prohibits retail development in the RDO unless a proposed site has frontage on a "major highway" and consists of a lot created prior to 1996, or a new lot lying entirely within 500 feet of a major highway. If either condition is met, the ZBA may grant a special permit for retail uses. According to § 10.0 of the ZBL, "major highway" includes the Providence Highway, Route 1A, or any state-numbered route with at least two travel lanes in each direction. Dedham provides a second mechanism for developing retail uses in the RDO, however: the Planned Commercial Development (PCD) special permit. The PCD provision paved the way for Legacy Place, a lifestyle center for which the Planning Board granted a special permit in 2007.

Major Nonresidential Project

In any commercial or industrial district, the Planning Board has authority to grant a special permit for Major Nonresidential Development (MNP), which the ZBL defines as any nonresidential project with 25,000 sq. ft. or more of gross floor area or 100 or more parking spaces. These thresholds are calculated retroactively to 1988, i.e., cumulative increases in floor area since then count toward the 25,000 sq. ft. limit that triggers the MNP special permit today. In effect, the MNP requirement means that Dedham does not allow any commercial or industrial uses by right, including those classified as permitted in the Table of Uses, if they exceed 25,000 sq. ft. or involve parking for 100 or more vehicles. A second effect of the MNP requirement is that the Planning Board becomes the special permit granting authority (SPGA) for uses that otherwise fall under the ZBA's purview if developed below the MNP size or parking thresholds. The MNP bylaw has noble intentions, and it could benefit both the town and developers. As written, however, the MNP bylaw contains some unusually broad language that is susceptible to different interpretations. It has the potential to discourage moderate-scale improvements to commercial and industrial properties because the application requirements are fairly onerous and in some cases, the review standards suffer from ambiguity.

The MNP permitting process is governed by § 9.4 of the ZBL, which describes the application requirements, review process, and decision standards for a special permit. Dedham adopted the MNP provision in order to consider a proposed development's off-site impacts, which typically exceed the authority of traditional site plan review, and to require mitigation as a condition of approval. In fact, MNP special permit applicants have to submit a considerable amount of information unless the Planning Board decides to grant a waiver. The heart of the MNP application is a series of impact studies – traffic, environmental, and community and fiscal impacts – each with "required" and "recommended" standards to guide the development of a special permit application and the Planning Board's decision. "Recommended" is something of a misnomer, however, because the ZBL authorizes the Planning Board to deny an application that does not meet two or more of the ten "recommended" standards. This would make it hard for applicants to anticipate what the Planning Board will expect above and beyond the fourteen "required" standards for approval.

While some of the "required" standards are fairly straightforward, others describe broad expectations without a measurable basis for determining compliance. For example, the required traffic impact standards include "binding provisions…to compensate for errors in projecting the potential traffic volumes and traffic routes." Aside from uncertainties about what sort of "binding provisions" the town would accept, the ZBL does not establish where the authority lies to determine after the fact

DRAFT

that an error has occurred. Moreover, traffic patterns can change in response to circumstances unrelated to a particular project, e.g., increases in cut-through traffic to avoid congestion on Route 128. Similarly, the required environmental standards include a prohibition against increases in runoff from a site "unless such increase is deemed by the Planning Board to be beneficial." Though it is unlikely that the Planning Board would ever classify an increase in stormwater runoff as beneficial (especially under the state's new Stormwater Guidelines), the ZBL leaves the door open for a finding to this effect with no standards to guide the Board's decision. Remarkably, the environmental standards contain no specific guidance on sustainable design, such as green building technologies or low-impact development.

The more disconcerting "required" standards in the MNP bylaw involve community and fiscal impacts. According to § 9.4.11, applicants have to make "provisions to minimize adverse financial, social, and visual impacts and to prevent deterioration and blight" if a development "does not materialize as envisioned." Possibly this broad language could be satisfied by a performance guarantee to complete the site work if an applicant abandons a project midway through construction, or it could mean that the applicant has to provide some type of payment to the town for "financial, social, and visual impacts" that the ZBL does not clearly define. Another provision calls for the payment of impact fees to pay for off-site capital improvements that the town would have to make in order to serve the development, but the ZBL does not establish how the impact fees will be set. It also does not provide for the possibility that the applicant would make the improvements instead of paying fees to the town.

Planned Commercial Development

As described in the 1996 Master Plan, "Planned Commercial Development" (PC) was intended to be a zoning district, and presumably an overlay district covering the "newly proposed zone districts of RDO, HB, and CB" to encourage "comprehensive planning and design of a larger area rather than a parcel-by-parcel development of buildings."[14] Unlike PRD, which requires both Planning Board support for a concept plan and a two-thirds vote of town meeting, the PC provision gives authority to the Planning Board to grant a Major Nonresidential Project special permit for a commercial or mixed-use development in the CB, GB, HB, LMA, LMB, and RDO districts. It is not really a zoning district, for in Massachusetts, authority to establish zoning districts lies with the local legislative body and each district must be depicted on a zoning map. In Dedham, PC is a mechanism for developing particular uses in a project that meets eligibility requirements in the ZBL: location in one of the designated zoning districts and approval through the MNP special permit process. For projects meeting these basic thresholds, the Planning Board may approve uses that otherwise would be prohibited, such as retail space or subsidiary apartments in the RDO district, a hotel in the GB district, or a mixed-use development with drive-through facilities in the CB district.[15]

---

[14] *Dedham Master Plan* (1996), IV-17.

[15] In § 6.3.2(5), the ZBL provides that "specific impacts…on the streets and service demands beyond the boundaries of the tract may be compensated for through impact fees as provided in the site plan review

DRAFT

The PC bylaw provides some flexibility to consider the unique needs of large-scale redevelopment projects, which the 1996 Master Plan correctly anticipated. Redevelopment is both costly and complicated, and sometimes it hinges even more on market forces than the development of vacant land. Dedham's PC provision makes sense given the prevalence of underutilized property in some of its zoning districts. At issue is whether the bylaw promotes the comprehensive planning of larger areas that the 1996 Master Plan intended. For example, there is no requirement for parcel assembly in a PC development.[16] In addition, the PC bylaw does not offer the possibility of more flexible dimensional requirements, such as an increase in the maximum floor area ratio or maximum building height under specified circumstances. This type of latitude can be very important for some developments, especially redevelopment projects, and it should not hinge on a dimensional variance from the ZBA.

Development Standards and Permitting Regulations

Dedham has the basic development regulations that appear in virtually all zoning bylaws. The town has adopted regulations for off-street parking and landscaping, and special regulations to guide the development of certain uses, such as PC developments, hospitals, adult uses, and some residential use types.

Site Plan Review under § 9.5 is a standard mechanism for reviewing detailed design and construction plans for uses other than single-family homes, farms, or uses classified as exempt in the state Zoning Act. Although most towns have some form of site plan review today, the Zoning Act does not provide for it. As a result, communities have to rely on a history of case law – sometimes inconsistent – to understand and apply site plan review within bounds established by the Massachusetts courts. In Dedham, site plan review applies to any construction involving 5,000 sq. ft. or more of gross floor area, and the process involves a 105-day permitting period between the application date and the Planning Board's decision. While the ZBL does not require an advertised public hearing for site plan review, it does obligate the Planning Board to notify abutters and publish a meeting agenda. A striking feature of Dedham's site plan review bylaw is its omission of review standards or criteria to guide an applicant's site plan preparation and the Planning Board's decision. It is purely a procedural bylaw, i.e., submission requirements, review procedures, decision timeline, and appeals.

provisions of the Zoning Bylaw." This is in error; § 9.5, Site Plan Review, contains no reference to impact fees. The only reference to impact fees elsewhere in the ZBL is under Major Nonresidential Project at § 9.4.11(3), where the grant of a special permit is tied, in part, to the payment of impact fees for off-site improvements. There is currently no authority under the state Zoning Act for communities to *require* impact fees as part of the development permitting process.

[16] A five-acre minimum land area requirement applies to PC developments. This appears as a footnote to the Table of Use Regulations, § 3.1.6(19). In a future ZBL update, the town should consider moving this requirement to § 6.3, Planned Commercial Development Standards or to the Table of Dimensional Requirements as a footnote to LMA/LMB/RDO, CB and GB.

DRAFT

Special Permits. Unlike site plan review, state law does provide specific local authority to grant special permits, though the special permit power has roots in court decisions that long pre-date the Zoning Act. Communities use special permits to regulate what has been called the "middle tier" of uses, i.e., uses not prohibited and uses not liberally allowed by right because in the wrong location or under the wrong conditions, they could create problems for neighboring properties. In Dedham, the ZBA serves as the "default" special permit granting authority (SPGA). This means that unless the ZBL explicitly empowers the Planning Board to grant a special permit, such as for Major Nonresidential Projects or developments in the Senior Campus district, the ZBA has jurisdiction over special permits. The ZBA has authority to grant or deny special permits in the residential districts and LB district, and for residential uses allowed in nonresidential districts, developments under 25,000 sq. ft. in all of the nonresidential districts, adult uses, and exceptions in the Flood Plain Overlay District, the Aquifer Protection Overlay District, and the Wireless Communications Services Overlay District. In addition, the ZBA controls special permits for non-conforming uses, structures, and lots.

A division of special permit powers like Dedham's is not unusual. Until 1975 when the present Zoning Act took effect, a ZBA was the only local board authorized to handle special permits. Since 1975, special permits have gradually evolved as a function of planning boards, though many communities have more than one SPGA, including Dedham. Still, dividing special permits among multiple boards or assigning special permits to one board and site plan review to another creates a challenging environment for applicants. In Dedham, small commercial projects requiring a special permit could necessitate separate zoning-related applications to the ZBA, the Planning Board (for site plan review or parking plan review), and the Design Review Advisory Board, and another application to the Building Department and Design Review Advisory Board under the Dedham Sign Code.

Off-Street Parking is regulated under § 5.1 of the ZBL, which establishes minimum parking space requirements for various uses, sets construction standards for parking lots and access roads, and regulates the location of parking lots. It also provides authority for the Planning Board to approve a deferral of parking space construction in some cases. In addition, § 5.1 offers some flexibility for Dedham Square properties, most of which would find it impossible to provide enough off-street parking to meet the requirements of the bylaw. In a related section, the ZBL imposes modest landscaping standards on parking areas. The standards are quantitative more than qualitative, focusing on matters such as the percentage of a parking lot that must be landscaped and the minimum dimensions of perimeter buffers.

Dedham requires a considerable amount of off-street parking for nearly all types of nonresidential development. For retail stores, the ZBL requires a minimum of one space per 200 sq. ft. of floor area – a standard that typically serves as the *upper* limit in modern parking bylaws with both minimum and maximum off-street parking space requirements. The ZBL does not have a sliding scale to allow parking space reductions for very large retail facilities, and for retail involving the sale of goods produced on the premises, such as a bakery, the ZBL requires storage and production space to be counted as retail floor area. For manufacturing facilities, Dedham requires one space per 500 sq. ft. of

floor area and for warehouses, one space per 1,000 sq. ft., yet the industry standards for these types of uses include one space per 800 sq. ft. and one space per 1,500 to 2,000 sq. ft., respectively. In general, most of the parking requirements in Dedham exceed guidelines recommended by planners today. Many of the same concerns were identified in Dedham's 1996 Master Plan.

Excessive parking can create both aesthetic and environmental problems, and over-sized parking lots also waste land that could be put to higher-value use. Dedham's ZBL does not provide clear or predictable ways to adjust parking requirements for mixed-use developments, and there are no requirements or incentives for bicycle parking. The ZBL also contains no authority for pavement reductions to encourage environmentally sensitive design, such as bioretention cells or rain gardens. Significantly, Dedham's approach to density and dimensional regulations does not include a minimum open space requirement in any of the nonresidential districts, where intensive uses can cover nearly an entire site except for the modest buffers around parking lots. This, coupled with the town's off-street parking requirements, creates the potential for excessive land coverage.

Planning Capacity

Planning boards and ZBAs sometimes overlap in Massachusetts because both can serve as a special permit granting authority, but their roles and responsibilities differ significantly. A planning board has exclusive jurisdiction over preparing a city or town master plan, administering the Subdivision Control Law and the Scenic Roads Act, and conducting hearings and making recommendations to town meeting about proposed zoning changes. In Dedham as in most communities, the Planning Board also has authority over site plan review. Since Dedham's government is organized under a home rule charter, the Dedham Planning Board's powers and duties flow not only from state law and the ZBL but also from the charter, which places the Planning Board in charge of the planning department.

Among the 1996 Master Plan's recommendations was a proposal to fund a full-time planner position. Though classified as "completed" in the Master Plan implementation element, Dedham has not really funded a full-time planner. Instead, the town has had the luxury of retaining a well-qualified planner who effectively worked full time for the Planning Board but as a consultant, not a municipal employee. As a result, the position has been budgeted as an expense item in the Planning Board's operating budget for many years. While the terms and conditions of employment for wage and salary workers stem from a community's personnel plan or a collective bargaining agreement, consultants operate under a contract. The difference is not minor. Employee status brings an obligation for communities to provide health and retirement benefits, but since consultants do not qualify as municipal employees, the community saves employer costs.

Dedham has benefited from an unusual situation. Planners who agree to work on a full-time basis under a non-employee contract are the exception, not the rule. While Dedham has continued to function on this basis, town government created new employment positions in an effort to bolster its capacity in other areas identified in the 1996 Master Plan, notably engineering, economic development, and environmental policy. The retirement of the consulting planner presents an opportunity for Dedham to reassess the organization and staffing of the planning department. The

DRAFT

town needs to protect and enhance its planning capacity. It also needs to ensure that the Planning Board, which has permitting responsibility for major developments, receives adequate, reliable staff support from a professional planner. In addition, Dedham needs to continue integrating its staff into working teams for tasks such as development review. In any community, a development review team should be lead by a planner who brings together all of the participating disciplines and synthesizes from their input a coherent approach to permitting.

ISSUES & OPPORTUNITIES

Smart Growth. Since 2003, state government has shown some interest in "smart growth," a set of planning principles that emphasize environmental protection by promoting compact, mixed-use development near public transportation, more transportation options to reduce vehicle dependency, housing and employment choices for people of all income levels, and fairness in development review and permitting procedures. The state's strategy involves measures such as Chapter 40R, which offers financial incentives to communities that allow higher-density housing by right, and designating growth districts. Massachusetts also promotes green buildings and renewable energy through public education and low-interest loans and grants for commercial, industrial, and government buildings that address the state's energy and water conservation policies. In addition, Chapter 43D encourages communities to identify areas for commercial, industrial, or mixed-use development ("Priority Development Sites") and make the permitting process for those projects efficient and clear. In a telling fragmentation of state policy, however, approval of Priority Development Sites does not depend on consistency with any local, regional, or state smart growth plan.

Dedham has the potential to implement a smart growth planning framework. It has two commuter rail stations, four points of access to the interstate highway system, and a development pattern with many of the ingredients of smart design. It also lacks crucial components of smart growth policy, however. Some noteworthy examples include:

- Dedham needs to reassess its land use policies around the Dedham Corporate Center MBTA station for opportunities to encourage higher-density, mixed use development, including residential uses;

- Dedham does not have a clear, specific policy for encouraging or requiring Transportation Demand Management (TDM) for large nonresidential developments;

- The ZBL's approach to regulating site development is weak, e.g., excessive pavement and parking requirements, and no incentives or requirements for environmental and energy performance standards in the design, construction, or operation of sites and buildings;

- The ZBL depends too heavily on discretionary special permits with ambiguous review standards, which increases the applicant's risk that permitting decisions will not be timely or predictable;

- The ZBL does not encourage a variety of housing choices, particularly near transit;

DRAFT

- There are no incentives or requirements for bicycle parking, even in small business areas connected to residential neighborhoods;

- Dedham does not have all of the tools for a coordinated approach to promoting redevelopment of underutilized areas. It needs a professional staff team that includes the town planner, the economic development coordinator, and the town administrator working in support of an economic development committee or an economic development and industrial corporation (EDIC);

- The town needs to invest in Dedham Square by implementing recommendations in the 1996 Master Plan, the 2004 Community Development Plan, and this Master Plan Update; and

- Dedham needs to marshal more effective tools to protect open space and incorporate open space design in new developments: open space residential development, a more realistic PRD bylaw, and dedicated funding for open space acquisitions, which may include adopting the Community Preservation Act (CPA).

Zoning Reform. A comprehensive revision of the Zoning Act, Chapter 40A, has been submitted to the legislature several times. Originally known as the Land Use Reform Act (LURA), the proposal was renamed the Community Planning Act, or "CPA-II," in 2006. CPA-II intended to address a wide range of municipal planning concerns and update Chapter 40A to make it more like the zoning laws found in many other states. It also required consistency between local comprehensive plans and zoning. Resistance to CPA II from developers and housing advocates made it difficult for supporters to move forward. Opposition increased in 2006 after the Pioneer Institute and the Rappaport Institute jointly published a critique of zoning and other regulations that were said to impede housing development in the Boston metropolitan area.

In 2007, the governor assigned a point person to work with opponents and supporters of land use reform in an effort to find compromise. A Zoning Task Force has been meeting to develop what is currently called the "Land Use Planning Act," or LUPA – a proposal with incentives for communities to adopt and implement comprehensive plans that address state and regional growth policy objectives. Unlike CPA-II, which would apply to all communities, LUPA promotes a voluntary system for communities to adopt plans consistent with state requirements, such as zoning land for commercial growth and high-density housing by right, with expedited permitting for development in these locations. In exchange, communities with LUPA-compliant plans would be allowed to exert more control over development by gaining access to regulatory tools that CPA-II intended to provide to all cities and towns: eliminating the "Approval Not Required" process, placing limits on vested rights, adopting rate-of-growth regulations, and making zoning changes with a simple majority vote at town meeting.

Despite LUPA's support from the administration, it has received only a lukewarm reception from groups interested in zoning reform, in part because LUPA will not resolve fundamental weaknesses in Chapter 40A except for a limited number of communities. Dedham may be in a good position to

benefit from the provisions of LUPA should it be enacted by the legislature because the town has so many redevelopment opportunities in the right locations. However, doing so would require the town to overhaul its development permitting procedures and designate specific areas for residential and commercial growth. In fact, Dedham already has designated commercial growth areas. What it lacks are designated areas for higher-density residential development.

Future Development Potential. Nearly a decade ago, the Executive Office of Energy and Environmental Affairs funded a statewide program to estimate the future growth capacity of every city and town in the Commonwealth. According to the analysis of undeveloped land in Dedham, the town's reserve growth capacity included 923 new housing units and about 361,250 sq. ft. of additional commercial space.[17] However, the state's projection ignored Dedham's significant potential for redevelopment, especially along the Providence Highway, and also ignored the impacts of Chapter 40B, the comprehensive permit law.

Since the buildout analysis was completed in 2001, Dedham has permitted nearly 600 units of mixed-income housing in the RDO district and 256 cottage-style homes in the large NewBridge on the Charles development, in addition to incremental new-home construction. The town also permitted a major regional retail center, Legacy Place, with nearly twice the nonresidential floor area estimated in the state buildout study, as well as institutional space at NewBridge on the Charles. Together, these events underscore the significant growth potential that can come about as a direct result of redevelopment and infill development and, in the case of Hebrew SeniorLife's project, the strategic use of overlay zoning. Dedham needs to harness the full power of land use regulation so that future development occurs where there are adequate facilities to support it and provides not only economic and fiscal benefits, but also environmental benefits. The future evolution of land uses adjacent to the Providence Highway will present enormous challenges for Dedham – challenges that far surpass contending with comprehensive permits or working through the permitting process for a large development such as Legacy Place. Its present zoning policies will not be enough to address these challenges.

RECOMMENDATIONS

1. Recodify and update the Zoning Bylaw and amend the Zoning Map, paying particular attention to the following issues:

    a) Site development regulations, focusing on environmental and energy performance standards;

    b) Clarity and consistency of definitions, use regulations, and development review and permitting criteria;

[17] Executive Office of Environmental Affairs, 2001.

DRAFT

c) Written descriptions of the purposes and intent of each use district and overlay district;

d) Division of special permit and site plan review powers between the ZBA and Planning Board;

e) Use and dimensional regulations in the HB and RDO districts;

f) The boundaries (shape) and use and dimensional regulations of the CB district, including but not limited to consolidating and clarifying the regulations for mixed-use (residential and commercial) development;

g) Clarity of review and decision standards for Major Nonresidential Projects (MNP), a reassessment of submission requirements, and providing for scoping sessions at an "all boards" and staff level to increase inter-board and interdepartmental coordination;

h) The treatment of split lots;

i) Off-street parking regulations;

j) Transportation Demand Management;

k) Adequacy of the existing Aquifer Protection Overlay District to achieve its objectives and comply with DEP policy;

l) Open space design and its applications both for residential and nonresidential development; and

m) Reassessment of Planned Commercial Development, possibly to include provisions for mixed-use development in the RDO and HB districts.

2. Commit funding to the full-time planning director as a municipal employee.

3. Formalize the roles, responsibilities, and expectations of the development review team, to be led by the planning director.

4. Review and update of the Rules and Regulations of Subdivision Control to ensure consistency and compatibility of technical engineering standards with the updated Zoning Bylaw.

5. Evaluate the town's capital planning process for its adequacy to support impact fees, and modify the process and content of the plan as needed. Dedham needs to be prepared for the eventuality that impact fee legislation will be enacted in Massachusetts.

6. Establish an annual review process to evaluate the town's progress toward implementing this Master Plan, to be led jointly by the Board of Selectmen and Planning Board.