



## Nonprofit 411: Zoning Basics for Nonprofit ED's

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As the executive director of a small nonprofit, you need to be a jack of all trades – social service provider, marketer, manager – to name a few. But zoning expert? If your organization wants to expand a facility or build a new one, a working knowledge of zoning is helpful. Here's a primer.

### Zoning 101

All Massachusetts municipalities other than Boston are governed by the same overarching zoning law, M.G.L. Chapter 40A, though the particular requirements vary from municipality to municipality. Boston's zoning structure differs somewhat from other Massachusetts municipalities, but the basic components are similar.

Local zoning bylaws regulate two aspects of a building: the use of the building and the physical dimensions of the building.

Zoning bylaws typically include three items that you must review in order to determine if your facility complies with zoning: (1) a zoning map which divides the municipality into various zoning districts, (2) a chart of uses that are categorized as "allowed", "conditional", or "forbidden" within each zoning district, and (3) a chart of dimensional requirements applicable within each zoning district. After you determine what zoning district your facility is located in, you must review the use chart to determine if your proposed use is allowed in your zoning district, and review the dimensional chart and a site plan to determine if your new building or addition complies with the dimensional requirements in the zoning district.

If your building or addition does not comply with the bylaw's use and dimensional requirements, you must obtain zoning relief as follows:

- Use: If the proposed use of the facility is "conditional" you must obtain a special permit. If the use is "forbidden" you must obtain a variance, although some municipalities prohibit use variances. Also, because the legal standard for granting use and dimensional variances is difficult to satisfy, variances are more likely to be overturned in court than special permits.
- Dimensional: If the building, addition, parking or other improvement does not comply with the bylaw's dimensional requirements, you will need a variance.

Most zoning bylaws also require projects to undergo site plan approval. Site plan approval typically regulates design issues such as signage, parking, and landscaping.

Massachusetts law provides several statewide exemptions from local zoning ordinances.

#### Dover Amendment

The Dover Amendment prohibits zoning regulation of the use of property by nonprofit educational corporations. Although the Dover Amendment does not exempt these facilities from reasonable dimensional requirements, educational use is permitted regardless of what the zoning bylaw says. The Dover Amendment has been subject to much scrutiny, particularly around what constitutes educational use. The term as construed by the courts is far broader than traditional classroom use.

#### Chapter 40B – Affordable Housing

A frequently used, but often contentious, exemption is M.G.L. Chapter 40B. Chapter 40B, when applicable, enables an affordable housing proponent to obtain a "comprehensive permit" which encompasses zoning and all other municipal ordinances. A zoning restriction may not be strictly applied to a 40B project if the restriction's benefits are deemed outweighed by the need for affordable housing.

#### ADA/Fair Housing

Other avenues to explore when local zoning restricts a nonprofit's development or use of property are the Americans with Disabilities Act and the Fair Housing Act, both of which are designed to prevent unfair discrimination by a municipality against those with special needs.