



## **Zoning & Planning Committee** **Report**

### **City of Newton** **In City Council**

**Monday, September 12, 2022**

**Present:** Councilors Crossley (Chair), Albright, Danberg, Krintzman, Wright, Leary, Baker, and Ryan

**Also Present:** Councilors Markiewicz, Lipof, Lucas, Greenberg, Kelley, Bowman, Laredo, and Downs

**City Staff:** Zachary LeMel, Chief of Long Rand Planning; Jen Caira, Chief Planner; Jennifer Wilson, Assistant City Solicitor; Lara Kritzer, CPA Program Manager; Eamon Bencivengo, Housing Development Planner; Jonah Temple, Deputy City Solicitor; Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Zoning & Planning Committee September 12, 2022 \(newtv.org\)](https://www.newtv.org/Zoning-Planning-Committee-September-12-2022)

**#192-22      Request for review and amendments to Section 6.7.1**  
**COUNCILORS CROSSLEY, DANBERG, LIPOF, KELLEY, ALBRIGHT, NORTON,**  
**BOWMAN, GREENBERG, HUMPHREY, LEARY, RYAN, AND KRINTZMAN** requesting  
a review of and possible amendments to, Section 6.7.1 Accessory Apartments, to  
remove barriers to creating accessory apartments, such as to consider conditions  
under which detached ADUs may be allowed by right, and under which ADUs may  
be permitted as part of new construction.  
**Zoning & Planning Held 7-0-1 (Councilor Baker abstaining) on 08/09/22**  
**Recommendation from Planning & Development Board Pending**  
**Action:      Zoning & Planning Approved 5-2-1 (Councilors Baker and Wright opposed)**  
**(Councilor Ryan abstaining)**

**Note:**      The Chair read the item into the record and introduced Zachary LeMel, Chief of Long Range Planning to present the draft ordinance amendments. The purpose of these amendments is to make accessory dwelling units (ADUs) easier to create in Newton. Mr. LeMel outlined the benefits that ADUs can bring such as enabling diverse housing options, providing flexibility for homeowners, supporting aging in place, and allowing for new housing without major new construction. The first proposed amendment is to remove the 4-year “lookback” period that is currently required in 6.7.1.C.5., to allow for planning and building of ADUs in new construction. The second proposed amendment is to allow more detached ADUs by-right, if limited to 250sf – 900 sf, or 50% of total habitable space, whichever is less. He noted that historic carriage houses, depending on their location on a site, are currently allowed to be converted to ADUs by-right in non-historic districts. This is to encourage restoration. The third proposed

amendment is to modify the setbacks for detached ADUs to equal either half of the setback required for the principal building in that zone, or 7.5 feet, whichever is greater. Currently, accessory buildings of all other uses require only a 5 foot rear and side yard setback, with the front setback equal to that of the principle building. And, if the setbacks are less than that of the principal dwelling, but otherwise meet this standard, screening would also be required either via dense planting or fencing.

The final proposed amendment is to clarify the language defining the owner occupancy requirement.

The Public Hearing was opened.

Sean Roche, 42 Daniel St, commended Mr. LeMel on making this content easily understandable and substantially agrees with the proposed amendments. Mr. Roche did note that he thinks these amendments should have gone further and the owner occupancy requirement should be dropped.

Rena Getz Escudero, 192 Pine Ridge Rd, cited multiple communities that recently amended their zoning ordinance relating to ADUs and expressed opposition to the removal of the lookback (4 year waiting) period. by Ms. Getz Escudero explained her opposition is based on wanting to prevent teardowns within the City. She did express support of allowing small ADUs by-right along with a suggestion to amend the 50% of the principle setback provision to 75% of the principle setback. She also noted that ADUs are eligible to be counted in the SHI calculation for the City. Ms. Caira later in the meeting noted that she knows of no ADUs included in the SHI calculation and that it would be rare if any were included. The Chair noted that a review of similar ordinances in other municipalities was conducted, and that in order to count ADUs in the SHI, certain deed-restricted affordability requirements would have to be imposed.

Robert Fizek, 47 Forest St, stated that he is an Architect who has worked on ADUs with many clients and expressed opposition to all amendments presented by Mr. LeMel. Mr. Fizek stated that the Special Permit process is not a significant obstacle to the construction of ADUs and that he believes the process helps bring the community together.

Lisa Monahan, 1105 Walnut St, also a local architect, expressed support for the proposed amendments. Ms. Monahan noted that she sees these amendments as a way to increase the housing stock while preserving the neighborhood's physical character. She also noted her disagreed with Mr. Fizek's comment regarding the Special Permit process not being a significant obstacle.

Jay Walter, 83 Pembroke St, also a local architect serving many clients needing ADUs, supports the amendments and sees the setbacks proposed as a good compromise. He described a couple who found that creating an ADU was the only affordable option they had to be able to continue to live in Newton. Mr. Walter also recommended that the section regarding the floor area ratio

(FAR) be clarified as it is ambiguous. It was also noted that the “Building Professional Working Group” he is part of supports removing the lookback, finding that developers are generally not interested in building ADUs in their speculative buildings, because it adds expense and limits buyers.

MaryLee Belleville, 136 Warren St, expressed overall support for the proposed amendments but did express some concern regarding the 1500 sf upper limit on detached ADUs via Special Permit. Staff later stated that this upper limit exists in the current ordinance. Ms. Belleville also posed several questions relating to the ability to see where in the City ADUs are located, how many have sold in the last 8 years, and finding information on changes of ownership. City Staff noted that this information would be on file with the City’s Inspectional Services Department (ISD).

Ruth Kantar, 672 Chestnut St, expressed her interest in facilitating ADUs as related to being the parent of an adult with developmental disabilities. By making ADUs easier to create, there could be more housing options that better meet the needs of diverse families. Ms. Kantar did seek clarification on whether a detached garage would make a property ineligible to have an ADU. The Chair noted that, while there is nothing in the code that prohibits multiple accessory buildings on a site, that FAR limits the total square footage that may be built on a site.

Lynn Weissberg, 5 Alden St, and Kathy Pillsbury 34 Carver Rd. also expressed support.

The Committee voted 8-0 on a motion to close the public hearing by Councilor Leary. The item was then tabled via an 8-0 vote on a motion from Councilor Danberg.

Later in the meeting, the Committee voted 8-0 on a motion to take the item off the table from Councilor Leary.

One Councilor noted that the Planning & Development Board’s Public Hearing for this item is scheduled after the next City Council Meeting, so what will be the procedure tonight. The Chair stated that the Committee may vote this item tonight but, if so, at the next City Council Meeting this item will be postponed to a date certain, in order to wait for the Planning Board’s recommendation, which we should have prior to the first full Council meeting in October..

One Councilor noted that the first ordinance allowing ADUs in Newton passed on August 3, 1987 intended to make sure that ADUs could exist but also fit into the context of the neighborhood. He sought clarification regarding the owner occupancy requirement if the owner is a Trust. Ms. Cairn responded stating that the proposed amendment to the owner occupancy requirement is strictly to ensure the ordinance is clear to the public.

This Councilor then shared several slides with the Committee, noting that the graphics were created by another (attached). A map of the city highlighted the location of single- and two-family properties throughout Newton, noting that setbacks are an important factor in the construction of these units and stating that the special permit process helps to provide a

reasonable safeguard. The Councilor proceeded to show the Committee hypothetical examples of detached ADUs by-right if built on every property located in the same block. He proposed that allowing by-right construction of detached ADUs would result in a significant number of these units. In advocating for the lookback provision this Councilor noted that the four year wait was to prevent an ADU in new construction serving as an incentive for people to move to Newton who otherwise could not, and that this would raise property costs.

During the discussion, it was noted by multiple Councilors that the presentation made by the Councilor was a scare tactic and the scenario depicted is highly unlikely. It was also noted that the illustration incorrectly showed 900sf ADU footprints, but accessory buildings are limited to 700sf footprints by-right; the 900sf ADU can only be achieved by a 1.5 story unit.

Several Councilors also raised concerns with the screening requirements for detached ADUs having setbacks less than the principal dwelling. But other members of the Committee expressed support for the screening provision. The Committee voted 4-3-1 with Councilors Wright, Baker, and Ryan opposed and Councilor Krintzman abstaining on a motion to remove the screening requirements from the ordinance amendment as proposed.

Three motions were then brought before the Committee by Councilor Baker. First, a motion to amend the proposal to preserve the lookback provision failed 2-6, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed. Second, a motion to amend the proposal to require that the setbacks for detached ADUs equal that of the principal dwelling failed 2-6, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed. Third, a motion to amend the proposal by deleting the portion allowing small detached ADUs by-right failed 1-6-1, with Councilors Leary, Albright, Krintzman, Crossley, Danberg, and Ryan opposed and Councilor Wright abstaining.

Finally, a motion by Councilor Wright to allow a 1-year lookback provision failed 3-5, Councilors Leary, Albright, Krintzman, Crossley, and Danberg opposed.

The Committee once more reviewed the draft text of the ordinance noting deletion of the screening requirements and agreeing that the language describing the FAR limit on a site would be clarified in the final draft presented to Council. Councilor Danberg moved approval as amended, which carried 5-2-1, Councilors Wright and Baker opposed and Councilor Ryan abstaining.

**#401-22 Request for review and amendment to Section 5.11.5.E**

HER HONOR THE MAYOR requesting possible amendment to Section 5.11.5.E to specify that the Affordable Housing Trust will be the entity to receive and distribute one half of new Inclusionary Zoning funds, rather than having these funds go to a separate City account.

**Zoning & Planning Held 8-0 on 08/09/22**

**Recommendation from Planning & Development Board Pending**

**Action: Zoning & Planning Approved 8-0**

**Note:** The Chair read the item into the record, noted members of the CPC and Housing Trust joining us for this meeting, and introduced Eamon Bencivengo, Housing Development Planner to present on the proposed ordinance amendments. In this presentation Mr. Bencivengo outlined that the purpose of dedicating 50% of the IZ funding to the Affordable Housing Trust (Trust) is to allow the Trust to operate as efficiently as possible. The current ordinance has cash payments to the IZ fund shared equally between the City's Inclusionary Zoning Fund and the Newton Housing Authority (NHA). The proposed amendment would provide that the Trust receive 50% of the funds directly. This amendment does not alter the share that NHA will receive of these cash payments. Mr. Bencivengo then shared with the Committee a copy of the proposed text revision to Section 5.11.5.E.

The Public Hearing was opened.

Community Preservation Committee member Eliza Datta of 40 Homer St noted that approving this ordinance amendment along with the upcoming item #436-22 will be a powerful way for the Trust to get a start on achieving their goals. These sentiments were echoed by Sean Roche of 42 Daniel St and Jay Walter of 83 Pembroke St.

Chair of the Municipal Affordable Housing Trust Ann Houston, of 45 Wedgewood St., was recognized next. (She also recognized the presence of Trust member Peter Sargent). She noted that these amendments will allow the Trust to be responsive to opportunities to increase the City's supply of affordable housing. Ms. Houston also noted that at the next meeting of the Trust on September 28<sup>th</sup> the Trust will be approving the first version of their strategic vision plan and guidelines along with a formal application form. It was also noted that the Trust is looking to be responsive to any projects that wish to seek support.

Robert Fizek of 47 Forest Street admitted he was just learning about this, and inquired about the efficacy of having a Trust that receives these funds versus the affordable units being built by the developer. Mr. Bencivengo stated that fractional payments can be made by developers should the development have a partial amount of the required affordable units. The Chair noted numerous reports that are available from meetings over the past term as the Trust was being established. The Committee voted 8-0 on a motion to close the public hearing from Councilor Danberg. The Committee then voted 8-0 on a motion to approve also from Councilor Danberg.

**#399-22**      **Appointment of Elizabeth Sweet to the Zoning Board of Appeals**  
HER HONOR THE MAYOR appointing Elizabeth Sweet, 281 Lexington Street, Auburndale as a full member of the Zoning Board of Appeals for a term of office to expire on September 19, 2025. (60 Days: 10/07/2022)  
**Action:**      **Zoning & Planning Approved 8-0**

**Note:** The Chair introduced Elizabeth Sweet, inviting her to describe her interest in becoming a full member of the Zoning Board of Appeals (ZBA). In her statement Ms. Sweet described her experience as an alternate member of the Zoning Board of Appeals as one that has helped her gain knowledge and better link the material, she teaches with real world examples. She noted that her experience as an urban planner helps add to the diverse set of experiences on the Board and looks forward to further contributing to the work of the Board. Multiple Councilors expressed support for Ms. Sweet's appointment. The Committee then voted 8-0 on a motion to approve from Councilor Krintzman.

### **Referred to Zoning & Planning and Finance Committees**

**#436-22**

#### **CPC Recommendation to appropriate \$1,948,056 in CPA funding**

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of one million nine hundred forty eight thousand fifty six dollars (\$1,948,056) in Community Preservation Act funding, with \$556,588 to come from the FY23 Community Housing Reserve Account and \$1,391,468 to come from FY23 Unrestricted Funding Account, to the control of the Planning & Development Department to provide funding to the Newton Affordable Housing Trust for future projects that meet one or more of the CPA's eligible funding categories for Community Housing projects.

**Action:** **Zoning & Planning Approved 8-0**

**Note:** The Chair introduced Eliza Datta, Vice Chair of the Community Preservation Committee, who noted the Trust being created in December 2021 and the CPC subsequently agreeing to allocate its annual target for Community Housing Funds to the Trust. This request is set to recur on an annual basis. This request would allocate the CPC's target amount for Community Housing, currently 35% of the CPC FY23 annual funds to the Trust as seed money for future projects. It was noted that the Trust so far has been very efficient at getting to work meeting the goals of the Trust. The Trust is currently in the process of developing program guidelines and review processes with applications being accepted on a rolling basis starting this Fall.

During discussion one Councilor sought clarification about the relative appropriation of resources in this request. Ms. Datta responded that the allocation in this proposal is not a change in the relative allocation of funding but rather consistent with CPC targets for previous years. It was also reaffirmed that this request is only for this year. Multiple Councilors also expressed support for this funding request as a mechanism for the Trust to have a successful start, and again expressed gratitude to the members of the Trust for their service. The Committee voted 8-0 on a motion to approve from Councilor Danberg.

**Chair's Note:** *The final regulations that will guide compliance with the MBTA Communities Law were released in August, and are attached for your review. Planning staff are in the process of getting clarification on several points. I encourage you to submit any specific questions you may have to our Committee Clerk for the Planning Department to address more fully at the Wednesday, September 28 ZAP meeting.*

**#39-22      Requesting discussion on state guidance for implementing the Housing Choice Bill**

COUNCILOR CROSSLEY on behalf of the Zoning & Planning Committee requesting discussion on state guidance for implementing the Housing Choice element of the MA Economic Development legislation. (formerly #131-21)

**Zoning & Planning Held 8-0 on 01/24/22**

**Action:**      **Zoning & Planning Held 8-0**

**Note:**      The Chair that the state has finalized regulations for MBTA Communities, which we received in August, and are in the Packet. She noted that the Compliance Guidelines now allows until January 31, 2023 for communities to submit an Action Plan to DHCD. She reminded that tonight's meeting was only to raise questions for deeper discussion at our September 28 meeting. The Planning Department along with other individuals are currently seeking clarification regarding some aspects of these regulations. Individuals with questions for the Planning Department should submit them to the Committee Clerk, Jaclyn Norton ([jnorton@newtonma.gov](mailto:jnorton@newtonma.gov)). Jen Caira stated that questions should be submitted by Monday morning, September 19, 2022. The Committee then voted 8-0 on a motion to hold from Councilor Krintzman.

**#47-22      Requesting annual updates on Newton's Subsidized Housing Inventory (SHI)**

THE ZONING & PLANNING COMMITTEE, COUNCILORS LUCAS AND OLIVER, requesting a conversation with the Director of Planning and Development about Newton's Subsidized Housing Inventory (SHI) and progress towards meeting the affordable housing safe harbor and a request to post the SHI on the City's website. (formerly #307-21)

**Action:**      **Zoning & Planning Held 8-0**

**Note:**      The Chair introduced Jonah Temple, Deputy City Solicitor and Ms. Caira to provide a brief overview of the recalculation of Newton's Subsidized Housing Inventory (SHI) (SHI Memo attached). Ms. Caira described to the Committee that this is part of MGL Chapter 40B (1969) and the City can claim "Safe Harbor" status once 10% of the housing stock or 1.5% of relevant land area is developed as affordable housing according to the state requirements. This calculation is performed for each comprehensive permit application so that the Zoning Board of Appeals (ZBA), can decide if they may claim Safe Harbor, which changes the rules. This calculation has also been performed more recently on a semi-annual basis to ensure this calculation is up-to-date. The current calculation shows that Newton has 9.8% compliant affordable housing stock and that 1.35% of available land area supports affordable housing. This concluded Ms. Caira's presentation

One Councilor presented several questions which were expressed in a memo sent to Attorney Temple, Deputy Director Caira and the full Council (attached). The first was a request for a chart to show the last 10 years of SHI data. Ms. Caira responded and said that the last 6-8 years of can be readily supplied but would need time to put that information into a chart. Second was to ask

how many affordable units are not included in the SHI calculation. Ms. Caira responded stating that these units are very few and the City continues to submit them for inclusion in the SHI. Another question from this Councilor was regarding the time frame for qualifying for safe harbor relative to Newton's continued eligibility to participate as one of the ten communities seeking the authority to require electrification in new construction. Attorney Temple noted that the City is currently seeking guidance on this topic. Later in the discussion this Councilor requested a written response to the questions posed in this memo.

Other Councilors also presented questions with one Councilor seeking clarification on how the numerator and denominator change in this calculation. Ms. Caira stated that the denominator is calculated each decennial Census with the numerator updating each time the calculation is performed. Other Councilors sought clarification on when a development can be included in this calculation and the process after the City has reached safe harbor status. Ms. Caira noted that once safe harbor status is reached the ZBA is given more discretionary leeway with projects, but developers may still request a Comprehensive permit under Ch40B, versus seeking a special permit. Regarding when a development can be included in the calculation, Attorney Temple stated that a building permit for vertical construction is required. The Committee then voted 8-0 on a motion to hold from Councilor Baker.

**#38-22 Discussion and review relative to the draft Zoning Ordinance regarding village centers**

ZONING & PLANNING COMMITTEE requesting review, discussion and possible ordinance amendments relative to Chapter 30 zoning ordinances pertaining to Mixed Use, business districts and village districts relative to the draft Zoning Ordinance. (formerly #88-20)

**Zoning & Planning Held 7-0 (Councilor Baker not voting) on 08/09/22**

**Action: Zoning & Planning Held 8-0**

**Note:** The Chair stated that the exhibit located on the second floor of the library is open to the public and is available in a digital version on the Planning Department's website ([Village Centers \(newtonma.gov\)](https://www.newtonma.gov/village-centers)). Regarding the community testimonials received it was noted that the Committee Clerk has compiled those testimonials received in 2022 on the Zoning & Planning Committee website ([Village Center Zoning Redesign \(newtonma.gov\)](https://www.newtonma.gov/village-center-zoning-redesign)). One Councilor did request an updated calendar to gather an idea of what the Chair is looking to bring before the Committee for the rest of the year. The Chair agreed, noting that the majority of our work will be focused on zoning for village centers through the end of the year. Seeing no further discussion, the Committee voted 8-0 on a motion to hold from Councilor Leary.

The meeting adjourned at 10:35pm

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**

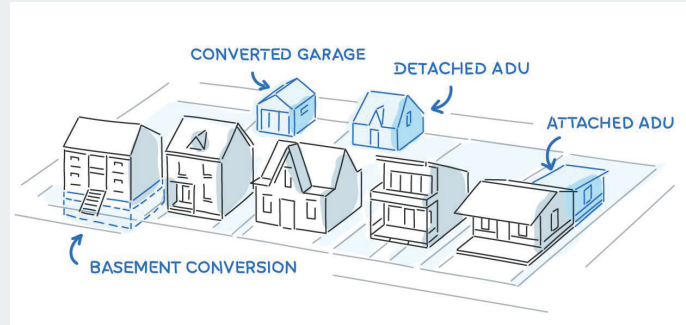


# Accessory Apartment Amendments

Docket #192-22

Zoning and Planning Committee  
September 12, 2022

Public Hearing



Source: [www.housable.com](http://www.housable.com)

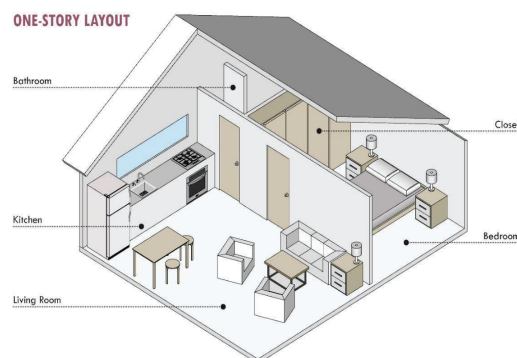
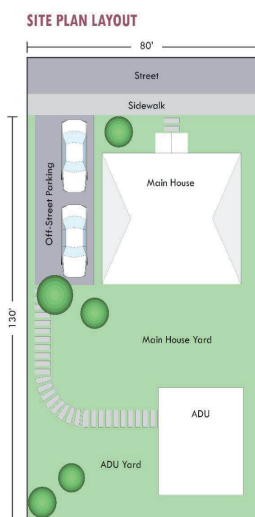
## Overview

- Rationale for Amendments
- Proposed Zoning Amendments
- Public Hearing

# Rationale for Amendments

## Benefits of ADUs

- Diversify housing options
- Flexibility for homeowners
- Allow for new housing without adding new buildings
- Support for aging in place & needs of a dynamic, changing community



**GENERAL LAYOUT**

<b>Lot Size</b>	10,000 sf (approx. 1/4 acre), but depends on town's ADU zoning	<b>Unit Size</b>	250 - 1,200 sf or 30% - 40% of primary DU
<b>Setbacks</b>	6' - 10' from primary DU Respects other zoning setbacks	<b>Interior</b>	Kitchen: 8' x 12' Bathroom: 5' x 8' Living Room: 12' x 18' Bedroom (can be lofted): 12' x 18'

Image Source: "Living Little," MAPC

# Proposed Zoning Amendments

## 1. Remove 4-year lookback

### Proposed Change - remove Sec. 6.7.1.C.5

Current	Proposed
<p>The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling or, where no certificate is available, the owner provides other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;</p>	<p><del>The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling or, where no certificate is available, the owner provides other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;</del></p>

## 2. Allow small detached ADUs by-right - max. size

### Proposed Change - Amend Sec.6.7.1.E.1

	Current	Proposed
Allowed by-right	Not allowed (except historic carriage houses in non-historic districts)	<b>250 sf - 900 sf or 50% of total Habitable Space, whichever is less</b>
Allowed by Special Permit	<ul style="list-style-type: none"> <li>- 250 sf- 1200 sf or 40% of total Habitable Space, whichever is less</li> <li>- Or up to 1,500 sq. ft.</li> </ul>	Up to 1,500 sq. ft.

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## 3. Allow small detached ADUs by-right - reduced setbacks

### Proposed Change - Amend Sec.6.7.1.E.5

Current	Updated Proposed
<ul style="list-style-type: none"> <li>- A detached ADU must meet the setback requirements of the principal dwelling unit, except by special permit</li> </ul>	<ul style="list-style-type: none"> <li>- A detached ADU side- and rear-setbacks can be <b>half of what is required of the principal dwelling or 7.5 feet, whichever is greater.</b></li> <li>- Additional screening requirements if detached ADU setbacks are less than the principal dwelling unit requirements                             <ul style="list-style-type: none"> <li>- Dense planting</li> <li>- Fencing</li> </ul> </li> </ul>

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## 4. Owner Occupancy Prevision (clarification only)

### Proposed Clarification - update Sec. 6.7.1.C.3

Current	Proposed
<p>The property owner must occupy either the principal dwelling unit or the accessory apartment;</p>	<p>The property owner <i>or an indirect property owner must occupy either the principal dwelling unit or the accessory apartment. Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property; <del>must occupy either the principal dwelling unit or the accessory apartment;</del></i></p>

# Public Hearing

# Accessory Apartments

Background on proposed  
amendments

by Councilor Lisle Baker

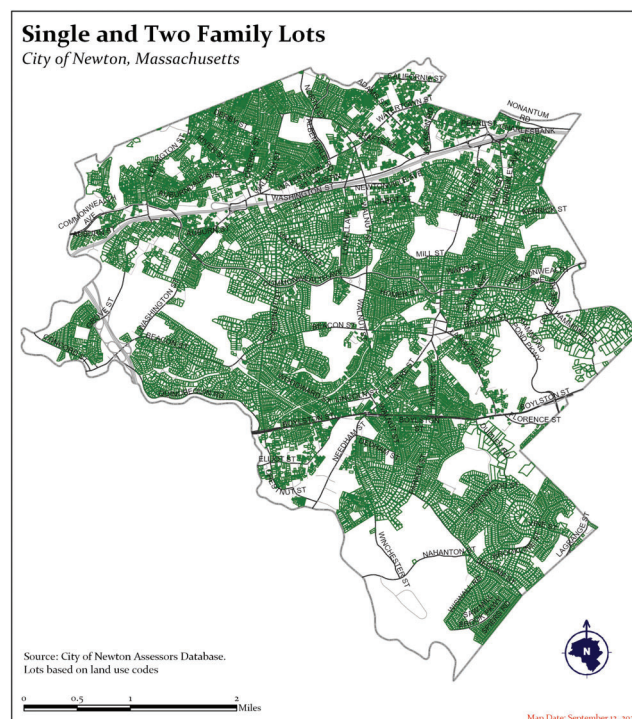
## Newton's Comprehensive Plan

Newton's 2007 Comprehensive Plan recommends allowing Accessory Apartments (ADUs) "where appropriate," and "in those circumstances where it would not be disruptive of the neighborhood fabric."

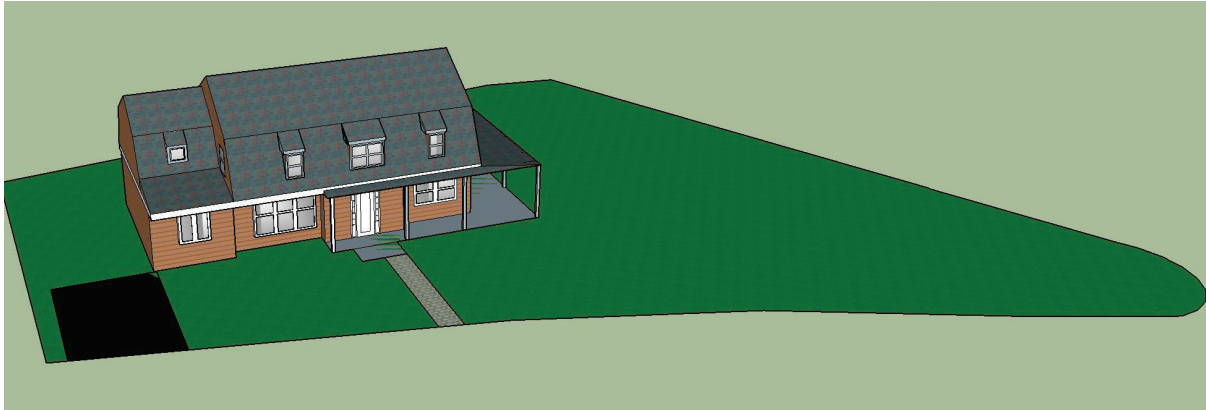
# Detached Accessory Apartments under the proposed new ordinance

Where might Accessory Apartments be built  
as of right under the proposed new  
ordinance in existing or new detached  
structures?

The following slide shows single and two  
family properties, according to assessing  
data (understanding that zoning setback and  
dimensional limits are not yet included).



# Example: Pine Ridge Road now

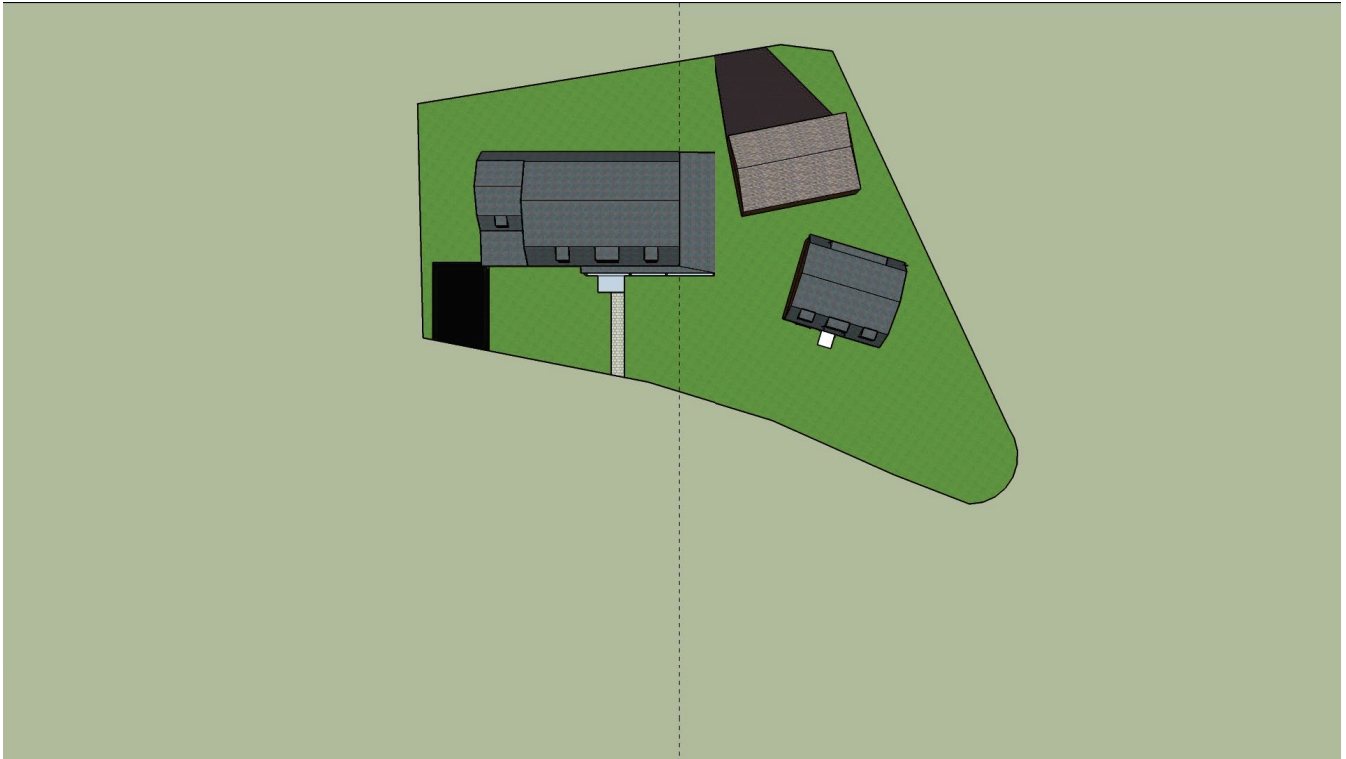


# Pine Ridge Rd with garage & ADU

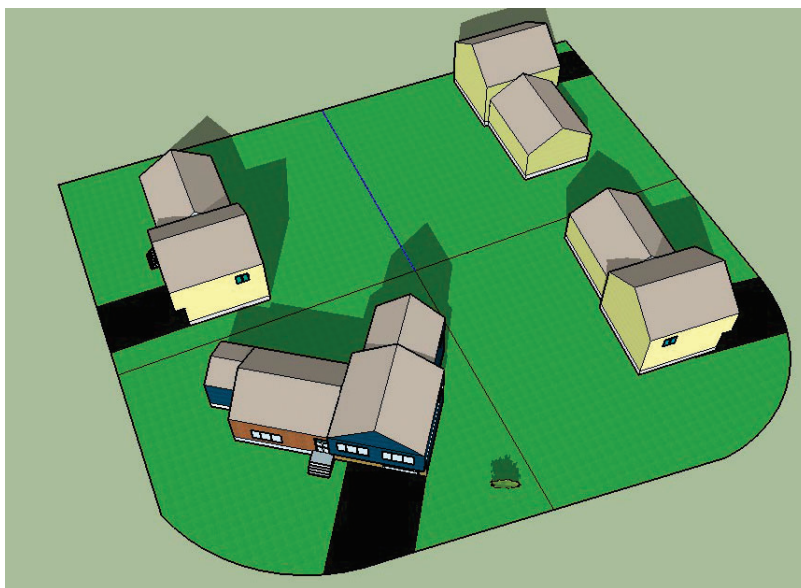




# Pine Ridge Road with garage & ADU



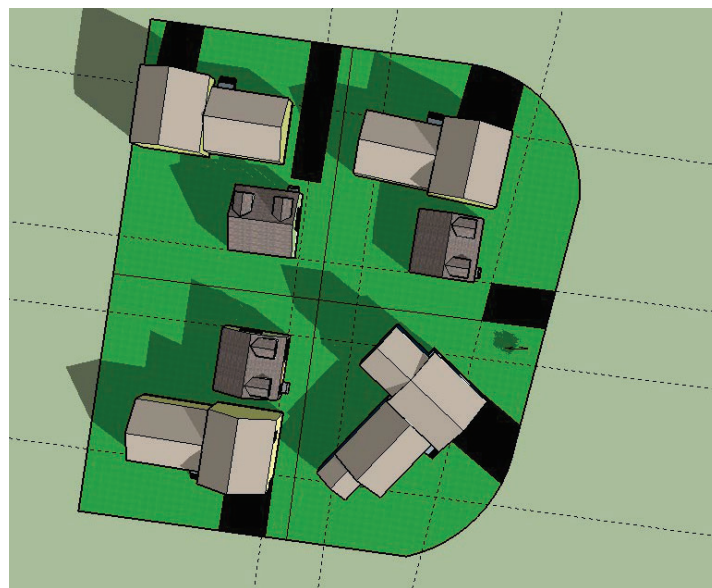
# Andrews Rd without ADU



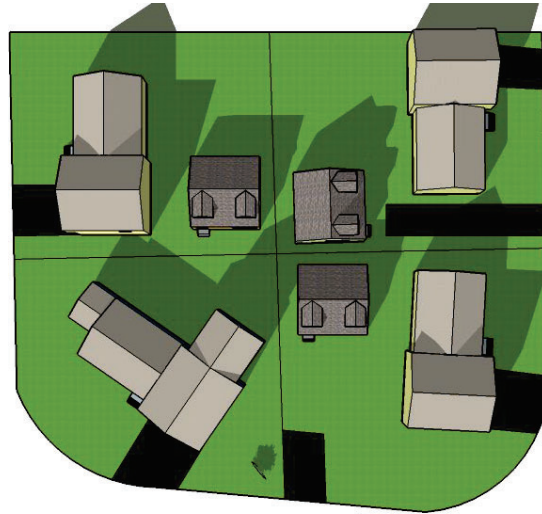
# Andrews Rd with ADUs to setbacks



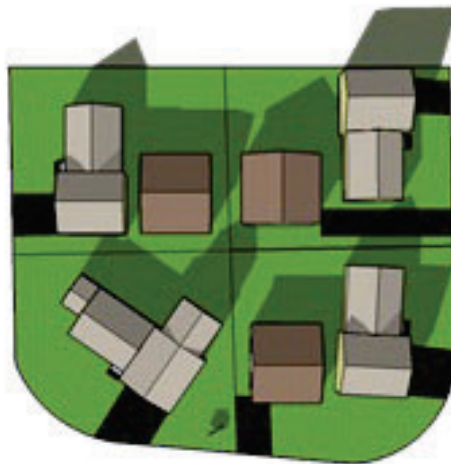
# Andrews Rd Setbacks



# Andrews Road with 7.5 setback



# Andrews Road 7.5 setback with 900 sq. ft. ADU



# Andrews Road 7.5 setback with 900 sq. ft. ADU



# Newton's IZ Funds Cash Payment Recipient

## Proposed Amendments to Inclusionary Zoning Ordinance: Section 5.11.5(E)

Public Hearing - ZAP Meeting  
September 12, 2022

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The City of Newton  
Planning & Development Department

## Purpose & Background

- This proposed amendment seeks to assist the City's newly created Affordable Housing Trust (AFT) to operate as efficiently and effectively as possible.
- Section 5.11.5 (E) currently dictates that any and all cash payments made by a developer in lieu of providing inclusionary units within a project are made to the City's Inclusionary Zoning Fund and then shared equally with the Newton Housing Authority (NHA).

# Proposed Amendment

- This proposal seeks to specify that the AHT be the entity that receives any and all cash payments made by a developer in lieu of creating affordable units in a project instead of the City's IZ Zoning Fund.
- The amendment does **not** propose to alter the provision that the NHA still receive an equal share of any cash payment. Any payments received will therefore be shared equally between the AHT and NHA.

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## Proposed Text Revision to Section 5.11.5 (E)

### E. Cash Payment Recipient.

1. The cash payment ~~shall be~~ made to the City's ~~Inclusionary Zoning Fund~~ Municipal Affordable Housing Trust Fund, to be distributed equally to the Newton Housing Authority and ~~the City of Newton~~ the Newton Affordable Housing Trust.
2. These funds are to be used for the restoration, rehabilitation, acquisition, creation, preservation, associated support services, and monitoring of deed-restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical.
3. Notwithstanding Section 2 above, funds received from Inclusionary Housing Projects with 7-9 units, as described in Section 5.11.5.B.3, must be used for the creation of deed-restricted units affordable to households at or below 80% of AMI.

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# Proposed Text Revision to Section 5.11.5 (E)

~~4. Appropriation of these funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board and then by the Mayor.~~

5. The Newton Housing Authority and the City Newton Affordable Housing Trust must each maintain an ongoing record of payments to the fund on their behalf and the use of the proceeds for the purposes stated in this Sec.

5.11.

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Thank you

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Questions / Comments?

# Newton Affordable Housing Trust CPA Funding Recommendation

Community Preservation Committee  
Presentation to  
Zoning and Planning Committee  
September 12, 2022

## Project Overview

- ▶ City Council established the Newton Affordable Housing Trust in December 2021
- ▶ The seven members of the Trust were appointed this spring and held their first meeting in June 2022
- ▶ The new Trust is currently working to develop an initial set of program guidelines and application process
- ▶ During the Ordinance review process, the CPC agreed to allocate its annual target for Community Housing funds to the Trust for use in future housing projects
- ▶ This request is the first in what is expected to be an annual request for CPA Community Housing funds.



## Current Funding Request

The Newton Affordable Housing Trust (NAHT) requests that the CPC’s target amount for Community Housing, which is currently equal to 35% of the Community Preservation Program’s FY23 annual funds, be allocated to the new Affordable Housing Trust Funds for future projects which acquire, create, support, preserve, and restore/rehabilitate affordable housing in Newton.

## Recommended CPA Project Funding

CPA Funding Accounts	Amount
Community Housing FY23 Reserve Funds	\$556,588
FY23 Unrestricted Funding Account	\$1,391,468
<b>TOTAL CPA PROJECT FUNDS:</b>	<b>\$1,948,056</b>

CPA Funding is recommended to be Community Housing category funding.

## Timeline

- ❖ Trustees are currently in the process of developing program guidelines and review processes
- ❖ Trustees anticipates being ready to accept new applications for affordable housing projects this Fall
- ❖ Applications will be accepted on a rolling basis

## Questions & Discussion

Thank you!



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
 COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

Issue Date: August 10, 2022

**Compliance Guidelines for Multi-family Zoning Districts  
 Under Section 3A of the Zoning Act**

**1. Overview of Section 3A of the Zoning Act**

Section 3A of the Zoning Act provides: *An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.*

The purpose of Section 3A is to encourage the production of multi-family housing by requiring MBTA communities to adopt zoning districts where multi-family housing is allowed as of right, and that meet other requirements set forth in the statute.

The Department of Housing and Community Development, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, is required to promulgate guidelines to determine if an MBTA community is in compliance with Section 3A. DHCD promulgated preliminary guidance on January 29, 2021. DHCD updated that preliminary guidance on December 15, 2021, and on that same date issued draft guidelines for public comment. These final guidelines supersede all prior guidance and set forth how MBTA communities may achieve compliance with Section 3A.

**2. Definitions**

“Adjacent community” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) is not an adjacent small town.

“Adjacent small town” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

“Affordable unit” means a multi-family housing unit that is subject to an affordable housing restriction with a term of no less than 30 years and eligible for inclusion on DHCD’s Subsidized Housing Inventory.

“Age-restricted housing” means any housing unit encumbered by a title restriction requiring a minimum age for some or all occupants.

“As of right” means development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval.

“Bus station” means a location with a passenger platform and other fixed infrastructure serving as a point of embarkation for the MBTA Silver Line. Upon the request of an MBTA community, DHCD, in consultation with the MBTA, may determine that other locations qualify as a bus station if (i) such location has a sheltered platform or other fixed infrastructure serving a point of embarkation for a high-capacity MBTA bus line, and (ii) the area around such fixed infrastructure is highly suitable for multi-family housing.

“Commuter rail community” means an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations.

“Commuter rail station” means any MBTA commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service, including stations under construction and scheduled to being service before the end of 2023, but not including existing stations at which service will be terminated, or reduced below regular year-round service, before the end of 2023.

“Compliance model” means the model created by DHCD to determine compliance with Section 3A’s reasonable size, gross density, and location requirements. The compliance model is described in further detail in Appendix 2.

“Determination of compliance” means a determination made by DHCD as to whether an MBTA community has a multi-family zoning district that complies with the requirements of Section 3A. A determination of compliance may be determination of interim compliance or a determination of district compliance, as described in section 9.

“Developable land” means land on which multi-family housing can be permitted and constructed. For purposes of these guidelines, developable land consists of: (i) all privately-owned land except lots or portions of lots that meet the definition of excluded land, and (ii) developable public land.

“Developable public land” means any publicly-owned land that (i) is used by a local housing authority; (ii) has been identified as a site for housing development in a housing production plan approved by DHCD; or (iii) has been designated by the public owner for disposition and redevelopment. Other publicly-owned land may qualify as developable public land if DHCD determines, at the request of an MBTA community and after consultation with the public owner, that such land is the location of obsolete structures or uses, or otherwise is suitable for conversion to

multi-family housing, and will be converted to or made available for multi-family housing within a reasonable period of time.

“Developable station area” means developable land that is within 0.5 miles of a transit station.

“DHCD” means the Department of Housing and Community Development.

“EOHED” means the Executive Office of Housing and Economic Development.

“Excluded land” means land areas on which it is not possible or practical to construct multi-family housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:

- (i) All publicly-owned land, except for lots or portions of lots determined to be developable public land.
- (ii) All rivers, streams, lakes, ponds and other surface waterbodies.
- (iii) All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.
- (iv) Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).
- (v) All public rights-of-way and private rights-of-way.
- (vi) Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.
- (vii) Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.

“Ferry terminal” means the location where passengers embark and disembark from regular, year-round MBTA ferry service.

“Gross density” means a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

“Housing suitable for families” means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no zoning restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

“Listed funding sources” means (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2E of chapter 29; and (iii) the MassWorks infrastructure program established in section 63 of chapter 23A.

“Lot” means an area of land with definite boundaries that is used or available for use as the site of a building or buildings.

“MassGIS data” means the comprehensive, statewide database of geospatial information and mapping functions maintained by the Commonwealth's Bureau of Geographic Information, within the Executive Office of Technology Services and Security, including the lot boundaries and use codes provided by municipalities.

“MBTA” means the Massachusetts Bay Transportation Authority.

“MBTA community” means a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.

“Multi-family housing” means a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.

“Multi-family unit capacity” means an estimate of the total number of multi-family housing units that can be developed as of right within a multi-family zoning district, made in accordance with the requirements of section 5.b below.

“Multi-family zoning district” means a zoning district, including a base district or an overlay district, in which multi-family housing is allowed as of right; provided that the district shall be in a fixed location or locations, and shown on a map that is part of the zoning ordinance or by-law.

“One Stop Application” means the single application portal for the Community One Stop for Growth through which (i) the Executive Office of Housing and Economic Development considers requests for funding from the MassWorks infrastructure program; (ii) DHCD considers requests for funding from the Housing Choice Initiative, (iii) EOHEd, DHCD and other state agencies consider requests for funding from other discretionary grant programs.

“Private rights-of-way” means land area within which private streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Publicly-owned land” means (i) any land owned by the United States or a federal agency or authority; (ii) any land owned by the Commonwealth of Massachusetts or a state agency or authority; and (iii) any land owned by a municipality or municipal board or authority.

“Public rights-of-way” means land area within which public streets, roads and other ways have been laid out and maintained, to the extent such land areas can be reasonably identified by examination of available tax parcel data.

“Rapid transit community” means an MBTA community that has within its borders at least 100 acres of developable station area associated with one or more subway stations, or MBTA Silver Line bus rapid transit stations.

“Residential dwelling unit” means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Section 3A” means section 3A of the Zoning Act.

“Sensitive land” means developable land that, due to its soils, slope, hydrology, or other physical characteristics, has significant conservation values that could be impaired, or vulnerabilities that could be exacerbated, by the development of multi-family housing. It also includes locations where multi-family housing would be at increased risk of damage caused by flooding. Sensitive land includes, but is not limited to, wetland buffer zones extending beyond the title 5 setback area; land subject to flooding that is not a wetland resource area; priority habitat for rare or threatened species; DEP-approved wellhead protection areas in which development may be restricted, but is not prohibited (Zone II and interim wellhead protection areas); and land areas with prime agricultural soils that are in active agricultural use.

“Site plan review” means a process established by local ordinance or by-law by which a local board reviews, and potentially imposes conditions on, the appearance and layout of a specific project prior to the issuance of a building permit.

“Subway station” means any of the stops along the MBTA Red Line, Green Line, Orange Line, or Blue Line, including any extensions to such lines now under construction and scheduled to begin service before the end of 2023.

“Transit station” means an MBTA subway station, commuter rail station, ferry terminal or bus station.

“Transit station area” means the land area within 0.5 miles of a transit station.

“Zoning Act” means chapter 40A of the Massachusetts General Laws.

### **3. General Principles of Compliance**

These compliance guidelines describe how an MBTA community can comply with the requirements of Section 3A. The guidelines specifically address:

- What it means to allow multi-family housing “as of right.”
- The metrics that determine if a multi-family zoning district is “of reasonable size.”
- How to determine if a multi-family zoning district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code.

- The meaning of Section 3A’s mandate that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.”
- The extent to which MBTA communities have flexibility to choose the location of a multi-family zoning district.

The following general principles have informed the more specific compliance criteria that follow:

- MBTA communities with subway stations, commuter rail stations and other transit stations benefit from having these assets located within their boundaries and should provide opportunity for multi-family housing development around these assets. MBTA communities with no transit stations within their boundaries benefit from proximity to transit stations in nearby communities.
- The multi-family zoning districts required by Section 3A should encourage the development of multi-family housing projects of a scale, density and aesthetic that are compatible with existing surrounding uses, and minimize impacts to sensitive land.
- “Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a multi-family zoning district that is “reasonable” in one city or town may not be reasonable in another city or town.
- When possible, multi-family zoning districts should be in areas that have safe, accessible, and convenient access to transit stations for pedestrians and bicyclists.

#### **4. Allowing Multi-Family Housing “As of Right”**

To comply with Section 3A, a multi-family zoning district must allow multi-family housing “as of right,” meaning that the construction and occupancy of multi-family housing is allowed in that district without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval. DHCD will determine whether zoning provisions allow for multi-family housing as of right consistent with the following guidelines.

##### *a. Site plan review*

The Zoning Act does not establish nor recognize site plan review as an independent method of regulating land use. However, the Massachusetts courts have recognized site plan review as a permissible regulatory tool, including for uses that are permitted as of right. The court decisions establish that when site plan review is required for a use permitted as of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law.<sup>1</sup> These guidelines similarly recognize that site plan review may be required for multi-

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<sup>1</sup> See, e.g., *Y.D. Dugout, Inc. v. Board of Appeals of Canton*, 357 Mass. 25 (1970); *Prudential Insurance Co. of America v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986); *Osberg v. Planning Bd. of Sturbridge*, 44 Mass. App. Ct. 56, 59 (1997) (Planning Board “may impose reasonable terms and conditions on the proposed use, but it does not have discretionary power to deny the use”).



family housing projects that are allowed as of right, within the parameters established by the applicable case law. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review should not unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations.

*b. Affordability requirements*

Section 3A does not include any express requirement or authorization for an MBTA community to require affordable units in a multi-family housing project that is allowed as of right. It is a common practice in many cities and towns to require affordable units in a multi-family project that requires a special permit, or as a condition for building at greater densities than the zoning otherwise would allow. These inclusionary zoning requirements serve the policy goal of increasing affordable housing production. If affordability requirements are excessive, however, they can make it economically infeasible to construct new multi-family housing.

For purposes of making compliance determinations with Section 3A, DHCD will consider an affordability requirement to be consistent with as of right zoning as long as: (i) any affordable units required by the zoning are eligible to be listed on DHCD's Subsidized Housing Inventory; (ii) the zoning requires not more than 10 percent of the units in a project to be affordable units; and (iii) the cap on the income of families or individuals who are eligible to occupy the affordable units is not less than 80 percent of area median income. Notwithstanding the foregoing, the percentage of units required to be affordable units may be up to, but not more than, 20 percent of the units in a project, only if (i) the affordability requirement applicable in the multi-family zoning district pre-dates the enactment of Section 3A and the MBTA community demonstrates to DHCD that the affordability requirement has not made and will not make multi-family housing production infeasible, or (ii) the multi-family zoning district requires DHCD review and approval as a smart growth district under chapter 40R, or under another zoning incentive program administered by DHCD.

*c. Other requirements that do not apply uniformly in the multi-family zoning district*

Zoning will not be deemed compliant with Section 3A's requirement that multi-family housing be allowed as of right if the zoning imposes requirements on multi-family housing that are not generally applicable to other uses. The following are examples of requirements that would be deemed to be inconsistent with "as of right" use: (i) a requirement that multi-family housing meet higher energy efficiency standards than other uses; (ii) a requirement that a multi-family use achieve a third party certification that is not required for other uses in the district; and (iii) a requirement that multi-family use must be combined with commercial or other uses on the same lot or as part of a single project. Mixed use projects may be allowed as of right in a multi-family zoning district, as long as multi-family housing is separately allowed as of right.

**5. Determining "Reasonable Size"**

In making determinations of "reasonable size," DHCD will take into consideration both the land area of the multi-family zoning district, and the multi-family zoning district's multi-family unit capacity.

a. *Minimum land area*

A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. For purposes of compliance with Section 3A, a multi-family zoning district should be a neighborhood-scale district, not a single development site on which the municipality is willing to permit a particular multi-family project. DHCD will certify compliance with Section 3A only if an MBTA community’s multi-family zoning district meets the minimum land area applicable to that MBTA community, if any, as set forth in Appendix 1. The minimum land area for each MBTA community has been determined as follows:

- (i) In rapid transit communities, commuter rail communities, and adjacent communities, the minimum land area of the multi-family zoning district is 50 acres, or 1.5% of the developable land in an MBTA community, whichever is *less*. In certain cases, noted in Appendix 1, a smaller minimum land area applies.
- (ii) In adjacent small towns, there is no minimum land area. In these communities, the multi-family zoning district may comprise as many or as few acres as the community determines is appropriate, as long as the district meets the applicable minimum multi-family unit capacity and the minimum gross density requirements.

In all cases, at least half of the multi-family zoning district land areas must comprise contiguous lots of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement. If the multi-family unit capacity and gross density requirements can be achieved in a district of fewer than 5 acres, then the district must consist entirely of contiguous lots.

b. *Minimum multi-family unit capacity*

A reasonably sized multi-family zoning district must also be able to accommodate a reasonable number of multi-family housing units as of right. For purposes of determinations of compliance with Section 3A, DHCD will consider a reasonable multi-family unit capacity for each MBTA community to be a specified percentage of the total number of housing units within the community, with the applicable percentage based on the type of transit service in the community, as shown on Table 1:

Table 1.

<b>Category</b>	<b>Percentage of total housing units</b>
Rapid transit community	25%
Commuter rail community	15%
Adjacent community	10%
Adjacent small town	5%

To be deemed in compliance with Section 3A, each MBTA community must have a multi-family zoning district with a multi-family unit capacity equal to or greater than the minimum unit capacity shown for it in Appendix 1. The minimum multi-family unit capacity for each MBTA community has been determined as follows:

- (i) First, by multiplying the number of housing units in that community by 0.25, 0.15, 0.10, or .05 depending on the MBTA community category. For example, a rapid transit community with 7,500 housing units is required to have a multi-family zoning district with a multi-family unit capacity of  $7,500 \times 0.25 = 1,875$  multi-family units. For purposes of these guidelines, the number of total housing units in each MBTA community has been established by reference to the most recently published United States Decennial Census of Population and Housing.
- (ii) Second, when there is a minimum land area applicable to an MBTA community, by multiplying that minimum land area (up to 50 acres) by Section 3A's minimum gross density requirement of 15 units per acre. The product of that multiplication creates a floor on multi-family unit capacity. For example, an MBTA community with a minimum land area of 40 acres must have a district with a multi-family unit capacity of at least 600 (40 x 15) units.
- (iii) The minimum unit capacity applicable to each MBTA community is *the greater of* the numbers resulting from steps (i) and (ii) above, but subject to the following limitation: In no case does the minimum multi-family unit capacity exceed 25% of the total housing units in that MBTA community.

*Example: The minimum multi-family unit capacity for an adjacent community with 1,000 housing units and a minimum land area of 50 acres is determined as follows:(i) first, by multiplying  $1,000 \times .1 = 100$  units; (ii) second, by multiplying  $50 \times 15 = 750$  units;(iii) by taking the larger number, but adjusting that number down, if necessary, so that unit capacity is no more than 25% of  $1,000 = 250$  units. In this case, the adjustment in step (iii) results in a minimum unit capacity of 250 units.*

c. *Methodology for determining a multi-family zoning district's multi-family unit capacity*

MBTA communities seeking a determination of compliance must use the DHCD compliance model to provide an estimate of the number of multi-family housing units that can be developed as of right within the multi-family zoning district. The multi-family unit capacity of an existing or proposed district shall be calculated using the unit capacity worksheet described in Appendix 2. This worksheet produces an estimate of a district's multi-family unit capacity using inputs such as the amount of developable land in the district, the dimensional requirements applicable to lots and buildings (including, for example, height limitations, lot coverage limitations, and maximum floor area ratio), and the parking space requirements applicable to multi-family uses.

Minimum unit capacity is a measure of whether a multi-family zoning district is of a reasonable size, not a requirement to produce housing units. Nothing in Section 3A or these guidelines should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target. Demonstrating compliance with the minimum multi-family unit capacity requires only that an MBTA community show that the zoning allows multi-family housing as of right and that a sufficient number of multi-family housing units could be added to or replace existing uses and structures over time—even though such additions or replacements may be unlikely to occur soon.

If an MBTA community has two or more zoning districts in which multi-family housing is allowed as of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum multi-family unit capacity requirements, as long as each district independently complies with Section 3A's other requirements.

d. *Water and wastewater infrastructure within the multi-family zoning district*

MBTA communities are encouraged to consider the availability of water and wastewater infrastructure when selecting the location of a new multi-family zoning district. But compliance with Section 3A does not require a municipality to install new water or wastewater infrastructure, or add to the capacity of existing infrastructure, to accommodate future multi-family housing production within the multi-family zoning district. In most cases, multi-family housing can be created using private septic and wastewater treatment systems that meet state environmental standards. Where public systems currently exist, but capacity is limited, private developers may be able to support the cost of necessary water and sewer extensions. While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations, including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows.

The multi-family unit capacity analysis does not need to take into consideration limitations on development resulting from existing water or wastewater infrastructure within the multi-family zoning district, or, in areas not served by public sewer, any applicable limitations under title 5 of the state environmental code. For purposes of the unit capacity analysis, it is assumed that housing developers will design projects that work within existing water and wastewater constraints, and that developers, the municipality, or the Commonwealth will provide funding for infrastructure upgrades as needed for individual projects.

**6. Minimum Gross Density**

Section 3A expressly requires that a multi-family zoning district—not just the individual lots of land within the district—must have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A. The Zoning Act defines “gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

a. *District-wide gross density*

To meet the district-wide gross density requirement, the dimensional restrictions and parking requirements for the multi-family zoning district must allow for a gross density of 15 units per acre of land within the district. By way of example, to meet that requirement for a 40-acre multi-family zoning district, the zoning must allow for at least 15 multi-family units per acre, or a total of at least 600 multi-family units.

For purposes of determining compliance with Section 3A's gross density requirement, the DHCD compliance model will not count in the denominator any excluded land located within the multi-family zoning district, except public rights-of-way, private rights-of-way, and publicly-owned land used for recreational, civic, commercial, and other nonresidential uses. This method of

calculating minimum gross density respects the Zoning Act’s definition of gross density—“a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses”—while making it unnecessary to draw patchwork multi-family zoning districts that carve out wetlands and other types of excluded land that are not developed or developable.

b. *Achieving district-wide gross density by sub-districts*

Zoning ordinances and by-laws typically limit the unit density on individual lots. To comply with Section 3A’s gross density requirement, an MBTA community may establish reasonable sub-districts within a multi-family zoning district, with different density limits for each sub-district, provided that the gross density for the district as a whole meets the statutory requirement of not less than 15 multi-family units per acre. DHCD will review sub-districts to ensure that the density allowed as of right in each sub-district is reasonable and not intended to frustrate the purpose of Section 3A by allowing projects of a such high density that they are not likely to be constructed.

c. *Wetland and septic considerations relating to density*

Section 3A provides that a district of reasonable size shall have a minimum gross density of 15 units per acre, “subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A.” This directive means that even though the zoning district must permit 15 units per acre as of right, any multi-family housing produced within the district is subject to, and must comply with, the state wetlands protection act and title 5 of the state environmental code—even if such compliance means a proposed project will be less dense than 15 units per acre.

**7. Determining Suitability for Families with Children**

Section 3A states that a compliant multi-family zoning district must allow multi-family housing as of right, and that “such multi-family housing shall be without age restrictions and shall be suitable for families with children.” DHCD will deem a multi-family zoning district to comply with these requirements as long as the zoning does not require multi-family uses to include units with age restrictions, and does not limit or restrict the size of the units, cap the number of bedrooms, the size of bedrooms, or the number of occupants, or impose a minimum age of occupants. Limits, if any, on the size of units or number of bedrooms established by state law or regulation are not relevant to Section 3A or to determinations of compliance made pursuant to these guidelines.

**8. Location of Districts**

a. *General rule for determining the applicability of Section 3A’s location requirement*

Section 3A states that a compliant multi-family zoning district shall “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” When an MBTA community has only a small amount of transit station area within its boundaries, it may not be possible or practical to locate all of the multi-family zoning district within 0.5 miles of a transit station. Transit station area may not be a practical location for a multi-family zoning district if it does not include developable land where multi-family housing can actually be

constructed. Therefore, for purposes of determining compliance with Section 3A, DHCD will consider the statute’s location requirement to be “applicable” to a particular MBTA community only if that community has within its borders at least 100 acres of developable station area. DHCD will require more or less of the multi-family zoning district to be located within transit station areas depending on how much total developable station area is in that community, as shown on Table 2:

Table 2.

<u>Total developable station area within the MBTA community (acres)</u>	<u>Portion of the multi-family zoning district that must be within a transit station area</u>
0-100	0%
101-250	20%
251-400	40%
401-600	50%
601-800	75%
801+	90%

The percentages specified in this table apply to both the minimum land area and the minimum multi-family unit capacity. For example, in an MBTA community that has a total of 500 acres of transit station area within its boundaries, a multi-family zoning district will comply with Section 3A’s location requirement if at least 50 percent of the district’s minimum land area is located within the transit station area, *and* at least 50 percent of the district’s minimum multi-family unit capacity is located within the transit station area.

A community with transit station areas associated with more than one transit station may locate the multi-family zoning district in any of the transit station areas. For example, a rapid transit community with transit station area around a subway station in one part of town, and transit station area around a commuter rail station in another part of town, may locate its multi-family zoning district in either or both transit station areas.

*b. MBTA communities with limited or no transit station area*

When an MBTA community has less than 100 acres of developable station area within its boundaries, the MBTA community may locate the multi-family zoning district anywhere within its boundaries. To encourage transit-oriented multi-family housing consistent with the general intent of Section 3A, MBTA communities are encouraged to consider locating the multi-family zoning district in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that qualifies as an “eligible location” as defined in Chapter 40A—for example, near an existing downtown or village center, near a regional transit authority bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new multi-family housing.

*c. General guidance on district location applicable to all MBTA communities*

When choosing the location of a new multi-family zoning district, every MBTA community should consider how much of a proposed district is sensitive land on which permitting requirements and other considerations could make it challenging or inadvisable to construct multi-family housing. For example, an MBTA community may want to avoid including in a multi-family zoning district

areas that are subject to flooding, or are known habitat for rare or threatened species, or have prime agricultural soils in active agricultural use.

**9. Determinations of Compliance**

Section 3A provides that any MBTA community that fails to comply with Section 3A’s requirements will be ineligible for funding from any of the listed funding sources. DHCD will make determinations of compliance with Section 3A in accordance with these guidelines to inform state agency decisions on which MBTA communities are eligible to receive funding from the listed funding sources. Determinations of compliance also may inform funding decisions by EOHED, DHCD, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs, or making other discretionary funding decisions.

DHCD interprets Section 3A as allowing every MBTA community a reasonable opportunity to enact zoning amendments as needed to come into compliance. Accordingly, DHCD will recognize both *interim* compliance, which means an MBTA community is taking active steps to enact a multi-family zoning district that complies with Section 3A, and *district* compliance, which is achieved when DHCD determines that an MBTA community has a multi-family zoning district that complies with Section 3A. The requirements for interim and district compliance are described in more detail below.

Table 3.

<b>Transit Category (# of municipalities)</b>	<b>Deadline to Submit Action Plan</b>	<b>Deadline to Submit District Compliance Application</b>
Rapid transit community (12)	January 31, 2023	December 31, 2023
Commuter rail community (71)	January 31, 2023	December 31, 2024
Adjacent community (58)	January 31, 2023	December 31, 2024
Adjacent small town (34)	January 31, 2023	December 31, 2025

*a. Process to achieve interim compliance*

Many MBTA communities do not currently have a multi-family zoning district of reasonable size that complies with the requirements of Section 3A. Prior to achieving district compliance (but no later than the deadlines set forth in Table 3), these MBTA communities can achieve interim compliance by taking the following affirmative steps towards the creation of a compliant multi-family zoning district.

- i. *Creation and submission of an action plan.* An MBTA community seeking to achieve interim compliance must first submit an action plan on a form to be provided by DHCD. An MBTA community action plan must provide information about current zoning, past planning for multi-family housing, if any, and potential locations for a multi-family zoning district. The action plan also will require the MBTA community to establish a timeline for various actions needed to create a compliant multi-family zoning district.
- ii. *DHCD approval of an action plan.* DHCD will review each submitted action plan for consistency with these guidelines, including but not limited to the timelines in

Table 3. If DHCD determines that the MBTA community's action plan is reasonable and will lead to district compliance in a timely manner, DHCD will issue a determination of interim compliance. DHCD may require modifications to a proposed action plan prior to approval.

- iii. *Implementation of the action plan.* After DHCD approves an action plan and issues a determination of interim compliance, an MBTA community must diligently implement the action plan. DHCD may revoke a determination of interim compliance if an MBTA community has not made sufficient progress in implementing an approved action plan. DHCD and EOHED will review an MBTA community's progress in implementing its action plan prior to making an award of funds under the Housing Choice Initiative and Massworks infrastructure program.
  - iv. *Deadlines for submitting action plans.* To achieve interim compliance for grants made through the 2023 One Stop Application, action plans must be submitted by no later than January 31, 2023. An MBTA community that does not submit an action plan by that date may not receive a DHCD determination of interim compliance in time to receive an award of funds from the listed funding sources in 2023. An MBTA community that does not achieve interim compliance in time for the 2023 One Stop Application may submit an action plan to become eligible for a subsequent round of the One Stop Application, provided that an action plan must be submitted by no later than January 31 of the year in which the MBTA community seeks to establish grant eligibility; and provided further that no action plan may be submitted or approved after the applicable district compliance application deadline set forth in Table 3.
- b. *Assistance for communities implementing an action plan.*

MBTA communities are encouraged to communicate as needed with DHCD staff throughout the process of implementing an action plan. DHCD will endeavor to respond to inquiries about whether a proposed multi-family zoning district complies with Section 3A prior to a vote by the municipal legislative body to create or modify such a district. Such requests shall be made on a form to be provided by DHCD and should be submitted at least 90 days prior to the vote of the legislative body.

c. *Requests for determination of district compliance*

When an MBTA community believes it has a multi-family zoning district that complies with Section 3A, it may request a determination of district compliance from DHCD. Such a request may be made for a multi-family zoning district that was in existence on the date that Section 3A became law, or for a multi-family zoning district that was created or amended after the enactment of Section 3A. In either case, such request shall be made on an application form required by DHCD and shall include, at a minimum, the following information. Municipalities will need to submit:

- (i) A certified copy of the municipal zoning ordinance or by-law and zoning map, including all provisions that relate to uses and structures in the multi-family zoning district.
- (ii) An estimate of multi-family unit capacity using the compliance model.



- (iii) GIS shapefile for the multi-family zoning district.
- (iv) In the case of a by-law enacted by a town, evidence that the clerk has submitted a copy of the adopted multi-family zoning district to the office of the Attorney General for approval as required by state law, or evidence of the Attorney General's approval.

After receipt of a request for determination of district compliance, DHCD will notify the requesting MBTA community within 30 days if additional information is required to process the request. Upon reviewing a complete application, DHCD will provide the MBTA community a written determination either stating that the existing multi-family zoning district complies with Section 3A, or identifying the reasons why the multi-family zoning district fails to comply with Section 3A and the steps that must be taken to achieve compliance. An MBTA community that has achieved interim compliance prior to requesting a determination of district compliance shall remain in interim compliance for the period during which a request for determination of district compliance, with all required information, is pending at DHCD.

#### **10. Ongoing Obligations; Rescission of a Determination of Compliance**

After receiving a determination of compliance, an MBTA community must notify DHCD in writing of any zoning amendment or proposed zoning amendment that affects the compliant multi-family zoning district, or any other by-law, ordinance, rule or regulation that limits the development of multi-family housing in the multi-family zoning district. DHCD may rescind a determination of district compliance, or require changes to a multi-family zoning district to remain in compliance, if DHCD determines that:

- (i) The MBTA community submitted inaccurate information in its application for a determination of compliance;
- (ii) The MBTA community failed to notify DHCD of a zoning amendment that affects the multi-family zoning district;
- (iii) The MBTA community enacts or amends any by-law or ordinance, or other rule or regulation, that materially alters the minimum land area and/or the multi-family unit capacity in the multi-family zoning district;
- (iv) A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a multi-family housing project that is allowed as of right in the multi-family zoning district;
- (v) The MBTA community takes other action that causes the multi-family zoning district to no longer comply with Section 3A; or
- (vi) An MBTA community with an approved multi-family zoning district has changed transit category as a result of a newly opened or decommissioned transit station, or the establishment of permanent, regular service at a transit station where there was formerly intermittent or event-based service.

#### **11. Changes to MBTA Service**

Section 3A applies to the 175 MBTA communities identified in section 1A of the Zoning Act and section 1 of chapter 161A of the General Laws. When MBTA service changes, the list of MBTA communities and/or the transit category assignments of those MBTA communities in Appendix 1 may change as well.

The transit category assignments identified in Appendix 1 of these guidelines reflect certain MBTA service changes that will result from new infrastructure now under construction in connection with the South Coast Rail and Green Line Extension projects. These service changes include the opening of new Green Line stations and commuter rail stations, as well as the elimination of regular commuter rail service at the Lakeville station. These changes are scheduled to take effect in all cases a year or more before any municipal district compliance deadline. Affected MBTA communities are noted in Appendix 1.

Municipalities that are not now identified as MBTA communities and may be identified as such in the future are not addressed in these guidelines or included in Appendix 1. New MBTA communities will be addressed with revisions to Appendix 1, and separate compliance timelines, in the future.

Future changes to Silver Line routes or stations may change district location requirements when expanded high-capacity service combined with new facilities creates a bus station where there was not one before. Changes to other bus routes, including the addition or elimination of bus stops or reductions or expansions of bus service levels, do not affect the transit categories assigned to MBTA communities and will not affect location requirements for multi-family zoning districts. Any future changes to MBTA transit service, transit routes and transit service levels are determined by the MBTA Board of Directors consistent with the MBTA's Service Delivery Policy.

### **List of Appendices:**

Appendix 1: MBTA Community Categories and Requirements

Appendix 2: Compliance Methodology/Model

## Appendix 1:

**MBTA Community Categories and Requirements**

<b>Community</b>	<b>Community category</b>	<b>2020 Housing Units</b>	<b>Minimum multi-family unit capacity*</b>	<b>Minimum land area**</b>	<b>Developable station area***</b>	<b>% of district to be located in station area</b>
Abington	Commuter Rail	6,811	1,022	50	307	40%
Acton	Commuter Rail	9,219	1,383	50	246	20%
Amesbury	Adjacent Community	7,889	789	50	-	0%
Andover	Commuter Rail	13,541	2,031	50	587	50%
Arlington	Adjacent Community	20,461	2,046	32	58	0%
Ashburnham	Adjacent Small Town	2,730	137	-	-	0%
Ashby	Adjacent Small Town	1,243	62	-	-	0%
Ashland	Commuter Rail	7,495	1,124	50	272	40%
Attleboro	Commuter Rail	19,097	2,865	50	467	50%
Auburn	Adjacent Community	6,999	750	50	-	0%
Ayer	Commuter Rail	3,807	750	50	284	40%
Bedford	Adjacent Community	5,444	750	50	-	0%
Bellingham	Adjacent Community	6,749	750	50	-	0%
Belmont	Commuter Rail	10,882	1,632	27	502	50%
Berkley	Adjacent Small Town	2,360	118	-	79	0%
Beverly	Commuter Rail	17,887	2,683	50	1,435	90%
Billerica	Commuter Rail	15,485	2,323	50	308	40%
Bourne	Adjacent Small Town	11,140	557	-	-	0%
Boxborough	Adjacent Small Town	2,362	118	-	-	0%
Boxford	Adjacent Small Town	2,818	141	-	-	0%
Braintree	Rapid Transit	15,077	3,769	50	485	50%
Bridgewater	Commuter Rail	9,342	1,401	50	181	20%
Brockton	Commuter Rail	37,304	5,596	50	995	90%
Brookline	Rapid Transit	27,961	6,990	41	1,349	90%

<b>Community</b>	<b>Community category</b>	<b>2020 Housing Units</b>	<b>Minimum multi-family unit capacity*</b>	<b>Minimum land area**</b>	<b>Developable station area***</b>	<b>% of district to be located in station area</b>
Burlington	Adjacent Community	10,431	1,043	50	-	0%
Cambridge	Rapid Transit	53,907	13,477	32	1,392	90%
Canton	Commuter Rail	9,930	1,490	50	451	50%
Carlisle	Adjacent Small Town	1,897	95	-	-	0%
Carver	Adjacent Small Town	4,701	235	-	-	0%
Chelmsford	Adjacent Community	14,769	1,477	50	-	0%
Chelsea	Rapid Transit	14,554	3,639	14	608	75%
Cohasset	Commuter Rail	3,341	638	43	241	20%
Concord	Commuter Rail	7,295	1,094	50	519	50%
Danvers	Adjacent Community	11,763	1,176	50	-	0%
Dedham	Commuter Rail	10,459	1,569	49	507	50%
Dover	Adjacent Small Town	2,046	102	-	-	0%
Dracut	Adjacent Community	12,325	1,233	50	-	0%
Duxbury	Adjacent Community	6,274	750	50	-	0%
East Bridgewater	Adjacent Community	5,211	750	50	-	0%
Easton	Adjacent Community	9,132	913	50	-	0%
Essex	Adjacent Small Town	1,662	83	-	-	0%
Everett	Rapid Transit	18,208	4,552	22	200	20%
Fitchburg	Commuter Rail	17,452	2,618	50	601	75%
Foxborough	Adjacent Community	7,682	768	50	-	0%
Framingham	Commuter Rail	29,033	4,355	50	270	40%
Franklin	Commuter Rail	12,551	1,883	50	643	75%
Freetown	Commuter Rail	3,485	750	50	346	40%
Georgetown	Adjacent Community	3,159	750	50	-	0%
Gloucester	Commuter Rail	15,133	2,270	50	430	50%
Grafton	Adjacent Community	7,760	776	50	82	0%
Groton	Adjacent Small Town	4,153	208	-	-	0%

<b>Community</b>	<b>Community category</b>	<b>2020 Housing Units</b>	<b>Minimum multi-family unit capacity*</b>	<b>Minimum land area**</b>	<b>Developable station area***</b>	<b>% of district to be located in station area</b>
Groveland	Adjacent Small Town	2,596	130	-	-	0%
Halifax	Commuter Rail	3,107	750	50	300	40%
Hamilton	Commuter Rail	2,925	731	49	184	20%
Hanover	Adjacent Community	5,268	750	50	-	0%
Hanson	Commuter Rail	3,960	750	50	218	20%
Harvard	Adjacent Small Town	2,251	113	-	-	0%
Haverhill	Commuter Rail	27,927	4,189	50	415	50%
Hingham	Commuter Rail	9,930	1,490	50	757	75%
Holbrook	Commuter Rail	4,414	662	41	170	20%
Holden	Adjacent Community	7,439	750	50	-	0%
Holliston	Adjacent Community	5,562	750	50	-	0%
Hopkinton	Adjacent Community	6,645	750	50	79	0%
Hull	Adjacent Community	5,856	586	7	34	0%
Ipswich	Commuter Rail	6,476	971	50	327	40%
Kingston	Commuter Rail	5,364	805	50	345	40%
Lakeville	Adjacent Small Town	4,624	231	-	30	0%
Lancaster	Adjacent Small Town	2,788	139	-	-	0%
Lawrence	Commuter Rail	30,008	4,501	39	271	40%
Leicester	Adjacent Small Town	4,371	219	-	-	0%
Leominster	Commuter Rail	18,732	2,810	50	340	40%
Lexington	Adjacent Community	12,310	1,231	50	-	0%
Lincoln	Commuter Rail	2,771	635	42	130	20%
Littleton	Commuter Rail	3,889	750	50	244	20%
Lowell	Commuter Rail	43,482	6,522	50	274	40%
Lunenburg	Adjacent Small Town	4,805	240	-	-	0%
Lynn	Commuter Rail	36,782	5,517	50	637	75%
Lynnfield	Adjacent Community	4,773	607	40	-	0%

<b>Community</b>	<b>Community category</b>	<b>2020 Housing Units</b>	<b>Minimum multi-family unit capacity*</b>	<b>Minimum land area**</b>	<b>Developable station area***</b>	<b>% of district to be located in station area</b>
Malden	Rapid Transit	27,721	6,930	31	484	50%
Manchester	Commuter Rail	2,433	559	37	305	40%
Mansfield	Commuter Rail	9,282	1,392	50	327	40%
Marblehead	Adjacent Community	8,965	897	27	-	0%
Marlborough	Adjacent Community	17,547	1,755	50	-	0%
Marshfield	Adjacent Community	11,575	1,158	50	-	0%
Maynard	Adjacent Community	4,741	474	21	-	0%
Medfield	Adjacent Community	4,450	750	50	-	0%
Medford	Rapid Transit	25,770	6,443	35	714	75%
Medway	Adjacent Community	4,826	750	50	-	0%
Melrose	Commuter Rail	12,614	1,892	25	774	75%
Merrimac	Adjacent Small Town	2,761	138	-	-	0%
Methuen	Adjacent Community	20,194	2,019	50	-	0%
Middleborough	Commuter Rail	9,808	1,471	50	260	40%
Middleton	Adjacent Community	3,359	750	50	-	0%
Millbury	Adjacent Community	5,987	750	50	-	0%
Millis	Adjacent Community	3,412	750	50	-	0%
Milton	Rapid Transit	9,844	2,461	50	404	50%
Nahant	Adjacent Small Town	1,680	84	-	-	0%
Natick	Commuter Rail	15,680	2,352	50	680	75%
Needham	Commuter Rail	11,891	1,784	50	1,223	90%
Newbury	Adjacent Small Town	3,072	154	-	69	0%
Newburyport	Commuter Rail	8,615	1,292	35	213	20%
Newton	Rapid Transit	33,320	8,330	50	2,833	90%
Norfolk	Commuter Rail	3,601	750	50	333	40%
North Andover	Adjacent Community	11,914	1,191	50	5	0%
North Attleborough	Adjacent Community	12,551	1,255	50	-	0%

<b>Community</b>	<b>Community category</b>	<b>2020 Housing Units</b>	<b>Minimum multi-family unit capacity*</b>	<b>Minimum land area**</b>	<b>Developable station area***</b>	<b>% of district to be located in station area</b>
North Reading	Adjacent Community	5,875	750	50	-	0%
Northborough	Adjacent Community	5,897	750	50	-	0%
Northbridge	Adjacent Community	6,691	750	50	-	0%
Norton	Adjacent Community	6,971	750	50	-	0%
Norwell	Adjacent Community	3,805	750	50	-	0%
Norwood	Commuter Rail	13,634	2,045	50	861	90%
Paxton	Adjacent Small Town	1,689	84	-	-	0%
Peabody	Adjacent Community	23,191	2,319	50	-	0%
Pembroke	Adjacent Community	7,007	750	50	-	0%
Plymouth	Adjacent Community	28,074	2,807	50	-	0%
Plympton	Adjacent Small Town	1,068	53	-	-	0%
Princeton	Adjacent Small Town	1,383	69	-	-	0%
Quincy	Rapid Transit	47,009	11,752	50	1,222	90%
Randolph	Commuter Rail	12,901	1,935	48	182	20%
Raynham	Adjacent Community	5,749	750	50	-	0%
Reading	Commuter Rail	9,952	1,493	43	343	40%
Rehoboth	Adjacent Small Town	4,611	231	-	-	0%
Revere	Rapid Transit	24,539	6,135	27	457	50%
Rochester	Adjacent Small Town	2,105	105	-	-	0%
Rockland	Adjacent Community	7,263	726	47	-	0%
Rockport	Commuter Rail	4,380	657	32	252	40%
Rowley	Commuter Rail	2,405	601	40	149	20%
Salem	Commuter Rail	20,349	3,052	41	266	40%
Salisbury	Adjacent Community	5,305	750	50	-	0%
Saugus	Adjacent Community	11,303	1,130	50	11	0%
Scituate	Commuter Rail	8,260	1,239	50	373	40%
Seekonk	Adjacent Community	6,057	750	50	-	0%

<b>Community</b>	<b>Community category</b>	<b>2020 Housing Units</b>	<b>Minimum multi-family unit capacity*</b>	<b>Minimum land area**</b>	<b>Developable station area***</b>	<b>% of district to be located in station area</b>
Sharon	Commuter Rail	6,581	987	50	261	40%
Sherborn	Adjacent Small Town	1,562	78	-	-	0%
Shirley	Commuter Rail	2,599	650	43	338	40%
Shrewsbury	Adjacent Community	14,966	1,497	50	52	0%
Somerville	Rapid Transit	36,269	9,067	24	1,314	90%
Southborough	Commuter Rail	3,763	750	50	167	20%
Sterling	Adjacent Small Town	3,117	156	-	-	0%
Stoneham	Adjacent Community	10,159	1,016	27	12	0%
Stoughton	Commuter Rail	11,739	1,761	50	317	40%
Stow	Adjacent Small Town	2,770	139	-	-	0%
Sudbury	Adjacent Community	6,556	750	50	-	0%
Sutton	Adjacent Small Town	3,612	181	-	-	0%
Swampscott	Commuter Rail	6,362	954	20	236	20%
Taunton	Commuter Rail	24,965	3,745	50	269	40%
Tewksbury	Adjacent Community	12,139	1,214	50	-	0%
Topsfield	Adjacent Small Town	2,358	118	-	-	0%
Townsend	Adjacent Small Town	3,566	178	-	-	0%
Tyngsborough	Adjacent Community	4,669	750	50	-	0%
Upton	Adjacent Small Town	2,995	150	-	-	0%
Wakefield	Commuter Rail	11,305	1,696	36	630	75%
Walpole	Commuter Rail	10,042	1,506	50	638	75%
Waltham	Commuter Rail	26,545	3,982	50	470	50%
Wareham	Adjacent Community	12,967	1,297	50	-	0%
Watertown	Adjacent Community	17,010	1,701	24	27	0%
Wayland	Adjacent Community	5,296	750	50	-	0%
Wellesley	Commuter Rail	9,282	1,392	50	921	90%
Wenham	Commuter Rail	1,460	365	24	111	20%



Community	Community category	2020 Housing Units	Minimum multi-family unit capacity*	Minimum land area**	Developable station area***	% of district to be located in station area
West Boylston	Adjacent Community	3,052	587	39	-	0%
West Bridgewater	Adjacent Small Town	2,898	145	-	-	0%
West Newbury	Adjacent Small Town	1,740	87	-	-	0%
Westborough	Commuter Rail	8,334	1,250	50	194	20%
Westford	Adjacent Community	9,237	924	50	-	0%
Westminster	Adjacent Small Town	3,301	165	-	30	0%
Weston	Commuter Rail	4,043	750	50	702	75%
Westwood	Commuter Rail	5,801	870	50	470	50%
Weymouth	Commuter Rail	25,419	3,813	50	713	75%
Whitman	Commuter Rail	5,984	898	37	242	20%
Wilmington	Commuter Rail	8,320	1,248	50	538	50%
Winchester	Commuter Rail	8,135	1,220	37	446	50%
Winthrop	Adjacent Community	8,821	882	12	14	0%
Woburn	Commuter Rail	17,540	2,631	50	702	75%
Worcester	Commuter Rail	84,281	12,642	50	290	40%
Wrentham	Adjacent Community	4,620	750	50	-	0%

\* Minimum multi-family unit capacity for most communities will be based on the 2020 housing stock and the applicable percentage for that municipality's community type. In some cases, the minimum unit capacity is derived from an extrapolation of the required minimum land area multiplied by the statutory minimum gross density of 15 dwelling units per acre. In cases where the required unit capacity from these two methods would exceed 25% of the community's housing stock, the required unit capacity has instead been capped at that 25% level.

\*\* Minimum land area is 50 acres for all communities in the rapid transit, commuter rail and adjacent community types. There is no minimum land area requirement for adjacent small towns. Where 50 acres exceeds 1.5% of the developable land area in a town, a cap has been instituted that sets minimum land area to 1.5% of developable land area in the town.

\*\*\* Developable station area is derived by taking the area of a half-mile circle around an MBTA commuter rail station, rapid transit station, or ferry terminal and removing any areas comprised of excluded land.



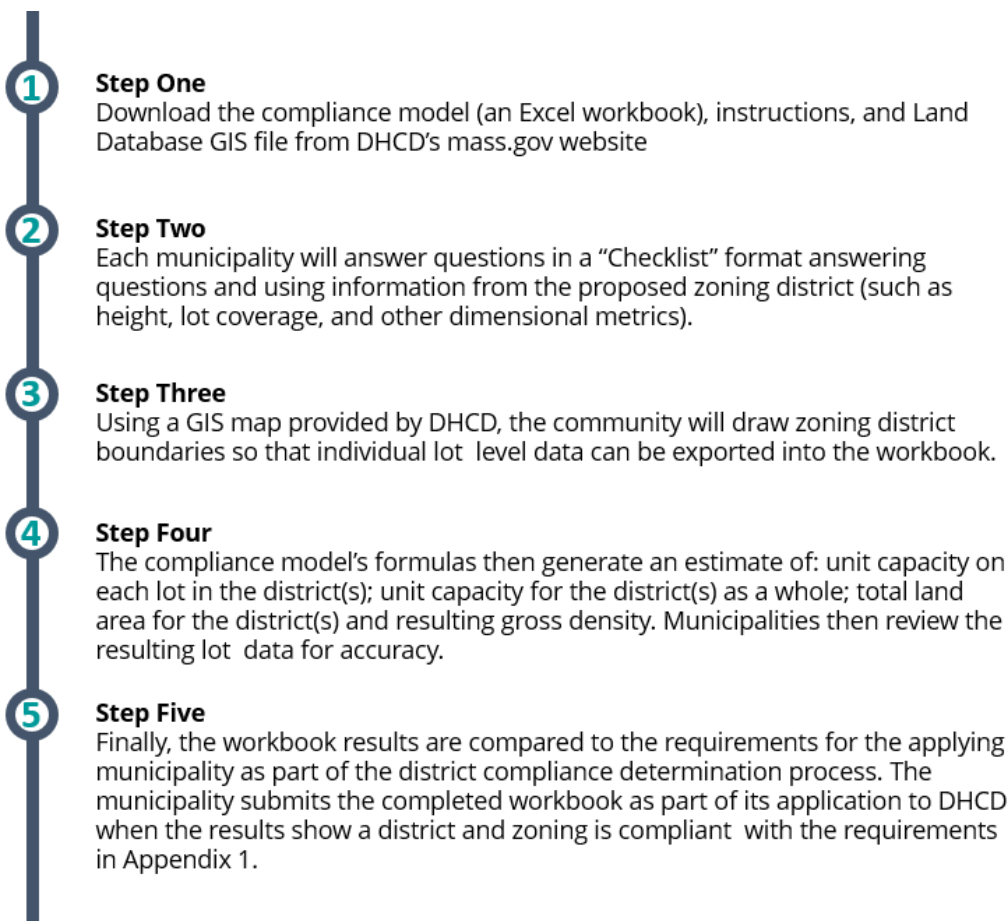
## Appendix 2

### Compliance Model Overview

The purpose of the compliance model is to ensure a consistent approach to measuring and evaluating multi-family zoning districts for compliance with Section 3A. The compliance model is intended to create a reasonable estimate of multi-family unit capacity of each multi-family zoning district. It is not intended to provide a precise determination of how many units may be developed on any individual lot or combination of lots.

The model uses geospatial tax parcel data from local assessors, compiled and hosted by MassGIS, to define lot boundaries and dimensions in each multi-family zoning district. The model also captures key dimensional and regulatory elements of the multi-family zoning district that impact multi-family unit capacity. The product of the compliance model is a Microsoft Excel workbook that must be submitted as part of a compliance application to DHCD. Consultant support is available at no cost to assist MBTA communities in meeting all the technical requirements of compliance.

The Compliance Modeling Process at a Glance:



## **Components of the Compliance Model**

### Land database

The compliance model includes geospatial parcel data for each MBTA community that identifies how much land area on each lot within a multi-family zoning district is developable land. Applicants will prepare this parcel data for the model's calculations by creating a shapefile for each district, measuring each district's land area, and exporting all lot records within the district's boundaries into an Excel or .csv file. These exported tables can then be pasted into the zoning review checklist and unit capacity estimator, described below.

### Zoning review checklist and unit capacity estimator

To capture the data needed to estimate a district's multi-family unit capacity, municipalities will be required to complete a zoning review checklist. The checklist is of a series of questions and responses about allowed residential uses, parking requirements, dimensional restrictions (such as maximum building height and minimum open space), and other regulatory elements applicable in the district.

The unit capacity estimator uses the GIS exported lot information from the land database and the information entered into the zoning review checklist to calculate an estimate of the maximum number of multi-family residential units that could be constructed on each lot in each district as of right. It then aggregates the unit capacity estimates for each lot into an estimate of total unit capacity for each district. It also derives an estimate of the gross density for each district.

## **Case-Specific Refinements to the Compliance Model Inputs and Outputs**

To ensure the integrity and reasonableness of each unit capacity estimate, DHCD may adjust the compliance model inputs and outputs as necessary to account for physical conditions or zoning restrictions not adequately captured by the compliance model. For example, DHCD may override the GIS data and change one or more lots from excluded land to developable land where a municipality demonstrates those lots meet the definition of developable land. DHCD may also adjust the unit capacity estimator's algorithm when it does not adequately account for an atypical zoning requirement or other local development restriction that will clearly impact unit capacity.



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Barney S. Heath  
Director

**MEMORANDUM**

Date: August 24, 2022  
TO: Zoning Board of Appeals Members  
FROM: Jonah Temple, Deputy City Solicitor  
Jennifer Caira, Deputy Director, Planning & Development Department  
CC: City Council Members  
Mayor Ruthanne Fuller  
SUBJECT: Update on Chapter 40B Safe Harbors

The purpose of this memorandum is to update the Zoning Board of Appeals (“ZBA”) on the most recent calculation of the Chapter 40B statutory safe harbors. Safe harbor status is available to municipalities that have met either the *General Land Area Minimum*, achieved when housing units eligible for inclusion on the state’s Subsidized Housing Inventory (“SHI”) exist on sites comprising 1.5% or more of a municipality’s total land area; or the *Housing Unit Minimum*, achieved when a municipality’s SHI Eligible Housing units exceed 10% of its total housing units.

As an initial note of clarification, SHI Eligible Housing units are often referred to as “affordable units” (including in past versions of this memorandum); however, not all units on the City’s SHI are deed-restricted units affordable to households up to 80% of the Area Median Income (“AMI”). The Massachusetts Department of Housing & Community Development (“DHCD”) Chapter 40B Guidelines provide that if 25% of units in a rental development are affordable up to 80% AMI, or if 20% of units are affordable up to 50% AMI, then all units in the development—including the market rate units—are included on the SHI (e.g. Austin Street, where 33% of the units are affordable at 80% AMI, meaning all 68 units are on the SHI). As a result, the City’s SHI Eligible Housing includes both affordable units and market rate units. Therefore, while the City need only attain 10% SHI Eligible Housing units to reach the Housing Unit Minimum safe harbor, that does not represent the actual percentage of the City’s affordable units. Currently, approximately 5% of the City’s housing stock can be characterized as deed-restricted units affordable to households earning up to 80% AMI.

City staff previously calculated Newton’s progress towards these safe harbors at the end of 2020. Those calculations were reported to the ZBA in a memorandum dated January 7, 2021. At that time, Newton’s Land Area Minimum calculation equaled 1.32% and its Housing Unit Minimum calculation equaled 9.59%.

City staff did not provide a year end calculation for 2021 as we were awaiting the 2020 census data that would provide an updated total number of housing units in Newton. This current calculation is being provided now in anticipation of two 40B projects that are expected to be filed with the ZBA in the first week of September. The updated calculations show that Newton still has not met either safe harbor: the Land Area Minimum calculation (with a 1.5% threshold) is **1.35%** and the Housing Unit Minimum calculation (with a 10% threshold) is **9.80%**.

### Overview of the Chapter 40B Safe Harbors

#### A. Background

- Chapter 40B, also known as the Comprehensive Permit Law, is a state law enacted in 1969 to facilitate construction of affordable housing by removing obstacles and streamlining the permitting process for certain development projects. Under Chapter 40B, affordable housing is defined as a housing unit that is affordable to households with annual gross median incomes up to 80% of the AMI. The law provides that, in municipalities with an insufficient supply of affordable housing, a developer of a project that has a minimum percentage of affordable units may apply for a single Comprehensive Permit from the ZBA, rather than seeking separate approval from each local board with jurisdiction over the project. Chapter 40B also gives the ZBA authority to waive zoning and other local permitting requirements for such projects.
- Chapter 40B also allows municipalities to invoke various safe harbors if they are providing their fair share of affordable housing, which act as an exemption from the Chapter 40B framework. If and when the City creates enough affordable housing to meet a safe harbor, the provisions of the Chapter 40B law may be lifted, meaning a decision made by the ZBA concerning a comprehensive permit application—whether it is to deny the permit, approve the permit, or approve it with conditions—will be upheld on appeal as a matter of law.
- Achievement of a safe harbor, however, does not deprive the ZBA of the ability to grant additional comprehensive permits to developers seeking to construct housing. Even if the City has met a safe harbor, comprehensive permit applications may still be submitted to the ZBA and the ZBA must determine whether to invoke the safe harbor within 15 days after opening a public hearing. For example, there may be future 40B projects that the ZBA determines do not necessitate the invocation of a safe harbor even if the City has reached one. Additionally, if the ZBA does invoke a safe harbor, a full public hearing will still proceed and the ZBA may ultimately issue a comprehensive permit.

#### B. SHI Eligibility

- The safe harbor calculations are not static and regularly change. Housing properties are routinely added and removed from the City's list of SHI Eligible Housing units in accordance with DHCD regulations and guidelines. DHCD's regulations and guidelines dictate when units first become eligible for inclusion on the SHI and thus can be counted in the City's safe harbor calculations.

- For 40B projects approved by the ZBA, SHI eligibility begins on the date that the comprehensive permit is issued and filed with the City Clerk. Thereafter, 40B projects that have received approval lose SHI eligibility if a building permit is not issued within one year of receiving local permitting approval—though the project will regain eligibility after a building permit is issued. As an example, the Haywood House expansion received a comprehensive permit on July 26, 2018. At that time the project was SHI eligible and counted in the City’s safe harbor calculations. The project then lost eligibility and was removed from the calculations in July 2019 as a year had passed and the building permit was not yet issued. As a building permit was issued for the project in December 2020, it is once again SHI eligible and the units are again part of the safe harbor calculations.
- For special permit projects approved by the City Council, SHI eligibility does not begin until the project receives approval from DHCD. Under DHCD regulations, affordable units created through the special permit process are called “Local Action Units” (“LAU”) and require approval by DHCD, which is known as “LAU Approval.” The purpose of this approval process is for DHCD to confirm that the Local Action Units are affordable, subject to a long-term affordability deed restriction, subject to a fair housing marketing plan, and subject to ongoing monitoring. In contrast, affordable units created by a Chapter 40B comprehensive permit and approved by the ZBA do not require DHCD LAU Approval because those projects already have approval from a state subsidizing agency before applying for a comprehensive permit. As a result, comprehensive permit projects are immediately SHI eligible while special permit projects must wait until final LAU Approval before any units are SHI eligible. This means that projects such as Riverside that have been issued a special permit but have not yet been approved by DHCD as Local Action Units, cannot be counted yet in the City’s safe harbor calculations. The standard practice for the City is to apply for LAU Approval (jointly with the project developer) sometime after commencement of construction but prior to completion and marketing of any units.
- Given the fluctuation of the number of the City’s SHI Eligible Housing units, it is important to understand that the City’s attainment of safe harbor status is based on the City’s calculation on the date that a comprehensive permit application is filed with the ZBA. The safe harbor calculations are made anew each time a comprehensive permit application is filed and are based on the current state of SHI Eligible Housing units at the time of the filing. The City will again determine its safe harbor status when a future comprehensive permit application is filed. The City also updates its calculations on other occasions to provide the ZBA and the public with an update or when important information becomes available (e.g., upon receipt of new census data on the number of housing units in Newton).

### C. The General Land Area Minimum (1.5%) Safe Harbor

- The 1.5% calculation requires dividing the land area of affordable housing sites that are inventoried or eligible to be inventoried on the City’s SHI (the *numerator*) by the total developable land area in the City that is zoned for residential, commercial or industrial use (the *denominator*). In conducting this calculation, the City is required to follow the prescribed methodology and technical instructions that were enacted by DHCD in 2018.
- In calculating the land area of affordable housing sites (*numerator*), only the proportion of each site that is occupied by SHI Eligible Housing units (including impervious and landscaped

areas directly associated with such units) can be counted. For example, if 15% of all units in a development are affordable up to 80% AMI, such as Washington Place, the City can count 15% of the total acreage of the site (that is directly associated with the housing units) towards the numerator. For rental developments, if at least 25% of units are affordable up to 80% AMI or if at least 20% of units are affordable up to 50% AMI, then the entire acreage of the site directly associated with the housing will count towards the City's 1.5% numerator.

#### D. The Housing Unit Minimum (10%) Safe Harbor

- A second safe harbor available to the City can be achieved when Newton's SHI Eligible Housing units exceed 10% of its total housing units. The 10% calculation requires dividing the total number of housing units that are inventoried or eligible to be inventoried on the City's SHI (the *numerator*) by the total number of year-round housing units in the City (the *denominator*). The total number of housing units used for this calculation is the number reported in the most recent federal (decennial) census.
- At this time, both DHCD and the City are still operating under the 2010 Census for the number of housing units in making this calculation. That number is 32,346 units in Newton. While we do have an updated number of total housing units from the 2020 Census—which is 33,320 units—we are still waiting for the updated number of “year round” housing units, which is the actual figure that must be used for this safe harbor calculation. DHCD has indicated that the updated year round number will not be available until sometime in 2023. Ultimately, Newton's year round number of housing units from the 2020 Census will be somewhere in between the two housing unit numbers we currently have. This memo presents a current calculation based on both numbers, though the legally operable number of housing units remains the 2010 total. City staff will update Newton's 10% calculation after DHCD provides the year round total housing unit figure next year.

#### **Current Safe Harbor Calculations as of Year End December 2020**

##### A. 1.5% Calculation

- The City's current land area percentage of SHI Eligible Housing equals 1.35%.<sup>1</sup>

$$\text{New Calculation} = \frac{104.50 \text{ acres}}{7,713.99 \text{ acres}} = 1.35\%$$

- The City currently has 104.50 acres of SHI Eligible Housing units. A summary of which projects have been added and removed from this calculation in the last year is set forth in the next section. There has been no change to the City's total land area of developable land

<sup>1</sup> The final required step in calculating the area of each affordable housing site requires calculating the maximum number of residential units that would be permitted at that site under the Newton Zoning Ordinance. The land area devoted to affordable housing must then be further reduced if the total number of units on site is less than the maximum permitted. As this number varies based on the zoning district and building type (and will change if new zoning is adopted as part of Zoning Redesign), and would only further reduce the affordable housing acreage, this final step in the 1.5% calculation has not been undertaken. As the City nears the 1.5% safe harbor, staff will further refine the numerator by completing this calculation.



since the last calculation. This is normally a static number, though it had previously been reduced by the taking and subsequent rezoning of Webster Woods in 2019.

- Based on this calculation, the City needs approximately 11 additional acres of SHI housing in order to reach the 1.5% safe harbor.

#### B. 10% Calculation

- The City's current percentage of SHI Eligible Housing units equals 9.80%.

$$\text{New Calculation} = \frac{3,170 \text{ SHI Eligible Housing units}}{32,346 \text{ total housing units}} = 9.80\%$$

- The City currently has 2,878 housing units officially inventoried on the most recent SHI published by DHCD. In accordance with DHCD regulations, the City is also allowed to count units that are SHI "eligible" but that have not yet been officially inventoried on the SHI. Currently the City has approximately 292 additional eligible units not listed on the published SHI. As a result, the City currently has 3,170 SHI Eligible Housing units.
- There has been no change to the City's total number of housing units. As enumerated on the 2010 Census, Newton has 32,346 total housing units. Based on the total housing unit figure we do have from the 2020 Census of 33,320, the City's 10% calculation would decrease to 9.49%. The ultimate updated number of total year round housing units will be less than that interim 2020 figure, but more than the 2010 figure.
- Based on this calculation, the City needs approximately 65 additional SHI units to reach the 10% safe harbor.

#### C. Summary of Current SHI Eligibility

- The following project has been approved since the last safe harbor calculations and is currently counted as SHI Eligible Housing:
  - > Dunstan East amendment and expansion (comprehensive permit)
- The following previously approved special permit projects do not currently count as SHI Eligible Housing, because they have not received Local Action Approval from DHCD:
  - > Northland
  - > Riverside
  - > 15-21 Lexington Street
  - > 20 Kinmonth Road
  - > 283 Melrose Street
  - > 956 Walnut Street
  - > 39 Herrick Road
  - > Cabot Park Village expansion
  - > 1114 Beacon Street
  - > 149-1151 Walnut Street
  - > 967 Washington Street
  - > 383 Boylston Street

### Looking Forward

- Newton has made significant progress towards achieving the Housing Unit Minimum safe harbor based on the current calculation of 9.80%. In light of the expected development landscape, it is possible that Newton will reach the 10% threshold for this safe harbor sometime in the next six months.
- There are two upcoming 40B applications that, if approved, would likely tip Newton over the 10% threshold. The first is the Northland Charlemont project that proposes 410 residential units on Charlemont Street and Christina Street. The second is the Armory development that proposes 43 residential units at 1135 Washington Street. Both projects have received Project Eligibility approval from their subsidizing agency and will be filing 40B applications with the ZBA in early September. The ZBA's review of these projects will likely take many months and it is not known whether these projects will ultimately be approved and/or modified during the review process. This analysis is simply being provided to offer a rough estimation of what the City's calculations may look like in the future.
- In the same vein, there is likely to be additional movement of the safe harbor calculations in both directions moving forward. As examples, the Dunstan East project may lose SHI eligibility if a building permit is not issued in September and the Northland special permit project will likely achieve SHI eligibility for some or all of its units in the next year as LAU Approval and building permits are issued. SHI eligibility for other previously approved project will also ebb and flow and new projects will also be approved.
- As an outlook summary, the most likely scenario is Newton will achieve the 10% safe harbor at some point in the next year. But as various projects gain or lose SHI eligibility, the City's calculation will fluctuate and at times may dip or crest depending on the date of the calculation. As a result, it is difficult to accurately pinpoint at which point the City will be above the 10% threshold or for how long it would remain above it. The official change to the number of total year round housing units in Newton, which will be reported in 2023, will also impact the calculation. What this means for future development in Newton, and in particular for projects planning to seek a comprehensive permit, is that the ZBA's ability to invoke a safe harbor for any given project remains dependent on the City's exact calculation on the date that a comprehensive permit application is filed with the ZBA. City staff will remain transparent as to this calculation and will continue to provide additional updates.

## Memorandum

To: Deputy City Solicitor Jonah Temple and Planning & Development Deputy Director Jennifer Caira  
From: Councilors Marc Laredo, Pam Wright, Julia Malakie, Christopher Markiewicz, John Oliver, Tarik Lucas, Emily Norton, President Emeritus R. Lisle Baker, David Kalis, Leonard Gentile, and President Susan Albright  
Cc: Mayor Ruthanne Fuller; Chief Operating Officer Jonathan Yeo, Planning Director Barney Heath; Chief Assessor James Shaughnessy; City Solicitor Alissa Giuliani; City Council; Council Clerk Carol Moore  
Re: Questions and comments regarding Chapter 40B Safe Harbor Memorandum  
Date: September 7, 2022

We are writing in regard to your recent memorandum regarding the Chapter 40B safe harbor provisions.

First, thank you for your comprehensive review and analysis of the Chapter 40B requirements and where Newton stands in regarding to achieving safe harbor status.

Our understanding is that Newton is close to meeting the safe harbor requirement of ten percent SHI housing and so our questions and comments will mainly focus on that aspect of the statute rather than the land area safe harbor. Given that the percentage may fluctuate over the next several years, it is critically important that we fully understand and properly measure our compliance level as we make policy decisions. Here are our initial questions and comments:

- 1. Chart of our percentage of SHI housing in Newton over the last ten years.** Tracking our progress towards meeting our SHI goal is very important. Therefore, we would like to see a chart that shows what percentage of housing was considered SHI each year since 2012 (and if the information was not calculated in a particular year, please explain why). Since the methodology for making these calculations has changed over time, please note the changes as well. Please provide a similar chart for the land area analysis.
- 2. “Missing” SHI units.** Are there individual units and/or entire buildings in the city that meet the definition of affordable but are not included in the SHI inventory? If so, why are they not included and is there anything that can be done to make them eligible for inclusion?
- 3. What can be done to speed up the LAU approval process for projects approved by the City Council?** What is the earliest date when we can apply for LAU approval for these projects? If we are not applying on the earliest possible date, why not? How many LAU units are “pending” today?

4. **Please clarify why the number of units in the city listed on the Assessors database may differ from the number of units listed in your memorandum.**
5. **What will be the effect of achieving the 10% and/or 1.5 % safe harbor levels on our eligibility to require that all new construction and major renovations be electric?**
6. **If we achieve the 10% and/or 1.5% 40B safe harbor levels, but then drop below one or both of those levels in subsequent years, will we still be able to require electrification in new construction and major renovation projects?**
7. **What effect, if any, will reaching the 10% and/or 1.5 % safe harbor levels have on our obligations to comply with the new MBTA communities zoning requirement?**
8. **Why is this information only updated when a new 40B application is filed?**  
This is information that Newton should maintain “in real time” and post prominently on our website.

Thank you in advance for assisting us in understanding how we can reach the SHI safe harbor.