



Town of Braintree

Department of Planning and Community Development

Zoning Diagnostic & Issues Report

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Appendix 1: Summary of November 16, 2015 Community Meeting

Appendix 2: Six District Field Studies

I. INTRODUCTION

The Town of Braintree has commissioned a comprehensive revision of its Zoning Bylaw (ZBL) and Zoning Map. A comprehensive zoning revision encompasses the following tasks:

- Reorganize and reformat the ordinance or bylaw;
- Update and clarify use regulations and definitions;
- Eliminate conflicts with G.L. c. 40A (Zoning Act), and case law;
- Eliminate inconsistencies and conflicts, e.g., inconsistent terminology, conflicting provisions;
- Clarify, simplify, and where possible, improve the efficiency of administrative and permitting procedures;
- Incorporate standards to address changes in technology, unnamed land uses, and best practices since the last major rewrite of the ordinance or bylaw;
- Align land use policies with the community’s development and preservation goals – in other words, to achieve consistency with the city or town plan; and
- Update the zoning map, if necessary, to reflect land use policy changes.

Unlike occasional zoning amendments, a comprehensive revision involves a complete rewrite of a community’s zoning ordinance or bylaw. It is not accomplished with piecemeal edits; rather, it culminates in submission of a single proposed zoning ordinance to the Planning Board and the local legislative body. In Braintree’s case, the local legislative body is the Town Council.

With these outcomes in mind, RKG Associates, Inc., and other members of the consulting team¹ have completed a critical analysis of the existing ZBL, met with Town staff and others with working knowledge of the ZBL, conducted a public meeting to learn more about the community’s planning concerns, and carried out field studies in order to evaluate the fit between existing zoning and actual conditions “on the ground” in several parts of Braintree. We also digitized the Zoning Map supplied by the Town (dated 2001) and several map amendments approved by the Town Council since the charter change in 2008. In addition, we reviewed the Town’s master plans in an effort to understand the rationale for some of the Town’s existing districts and regulatory framework. Finally, we conducted independent research to verify zoning amendments acted upon at various town meetings between 2000 and

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2007, i.e., prior to the charter change. We did this because the version of the ZBL on Braintree’s website and the version available from eCode appear to have some differences.² It appears that Braintree does not have an up-to-date ZBL that includes all of the amendments passed over the last several years.

This Zoning Diagnostic summarizes our review of Braintree’s ZBL and presents our findings and some initial recommendations. A zoning diagnostic (sometimes called a zoning audit) is not a redline markup of the ordinance or bylaw or a section-by-section list of deficiencies. It also is not a compendium of all the comments we received about the ZBL and how it has been administered to date. Instead, its purpose is to focus attention on key issues that need to be addressed in a comprehensive rewrite. We have divided these issues into two broad groups: *technical review*, e.g., structure, inconsistencies, administrative procedures, and *policy review*, e.g., the rationale for requiring special permits, the purposes served by various districts, and so forth. The latter is very important because once we begin revising the ZBL, some of the technical changes that need to be made will require Town leaders to make policy choices. There are also aspects of the ZBL that have not been very effective, and they should be looked at during the revision process. This will become apparent in Section III, [Policy Review](#) of our report.

A. Information Reviewed by the Consulting Team

RKG received and reviewed the following information from the Town:

- (1) A binder with a printed copy of the ZBL and all of the amendments (text and maps) approved by the Town Council since 2008;
- (2) A printed copy of the Zoning Map, dated 2001;
- (3) The Town’s 1963, 1985, and 1998 Master Plans;
- (4) Braintree Open Space and Recreation Plan (2009; Updated 2014);
- (5) The GIS assessor’s map and property data;
- (6) An editable (Word) copy of the General Code version of the ZBL;
- (7) Sample of recent Special Permit decisions; and
- (8) The decision in *Aiello v. Braintree Planning Board, et al.*, Misc. Case No. 414098 (Land Court, 2015).

² Example: In the website version, “variances” are covered in §135-407; in the General Code version, §135-406. The difference appears to be little more than a scrivener’s error, but there are enough of these small, nagging discrepancies to emphasize the importance of a comprehensive rewrite rather than a “piecemeal” repair process.

As noted above, RKG also assembled records from Braintree's Annual Town Reports, 2000-2006,³ to understand the chronology of recent pre-charter amendments.

B. Outreach and Participation

The consulting team is working under the direction of Braintree's Department of Planning and Community Development (PCD). Through the PCD, Braintree has organized an Ordinance Working Group (OWG) to help guide the development of a new Zoning Ordinance. The OWG accompanied members of the consulting team and Town staff on an initial tour of the Town in July 2016 and has met three times since then. They also assisted with facilitating a vision and goals event in November 2016.

In September, October, and November 2015, RKG's team interviewed several local stakeholders in order to solicit input about the ZBL, specifically where the problem areas are from the perspective of different user groups. Comments received during and after these meetings have been considered in the preparation of this report. As the participation process moved forward, RKG established a project website (www.braintreezoning.org) with a direct link to it from the Town's website. We also created an interactive social media site on MySidewalk (<https://mysidewalk.com/organizations/290129/braintree-zoning-review-and-update>) in order to encourage participation by people who cannot or prefer not to attend public meetings. It became apparent early on in this project that some of the concerns we and others identified in the ZBL would require fundamental policy choices by the Town, and this made outreach and community participation critically important. Accordingly, RKG's team organized and led a community meeting on Nov. 16, 2015, with assistance from the OWG and Town staff. Appendix 1 provides a summary of the meeting. Although some of the concerns that attendees identified cannot be addressed with zoning, our team needs to understand how Braintree residents think about their community and what they hope for its future.

C. Field Assessments

While preparations for the Nov. 16 community meeting were underway, RKG's team conducted a series of six field studies in order to assess the "fit" between the Town's present zoning and development patterns in various parts of the community. The study areas were identified in consultation with the OWG and Town staff. As illustrated in the study reports in Appendix 2, there are some significant differences between conditions on the ground and the dimensional requirements in Braintree's ZBL. The Town has *many* nonconforming properties. If all of them had to comply with the ZBL, the neighborhoods and business areas involved would be very different places – perhaps better, in some ways, but not necessarily better.

Over time, Braintree seems to have adopted and reinforced policies designed to prevent or substantially limit new growth. Concerns about over-development are understandable in Boston-area suburbs because many of them witnessed considerable change during the last half

³ The 2007 Annual Town Report is not on file at the Town library.

of the twentieth century. Unfortunately, sometimes the policies that communities adopt to restrict development have unwanted consequences and create considerable frustration for property owners, their neighbors, and town boards and commissions. In the now-several months that we have been working with Braintree, we have heard frustrations from just about every group with a stake in the economic and environmental health of the town. The good news is, there are much better zoning tools available to the Town than the framework it has today. We look forward to the opportunity to present fresh ideas and “best practices” that could help Braintree work effectively and competently at managing growth and change.

D. Next Steps

In January-February 2016, RKG will provide the PCD/OWG with two documents that will connect this zoning diagnostic with an eventual first reading draft of a new zoning ordinance. In accordance with our contractual scope of work, we will provide a proposed outline of the new ordinance and “framework paper.” The framework paper will identify options for addressing the policy choices that will arise in drafting the ordinance. It should be vetted by the OWG and Planning Board and provided to the Town Council in order to keep them informed about the direction of this project. The detailed outline will be very important to us because the format approved by the Town is the format we will follow to generate the full draft ordinance.

While these next deliverables are underway, we will need the Town to review the GIS zoning map and amendments we submitted earlier and provide us with corrections. At this stage, the maps are considered quality assurance/quality control (QA/QC) drafts.

II. TECHNICAL REVIEW

A. Organization of the Present Zoning Bylaw

The Braintree ZBL consists of sixteen major sections (Articles) and multiple subsections. The major section titles include:

Article Number	Title
I	Purposes and Definitions
II	Administrative Provisions
III	General Regulatory Provisions
IV	Nonconforming Structures and Uses; Variances
V	Special Permits
VI	Permitted Uses in Districts
VII	Area Regulations
VIII	Off-Street Parking and Loading
IX	Rules and Regulations for Signs
X	Service Stations; Trailers
XI	Environmental Performance Standards
XII	Grading Regulations, Quarry Operations, Erosion Control Regulations
XIII	Adult Entertainment/Bookstore/Video Store/Motion Picture Establishments
XIV	Rules and Regulations for Traffic
XV	Zoning Amendments
XVI	Wireless Communication Facilities

The subordinate numbering is sequential and keyed to the chapter (135),⁴ and it restarts with each new article. For example, the titled subsections under Article V follow this format: § 135-501, § 135-502, and so forth. This structure allows the ordinance or bylaw to expand without having to renumber existing text. The paragraph-level text follows a conventional alphanumeric outline format. Though fairly common, the General Code (eCode 360) numbering scheme is not very “user friendly.”

B. Format, Structure, and Organization.

- (1) Finding information in the Braintree ZBL can be difficult because topics do not always appear where one would expect to find them, based on the major section titles. In general, the ZBL is poorly organized. The ZBL tends to hopscotch from one topic to another, with no particular rhyme or reason. At times, material seems to be placed at random.

⁴ We note that the ZBL is referred to as “this chapter” in § 135-101, but it is unclear whether the ZBL is incorporated as part of the Town bylaws, which are organized as Title 1 through Title 13.

- (2) Since the ZBL has been amended many times over the years, its structure has become fragmented and hard to discern as various authors edited, added, moved, or deleted text. For example, Article X is an odd, remarkably short section that addresses just two topics – service stations and trailers – yet the requirements covered in Article X overlap with the use and dimensional regulations in Articles VI and VII. In general, use regulations are scattered throughout the ZBL, and this makes it hard to trust the Table of (Principal) Uses.
- (3) Other requirements appear in odd places, too.
 - (a) Article III, General Regulatory Provisions, focuses for the most part on districts, yet the same section includes § 135-305, “Construction to commence or be subject to zoning amendments,” which is a nearly verbatim repetition of G.L. c. 40A, § 6, ¶ 2. The principle established in § 135-305 – the time limit for construction under pre-existing zoning – usually appears in the bylaw section addressing nonconforming uses and structures.
 - (b) Similarly, § 135-205, “Repetitive petitions,” falls between appeals of decisions by the Building Inspector and the processing of zoning violations: topics that have nothing to do with the two-year limit on reapplication for a special permit or variance that has been denied (G.L. c. 40A, § 18).
 - (c) Site Plan Review, § 135-711, is not a dimensional regulation, yet it falls under Article VII, Area Regulations. Similarly, § 135-702, Landscaping and buffer zones, is mainly a set of landscaping standards for residential and nonresidential development and a process for reviewing and approving landscaping plans as part of site plan review or the special permit process. Except for the district setback requirements in § 135-702(B)(1), this section seems out of place in Article VII.
- (4) All of the Town’s administrative procedures should be located in one section of the ZBL. This includes the building permit, certificate of zoning compliance (for communities that require one), zoning enforcement, appeals, special permits, variances, and site plan review. In Braintree, basic information about administration and permitting appears in at least two sections, and the content is awkwardly divided. Overall, there are 144 references to special permits and they are scattered throughout the ZBL.
- (5) One issue that surfaces in almost every zoning revision project is the placement of definitions. Some communities decide to put all definitions in a section so named, either near the beginning or at the end of the bylaw; other communities put all of the “umbrella” definitions in one section and define unique terms in the section in which they appear. Zoning practice has trended toward a single section for all definitions, and we generally recommend that approach. In Braintree, definitions are randomly scattered throughout the ZBL. For example, Article XI, Performance Standards,

includes a set of defined terms at § 135-1103, but some of the terms listed there are not unique to Article XI, such as “business,” “commercial,” “construction,” “demolition,” or “motorcycle.” Moreover, in some cases these words are already defined in § 135-102, Definitions (at the beginning of the ZBL).

- (6) Braintree devotes an entire section to zoning amendments (Article XVI). It is remarkably detailed and prescriptive (far more than one finds in other zoning ordinances and bylaws) and portions of it simply recite G.L. c. 40A, § 5. Typically, the topic “amendments” is part of an introductory section which establishes the ordinance or bylaw, asserts its purposes and scope, cites the authority under which it is enacted, provides for amendment, and declares the concept of “severability,” i.e., that the ordinance as a whole remains intact even if the courts invalidate a portion of it. The revised ZBL should consolidate all of these provisions under one section (the first), and simplify them wherever possible.
- (7) Long, repetitive sections are common in Braintree’s ZBL. § 135-702, Landscaping and buffer zones, is a good example. Most of the content in this section should be in the Planning Board’s regulations, not in the ZBL. Subsection A describes the requirements for a landscaping plan (submitted as part of site plan review). It spells out the height and caliper width at maturity of various tree types, and the specifications for lawn grass or, alternatively, ground cover species. Furthermore, it goes far into the weeds (no pun intended) about landscaping maintenance: “Trees and shrubs should be protected against damage incurred with lawn mower and garden equipment. Keeping grass away from tree trunks with the use of mulch is recommended.” § 135-702(A)(5)(d). It is difficult to read § 135-702 without wondering how the Inspectional Services Department enforces so many minute details.

The second part of § 135-702 is more troubling and raises questions about the Town’s intent. Subsection B, Buffer zones, begins by establishing minimum setbacks on properties that border a different (more restrictive) zoning district, e.g., a minimum of 30 feet between any building in Residence A or B and the Open Space and Conservancy District, or at least 100 feet between any building in the Commercial District or Highway Business District and any residential district or the Open Space and Conservancy District. Presumably these setbacks supplement the minimum side or rear setback requirements in the Table of Dimensional and Density Regulations. § 135-702(B), but the ZBL is not clear. Following a description of basic requirements about the size and composition of plant materials in the buffer zone, the term “SPGA” suddenly appears – which implies that any project triggering § 135-702(B) would require a special permit. It is hard to imagine that this is actually the case in practice. One feature that makes § 135-702 hard to follow is that it contains two “applicability” provisions: one under subsection A, landscaping, and a different applicability statement under B, buffer zones. There is no “umbrella” applicability provision for § 135-702 as a whole.

- (8) Locating wide-format tables at the end of the document may be convenient for the person maintaining the ZBL, but it does not help users. The hazards of this practice are particularly obvious in the physical separation of the Table of Dimensional and Density Regulations from § 135-701, Notes, which appears in the body of the ZBL. This important section augments the Table, and it is all but lost between § 135-614, Conversion of convalescent home or nursing home, and § 135-702, Landscaping and buffer zones.
- (9) The entire ZBL should be reorganized into a logical sequence of sections that are easily decipherable, intuitive, and as “standard” as possible. We will provide a recommended approach in the (Task 3) Framework Paper and Draft Outline, which is the next major deliverable under our contract with the Town. However, a simple structure like the following is fairly common and it holds up well over time – provided that drafters of future amendments pay attention to the section titles.

Article Number	Title
I	Purposes and Authority
II	Administration and Enforcement
III	Districts
IV	Use Regulations
V	Dimensional Regulations
VI	Nonconforming Uses and Structures
VII	General Regulations [e.g., Parking, Signs, Lighting]
VIII	Special Regulations: Residential
IX	Special Regulations: Nonresidential
X	Special Districts [e.g., Overlays]
XI	Definitions

There are other organizational schemes for zoning bylaws that we can present to the Town in the next stage of this project. For now, we simply note that Braintree’s ZBL should group related content in sections with recognizable headings and be consistent about the scope of each section as the document is amended over time.

- (10) Off-street parking, signs, lighting, and landscaping standards constitute the heart of site plan review. It usually works best to group them in one section of the ordinance or bylaw, e.g., General Regulations. Consolidating them in one section helps to reduce inconsistencies and duplication, make the ZBL navigable for the user, and promote a coordinated approach to plan review.

C. Access and Ease of Use.

- (1) Staff report “constant” inquiries from the public and professional because they cannot find information in the ZBL. Many of the issues described above help to explain why users find the Braintree ZBL difficult to use.
- (2) The ZBL would benefit from several navigation aids:
 - (a) An alphabetized index at the end of the ZBL.
 - (b) Redesign of the Table of Principal Uses and Table of Dimensional and Density Regulations to make them easier to read and interpret. For example, applying a color gradient in the Table of Dimensional and Density Regulations would provide a simple visual cue about the relative density or intensity of use in Braintree’s zoning districts. Similarly, the Table of Principal Uses can be color-coded to match the color scheme on the Zoning Map, thereby reinforcing the connection between uses and geography.
 - (c) Graphics to illustrate key dimensional requirements. Braintree does provide sketch illustrations of frontage, yard, and lot shape requirements in an attachment to the ZBL, but these drawings will be much more useful to readers if they appear in the body of the ZBL where the topics appear in text. (They should be updated, too.) An illustration showing how to measure building height should be added to the existing set of sketches.
 - (d) The Table of Dimensional and Density Regulations could be replaced by a pleasing one-page layout for each zoning district, with the district’s dimensional requirements provided in text (outline) and graphic formats.
 - (e) Better graphics to communicate the dimensional standards for off-street parking, with graphics placed on the same page as the corresponding text.
 - (f) Permitting flowcharts showing the sequence of steps and timelines involved with various approval processes.
 - (g) Hyperlinked cross-references that allow users of an online or PDF version to navigate efficiently to sections of interest to them.
 - (h) Reorganized, consolidated sections that are designed for access and navigability by a variety of users, from professionals accustomed to working with municipal codes to homeowners wanting to know if they can create an accessory apartment on their property.

- (i) Although the present numbering system probably works for some users of the ZBL, it is not intuitive and could be simplified. For example, if the Zoning Bylaw is actually a “chapter” of the Town Code, perhaps the major sections could be keyed to the chapter number, e.g., Section 135-1, Purposes and Authority; Section 135-2, Administration and Enforcement, etc., with major subsections numbered as follows: 1.1, Title, 1.2, Purposes, 1.3, Applicability, and so on.

D. Language Clarity.

A close reading of Braintree’s ZBL reveals many instances of unclear language. By “unclear language,” we mean errors in diction, syntax, punctuation, or any combination of these that can reduce the readability of text. Omissions also affect readability, e.g., when a definition is unclear because omitted words or phrases lead people to interpret it differently. Below we identify some examples of text that need greater clarity.

- (1) The definition of “Commercial District” is unusual and confusing. “An area included within a district zoned commercial where activities concerned with the fabrication, assembling, finishing or packaging of products are allowed. The processing or alteration of raw materials is not allowed in a commercial district.” As written, the definition of “commercial district” describes activities that are normally classified as industrial and implies they are allowed in a portion of a commercially zoned area. Apparently Braintree decided long ago that its zoning would avoid the term “industrial,” but to an ordinary person, “fabrication, assembling, finishing or packaging of products” are industrial activities.
- (2) The definition of “Congregate Living Facility” is problematic in part because it contains undefined words and obsolete terms. “A noninstitutional [*meaning?*] shared living environment which integrates shelter and service needs for functionally impaired [*people with disabilities?*] and older persons [*does “older” mean 55, 60, 62, or some other age?*] who can maintain a semi-independent lifestyle and who do not require constant supervision or intensive health care as provided by an institution [*meaning?*]. Each congregate unit has its own bedroom and may have a separate or shared living room, kitchen, dining area or bathroom. [*If a unit includes a bedroom, kitchen, living room, and bathroom, what makes it congregate?*]

Is a “convalescent home or nursing home” an institution?

Does “congregate living facility” include a group home for adults with disabilities? (See also our comments under Section I below, at [Reasonable Accommodation](#).)

- (3) The definitions of “Apartment House” and “Dwelling, Multifamily” overlap so closely that they are essentially the same:

- (a) Apartment House: A multiunit dwelling consisting of three or more families living independently of each other.
- (b) Dwelling, Multifamily: A building designed and used for the living quarters for more than two families.

In the few instances that “apartment” is used in the ZBL, it usually appears with “multifamily” in the same sentence, i.e., the uses are regulated the same way. However, the term “apartment house/2 family” appears in §135-614, Conversion of convalescent home or nursing home, and in the Table of Uses as well. Do the “SP” designations in the Table refer to apartment houses or two-family dwellings as separate residential uses, or is the phrase “apartment house/2 family” interpreted as a single class of use? To complicate matters further, § 135-610(G) uses the term “multifamily two-family dwellings.”

- (4) The definition of “Light Manufacturing” includes “fabrication, assembling, and finishing or packaging of products and not the processing or alteration of raw materials ...” It is not clear whether the Town intends to prohibit manufacturing activities that involve processing or alteration of raw materials. Presumably that is the Town’s intent because there is no other manufacturing-related definition in the ZBL. This needs discussion.
- (5) Article IV, § 135-403(C) has missing words. “Nonconforming one- and two-family dwellings shall be allowed, as a matter of right, extensions or structural changes which meet all current zoning requirements for setbacks, building coverage, lot coverage, height and use for a district in which they are located.” The meaning is not clear at all. This is a good example of either missing language or poorly written language that results in lack of clarity.
- (6) Like most communities, Braintree allows as a matter of right a modest extension of some architectural elements into a setback: “Nothing herein shall prevent the projection into any required yard of steps, stoops not exceeding 30 square feet in area, eaves to 18 inches, cornices, windowsills or belt courses.” § 135-701(7). The ZBL should be clear about how these projections are measured.
- (7) The repeated use of the abbreviation “SPGA” (in 167 places) is troublesome for all but experienced users of zoning. *Who* is the SPGA? § 135-501 names the Planning Board as the default special permit granting authority, so unless the ZBL names the Board of Appeals as the SPGA for a particular use, the Planning Board’s designation controls. Rather than force users to search the ZBL to figure out that the Planning Board has special permit approval powers, references to “the SPGA” would be more helpful if they were changed to “the Planning Board” or, as applicable, “the Board of Appeals.”

Similarly, replacing the term “permit granting authority” with “Board of Appeals” is more user-friendly and clear.

- (8) The provision for handling lots divided by a district boundary (§ 135-306) is very unclear.⁵ The intent of the policy is to protect the rights of property owners whose lots pre-date the adoption of zoning and were held in common ownership at that time. § 135-306 refers to “use districts, height districts or area districts” without any explanation of these terms (they are not defined elsewhere in the ZBL). To complicate matters, Braintree’s “split lot” policy allows the requirements of the less restrictive district to apply to the entire lot if the more restricted portion of the lot is located entirely within 150 feet of the district boundary line,” but the rule is silent about what happens if only a portion of the more restricted area is within 150 feet of the district line. It is also unclear about how the measurement is to be taken, and from where, and who in Town Hall makes the determination.

E. Clarity, Consistency, or Legal Concerns: Specific Provisions.

- (1) RKG’s team identified several concerns with § 135-711, Site Plan Review (SPR).
- (a) In *Y.D. Dugout v. Board of Appeals of Canton*, 357 Mass. 25, 31 (1970), the Supreme Judicial Court defined its understanding of site plan review as: “regulation of a use rather than its prohibition . . . (guiding) us in interpreting the (by-law) . . . as contemplating primarily the imposition for the public protection of reasonable terms and conditions.” The Supreme Judicial Court has repeatedly focused on distinguishing site plan review from the special permit process. See *Prudential Ins. Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Auburn v. Planning Bd. of Dover*, 12 Mass. App. Ct. 998 (1981). Site plan review can be used only to shape a project. On the other hand, in the special permit process, the full range of discretion is available to the granting authority.
- (b) As written, Braintree’s SPR provision is actually a special permit procedure in its entirety. It should be called a special permit and consolidated with § 135-503; or, revised into an actual SPR procedure, either as an administrative staff function (e.g., “minor SPR” in the Braintree Landing Overlay) or a public process before the planning board, with a public hearing and simple majority vote; or some combination of these two approaches based on classes of use.

⁵ § 135-306. Lots in more than one district. When a boundary line between use districts, height districts or area districts, as established by this chapter and the Town’s Zoning Map, divides a lot in single ownership on the effective date of this chapter, the requirements applying to the least restricted portion of such lot shall be considered as applying to the entire lot, provided that the most restricted portion of such lot is entirely within 150 feet of the district dividing boundary line. The use so extended shall be deemed to be conforming.

- (c) There is no stated requirement in § 135-711 to reduce the SPR decision to writing and to file the decision with the Town Clerk.
 - (d) § 135-711(B)(3) applies SPR to “all developments where the area of any new structure or extension of an existing structure is 500 square feet or more.” Hypothetical: the owner of a 10,000 sq. ft. retail store in the General Business District wants to build a 500 sq. ft. addition. According to the Table of Uses, the owner’s project is allowed by right. However, § 135-711(B)(3) requires the owner to obtain a SPR special permit. Braintree’s zoning seems to conflict with *Unisys Corp. v. Town of Sudbury* (1991), when the Land Court – citing Braintree’s famous *SCIT* decision⁶ – invalidated a 967 sq. ft. limitation on by-right development as tantamount to putting “shackles” on the use of property.
 - (e) In § 135-711(B), it is unclear whether SPR applies to uses otherwise exempt under the Dover amendment: educational uses, religious uses, and child care facilities.
 - (f) In § 135-711(C), the ZBL refers the site plan application to the special permit granting authority (SPGA). However, site plan review is not a special permit. Presumably SPR should be handled by the Planning Board or professional staff, but this is a policy issue the Town will need to resolve.
 - (g) While § 135-711(D) provides decision criteria, there is no statement of powers in § 135-711 overall, and it is unclear how the decision criteria should be weighed: approval, denial, approval with conditions.
 - (h) § 135-711(E) direct aggrieved parties to appeal to the Superior Court or District Court, but the District Court does not have jurisdiction. Substitute Land Court for District Court.
- (2) Accessory uses and structures, which are in various sections of the ZBL, need updating, more consistency, and clarification. For example, § 135-605, Accessory uses in business and commercial districts, provides no information about what is allowed as an accessory nonresidential use. Listing both principal and accessory uses in a Table of Uses would be most helpful to users of the ZBL.
 - (3) The minimum setback requirement for a detached garage could be problematic. § 135-701(6) provides the following: “An attached garage or other attached structure shall be considered part of the main building and shall comply with all the dimensional and density requirements for that building.” Under § 135-701(4), accessory structures must be set back at least five feet from the property line (or swimming pools, at least ten

⁶ *Unisys Corp v. Town of Sudbury*, Misc. Case No. 141550 (Land Court, 1991), and *SCIT, Inc. v. Planning Board of Braintree* 19 Mass. App. Ct. 101 (1984).

feet). It appears that a detached garage or an even larger accessory building could be situated closer to an abutter's property than a typical attached two-car garage.

- (4) The multifamily dwelling regulations in § 135-705 need to be reconceived. The requirements are too inflexible, and the rationale for the density allowances is not clear. Notably, the ZBL establishes the same maximum density for Residence C, General Business, Highway Business, and Commercial Districts, yet these are different settings and different districts that presumably have different purposes. At minimum, there should be design standards for multifamily development. While the buffer zone and landscaping standards in § 135-702 provide some guidance, they are largely generic standards (not sensitive to land use or context). Furthermore, consideration should be given to architectural design review for multifamily buildings and other large-scale structures.
- (5) It is good that Braintree specifically prohibits use variances in § 135-407(D). Unfortunately, § 135-407(A) goes too far. It is essentially an impermissible rewrite of G.L. c. 40A, § 10. Unlike the special permit, a variance is a variance is a variance, whether in Braintree, Williamstown, or Chilmark. The statute is nonnegotiable.
- (6) There are almost fifty references to drainage and erosion control in the ZBL. Any requirements imposed by the ZBL should be compatible and not inconsistent with the Town's stormwater management bylaw (assuming one exists). Where possible, the procedures for drainage review under the ZBL should be integrated with the Town's procedures for stormwater management review.
- (7) The Town's definitions and regulations for building coverage, lot coverage, and impervious surface need to be revisited. All three are subject to maximum limits in most of the Town's zoning districts, according to the Table of Dimensional and Density Regulations. Building and lot coverage address different planning issues, and it probably is not necessary to regulate both in any district, especially the residential districts. In addition, Braintree regulates both lot coverage and a minimum open space ratio in all districts, but invariably the sum of these two measures is 100 percent. How these metrics are used, and toward what end, need further discussion.
- (8) The reference to "Historic District" in § 135-301 should be deleted. There is no "historic" zoning district in Braintree.

F. Clarity, Consistency, or Legal Concerns: Whole Sections and Subsections.

- (1) Article IV, Nonconforming Uses and Structures, needs extensive updating and revision to bring up-to-date with current case law. We identify several issues below. A suggestion alternative to Article IV is attached to this report solely to illustrate what a compliant, "best practices" nonconforming uses and structures section should look like.

- (a) The rules pertaining to nonconformities in § 135-402 through § 135-405 should be deleted and replaced by a new, more modern set of rules for nonconforming uses and structures to conform with recent case law. There have been a dozen decisions since 1990 that fundamentally changed the practice of handling nonconforming uses and structures. Notably, Braintree’s Article IV is short of the standards imposed by *Blasco v. Board of Appeals of Winchendon*, 31 Mass. App. Ct. 32 (1991), in which the court required that all available changes to nonconformities be listed in the ordinance or bylaw. In addition, some provisions in Braintree run counter to the holding in *Bjorklund v. Board of Appeals of Norwell*, 450 Mass. 357 (2008).
 - (b) Article IV should address the different rules that apply to alteration, reconstruction, extension, or structural change to a single or two-family residential dwelling vs. other types of structures. It should be clear that the Board of Appeals may grant a special permit that allows proposed alterations to a single-family or two-family dwelling to intensify existing nonconformities. The provision a Section 6 finding should be made clear, too (meaning G.L. c. 40A, § 6).
 - (c) The ZBL needs new and better language providing for administrative authority – probably for the Zoning Administrator – to approve *de minimis* alterations to nonconforming structures.
 - (d) It is not clear whether Braintree allows a nonconforming use to change to another less detrimental nonconforming use.
- (2) The Adult Entertainment bylaw (Article XIII) falls short of Constitutional standards. Any regulation of protected speech must be grounded in a “compelling” reason. On the other hand, if the bylaw regulates the “secondary effects” of adult entertainment, such as crime to persons or property, reasonable restrictions on time, place, and manner will be upheld. The following language would bring Article XIII in line with generally accepted legal standards for regulating adult entertainment uses:

§ 134-1301. Purpose.

It is the purpose of this Section governing Adult Entertainment Establishments to address and mitigate the secondary effects of Adult Entertainment Establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety and general welfare of the Town and its inhabitants.

The provisions of this Bylaw have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this Bylaw to restrict or deny access by adults to Adult Entertainment Establishments or to sexually oriented matter or materials that are protected by the Constitution of the United States of America or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute, or exhibit such matter or materials. Neither is it the purpose or intent of this Bylaw to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

- (3) Most of our comments about Article VIII, Off-Street Parking and Loading, are in Section III of this report because they involve policy decisions the Town will need to make. For purposes of this Section II, however, we note that the uses listed in § 135-806, Schedule of Off-Street Parking Requirements, do not match the Table of Principal Uses at end of the ZBL. It is difficult to “cross-walk” these tables. Wherever possible, they should present uses in the same order and use the same terms.
- (4) According to Town Counsel, Article IX, Rules and Regulations for Signs, was never adopted as a zoning bylaw (following all of the procedures for amendment in G.L. c. 40A, § 5), yet it has been added to the ZBL.
- (5) The recently adopted billboard ordinance is not well crafted and should be rewritten.

G. Administration; Procedures

- (1) Braintree’s ZBL contains all sorts of minor “administrative” language that does not need to be in zoning. It also unnecessarily repeats procedures spelled out in the Zoning Act, e.g., notice, publication, and public hearings. In general, submission requirements and procedures should be addressed in the administrative rules and regulations of the Zoning Board of Appeals and Planning Board, as applicable, and not in the ZBL.

In some communities, officials fear that removing this kind of content from the ordinance or bylaw will somehow shortchange the public. However, all of the necessary administrative and statutory procedures can be provided in a set of instructions attached to application packets in the Building Department. The last phase of our work with Braintree will involve writing administrative rules and regulations for boards with administrative responsibilities under the new ZBL, as well as board and staff training. We can provide application packets as part of the administrative rules for special permits, variances, and site plan review. Text removed from the ZBL as part of the comprehensive revision process will be transferred to the application packets and instructions, where appropriate.

- (2) There are special permit procedures and special permit granting criteria in various places throughout the ZBL. In addition to the “umbrella” special permit criteria in § 135-503(I), decision standards can be found in § 135-702(B)(12), § 135-608(E), § 135-609(F), § 135-610(F), § 135-612(F), and so on. Braintree is currently involved in a lawsuit over modification of a special permit. The relationship between the criteria in § 135-503(I) and those listed in other sections of the ZBL needs to be clear.
- (3) The special permit granting criteria in § 135-503(I) are unusually wordy and comprehensive. Most communities we are familiar with have taken a simpler approach, and one that more clearly connects the “umbrella” criteria with others found elsewhere in the bylaw. Below is one example (in this case, from the Town of Dedham):

Special permits shall be granted by the Special Permit Granting Authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site and of the proposal in relation to that site. *In addition to any specific factors that may be set forth in this bylaw [emphasis added],* the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential economic impact, including fiscal impact on town services, the tax base, and local employment.

- (4) We previously made several comments about Braintree’s site plan review bylaw (§ 135-711) and will not repeat them here. In addition to those comments, however, we think it is critical for the Town to uncouple site plan review from the special permit and establish an administrative site plan review process.

H. Incomplete or Outdated Provisions

Since Braintree’s ZBL has not been systematically revised in a long time, some of its provisions are based on outdated practices or laws that have changed. In addition, the ZBL contains sections that were never complete to begin with. Below are some examples of incomplete provisions and obsolete language.

- (1) The purpose clause in § 135-101 does not incorporate 1975 Mass. Acts 808, s. 2A or the Home Rule Amendment. The purposes in Chapter 808, Section 2A⁷ have been cited

⁷ From Section 2A of Chapter 808: “The purposes of this act are to facilitate, encourage, and foster the adoption and modernization of zoning ordinances and by-laws by municipal governments in accordance with the provisions of Article 89 of

as a guide to the legitimate exercise of the zoning power. See, for example, *Sturges v. Town of Chilmark*, 380 Mass. 246, 253 (1980). These extensive powers "are not to be narrowly interpreted." *Collura v. Town of Arlington*, 367 Mass. 881, 885 (1975) (citing *Decoulos v. City of Peabody*, 360 Mass. 428, 429 (1971)). Furthermore, the Home Rule Amendment, Article 89 of the Constitution, acts in conjunction with Section 2A to establish the purposes and authority of the zoning power. It should be referenced in a separate section (i.e., a revised Article I entitled "Purposes and Authority") stating the "authority" by which the zoning power may be implemented.

- (2) The definitions of "Day Care, Accessory" and "Day Care, Commercial" need to be updated. There are two categories of family day care homes (accessory to a residential use)⁸ and they, along with child care centers (principal use)⁹ are now defined by G.L.

the Amendments to the Constitution and to achieve greater implementation of the powers granted to municipalities thereunder.

"This act is designed to provide standardized procedures for the administration and promulgation of municipal zoning laws. This section is designed to suggest objectives for which zoning might be established which include, but are not limited to, the following: -- to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the city or town, including consideration of the recommendations of the master plan, if any, adopted by the planning board and the comprehensive plan, if any, of the regional planning agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives. Said regulations may include but are not limited to restricting, prohibiting, permitting or regulating:

1. uses of land, including wetlands and lands deemed subject to seasonal or periodic flooding;
2. size, height, bulk, location and use of structures, including buildings and signs except that billboards, signs and other advertising devices are also subject to the provisions of sections twenty-nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D;
3. uses of bodies of water, including water courses;
4. noxious uses;
5. areas and dimensions of land and bodies of water to be occupied or unoccupied by uses and structures, courts, yards and open spaces;
6. density of population and intensity of use;
7. accessory facilities and uses, such as vehicle parking and loading, landscaping and open space; and
8. the development of the natural, scenic and aesthetic qualities of the community."

⁸ "Family child care home", a private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under 7 years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations adopted by the board. The total number of children under 16 in a family child care home shall not exceed 6, including participating children living in the residence. Family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

"Large family child care home", a private residence which, on a regular basis, receives for temporary custody and care during part, or all of the day, children under 7 years of age, or children under 16 years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations promulgated by the board, but the number of children under the age of 16 in a large family child care home shall not exceed 10, including participating children living in the residence. A large family child care home shall have at least 1 approved assistant when the total number of children participating in child care exceeds 6. Large family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

⁹ "Child care center", a facility operated on a regular basis whether known as a child nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under 7 years of age, or under 16 years of age if those children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Child care center shall not include:

c. 15D, § 1A. The Zoning Act gives considerable deference to child care centers, which are protected as Dover amendment uses much like public or non-profit schools and colleges or religious uses. As for family day care homes, G.L. c. 40A, § 3 provides the following: “Family child care home and large family child care home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.” Whether Braintree wants to allow large family day care homes by right in all types of neighborhoods should be determined during the zoning revision process.

- (3) The ZBL does not make any reference to the agricultural exemption under G.L. c. 40A, § 3, i.e., commercial agriculture on five or more acres or two qualified acres (based on sales volume). Similarly, there is no reference to exempt farm stands. The missing references to § 3 may not be an issue in Braintree because in the Table of Principal Uses, “Agriculture, Horticulture and Floriculture, Nurseries, and Similar Uses” are permitted as of right in all districts. It may be worth having a discussion about urban agriculture controls as part of the zoning revision process, but that is a policy issue. To be effective, the regulation of small backyard farms involves both zoning and public health authority, especially when it comes to limitations on poultry, other livestock, and fur-bearing animals.
- (4) Article XIV, Rules and Regulations for Traffic, applies to any project that requires a special permit or SPR. It contains some provisions for Transportation Demand Management (TDM): a body of incentives and requirements for reducing vehicle trips by promoting public transportation and non-vehicular means of travel. Under Article XIV, Braintree requires a traffic study for any use that will generate 50 or more peak-hour trips. If the traffic study demonstrates that the project will have an adverse impact on nearby streets and intersections, the Planning Board can deny the special permit or impose mitigation requirements, including TDM measures. This section of the ZBL needs to be updated to reflect “best practices” in TDM and make it easier for developers to comply. For example, the Cambridge ordinance – a national TDM model – imposes a “blanket” requirement for TDM measures based on the number of parking spaces a project is required to provide. Developers can choose from a menu of TDM options once they have received special permit or site plan approval for their projects, and the process for complying with the ordinance is worked out at the staff level, not as part of the special permit application process. This approach is more efficient and establishes a more consistent commitment to TDM than the Planning Board’s discretionary

any part of a public school system; any part of a private, organized educational system, unless the services of that system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization in which children are cared for during short periods of time while persons responsible for the children are attending religious services; a family child care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

authority outlined in Section 135-1405(C), which is a set of mitigation tools the Board can impose by choice.

- (5) § 135-206: The penalty allowed by G.L. c. 40A, s. 7 has been raised to \$300.00.
- (6) There is an across-the-board need to update and expand the definitions in Braintree's ZBL. In some cases, the definitions should be simplified. In other cases, the definition includes both meaning (interpretation) and regulation, e.g., These are a few examples of definitions that should be revised:
 - (a) "Agriculture, Horticulture and Floriculture" should specifically refer to the definition of agriculture in G.L. c. 128, § 1A.
 - (b) "Comprehensive Development", given how it is defined, should be "Comprehensive Permit Development."
 - (c) "Convalescent Home or Nursing Home" should clarify that "licensed" means licensure by the Massachusetts Department of Public Health.
 - (d) The definition of "Fast-Food Establishment" is unduly complicated. Enforcing it would require access to information that would be difficult, if not impossible, for the Town to obtain.
 - (e) "Research Facility" should probably exclude a Level 4 laboratory designated by the National Institutes for Health, but this is a policy decision.
 - (f) All of the automotive-related uses need to be updated. "Motor vehicle service station" and "motor vehicle repair" are more commonly used terms today.
 - (g) "Institution of Historic, Philanthropic or Charitable Character" is very broad and needs to be rewritten. The term itself should be revised.
 - (h) "Lodging House" should clarify whether the dwelling must be owner-occupied.
 - (i) The current definition of "Lot" should be replaced with the following: "An area of land in one ownership with definite boundaries ascertainable by recorded deed or plan and used or set aside and available for use as the site of one or more buildings or for any other definite purpose."
 - (j) "Public hearing" should be revised to clarify that it is more than an advertised public meeting. A public hearing is conducted in order to receive testimony about some matter that is under consideration.
 - (k) The ZBL should include a definition of "mobile home" and "manufactured housing."

I. Missing Topics

Braintree's ZBL does not include topics found in many zoning ordinances and bylaws in Eastern Massachusetts. The omissions may be the result of policy decisions made by the Town or because the ZBL has not been updated in a long time. In no particular order, the missing topics include the following:

- (1) **Renewable Energy:** zoning provisions for residential and commercial solar installations and wind facilities.
- (2) **Inclusionary Zoning:** a requirement or body of incentives to include affordable housing in residential or mixed-use developments. Braintree does require nursing home conversions to provide affordable units, and the allowable density of a PUD can be predicated, in part, on affordable housing, but the existing ZBL does not have an overall policy for affordable housing production.
- (3) **Split Lots:** in § 135-306, Braintree provides for the treatment of lots divided by a district boundary. However, the ZBL does not address lots split by municipal boundaries. The Town of Easton's provision is representative of many other bylaws in Massachusetts:

Lots Divided by Town Boundary. When a lot is situated in part in the Town of Easton and in part in an adjacent municipality, the provisions of this By-law shall be applied to the portion of such lot in the Town of Easton in the same manner as if the entire lot were situated in the Town of Easton.

- (4) **Reasonable Accommodation:** The Zoning Act forbids communities from imposing zoning requirements that effectively discriminate against people with disabilities.¹⁰ Today, most cities and towns understand that they cannot regulate or restrict group homes for adults with disabilities or deny a disability access ramp that encroaches on a setback. Nevertheless, the land use term closest in meaning to "group home" in Braintree is "[congregate living facility](#)," which requires a special permit in six of Braintree's eight zoning districts and is prohibited in the other two. Perhaps Braintree officials understand that a group home is statutorily permitted as of right, but the ZBL's silence about group homes is conspicuous in light of recent case law under the Federal Fair Housing Act (FFHA). Ideally, the ZBL should define "group home" so it can be classified as a categorically permitted use, and the definition of "family" should be updated (though Braintree's is not bad "as is"). This example from the U.S. Department

¹⁰ From G.L. c. 40A, § 3. ¶ 4: "... local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination." ¶ 8: "No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person ..."

of Housing and Urban Development (HUD) provides useful guidance for connecting the concept of “family” with a single housekeeping unit.

Family: Any group of individuals living together as the functional equivalent of a family where the residents may share living expenses, chores, eat meals together, and are a close group with social, economic, and psychological commitments to each other. A family includes, for example, the residents of residential care facilities and group homes for people with disabilities. A family does not include larger institutional group living situations such as dormitories, fraternities, or sororities, or transient quarters such as hotels or motels.

“Disability” encompasses a wide range of “... physical or mental impairments that limit one or more major life activities,” and barrier-free regulations involve more than accessible parking spaces. Representatives of the Municipal Law Unit, Massachusetts Attorney General’s office, recently provided half-day workshops on the FFHA/Section 3 protections for long-term residential treatment facilities for people recovering from addictions, e.g., sober houses, and the regulation of short-term treatment facilities such as detox centers. Some aspects of the law are clear; others involve unanswered questions that communities need to think about. These topics should be taken up during the zoning revision process, as should a “reasonable accommodation” policy for the Building Commissioner or Zoning Enforcement Officer and Board of Appeals.

- (5) Definitions. From our review of the ZBL and our interviews with local stakeholders, we noted several terms that are not currently defined in Braintree’s ZBL. To modernize Braintree’s use regulations, the following should be defined and provided for as principal or accessory uses (or both):
- (a) Accessory dwelling (or in-law suite, or both)
 - (b) Adult day care
 - (c) Affordable housing
 - (d) Ambulatory care center (which could be accommodated by modifying the existing definition of Medical Center or Clinic)
 - (e) Assisted living residence
 - (f) Bed and breakfast
 - (g) Child care center
 - (h) Electric charging stations

- (i) Gross leasable area
- (j) Home occupation
- (k) Kennel
- (l) Manufacturing
- (m) Reconstruction
- (n) Short-term vehicle rental
- (o) Warehouse

J. Other Issues

- (1) Fire Protection Districts are not zoning districts. References to Fire Protection Districts in § 135-301, § 135-607, and elsewhere should be deleted from the ZBL. Perhaps this topic should be addressed in a non-zoning section of the Town Code.
- (2) § 135-1107, Motor vehicles and motorcycles on public rights-of-way, does not belong in zoning. This topic, too, could be moved to a non-zoning section of the Town Code (or simply eliminated).
- (3) The Braintree-Weymouth Landing District should be added to the list of districts in § 135-301.

III. POLICY REVIEW

It is impossible to conduct a comprehensive zoning revision process without tackling important land use policy questions. For example, people may agree that small family day care homes should be allowed in all of Braintree's residential districts, but will they feel the same way about large family day care homes with as many as ten children enrolled, plus a day care assistant (an employee)? People may say they want to grow Braintree's tax base and remove barriers to business development, but is the Town prepared to embrace new ways of zoning for commercial and industrial development? How willing will Braintree be to trade discretionary special permits for new zoning that can do a better job of guiding development in predictable ways? And finally, what will the Town's policy be for changes to nonconforming business uses? Will they be allowed to change to other (less detrimental) nonconforming uses over time, or will any future change force them to become conforming uses?

This section of our review highlights some issues we considered as we studied Braintree's zoning, interviewed various stakeholders, and listened to comments made at the November 2015 community meeting.

A. Districts

- (1) Do the current districts reflect current reality? Should there be fewer, more, or just revised districts? Should there be additional "specialized" districts, such as Weymouth Landing, to address particular areas or corridors or squares in town?
- (2) To what extent can zoning be used as a tool to attract higher-value facilities for life sciences research, product development, and manufacturing in Braintree? Does promoting Braintree as a node for these types of businesses appeal to the Town enough to provide meaningful zoning incentives?
- (3) We have repeatedly heard concerns about § 135-609, the Watershed Protection District (WPD), which seems to be quite limiting for such a large area of the town. In our experience, efforts to curtail regulations like the WPD usually invoke considerable opposition. People fear that changes to environmental requirements will damage their quality of life and invite all sorts of unwanted consequences. If Town staff and/or Ordinance Working Group want to modify the WPD, either its regulations or geographic extent, or both, we think it will take sustained work by a group of credible leaders in order to make substantive changes. We can provide technical assistance and examples of similar districts from other communities, but the examples may not be very helpful. There is a generation of WPD-like bylaws in Massachusetts cities and towns and they tend to be similar. Some have been updated to incorporate compliance with the Massachusetts Stormwater Management Handbook and provide for alternative means of compliance. The issue in Braintree seems to be as much about the large area included in the WPD (and the resulting restrictions on development) as the regulations per se. This needs discussion.

- (4) The Commercial District is basically a combined commercial/industrial district with a mixed bag of allowed uses: animal hospital, gas station, light manufacturing, garden centers, and car sales, and a host of other uses by special permit. It is difficult to decide how best to revise and update the Commercial District because the Town's vision for it is not clear. One option is to divide the Commercial District into two districts. Alternatively, there could be better criteria and regulations for the uses within the district and the use regulations could also be updated (revised, deleted, or expanded). In addition, the Town needs to re-examine how uses are allowed (by-right, by a new SPR, by a special permit, or prohibited).
- (5) The Village Center Overlay District, § 135-613, is an odd town center district that does not seem very effective. Like so many other aspects of Braintree's zoning, the Village Center District involves a special permit process, in this case to depart from the underlying General Business (GB) dimensional regulations. There are associated parking regulations in § 135-815, including the ability to pay a fee in lieu of providing off-street parking spaces. It is not clear if the Town has a dedicated special revenue fund for fees paid under this provision of the ZBL. In any case, we think the Town should consider creating a Village Center District, not an overlay, and write regulations that will encourage the desired form and mix of uses in this part of town.
- (6) As we understand it, the Planned Unit Development (PUD) District provision in § 135-612 has never been used. Braintree's PUD option requires a concept plan submission to the Town Council (the ZBL still reads "Town Meeting") in order to place land in the PUD District. As long as the project meets some basic conditions – minimum tract size (three acres), at least 25 percent open space, not more than 25 percent lot coverage (which may be an error), at least 100 feet of frontage, and a mix of at least two land uses – decisions about density are left to the Planning Board during the special permit process. What seems like a very flexible development option is actually fraught with unpredictability, so if the PUD has not been used before, it is no surprise. There are other ways to provide for or encourage PUDs; at issue is whether the Town actually wants them.
- (7) As demonstrated in the district studies attached to this report, there are several areas in Braintree where the established development pattern does not line up well with the Town's existing zoning. Nowhere is this more obvious than East Braintree, where most of the lots do not conform to the minimum area requirement (15,000 sq. ft.) or frontage requirement (100 feet) in Residence B. Situations like this underscore the need for a nonconforming uses and structures section that clearly describes the kinds of alterations that can be approved by the Building Department, i.e., without having to seek a Section 6 finding or special permit from the Board of Appeals. However, the better remedy for East Braintree neighborhoods would probably be a new residential district that more accurately reflects what is on the ground.

- (8) The marine industrial uses along the waterfront don't seem to be adequately addressed in the ZBL. The revised ZBL should address the reality of that part of town.
- (9) There needs to be more discussion about transitional issues between districts, e.g., should the provisions related to parking, landscaping, setbacks or buffers, and so forth, be revised and updated? Perhaps the Town should consider creating a new "Transitional" zoning district to address potential use and site conflicts between commercial, industrial, and residential areas.

B. Uses

- (1) It is unclear whether the Town wants to allow accessory dwelling units. Some people seem to think so-called "in-law" apartments are fine, but not accessory apartments (that is, units not restricted to family members); others say the Town should provide for accessory units, and still others say that even the "in-law suite" is problematic because it creates a slippery slope to two-family conversions. Accessory apartments create an opportunity for low-cost housing for small households (one or two people) and provide rental income to seniors who want to remain in their homes. They can be limited to units located within single-family homes or allowed in detached accessory structures, such as an apartment above a garage. In our experience, accessory apartments have virtually no impact on residential neighborhoods, but they should be required to meet some basic conditions, e.g., limited to owner-occupied dwellings, side yard buffers, restrictions on parking. It is possible to accommodate a mix of housing in single-family neighborhoods if the Town wants to allow some diversity.
- (2) Braintree needs a clear policy for home occupations. It is generally best to regulate them by impact, exterior appearances, and standards and not by trying to list every conceivable type of home occupation.
- (3) The Table of Principal Uses includes "Access across a Zone to Serve a Different Zone" by special permit in all districts. In § 135-805, parking for business and commercial uses is prohibited in residential, cluster, or conservancy districts except properties covered by § 135-306 (split lots). If a business project receives approval to cross a residential district, perhaps the Town should consider allowing, by special permit, some nonresidential parking on residentially zoned land as long as basic approval criteria can be met.

C. Dimensional and Density Regulations

- (1) Braintree's building height definition and maximum height regulations have the potential to allow structures that would be quite out of place in established neighborhoods. The definition reads, in part: "For buildings, the vertical distance above the mean finished grade ten feet out from each face of the building to the highest point of the roof beams or trusses of a flat roof or to the top of the rafters at the ridge of a sloping roof ..." In the residential districts, the maximum height is 35 feet and three

stories (Table of Dimensional and Density Regulations). Judging from the neighborhoods we have visited during our work on the zoning diagnostic, we believe these rules should be reconsidered.

D. Development Regulations

- (1) The sign bylaw (Article IX) should be substantially revised by adding graphics and bringing it up-to-date with current constitutional law decisions, current sign technology and design topics, and the reality of Braintree's sign issues (e.g. South Shore Plaza sign problems) Again, we note that Article IX was not actually adopted as a zoning amendment under Chapter 40A, but was simply put into the ZBL anyway.
- (2) Braintree provides for residential cluster development in three districts, Cluster I-II-III, which correspond with different levels of maximum gross density. It appears that cluster development districts are created on a project-by-project basis because the ZBL provides that allowable density will be determined when the land is rezoned. (§ 135-610(B)). If the Town wants to encourage cluster design, the "best practices" model in Massachusetts today is sometimes called "Natural Resource Protection Zoning" (NRPZ) and is part of the Commonwealth's "Smart Growth" toolkit. Instead of putting developers through a special permit process – not to mention a rezoning effort! – the NRPZ approach *requires* cluster design in new residential developments and provides an opt-out by special permit. Alternatively, the Town could simply allow both cluster design and conventional subdivisions by right, and let the applicant choose. These provisions can be part of the development regulations for the Residential Districts; there is no need for a separate cluster development district.
- (3) The Town could consider adding incentive-based zoning to encourage desired development and/or the provision of public benefits in the business and commercial districts.
- (4) Many public buildings are in the Open Space Conservancy District. We understand that this has made it difficult to develop or expand on those properties. It would make sense to consider new regulations for these uses or a different approach to zoning for public property.
- (5) We think Braintree should consider adopting design guidelines for development in selected business districts, especially the center of town. Design review does not have to add a new layer to the permitting process. It can be (and often is) incorporated into SPR.

E. Other Policy Questions

- (1) Should the Town reconsider the practice of charging citizen petitioners for the costs associated with proposing a zoning amendment (advertising the public hearing, notifying abutters, etc.)?

- (2) The Town may want to consider adding a “Wellesley-like” notice provision for the issuance of new building permits. In *Gallivan v. Board of Appeals of Wellesley*, 71 Mass. App. Ct. 850 (2008), the Appeals Court ruled that when an abutter has notice of the issuance of a building permit, they must appeal within 30 days of the issuance. If no appeal is filed, the abutter loses the right to seek zoning enforcement during the six-year period provide in G.L. c. 40A, § 7. Several cases have complicated this ruling. As we understand it, some attorneys have taken to providing private notice. This is a fluid legal situation that is worth a policy discussion.

