



Leicester Zoning Diagnostic

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Commission for the Town of Leicester

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Introduction

Leicester started as a farming settlement. Over time it became a leader in industrialization, with urban development growing round several mills. In the post-industrial era it has matured into a largely residential town, retaining its original rural feel and a good deal of its industrial legacy. It is situated on the border of the city of Worcester, and served by Route 9, the old Boston Post Road that originally linked the greatest cities of the Northeast and now links Worcester to a string of towns to its west. It also has a second state route, Route 56 running through it. Leicester developed very rapidly in the last quarter of the 20th century and many of its regulations were developed to rein in what the town's people feared was excessive development. As it enters the second quarter of the 21st century, with the pace of development dramatically reduced, the town faces ever-changing challenges and the lack of up-to-date, fit-for-purpose bylaws and regulations makes it difficult for both the town and the people who live in it to rise to the challenges.

What is a Zoning Diagnostic and Why Complete One?

A zoning diagnostic is a comprehensive examination of land use patterns as they relate to a town's zoning bylaws and is intended to identify inconsistencies, redundancies, ambiguities, and errors and omissions. The desired benefit of completing the diagnostic is to identify areas in which the zoning bylaws can be modernized to be clear and concise, easily readable, and to identify amendments or additions that are needed due to changes in Massachusetts General Law (MGL) as well as newer topics in land use planning. In addition to reviewing the zoning bylaws, this diagnostic also involves reviewing other prior planning efforts in Leicester that have identified zoning related strategies to achieve their goals. We will first explore the key zoning strategies identified in previous studies, and then we will delve into the zoning bylaws.

Guidance from Prior Planning Efforts

Zoning can be thought of as the hub of a wheel that touches everything around it from housing to economic development to open space and transportation. The following previously completed studies each had goals and strategies for achieving these goals. Some of the strategies recommend amendments to the zoning bylaws to bring about the desired goals as noted below.

Leicester Reconnaissance Report (2007) ¹

The Leicester Reconnaissance Report ¹ is part of the Blackstone Valley / Quinebaug-Shetucket Landscape Inventory prepared in 2007 for the Massachusetts Department of Conservation and Recreation. It made several recommendations, some of which have since been implemented. Those that have not yet been implemented include:

- Consider introducing Village Center Zoning to support the character and business needs of small mixed-use commercial areas.
- Consider a Scenic Overlay District which may provide a no-disturb buffer on private property bordering on scenic roads or adopt flexible zoning standards to protect certain views.
- Consider Downtown Revitalization Zoning which seeks to encourage businesses to locate in downtowns.
- Consider introducing Transfer of Development Rights (TDR). TDR is a regulatory technique that allows a landowner to separate building or development rights from the property and sell them, receiving compensation for preserving land and allowing for the development to occur in areas selected for higher density projects

Leicester Master Plan (2009) ²

The Town of Leicester completed Master Plan update in 2009. This plan was steered by a committee representative of all the town's boards and committees. The Master Plan includes sections on Land Use; Housing; Open Space and Recreation; and Natural, Cultural, and Historic Resources. Some of the key recommendations in the Master Plan pertaining to zoning are the following:

- Consider changes to Zoning Bylaws to expand housing choices and affordability (such as Inclusionary Zoning). One option is to allow two-family "by-right" rather than by special permit in the Residential A (RA) district if the additional units meet Chapter 40B affordability requirements.

¹ Leicester reconnaissance Report. [Leicester Reconnaissance Report](#)

² Leicester Master Plan 2009. [Leicester Master Plan 2009](#)

- Evaluate and consider changes to multi-family zoning requirements in light of expansion of land zoned for multi-family housing, particularly the Business (B) district in the Cherry Valley area.
- Amend zoning district requirements as necessary to allow rental housing on upper floors of commercial buildings in Business (B) and Central Business (CB) districts.
- Incorporate appropriate changes to site plan design standards and zoning bylaws to maintain the pedestrian-friendliness of the Business District and Central Business District.
- Re-evaluate Industrial Zoning in Rochdale to allow development consistent with the surrounding neighborhood, such as adding buffer requirements and other site development standards consistent with other commercial districts in Leicester.
- Pursue development of an access management plan for major roadways, and/or develop zoning bylaws or other methods, such as reciprocal easement driveway arrangements for curb cut limitations along arterials for all land uses.
- Identify priority scenic roads and develop a Scenic Roads zoning bylaw that incorporates the preservation of existing stone walls and trees in the public right-of-way.
- Revise Parking and Loading Requirements. Set the minimum number of off-street parking spaces required for new industrial uses, commercial uses and apartment or condominium uses, including off-street spaces for visitors. Require loading spaces for commercial and industrial areas with adequate ingress and egress. Also, add standards for parking lot construction and paving, allowing for “green” paving techniques where practical.
- Discourage apartment or condominium uses unless public water and sewer are available.
- Add a Historic District Overlay Zone or Architectural Conservation District for historic districts identified in the Master Plan. Sample standards could include smaller lots, smaller building setbacks and narrower frontage requirements in accordance with the historic building/neighborhood pattern that currently exists.

- Add an Airport Noise Compatibility Overlay for all lands within the mapped 55 Ldn noise contour as put forth in the Part 150 Airport Noise/Land Use Compatibility Study and shown on the 2000 Master Plan Future Land Use recommendations map (Map 8-3).
- Develop consolidated site development standards for all commercial districts (i.e. require the same site development standards as HB-1 in BR-I and Bl-A) and/or rezone BR-I and Bl-A areas to HB-1 or HB-2 (to reduce complexity of bylaw)
- Revise the current Driveway Bylaw to ensure driveways provide safe access to structures. Consider removing from Zoning Bylaw and adopting separate Driveway Regulations.

Route 56 Study (2013)³

In 2012, the Central Thirteen Prioritization Project named the Route 56 (Huntoon Memorial Highway) Highway Business and Industrial Corridor as a Priority Development Area. Shortly after, CMRPC investigated existing conditions and opportunities for future economic development. The study concluded with several recommendations to boost growth in the area. Those pertaining to zoning include:

- Review landscape buffer requirements in the district area immediately south of Stafford Street. Consider including more discretion in bylaw language or even altering that particular area's zoning district to acknowledge its unique location as being directly adjacent to a residential zone.

Leicester Town Center Study (2014)⁴

The Central Thirteen Prioritization Project additionally named Leicester Town Center as a Priority Development Area. The Town had a particular interest in analysis and recommendations related to issues such as land use, zoning/permitting, Town Center streetscape and related amenities, and the gateway into Leicester Town Center. Zoning related recommendations included:

- Consider adjusting dimensional requirements so that more CBD parcels are conforming. More analysis that could have been done under the Scope of Services of this PDA Assessment is needed. But as noted on page 3, 27 of the 59 (45.76%) parcels identified in the Town Center are less than 15,000 square feet (which is about a third

³ Leicester Route 56 Study 2013. [Leicester Route 56 Study 2013](#)

⁴ Leicester Town Center Study 2014. [Town Center Study 2014](#)

of an acre) and are therefore nonconforming lots. The Town should build on the analysis. CMRPC assistance under DLTA in 2015 could be explored.

- Eliminate the “Car Wash”, “Storage warehouse and Gravel”, “sand or stone removal for commercial venture” and “trucking depot” as allowed uses within the CBD.
- Expand the CBD Zoning District to include 8-10 Pleasant and 16 Pleasant. However, CMRPC Staff bases this recommendation on the assessment of the existing land uses of those two properties and structures being commercial in nature already. This recommendation does not indicate any support for expansion of the CBD boundary to allow for the demolishing of the structures for new building construction. However, if the Town did want to support such new building construction to foster redevelopment, given the lack of parking as identified restraint, the Town should consider the public benefit of getting additional parking (perhaps either shared parking or dedicated municipal parking as part of a condition of any development proposal).
- The Town should assess if the CBD is appropriate for the existing residential land uses along Main Street west of the Castle and Northeast Pizza Plaza. As noted, there are a few single-family homes, which are prohibited in the CBD.

Leicester Housing Study (2018)⁵

After a downturn in housing development of all types, Leicester worked with CMRPC to identify potential causes and remedies. The project team focused primarily on changes to population growth and housing development in both the Town and neighboring communities. The resulting recommendations outlined several potential zoning changes to make development more approachable:

- Create more options for the development of single-family housing where appropriate. Reduce minimum lot sizes in SA districts and reduce minimum lot-size starting point in the Open Space Bylaw.
- Make the development of multi-family housing along appropriate corridors easier and more attractive to developers.

⁵ Leicester Workforce Housing Report 2018. [2018 Housing Study](#)

- Expand mixed use zoning operations along Route 9 & Cherry Valley. Create an overlay district or expand the existing CB district to cover more of the Route 9 corridor.
- Consider Traditional Neighborhood Development District- Adoption of a Village Center Residential or Traditional Neighborhood Development overlay district could simplify the development of two- and three-family housing. A TND overlay covering lots which front Route 9 between Worcester and the town center could create more opportunities for multi-family and mixed-use development along this corridor.
- Reduce minimum lot sizes in B and CB zones. CMRPC recommends reducing the lot sizes to 10,000 sf with a maximum lot coverage of at least 50% in areas where such change does not conflict with the limitations of the Town’s existing Water Resource Protection Overlay District.
- Simplify dimensional requirements where multi-family housing is allowed in RiB, B and CB districts.

Leicester Open Space and Recreation Plan (2021)⁶

An Open Space Plan was produced in 2007 and an Open Space and Recreation Plan in 2015. These were superseded by the Open Space and Recreation Plan of 2021. Among many detailed recommendations, the following are relevant to the Zoning Bylaws:

- Promote low-impact development practices and encourage the permanent protection of ecologically valuable land from new development.
 - Update Subdivision Rules and Regulations to reduce impervious surface and/or increase open space in new subdivisions.
 - Encourage developers to use the Open Space Residential Design Bylaw.
 - Encourage development and redevelopment of commercial and residential properties in village center to concentrate development in previously developed areas rather than on undeveloped land. Implement related Master Plan action items.

⁶Open Space and Recreation Plan 2021, Leicester Open Space Committee and CMRPC, December 2021,

- Analyze implications, including for housing costs, of making minimum residential lot sizes bigger to promote longevity of private open spaces.
- Review residential zoning around ponds and determine whether existing density could negatively impact water quality.
- Review opportunities to establish or enlarge "buffer area" between existing homes or wetlands and new construction to preserve open spaces and habitat corridors. Ensure that Leicester's buffer regulations meet or exceed the state's current minimum requirements.

Economic Development Plan (2021)⁷

The Leicester Economic Development Plan aimed to understand the challenges faced by the 300 businesses in the Town. Especially in light of the ongoing COVID-19 pandemic, the Plan focused on the protection and growth of local businesses, as well as the infrastructural changes needed to support continued development. Recommendations were wide-ranging, including collaboration with the former Becker College and investment in major transportation corridors. Goals related to zoning included:

- Create a sidewalk dining policy, and update regulations and procedures for outdoor dining proposals, identifying suitable locations for outdoor dining and outfitting them with amenities.
- Update zoning regulations to a form-based code in the downtown to create more flexibility in what can be used on the land and in the buildings.

Leicester Town Center Parking Study (2024)⁸

Leicester Town Center features a wide array of land uses, including facilities belonging to Leicester High School, the former Becker College, and several public parks and municipal buildings. Both the closure of Becker College and the overall growth of the Town present unique opportunities for growth in the area. The Downtown Parking Plan aims to prepare the Town's transportation infrastructure for future development and improve pedestrian safety and mobility. Its primary zoning proposal is the following:

- Reduce parking standards and incentivize shared parking

⁷ Leicester Economic Development Plan 2021. [Economic Development Plan](#)

⁸ [Town of Leicester Downtown Parking Plan](#), Stantec, 2024

Draft Master Plan⁹

In 2023 Leicester initiated the process of updating the 2009 Master Plan. The exercise was carried out during 2024 and 2025 with an extensive community survey and two community workshops. Because of the significant change in the planning context since 2009 the Master Plan recommends substantial changes in policy and approach. It was accepted by the Master Plan Steering Committee in May 2025 and is due to be considered by the Planning Board in August 2025. Included among the recommendations in the Master Plan are the following:

- **Adopt a policy of support for housing options that accommodate smaller households, such as downsizing opportunities, starter homes, and apartments.** In practice this would mean ensuring that the town adopts changes to bylaws and regulations, approves applications and supports initiatives that have the objective of, or are likely to lead to increasing numbers of small and affordable housing units.
- **Through policy and Zoning Bylaw amendments, direct new housing to areas of town with existing infrastructure and capacity for additional development.** While the capacity now exists to provide water and sewer for new developments, residents want to ensure that the open space in Leicester is preserved. A practical way to achieve this is to limit development to areas to which service infrastructure can practically and economically be extended and not to permit development into remote areas out of reach of the infrastructure. Appropriate areas are the old village centers (the Town Center, Cherry valley and Rochdale) and the movement corridors (*Route 9, Route 56 South and Stafford Steet*)
- **Permit multi-family housing by right or with Site Plan Review in one or more areas of town.** Leicester is in the process of complying with MGL Chapter 40A Section 3A (The MBTA Communities Act) which requires it to identify areas in which multi-family housing is permitted by right. There is potential, however, to expand this principle during the comprehensive review of the town’s zoning bylaws recommended in the Land Use chapter.
- **Pursue zoning amendments that permit pocket neighborhoods of smaller-scale housing such as cottage housing or tiny home communities.** While there was considerable opposition to the idea of large-scale apartment blocks, there was strong support in the first workshop and the community survey for the idea of cottage housing. This support appeared to be somewhat countered in the second workshop, with four red dots on this action item. Notes from the workshop indicate that this was

⁹ Reference to be filled in when Master Plan is complete

related to concerns that Tiny Homes, if not done right, could become a trailer park. The view was expressed that it would be better to concentrate multi-unit housing in the center of town. This concern should be considered in the implementation of this action item, with carefully formulated regulations and strict adherence to them. However, these views also need to be contrasted with the following comment from the community survey: “Lack of developments and neighborhoods. Drive in neighboring towns and you pass through cute neighborhoods that you can envision living in.” All this information should be taken in the context-that more than 50% of survey respondents saw cottage housing as positive and at the first workshop there were no red dots placed on the cottage housing block. There were seven green dots and eight yellow (neutral) dots.

- **Explore policies that incentivize developers to deed-restrict a portion of new units as affordable to low-income households.** There are various approaches that could be adopted for this action item. Among them are an inclusionary zoning bylaw which could be considered when the zoning bylaws are reviewed. It is critically important that any approach–be calibrated to ensure that it does not have the unintended consequence of preventing or substantially reducing new housing development. It is significant that the response to this action item at the community workshop was neutral with an equal number of red and green dots, and more yellow dots than either green or red. It is important to remember that “low-income households” in this context could be up to 80% of the area median income (though it might also be lower). Most of the people who teach in the schools and work for the town fall into this category. Also, until at least 10% of the town’s year-round occupied units are deed restricted for households in this category, the town remains vulnerable to “hostile 40B” developments that could deliver outcomes would not be acceptable to either-the town government or the people.
- **Reduce dimensional requirements in the zoning bylaws to facilitate better use of the town’s land.** This would involve reducing the minimum lot size in several zoning districts, particularly the Suburban-Agricultural (SA) Zoning District. These minimum lot sizes were dramatically increased in 2002, with the specific intention of reducing the pace of development. The resulting development pattern led to increased suburban sprawl. With the need to calibrate that impact it is logical to review lot sizes at this stage. It is noteworthy that the response to this action item was strongly positive with two thirds of people supporting it and only one person opposed to it.
- **Undertake a local area plan for Cherry Valley.** Identify regulatory changes such as special zones or changes to existing zoning regulations. Set out urban form and

architectural guidelines detailing desired relationships between buildings, shop fronts, parking, sidewalks, and other public spaces.

- **Carry out the currently planned diagnostic exercise on the Zoning Bylaws and Subdivision Regulations and use the outcome of the exercise to source funding for a full Bylaw revision to ensure that the Bylaws are easy to understand and easy to use**, that they do not contain contradictions, repetitions or redundant information, that they conform to all current best practices and that they support the goals set out in the Master Plan chapters.
- **Reduce reliance on Special Permits.** In the process of exploring the Zoning Bylaws, identify all instances in which a Special Permit is required where it might be acceptable either to change the requirement to a Site Plan, or to make the use exercisable by right. The reason for this is that Special Permits are issued at the discretion of the issuing authority (for example, the Planning Board). While this frequently seems to people outside the development world a small requirement to ensure the acceptability of proposed developments, it is a serious impediment to development. The cost of bringing a development application, including undertaking the necessary studies, preparing the plans and going through the application process is substantial. If a developer feels uncertain about whether the town will approve the plan, they are more likely to look for an opportunity in a different town where there is less uncertainty.
- **Find funding to explore the use of Transfer of Development Rights Bylaw** to make it possible to protect open space and agricultural land from development through the transfer of the development rights associated with those parcels to parcels of land where it is considered desirable to encourage development. This has the significant advantage that no landowner is asked or required to accept a reduction in the value of their property rights, but at the same time the natural, cultural and social values that the community wants to preserve can be secured.
- **Promote LID and Nature Based Solutions** that result in rainfall and snowmelt soaking into the earth rather than being collected in drains and pipes and flowing into water bodies, collecting pollution along the way. Swales, permeable paving, green parking lots, stormwater planters, bioretention bump-outs, and rain gardens are all examples of balancing needed development with stormwater runoff prevention. In addition to the systematic review of zoning bylaws, recommended in the Land Use Chapter, Leicester should carry out a LID evaluation of all its bylaws and regulations, using the Bylaw Review Toolkit developed by Mass Audubon² to ensure that

appropriate LID measures are included in Stormwater Bylaws, Zoning Bylaws and Subdivision Regulations.

- **Control the impact of light pollution by expanding requirements for International Dark-Sky Association (IDA) Dark-Sky Compliance.** Light pollution is an increasingly recognized environmental concern, as it disrupts natural wildlife behaviors and physiological processes like migration, sleep cycles, population size, and genetic diversity due to lights acting as barriers to population movement. Leicester can address this by expanding its zoning requirements for IDA compliance. Currently only the HB-1 Mixed Use district has this compliance as a requirement. Expanding this requirement to other districts would not only support the local environment but also provide long-term cost savings by reducing unnecessary energy consumption.

- **Identify and address regulatory barriers and opportunities for farmland access and preservation.** Leicester’s zoning over the 20th century was not conducive to maintaining small-scale agriculture. Save for the Suburban Agricultural (SA), and Highway Business Industrial (HB-1 and HB-2) districts, commercial agriculture, aquaculture, silviculture, horticulture, floriculture, and viticulture are only permitted by right on parcels over 5 acres (or 2 acres if the activity generates at least \$1,000 per acre per year). Livestock and greenhouses have even stricter limitations. Switching from outright banning these uses or requiring special permits to a site plan review process or allowing some agrarian uses by right in certain districts can encourage smaller-scale farming initiatives.
 - Additionally, the bylaws do not explicitly address farm related businesses, and especially agri-tourism businesses. This could lead to unintended restrictions and overburden their approval process. Farm stands could be permitted by right in all zones that allow agriculture, and mobile farm stands or pop-up sales could be encouraged. Small farm-to-table restaurants could be explicitly allowed as an accessory use on farms in certain areas, as well as value-added processing like cideries, bakeries, cheese-making, and commercial kitchens.

 - The town should also consider allowing farmers to diversify their revenue streams by permitting dual-use solar & agricultural projects in certain areas. Leicester does have a right-to-farm bylaw which effectively protects farmers against nuisance complaints by explicitly recognizing farming as a valuable and protected activity and ensuring that traditional farming practices cannot be considered a nuisance simply because they inconvenience neighbors. This includes protection for agritourism operations.

2025 Leicester Center of Town Plan.¹⁰

Because of the change in the activity patterns in the Center of Town that resulted from the closure of Becker College in August 2021 an additional study was run in parallel with the Master Plan to consider the Center of Town in more detail. This study is complete and awaiting adoption. Included in the recommendations of the Center of Town Plan are the following recommendations in relation to zoning:

- **Introduce a Build-to-Zone (BTZ) in the CB District:** A BTZ is an area along the property's frontage in which the façade of the primary building must be located. In this way, it serves as both a minimum and maximum front yard requirement. The BTZ should include an occupancy threshold that regulates the percentage of the BTZ that must be occupied by the primary structure. This ensures that sufficient street enclosure is maintained. A BTZ extending 10 – 15 feet from the property line would be appropriate in the CB district. Implementing a BTZ would be consistent with the 2021 Leicester RRP, which recommended establishing maximum front setbacks and building massing standards, including the orientation of buildings fronting streets.

- **Amend Other Dimensional Requirements in the CB District:**
 - **Reduce Minimum Lot Size:** The Workforce Housing report recommended a minimum lot size of 10,000 sq. Ft.

 - **Narrow Minimum Frontage Requirements:** A minimum frontage requirement of 80 ft. or 90 ft. should be sufficient to accommodate narrow storefronts and a driveway, even with existing setbacks.

 - **Eliminate or Increase Maximum Lot Coverage:** Standards for parking, driveways, front and side yards, already effectively limit maximum lot coverage on any property. If maximum lot coverage requirements are retained, the Workforce Housing report recommended a maximum lot coverage of at least 50 percent.

 - **Eliminate Side Yard Requirements Between Non-Residential Uses:** Side yards can be maintained where a non-residential use abuts a residential use. The feasibility of having minimal to no separation between buildings will still be subject to building code and fire flow rates of water mains in the area.

¹⁰ Reference to be inserted when document is accepted

- **Expand the CB District East of the Route 9 / 56 intersection:** Rezone the eastern approach to the Route 9 / 56 intersection (i.e., approximately 350 – 400 ft. east of the intersection) from B to CB. As one of the gateways to the Center of Town, the buildings here should be arranged in a street front pattern consistent with the rest of the area. But currently, the area is zoned B, which requires buildings to be set back far from the street. The B district also allows several uses that are not ideal for a town center setting, such as contractor’s yards and car washes.

- **Switch to a Form-Based Code in the CB District:** Form-based codes aim to foster predictable built results and a high-quality public realm by using physical form, as opposed to separation of use, as the organizing principle for land use regulations. Form-based codes typically include building form standards and street standards applied on the basis of neighborhood-specific regulating plans. A form-based code would ensure the Town’s regulations offer clear guidance on how new development should reflect the scale and character of the Center of Town. In doing so, it would offer the town the ability to influence these considerations while avoiding subjecting applicants to the ambiguity and uncertainty of discretionary processes like Special Permits. While a form-based code may be appropriate for a historic public setting like the Center of Town, form-based zoning may introduce more complexity than is necessary in less active settings like residential neighborhoods. Accordingly, the Town could adopt a form-based code for the Center of Town while retaining traditional zoning for other zoning districts.

- **Overhaul the Multi-Family Development Dimensional Table:**
 - Reduce Front Setbacks: Front setbacks for vertical mixed-use properties (i.e., those with a commercial use on the ground floor) should have the same setback as the rest of the CB district.

 - Increase Building Heights: The maximum height / number of stories of buildings in all the CB district should be raised to at least 3.5 stories or about 50 ft. “Step-backs” from the top floors of buildings could be required or encouraged to create the visual appearance of less height.

 - Change Density Standards: The multi-family development table currently relies on minimum lot size per number of dwelling units to regulate density. This complicated approach should be replaced with a maximum dwelling units per acre standard. That way, the density standard is uniform for lots of all sizes.

- Leicester should look to the Massachusetts Smart Growth Model Bylaw for guidance on selecting an appropriate density for mixed-use and multi-family development. Ideally, this density should be at least 15 units per acre.
- Leicester may also consider eliminating density requirements for multi-family and mixed-uses all together. The Leicester Zoning Bylaw and associated regulations already provide for minimum lot size, height, and parking standards for the CB district. Combined with the setback standards and maximum coverage limits in Table II, these already effectively limit the scale of multi-family and/or mixed-use development on a lot.
- **Relax Special Permits for Mixed-Use Development:** The Special Permit threshold for vertical mixed-use buildings should be increased. Below this threshold, vertical mixed-use buildings should be allowed by right.
- **Reduce Reliance on Special Permits:** Change the permitting process for property uses that fit the purpose / vision of the CB district from Special Permit to by-right. This should include uses 1-6, 10, 15, 17, 29, and 30 in Section 3.2.03 of the Leicester Zoning Bylaws. Site Plan Review may be applied to uses that demand scrutiny from the Planning Board.
- **Scrutinize Uses That Are Inconsistent With Town Center Settings:** Even as the permitting process is streamlined for other business uses in the CB district, drive-throughs (11) should remain subject to Special Permit approval. Rental storage facilities with no outdoor storage (13a) should be prohibited.
- **Reserve Ground Floor Spaces for Active Uses:** Define active uses in the Leicester Zoning Bylaw and only permit active uses to occupy the ground floor level in the CB district on a by-right basis. Non-active uses that are otherwise allowed in the CB district (e.g., non-consumer-facing offices like finance and insurance) may be allowed on the ground floor by special permit or on upper floors by right. This change could be achieved by splitting the column for the CB district in the Leicester Zoning By-laws schedule of use (Section 3.2) into two columns, one for ground floor spaces and another for upper floor spaces. See the Cape Cod Commission's Mixed-Use Model Bylaw for sample definitions and language to use.
- **Apply a Minimum / Maximum Driveway Width Standard:** To ensure driveways are neither too narrow nor too wide, Leicester's parking regulations should set required driveway widths for A) situations where separate access and egress are provided and

B) situations where common access and egress is provided. These required widths should reflect the recommended widths in MassDOT PDDG Chapter 15. The provision in the Leicester Parking Regulations allowing the Planning Board to waive parking facility design regulations can be retained to allow for flexibility when needed.

- **Limit the Number of Curb Cuts in the CB District**

- **Restrict The Number of Curb Cuts per Lot:** The site development standards for the B and CB districts should limit the number of curb cuts per lot to one. A less restrictive alternative would be to include language similar to that used for the HB-1 district access and driveway requirements (Zoning By-law Section 5.5.02(C)), which says that “To the maximum extent feasible, only one (1) curb cut shall serve each lot.”
- **Allow and Encourage Shared Driveways and Cross-Access Easements:** The site development standards for the CB district should explicitly allow shared driveways serving more than one lot, similar to the HB-1 district access and driveway requirements (Zoning By-law Section 5.5.02(C)). Shared driveways and cross-access easements between parking lots should also be incentivized, as noted in the Downtown Parking Study. Possible incentives to offer in exchange for shared driveways and cross-access easements are relaxing parking standards and dimensional requirements for zoning.
- **Encourage Indirect Access to Properties on Route 9:** The site development standards for the CB district should encourage and/or require indirect access to properties abutting major arterial roads, like Route 9. Here, indirect access may take the form of frontage roads (i.e., side roads set back from and laid out parallel to the main road) or requiring that corner lots place their driveways on side streets instead of the arterial road. Again, possible incentives to offer in exchange for these measures are relaxing parking standards and dimensional requirements for zoning.

- **Prohibit Parking in the Front of Primary Structures:** The Continuous Street Front Element recommends a build-to zone with an occupancy threshold to ensure buildings are positioned closer to the street front. This generally eliminates or severely restricts front-of-lot parking, but developers could still manage to squeeze in some front-of-lot parking if the zoning does not outright prohibit it. The zoning could outright prohibit parking between the building and the street in the CB district, save for by a special permit, and require parking to be located at the rear (preferred) or side (if rear is impractical).

- **Incorporate Non-Plant Screening Elements into the Leicester Landscaping Regulations:** While Leicester’s Landscaping Regulations specify landscape screening requirements for the CB district, neither the zoning bylaws nor the Landscaping Regulations address non-plant based elements, such as berms, masonry, decorative railings, fencing, or walls. The landscaping regulations can also be expanded to function as design guidelines with visuals offering examples of preferred landscaping approaches.
- **Expand the Shared Parking Radius in the B District:** Increase the allowable radius for shared parking in the B district from 300 ft. to at least 600 ft. (Section 5.1 of the Leicester Zoning By-laws).
- **Amend Zoning Regulations in the R2 district to Allow for Gentle Density:** Small-scale residential uses like duplexes and small apartments should be allowed by right in the R2 district. This approach is sometimes coined “gentle density” because these housing types can promote greater density while blending into single family neighborhoods. Minimum dimensional standards should also be relaxed. Even with setbacks, a 10,000 sq. ft. lot with 85 ft. of frontage offers plenty of space for a residence, driveway, and yard space, as demonstrated by many existing houses in the district.

Summary of Existing Zoning and Overlay Districts

There are 12 different base zoning districts in Leicester:

Residential 1	R1
Residential 2	R2
Suburban-Agricultural	SA
Business	B
Industrial	I
Business-Industrial-A	BI-A
Business Residential-1	BR-1
Residential Industrial Business	RIB
Highway Business-Industrial District 1	HB-1
Highway Business-Industrial District 2	HB-2
Greenville Village Neighborhood Business District	NB
Central Business	CB

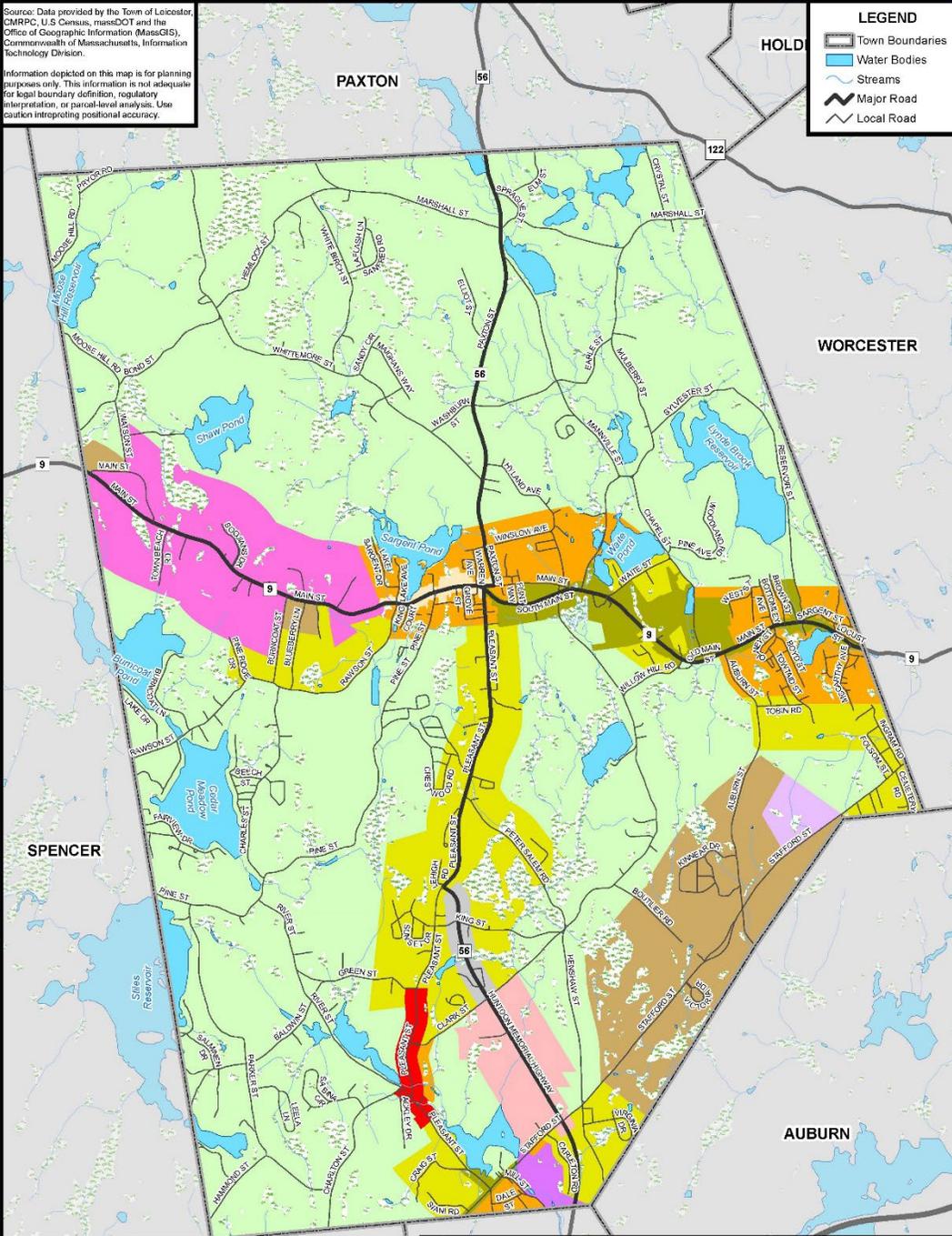
Town of Leicester, Massachusetts Master Plan

Source: Data provided by the Town of Leicester, CMRPC, U.S. Census, massDOT and the Office of Geographic Information (MassGIS), Commonwealth of Massachusetts, Information Technology Division.

Information depicted on this map is for planning purposes only. This information is not adequate for legal boundary definition, regulatory interpretation, or parcel-level analysis. Use caution interpreting positional accuracy.

LEGEND

- Town Boundaries
- Water Bodies
- Streams
- Major Road
- Local Road



Miles
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CHARLTON

Zoning Districts

Business	Greenville Village	Central Business
Business Industrial-A	Neighborhood Business	Residential 1
Business Residential-1	Highway Business-Industrial 1	Residential Industrial Business
Industrial	Highway Business-Industrial 2	Residential 2
		Suburban-Agricultural

Map 32 Zoning Districts

Date: 8/21/2024 Document Path: H:\Projects\0_Leicester_CRSIS\Subprojects\m151_master_plan\m151_32_Zoning_Districts_11x17.mxd

Residential Districts

The Suburban-Agricultural District makes up most of the town not along major routes, covering the northern half of town above Route 9, and two major portions in the southern half of town east and west of Pleasant Street. This district has a minimum lot size of 80,000 square feet or just under 2 acres. This district only allows single family homes, and certain commercial uses, many of which require a special permit. This is the only district in town that allows the raising of “swine and fur-bearing animals”, by special permit, and one of only three districts which allows the construction of a greenhouse, also by special permit, and one of only two districts which allow the operation of a farm, by-right.

There are two primary residential districts - Residential 1 is located mainly along Pleasant Street south of Route 9, with pockets along Main Street/Route 9. Residential 1 is low density, with a minimum lot area of 50,000 square feet, or just over an acre. Residential 2 is located mainly along Main Street/Route 9, with small pockets in Greenville and Rochdale in the southern part of Leicester. Residential 2 is denser, with a minimum lot size of 20,000 square feet, or just under half an acre.

Residential 1 only allows the construction of single-family homes, while Residential 2 allows the construction of two-family homes by special permit. Apart from that, the two districts share the same use regulations, with most businesses not permitted or requiring a special permit.

Business Districts

There are two primary zoning districts for business. The first, the Business District is located mainly along Main Street/Route 9 to the east of the intersection with Pleasant Street, with a small pocket in the south of town at the intersection of Stafford Street and Pleasant Street in Rochdale. The Business District has a minimum lot size of 15,000 square feet, or about a third of an acre. The second zoning district for business, the Central Business District is located in the center of town, along Main Street/Route 9 between the intersection with Paxton Street and the intersection with Lake Avenue. The Central Business District also has a minimum lot size of 15,000 square feet.

Neither district allows detached single-family dwellings, but both allow the construction of two family or multifamily homes by special permit. Both districts allow many of the same commercial uses, though the Business District is more permissive, while the Central Business District, sitting in a denser part of Leicester, requires special permits in most cases and disallows certain larger business uses such as Car Washes and Contractor’s Yards. Unlike almost any other districts in Leicester, both districts allow mixed use development.

Industrial Districts

There are two primary industrial districts. The base Industrial District is in the Rochdale neighborhood in the south of town, southeast of Stafford Street. There are two different minimum lot sizes, with a minimum lot size of 40,000 square feet or just under an acre, for a single-family home. All other uses require a minimum lot size of 10,000 square feet, or under a quarter of an acre.

The Business-Industrial A District is in the east of town, northwest of Stafford Street and south of Cherry Valley, next to the Auburn town line. There are two different minimum lot sizes in this district also, with the same minimum lot size of 40,000 square feet for a single-family home. All other uses require a minimum lot size of 20,000 square feet, or under half an acre.

Neither industrial district allows two-family or multifamily homes, while Business-Industrial A allows the construction of a Senior Village Development by special permit. Both districts allow a variety of commercial uses and allow various industrial uses by right or special permit.

There are two Highway Business Industrial Districts. Highway Business Industrial 1 is located along Main Street/Route 9 west of the Central Business District. Highway Business Industrial 2 is in the south of town, along Huntoon Memorial Highway, north of Stafford Street and south of Clark Street. These districts differ in their minimum lot size.

Highway Business Industrial 1 requires a minimum lot size of 60,000 square feet and Highway Business Industrial 2 requires a minimum lot size of 45,000 square feet. Both districts differ from the other industrial districts in allowing agricultural use but not allowing any housing use. Each district allows similar uses to the other Industrial districts, but they are in general more permissive. Certain uses, such as movie theaters and veterinary hospitals, are allowed by special permit.

Districts Not Governed by the Use Table

A few districts are not governed by the Schedule of Use Table, including Business Residential-1, Residential Industrial Business, and the Greenville Village Neighborhood Business District. Their permitted uses are governed by other sections of the Zoning Bylaws.

There are two sections of Business Residential-1, with the vast majority found along Stafford Street on the Auburn town line, and a small portion north of Main Street/Route 9 on the border with Spencer. This is another district with different minimum lot sizes for single family homes, which require 50,000 square feet while any other use requires 20,000 square feet.

Single family housing is allowed in this district by right. Numerous commercial, retail, and dining uses are allowed by right, while uses such as light manufacturing, vehicle sales, self-storage, and Senior Village Developments are allowed with a special permit.

Residential Industrial Business is located along Huntoon Memorial Highway/Route 56 south of Pleasant Street and north of Clark Street. This district has a complex set of dimensional regulations, with separate dimensional requirements for single family homes, two family homes, and multi-family homes, with additional acreage requirements for additional units in multi-family buildings. Business users have the same dimensional requirements as BR-1, a minimum lot size of 20,000 square feet. Single family homes are allowed by right, while other residential uses require a special permit. Light manufacturing, Senior Village Developments, and other commercial and retail uses are allowed by special permit.

The Greenville Village Neighborhood Business District is located along Pleasant Street in the Greenville neighborhood in the south of Leicester. This district has a minimum lot size of 20,000 square feet, or just under half an acre. All uses allowed in Residential 1 are allowed unless specified in the Village Neighborhood district bylaw. All non-residential projects require a minimum site plan review. Numerous small-scale retail, commercial, and dining uses are allowed. Special permits are required for drive-through facilities, take-out restaurants, and any business over 3,000 square feet. Vehicle sales, self-storage, and marijuana establishments are prohibited. This district also has unique site development standards.

Overlay Districts

There are two overlay districts in Leicester. The Recreational Development Overlay is located south of Leicester Center, primarily between Henshaw Street & Henshaw Pond and Pleasant Street, with a small portion along the west side of Pleasant Street south of Fox Run Lane. This district allows for special recreational developments maintained and preserved for active or passive recreation, including parks, sports facilities, and swimming pools. This overlay specifies special environmental design criteria for developments.

The Water Resources Protection overlay is large, covering large swathes of rural Leicester, including much of the north of town, portions of the center of town, and stretches along Pine Street, Pleasant Street, and Henshaw Street south of Leicester Center and north of Greenville and Rochdale. Special permits are required in this district under certain conditions, including the increase in impervious area, the application of certain pesticides and fertilizers, and any use involving toxic or hazardous materials. Various industrial and other uses involving toxic and hazardous materials are expressly prohibited.

Zoning Bylaw Comments and Recommendations

The following comments regarding the existing Zoning Bylaws are more general in nature. The attached bylaw document includes more specific comments and recommendations.

1. Definitions – We recommend that all definitions, currently widely distributed through the document, be concentrated in Section 1.3. We also recommend a thorough review of the definitions which currently break almost all the rules applicable to sound legal definitions. The Department of Justice of Canada has a useful [document](#) setting out the principles applicable to legal definitions. Of particular note, in the context of these bylaws, are the following statements:
 - “Definitions included in legislative texts must never simply reiterate the content of a dictionary or state the obvious. If the meaning of a term is well understood by the intended audience and unambiguous, don't define the term.”
 - “There are three reasons to define a term in a legislative text:
 - to avoid uncertainty about the meaning of words by resolving any ambiguity
 - to explain the meaning of words that are new or unusual
 - to shorten the text by reducing repetition”
 - “A definition must not include any substantive provision.”
 - “When a word or expression denotes something fundamental to the legislation, its definition is equivalent to an application provision. Consider drafting it as an application provision at the beginning of the text to be read first, rather than as ancillary matter buried among the definitions. This gives a degree of visibility or priority that is appropriate to the fundamental nature of the word or expression.”
2. The number of zoning districts makes the bylaw difficult to understand and administer. The town may wish to consider whether it is necessary to maintain the minor differences between the various districts or whether they could be rationalized and simplified.
3. Recreational Development – The town may wish to move the Recreational Development bylaw to Section 5. In doing so, also, attention should be paid to the principle that the bylaw should make it clear exactly what an applicant may expect to be acceptable to the Special Permit Granting Authority. This section of the bylaw is very vague and general and leaves an unusual amount of discretion to the Special Permit Granting Authority. This is likely to make it very unattractive for potential developers and to leave a great deal of room for legal contestation. In this regard it is worth quoting the Supreme Judicial Court's ruling in the case of *Castle Estates v. Park & Planning Board of Medfield*, “The subdivision control law attaches such importance to planning board regulations as to indicate to us that they should be comprehensive, reasonably definite, and carefully drafted, so that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them. Without such regulations, the purposes of the

law may easily be frustrated.” While this finding applied specifically to Subdivision Regulations, the same requirement applies to the Zoning Bylaw.

4. Tables – for ease of use it is essential that all districts should be included uniformly in permitted use and dimensions tables. Finding information about districts not included in the tables is unreasonably complicated.
5. Special Permits: There are many comments in the Bylaw document relating to the desirability and necessity of Special Permits. In this regard it is important to understand that, because the issue of a Special Permit is discretionary, it leads to uncertainty for developers and investors. Time and costs incurred on projects that do not advance because of failure to get permissions are problematic in themselves, but they are particularly difficult for developers from an accounting perspective. Whereas the costs incurred on a project that proceeds are capitalized, costs that are incurred before a project is approved are generally temporarily expensed and costs incurred in respect of projects that are never approved must be permanently expensed. These expenses have a disproportionately negative impact on a company’s profitability and balance sheet. Understanding this may make it easier for people not involved in development to see why developers and investors are often far less willing to explore projects where Special Permits are required than might be expected.
6. Housing - The recommendations from the Housing Plan and the Master Plan all support greater flexibility on housing. As noted in the comments in the bylaw, the town may wish to permit two-family and multi-family dwellings by right or with site plan review in most residential districts; it may wish to review minimum lot sizes and other dimensional restrictions; and it may wish to introduce specific bylaws for cottage housing.
7. Mixed use development – the respondents to the master plan survey and participants in the master plan workshops responded very favorably to mixed use. It is currently not permitted anywhere except by Special Permit. The town may wish to permit it by right or with site plan review in districts where business is permitted or along major roads.
8. CB District – The fact that there is no primary use permitted by right in the CB District may render the town liable to accusations of unreasonableness or of “taking” property rights. The town may wish to review the CB District in its totality in response to the recommendations of the Center of Town Study set out above. In particular, the town may wish to consider introducing form-based zoning in this area as recommended in the Center of Town study. If Euclidian Zoning is maintained, the Center of Town study also has recommendations about the prohibition of uses such as carwashes and builders’ yards, and both the Center of Town Study and a previous study have recommendations about the adjustment of the district boundaries.
9. There have been some updates to MGL in recent years regarding marijuana/cannabis. Recommend updating definitions and permissions to be in conformance with MGL.
 - <https://masscannabiscontrol.com/public-documents/regulations/>

3. Agri-business - The master plan recommends considering agri-business activities as a special case to support agriculture in the town and ensuring that they are widely permitted.
4. Signs – the signage section of the bylaw (3.2.07) appears to be quite insubstantial. There are no provisions, for instance, for multi-tenant signs. The town may wish to consider new signage bylaw. In this regard, note the Supreme Court Case (Reed v. Gilbert) regarding regulating the content of signs and the need to remain content neutral. Information sheets regarding the Reed case are included as an attachment to this document.
5. Dimensional Requirements – The town may want to review the schedule of dimensional requirements in totality. In particular, there have been repeated recommendations in prior planning studies to revise the minimum lot sizes in R1 and SA Districts. These minimum sizes were increased after a recommendation in the 2000 Master Plan for the purpose of reducing development in Leicester. According to the Master Plan, that is no longer a goal. The Center of Town study points out issues arising from the dimensional requirements for multi-family units. These would make it unlikely that anyone would wish to develop such units, although they are supported in the Master Plan. In addition, the study makes several other recommendations in relation to dimensional requirements.
6. Low Impact Development (LID) – consider developing an LID bylaw and introducing LID provisions to the Subdivision Regulations.
7. There is a great deal of redundancy in the document. This relates particularly to parking, landscaping, site plan review procedures and Special Permit procedures. Several of the following paragraphs are aimed at addressing redundancy.
8. Parking – The recent Town Center Parking Study and the Center of Town plan both make recommendation regarding parking requirements. These are noted above. In addition, there is an opportunity to introduce design standards and LID standards to reduce the negative impact of parking in the town. Far more of the regulations relating to parking in different districts could be combined in Section 5.1, so that parking is dealt with as much as possible in one section and not repeated for each different district.
9. Site Plan Review – The town may wish to change the site plan review requirements. The current Section 5.2 is somewhat unclear, and it does not set clear and comprehensible standards to be applied to applications that require site plan review. Section 5.5.01.4 could be adapted to form the basis of a general set of standards for site plan review that could be applied, without repetition, to all districts. It should also be made clear in the bylaw that the process of site plan review is not an opportunity for a development application to be denied because the Board considers the proposed use to be

undesirable. Also, this is a part of the bylaw that might benefit from consideration of the introduction of LID standards as well as visual and noise standards.

10. Special Permit Procedures – This is another area of significant repetition. A single section dealing with Special Permit procedures for all districts should be introduced far earlier in the bylaw than the current Section 6.4.2. Where common criteria for decisions regarding the issue of Special permits are applicable, these should be clearly stated in this section. Where necessary, specific criteria appropriate to an individual district can be introduced in the relevant section dealing with the district. It is essential that in all cases the remit of the Special Permit Granting Authority should be clearly spelled out so that applicants understand what standards they are required to meet.
11. Landscaping – The same applies to landscaping where a general section on landscaping would reduce repetition. In this regard the town could consider LID measures such as the specification of a list of trees and plants that are preferred for landscaping, a requirement for a percentage of native plantings, requirements for percentages of properties to remain permeable, to remain undisturbed, or to remain free of lawns.
12. Stormwater – consider developing a Stormwater Bylaw. This is an excellent way of introducing LID into the bylaws.
13. Consider adopting an Inclusionary Zoning bylaw. This might be more effective and have fewer unintended negative consequences than requiring affordability as part of the Adaptive Redevelopment Bylaw.
14. Open Space Residential Development – In view of the fact that this approach is strongly supported in the Master Plan and that it is considered an effective way of balancing the need to increase the availability and variety of housing in Leicester, the Town may want to make this a by right use and to incentivize it by allowing a small increase in density in OSRD developments above what would be permitted in a conventional development. In addition, to reduce the complexity of the bylaws, it might be possible to combine the Recreational Development bylaw with the OSRD bylaw.
15. Wind Energy and Solar Energy bylaws – review these sections to ensure that they reflect current best practices and current understanding of the state law with regard to these issues. Also consider adopting a bylaw to regulate Battery Energy Storage Systems (BESS) related to, as well as independent of power generation facilities.
16. Livestock and Backyard Chickens – review this section to see whether it is still relevant, whether it is enforceable and whether it fits with current best practice.
17. Consider if zoning map changes are warranted. In particular, there have been two recommendations for the expansion of the CB District.
18. Recommend that the Town Clerk verify that all previously approved bylaws have been approved by the Attorney General’s Office.

Other Considerations

Other New Bylaws and Districts

New bylaws or districts that may be considered during the zoning update process include the following:

- Cottage Housing Communities. Cottage Housing was identified during the master plan process and in the Master Plan as being desirable, provided that it is managed in a way that prevents the development of trailer parks
- Short-Term Rental Bylaw, potentially including a fee payable to the Town.
- Stormwater Bylaw (as discussed in the comments above)
- Wetlands Bylaw
- Backyard Lot Bylaw. The Master Plan endorsed the principle that the additional housing necessary in Leicester should, wherever possible, be developed in areas that are already developed. One way of doing this is to access parts of lots that are excess to the requirements of their owners but do not have frontage on streets. Back Lot (or “Pork Chop” lot) development is one way to do this.
- Village Center Zones could be considered for Rochdale and Cherry Valley as suggested in the Reconnaissance Report, though this should be considered in the context of the benefits of reducing, rather than increasing complexity.
- A Scenic Areas Overlay Zone could be considered to protect viewsheds.
- Several previous studies have recommended Transfer of Development Rights as a mechanism to help protect the rural parts of the town. Consider introducing a TDR Bylaw.

Conclusion

The recommendations included herein can be placed in four categories including:

- Strategies from prior planning efforts provide direction on areas of the Zoning Bylaws that can be amended to further the implementation of those plans.

- Amendments to address conflicting sections, ambiguity, nonconformities, for general modernization, and ease of reading.
- Amendments needed to bring the Zoning Bylaws into compliance with changes in MGL.
- New bylaws to address housing alternatives, stormwater, and other desired bylaws.

The strategies in those documents should be considered as Leicester undertakes a comprehensive zoning update. Through the update process, best practices should be identified and implemented while aiming to balance growth with open space protection. A community survey may be beneficial. Alternatively, survey results from recent projects can be used to assess the concerns and desires of residents. Lastly, to garner as much public support as possible, public information sessions should be held in advance of public hearings and Town Meeting to inform residents about proposed changes.

Appendix

Existing Zoning Bylaws with comments added (see attachment)

[Reed v. Gilbert Supreme Court Case](#)

REED V. TOWN OF GILBERT, ARIZONA - U.S. SUPREME COURT ADDRESSES LIMITATIONS ON CONTENT-BASED MUNICIPAL SIGN CODES

Prepared for the 2016 Massachusetts Municipal Association Annual Meeting

Municipalities face thorny constitutional issues in attempting to regulate signs on public and private property, despite legitimate aesthetic and public safety concerns. Numerous court decisions have invalidated sign statutes, ordinances and by-laws on the basis that such legislation violates protected First Amendment speech. In 2015, in the case of Reed v. Town of Gilbert, Arizona, 135 S.Ct. 2218 (2015), the United States Supreme Court (the "Court") reemphasized the importance of avoiding *content-based* restrictions that can easily cross the line into constitutionally impermissible limitation. The Attorney General will necessarily consider the Reed decision when evaluating adoption or amendment of sign by-laws in towns. This Memorandum summarizes the Supreme Court's decision and examines possible implications for municipal sign regulation.

Facts:

The town of Gilbert adopted a comprehensive code of regulations governing display of outdoor signs. For example, the code contained different size and durational requirements for: "Ideological Signs," signs "communicating a message or ideas," no set durational limits, 20 sq. ft. maximum; "Political Signs," signs "designed to influence the outcome of an election," durational limits of 60 days before and 15 days after election, 32 sq.ft. maximum; and "Temporary Directional Signs," signs directing the public to a meeting of a nonprofit group, durational limits of 12 hours before and one hour after the event, 6 sq.ft. maximum. The Good News Community Church and its pastor challenged the constitutionality of the code, which limited the ability of the Church to advertise the time and location of Sunday church services. The Ninth Circuit Appeals Court concluded that the sign code was content neutral and did not conflict with the First Amendment, but on appeal, the Supreme Court agreed to take the case.

Decision:

The Supreme Court unanimously reversed the Ninth Circuit, holding that Gilbert's sign code imposed different rules based on the words or message, i.e., the content of the sign, triggering the First Amendment's protections. The Court reasoned that government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed, even if it does not discriminate among viewpoints and has a benign motive. The Reed court held further that content based regulation of signs is unconstitutional unless it passes a "strict scrutiny" standard of review, meaning that the government would need to prove that the content-based law furthers a compelling interest and is narrowly tailored to achieve that interest.

Gilbert defended its ordinance as preserving aesthetic appeal and traffic safety. However, the majority determined that Gilbert had not shown a compelling interest that justified the differing treatment. For example, the Court

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concluded that the Town could not claim that placing strict limits on temporary directional signs was necessary to beautify the Town where other types of signs pose the same problem. Similarly, the Court indicated that the Town had failed to show that temporary directional signs pose a greater threat to public safety than ideological or political signs. The Court concluded, therefore, that the demanding strict scrutiny test had not been met.

Potential Consequences of Decision

Although all nine Supreme Court justices agreed with the judgment in Reed, a minority of justices disagreed with the reasoning of the majority decision and raised concerns about its potential consequences. The minority pointed out that countless municipalities across the country have adopted valid and reasonable ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter. The minority also stated that if the majority's strict scrutiny approach is automatically applied to all content-based sign regulations, municipalities "will find themselves in an unenviable bind: they will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter." The minority justices urged a less restrictive analysis for local content-based sign laws, one that would prohibit only a regulation that "works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives."

The Reed decision casts new attention on the issue of sign regulation, and may trigger an increase in legal challenges to the validity of municipal sign by-laws or ordinances. Further, there can be no doubt that the Attorney General's office, which must review and approve all new by-laws in towns, will be required to apply the Reed decision when reviewing sign by-laws.

Permissible Sign Regulation

The Court's decision in Reed maintains that there are still reasonable sign regulations that municipalities may enact and enforce. For example, rules regulating the size, location or construction of signs are not based on the speech content of the signs and do not require First Amendment analysis. By-laws and ordinances may, with certain limitations, distinguish between: free-standing signs and those attached to buildings; signs on commercial and residential property; lighted and unlighted signs; signs placed on private land and public land; signs placed on-premise and off-premise; and time restrictions on signs for a one-time event. In general, a municipality may also restrict or even prohibit signs on public property, but limitations will still be judged on whether they infringe upon First Amendment considerations.

In conclusion, the Reed decision should not prevent municipalities from regulating signs in a manner that protects public safety and serves legitimate aesthetic objectives, including directional signs and signs pointing out historic sites and scenic spots. Any provision of an ordinance or by-law that differentiates types of signs based on the content of the sign, however, must be analyzed to ensure that it does not run into the same issues that invalidated portions of the Gilbert, Arizona sign code.

Should you have any questions concerning the impact of the Reed decision to adoption, amendment or enforcement of sign bylaws or ordinances, please contact Attorney Brian W. Riley by e-mail at briley@k-plaw.com or by phone at 617.556.0007.

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