

Commentary: By right zoning – what is it?

By Jack Clarke^[1] and Paul Lundberg | Mar 7, 2024

Zoning has often been referred to as the third rail of local politics. This is especially true today as Gloucester and 176 other Massachusetts municipalities work to conform to the MBTA Communities Zoning Act passed by the Legislature and signed by Gov. Charlie Baker in 2021.

The words of the statute are simple and speak to goals which both the Commonwealth and Gloucester in its most recent Housing Production Plan adopted to address the growing state-wide housing crises.

The act requires that by the end of the year, communities served by the T establish at least one reasonably sized residential zoning district, that allows for development of at least 15 units per acre, within half-a-mile of their T station.

The statute also calls for the zoning district to accommodate multi-family housing with no age restrictions, and suitable for families with children — all permitted “as of right.”

The purpose of this type of housing is to help address the housing shortage as well as strengthen community character.

Yet, sadly, the recent debate over the seaport’s adoption of the MBTA Communities Zoning Act has erupted into a shouting match about the meaning of “as of right.” It doesn’t have to be this way.

During our decades of service on the Gloucester Planning Board and City Council collectively, we have reviewed dozens of by-right development proposals under state and local zoning laws.

This experience has given us a perspective of what “as of right” means and how it should be applied in any new Gloucester zoning district that complies with the MBTA Zoning Act.

We have an idea that may shed some light on the opportunity that a new compliant zoning ordinance may provide Gloucester.

Legally, “as of right” refers to an owner’s use of property and structures in a manner consistent with the requirements of local zoning. Because “as of right” uses fall within the limits of what is allowed locally, it is not subject to special review or discretionary approval.

For example, the renovation of a building that does not change the allowable use or exceed any of the existing standards in the city’s zoning ordinance would be permitted as “as-of-right.” The development conforms to and obeys all local laws and therefor doesn’t need any special reviews — it is “as-of-right.”

It does NOT mean that the municipality or local permitting authority is relinquishing control over how a project goes forward. It means the developer still must conform to all the city's rules and regulations on development with no variations.

Our experience has shown that Gloucester's zoning ordinance is filled with detailed standards regarding uses, dimensions, size, frontage, width, set-backs, open space, parking, and traffic.

Proper permitting of an "as of right" use keeps all those requirements in place.

As a matter of fact, when it comes to new single family house construction, and even new two-family house construction, every neighborhood throughout the city has by-right zoning — and has for decades.

And if we don't like what the present Gloucester rules are regarding "as of right" developments, it is incumbent on us to tighten them up to reflect what we want our city to look like and become — as long as the ordinance redo does not unduly restrict fair housing opportunities.

As the city begins the task of drafting the new multi-family housing zoning ordinance to conform with the T zoning requirements, now would be the time to revisit the "as of right" provisions, especially regarding affordable housing, and mixed residential/business development.

The public will be given ample opportunities to participate in the upcoming debates as hearings will be held by the Planning Board and City Council regarding zoning conformance with the MBTA Communities Zoning Act. These formal public hearings will be preceded by three open meetings in which residents can provide their recommendations on the zoning changes.

Let's use the opportunity of designing the MBTA Communities Zoning Act for our city to further advance Gloucester's housing goals and employ "as of right" zoning to help strengthen and diversify our community character.

Change is coming to Gloucester. We will either be in the driver's seat directing that change or we will be at the effect of it with no influence. Saying no to the future should not be an option.

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