

MIXED USE ZONING

Citizens' Guide

TECHNICAL APPENDIX¹

Things to Consider in Reviewing Mixed Use Proposals

Using an Overlay District vs. Changing Underlying Zoning

To achieve well-planned mixed use development, communities often use “overlay” districts. This means that the underlying zoning remains in place. Developers may choose to develop according to the underlying zoning or, alternatively, according to the mixed use provisions. The overlay encourages coordinated, cohesive development among lots or through lot consolidation. The overlay approach is especially useful when the community wants to promote a unified approach in an area where there are two or more underlying districts.

An “overlay” district is a zoning district that is superimposed over one or more existing districts in order to impose additional restrictions, permit additional uses, or implement density bonuses or incentive zoning to achieve community goals.² In the case of mixed use zoning, it is used to allow added uses and to provide incentives to achieve local goals. Thus developers can develop either according to the underlying zoning or according to more flexible mixed use provisions.

The overlay, as we have noted, encourages coordinated, cohesive development across lots or through lot consolidation. Rather than allowing piecemeal development, it encourages a sense of place over a larger area. The overlay allows the community to enable and require a mix of uses and to control their features. Changing the underlying zoning to allow a mix by right would only enable the mix but would not require it nor would it control it via the special permit process. The overlay concept is especially useful where the desired mixed use area crosses zoning district boundaries or includes only a piece of a district or where the community wishes to protect commercial or industrial uses in parts of a district.

Selecting the Permit-Granting Authority

Mixed use proposals should be reviewed and authorized by a board with substantial planning expertise and the ability to act with relative speed. The longer and less predictable the approval process, the less likely it is that developers will choose the

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² Mark Bobrowski, *Handbook of Massachusetts Land Use and Planning Law*, 1993, p, 480.

mixed use route. Most of the communities in our study selected the Planning Board as the most appropriate review and approval body. The Planning Board generally has more design and development negotiation experience than the Zoning Board of Appeals. The Planning Board process is substantially less cumbersome, more expeditious, and more consistent and predictable than Town Meeting. In some communities, however, the Zoning Board traditionally grants special permit and residents may be more comfortable with that arrangement. In this guide, we simply refer to the permit-granting authority as “the board.”

Balancing Incentives and Requirements

To encourage developers to use the mixed use option, the bylaw needs to include incentives and provide for community control while avoiding excessively burdensome requirements. It is easy for local boards to be carried away by utopian visions of the ideal development, but if the bylaw raises too many hurdles it will never be used.

The choice of incentives and requirements should be based on the community’s goals and the purpose of the bylaw. A town that is primarily trying to promote revitalization, for example, may have less stringent housing requirements than one where affordable housing is a primary goal. Thus the proposed Bedford bylaw, geared toward revitalization, requires 10 percent affordable housing in developments of eight units or more while Southborough, where affordable housing is a key goal, is considering 20 percent in developments of four units or more.³

The choice of incentives should also consider what is most likely to appeal to developers in the areas under consideration. Communities may choose from a number of potential incentives, such as:

- The ability to build certain kinds of housing (e.g., multi-family or small units) where it is not otherwise allowed
- More flexible design standards
- Less open space where flexibility produces better design
- Less parking, provided that adequate parking is achieved through such alternatives as shared parking arrangements; higher reliance on public transportation, bicycling, or walking; or transportation demand management techniques
- Streamlined permitting

In balancing incentives and requirements, it is important to remember that the community retains control through the special permit process. The special permit ensures high quality design. The board may always say no or negotiate more desirable design.

Setting the Tone and Establishing the Scope

Mixed use is intended as an improvement over traditional, segregated-use zoning. It often derives from a positive vision of a more desirable community. The bylaw should

³ Most of the bylaws referred to in this guide are still works in progress and have not yet been adopted. Provisions could change radically or be rejected totally.

help set this tone, emphasizing what the developer can do while limiting prohibitions. Sometimes even a prohibition can be affirmatively phrased; “up to” 40,000 square feet sounds more affirmative than “no more than” 40,000 square feet.

The bylaw should spell out its purposes, goals, and benefits and may include positive performance criteria and design standards. The bylaws in our study rely heavily on these components to set the tone and to give the board the tools to support good design.

Application procedure requirements and document submission information should go at the end of the bylaw, appearing after the reader is engaged by the mixed use concept. In general, those bylaw provisions that mirror other local bylaws should simply refer to the applicable sections without repeating the details.

Selecting the Areas and Boundaries

Our study communities selected for mixed use those areas where

- Run-down properties were prime candidates for redevelopment;
- Existing zoning limited creativity; and/or
- Village-style development would improve community character.

Some of the most underutilized or unattractive sites are currently zoned for industrial uses. Communities are faced with a challenge in dealing with these sites. On the one hand, the properties could be much more attractive as village-style mixed use development. On the other hand, industrial property is a limited but necessary resource, and there is some reluctance to give it up. These competing factors will play themselves out in the selection of areas and their boundaries.



Establishing boundaries for mixed use districts is very site-specific. In general, boundaries should be selected to protect desirable existing uses and properties and to ensure smooth transitions to surrounding areas.

Some communities, such as Southborough, chose to start small with the hope of potentially expanding later. Other communities, such as Stow, selected larger areas, incorporating “A” and “B” subareas to ensure a gradual transition to and from the neighboring residential areas.

As with the other issues outlined here, the choice should be based on substantial input from local officials, property owners, developers, abutters, and other citizens.

Achieving Good Design

Many of these elements of good design apply to all development, and it is beyond our scope to discuss them all here. However, certain aspects seem especially relevant to mixed use and thus are included here.

Variations in approach

There are two basic ways communities can regulate the design of new development, whether mixed use or single use. One is to set specific density standards such as units per acre, floor area ratio, or percent lot coverage limits. The other is to establish more general design criteria and performance standards and use the special permit process to negotiate the outcomes. In this latter approach, parking and water and sewer infrastructure, along with design elements such as connectivity, walkability, and architectural features, are used to guide development.

In the case of mixed use, several of our study communities have opted to omit specific density standards in the belief that greater flexibility will lead to better design. This approach seems in keeping with the vision of mixed use as more flexible, innovative, and context-sensitive than traditional zoning. The approach is open to debate. Some believe that density itself is seldom the problem; bad design is. Others say that citizens need more assurance that development will not be too dense and developers prefer clearer rules. Knowledge of your community's predilections will help you gauge which approach is most appropriate. A compromise might be to limit density but allow it to go higher under certain circumstances or to cap the total number of units over a given number of years.

Design Features in a Mixed Use Setting

Balanced mix of uses: To be successful, a mixed use district should include a balanced and vibrant mix of compatible uses, with first floor street-front uses generally reserved for retail, restaurant, and in some cases office uses. The proposed bylaws in our study communities encourage this mix by regulating first-floor street front uses and by incorporating a goals and performance criterion that considers a development's mix and its impact on the existing mix. Thus they allow residential uses on first floors of buildings or parts of buildings only where they are behind those with street frontage or where the permit-granting authority deems these uses not to have an adverse impact. These bylaws also allow uses to be commingled in a single structure or located in separate structures on site.

Other communities set limitations on the percentage of certain uses relative to other uses. For example, Canton allows one housing unit for every 2,000 square feet of buildable lot area and also allows for 3,000 square feet of commercial development for each 10,000 square feet of land area. Bedford limits the floor area ratio (FAR) of each of the various possible uses within its existing Industrial Mixed Use Overlay district.

Connectivity of uses: Traditional bylaws tend to emphasize buffering and protecting one use from others. Successful mixed use, by contrast, encourages links among uses. It encourages people to walk from one use to another and to enjoy and socialize in an attractive outdoor setting. Many design features promote this ambience. They include the layout and orientation of buildings; the network of sidewalks and pathways; the location of parking relative to structures and walkways; and the amount and placement of green space, landscaping, benches, and other amenities.

The bylaw should authorize the board to consider these factors in approving permits. Specifics may include requirements for parking to be behind or next to buildings rather than in front. The community may wish to adopt separate design guidelines to provide more information and positive examples to developers.

Active street frontage: In addition to the first-floor street-front use provisions mentioned earlier, communities influence street frontage through setbacks and other yard dimensions. Thus our study area bylaws allow a zero minimum front yard depth in some areas, set a maximum front yard depth, and prohibit front yard parking.

Compactness: The walkability of a mixed use development depends on the proximity of structures. Thus some bylaws set dimensional requirements that allow a zero side-yard width and a zero rear yard depth except where the property abuts a residential district.

Compatibility with town character and historic or traditional context: Although the bylaw should authorize the board to consider compatibility in awarding permits, the elements of such compatibility are generally no different in a mixed use setting than in any other new development. Hence, whatever guidance applies to other new development can simply be incorporated by reference in the mixed use bylaw.

A few caveats apply, however. If the community wants to encourage creative design rather than strict adherence to historic styles, the bylaw should stress “compatibility” rather than words like “consistency,” “conformity,” or “compliance.” If the proposed mixed use area has special historic importance, it would be wise to acknowledge and affirm it in the bylaw to ensure people that their heritage will be respected and that historic preservation regulations will apply.



Good bicycle and pedestrian access: One of the key benefits of mixed use is its emphasis on walking and bicycling to reduce auto dependence. Mixed use bylaws can promote walking and bicycling by including bicycle parking and storage facilities, creating a network of walkways among uses, minimizing curb cuts, and requiring that automobile parking be in back.

The Depot Park area of Bedford, one of the proposed study bylaws, is especially geared toward cyclists and pedestrians. It is located at the terminus of the Minuteman Bikeway and already has a bicycle repair shop as well as a vintage railroad station, freight house, and passenger car recalling the park's historic role in rail transportation. The town envisions complementing and capitalizing on these features with small-scale restaurants, housing, and fitness or health-related uses.

Reduced parking: Under certain circumstances, mixed use districts may set aside less parking than in traditional, single use settings. Reductions could occur near public transportation, where uses are clearly at different times and can share the same spaces, or where there is a strong program to manage transportation demand. For the town to allow such reductions, the public would need to be assured that the resulting parking is adequate to meet the need.

Determining Appropriate Uses

The mixed use bylaw should allow housing, including multi-family, as well as retail, restaurants, offices, and civic uses. Other uses may include housing for the elderly, personal services shops, child care facilities, recreation, and municipal uses. Although the use categories in the underlying district must be allowed, subcategories may be disallowed. Our study areas exclude those subcategories that are not conducive to their village-style vision (e.g., drive-through establishments, storage trailers, and adult entertainment).

Incorporating Housing

One of the main reasons to allow mixed use is to promote a greater variety of housing choice, including smaller units, more multi-family, and perhaps more rental than is typical in new suburban development. The bylaw should spell out the type of housing that is allowed, may regulate unit size or numbers of bedrooms, and may require some affordable units. If the community chooses to require some affordable units, it will need to specify the threshold number of units, the percentage of affordable units, target income eligibility levels, and other provisions similar to other affordable housing or inclusionary zoning bylaws. If the community already has detailed housing provisions, it may simply incorporate them by reference. Stow, for example, has an existing bylaw governing the inclusion of affordable units, and most of its elements are applicable to mixed use.

As mentioned earlier, the extent of the affordability requirements depends on the community's overall goals and the balance of incentives and requirements needed to achieve those goals.