



# Town of Brookline Massachusetts

## SELECT BOARD

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March 29, 2023

Deputy Director Chris Kluchman  
Department of Housing & Community Development (DHCD)  
100 Cambridge St  
Suite 300  
Boston, MA 02114

RE: MBTA-CA Clarifications & Requests

Deputy Director Kluchman,

The Town of Brookline's Select Board respectfully requests clarifications and adjustments to the MBTA-CA Guidelines and related compliance model to enable communities, like Brookline, with high density around rapid transit, to comply more effectively with Chapter 40A, §3A, the MBTA Communities Act ("Section 3A"). (As background to this request, we have attached to this letter a resolution of the Select Board dated February 7, 2023, to the Town's Planning Department staff.) We understand that our staff has had productive conversations with you and your staff about most of these items. The Select Board encourages the continuation of these conversations and by this letter offers additional context for your consideration. We look forward to working together with other communities and your administration in making the Guidelines an effective policy that will result in easier permitting for multifamily developments in eastern Massachusetts, especially the production of more housing that is affordable for families.

### Clarifications

1. Ground Floor Retail Requirements. DHCD's reasoning behind its prohibition of retail mandates, as we understand it, is based on an interpretation of the relationship between the definitions of "multi-family housing" and "mixed use development" in Section 1 of Chapter 40A (definitions) and the use of the term "multi-family housing" in Section 3A. Because the purpose of Section 3A is to allow by-right permitting for "multi-family housing," DHCD has determined that a zoning district that requires retail on the ground floor of multi-family housing (and therefore a "multi-family"/ "mixed-use

development”), is not allowed by Section 3A. We do not believe that Section 3A is properly interpreted in that way. Precluding such "multi-family housing/ mixed-use developments" in areas that are within ½ mile of an MBTA transit line in densely built up municipalities, such as Brookline, would have the perverse effect of undermining the economic viability of key commercial corridors of such municipalities.

2. Existing Building Bonuses & Demolition Special Permits. DHCD has verbally stated in workshops that adding unit bonuses for existing buildings could not be included in compliant zoning districts since the “reasonable size” of a MBTA-CA district is not based on actual building production, but rather acreage and a theoretical minimum unit yield – even in Local Historic Districts. The policy developed follows the rule that a compliant district would need to treat every property the same, “as if any individual parcel is not developed.” Our Zoning By-Law requires special permits for demolition of buildings under some conditions. We believe a special permit for some demolitions could remain in place under DHCD’s Guidelines and compliance model, since the standard for zoning compliance assumes the parcel is not developed. Would you please confirm whether you agree with this interpretation.
3. Historic Districts. Would you please confirm that it would be possible for a zoning bylaw to remain in compliance with Section 3A even if a Local Historic District is then created as a general bylaw under Section 40C, with Local Historic District guidelines that only permit a building form that looks like a single, two-, or three-family building typology.
4. Unit Sizes. One of our concerns about creating multi-family zoning by-right is that developers may on smaller lots choose to only build three very large (more than 2,000 square feet) units. Through the Guidelines and individual conversations with DHCD staff, we understand that we would not be permitted to include minimum or maximum unit sizes or even average unit sizes. We believe that there is a reasonable threshold between permitting family housing and allowing developers to take advantage of the as-of-right permitting to build extremely large luxury units on smaller lots. The Guidelines define multifamily as three or more units on a parcel. Would you please clarify whether we could have the by-right zoning only apply to proposed buildings that have a minimum unit number of at least 4 or 5 units?

#### Requests

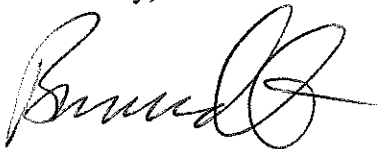
- a. We are formally requesting that DHCD consider phasing compliance over the next couple years regarding the minimum multi-family unit capacity. For example, the Guidelines could add another interim compliance step such that by December 2024 rapid transit communities must have zoning district(s) in place that have a theoretical yield of two-thirds of the multi-family unit capacity, and then by December 2026 have zoning district(s) in place that accommodate the complete minimum unit capacity. Our staff is diligently working with the community to present potential solutions in this short time frame. DHCD still has not fully defined compliance standards (e.g., inclusionary zoning). This delay combined with more than 260 elected officials governing our zoning bylaw, and a filing deadline of early September for Fall Town Meeting, we are extremely concerned that we may not be able to be in full compliance by the end of December.

Rather than risk non-compliance from the first round of rapid transit communities, we are asking DHCD to consider a phased in compliance over a couple years.

- b. We are also requesting that the requirement that a majority of the zoning district(s) must be contiguous be removed, and that the minimum zoning district area be lowered from 5 acres to 2 acres. This would provide municipalities more flexibility to choose which areas are most appropriate to the development of multifamily housing and would most likely result in such development.
- c. Change the guidelines to explicitly state that DHCD clearly has the flexibility to issue a waiver from one or more of the guidelines, especially as communities continue to work with the state in attempting to comply with the guidelines, but may encounter issues shared by multiple communities trying to comply.
- d. Given that we only have until the end of August to submit a zoning warrant article for Town Meeting's consideration, immediately define an extremely simple process for communities to demonstrate that inclusionary requirements or parking requirements are conducive to financially feasible multifamily developments. Communities where developers are actively including these features already in multi-family developments should not need to spend more time or money on these details, especially in the first couple of years of compliance. The fact that these hurdles are still unknown will lead communities in the short term to comply in name only with very little change in current zoning.

The Town of Brookline expects that the MBTA Communities Act and the related Guidelines will evolve over time, just as other housing incentives and standards such as 40B and 40R. We are asking that DHCD work with rapid transit communities for a successful first deadline hurdle. Some small adjustments will lead many communities like Brookline to be able to not only meet the minimum standard of the law, but also use the law as an incentive to update and improve our existing zoning in a meaningful manner and facilitate, among other results, housing production and increased housing affordability.

Sincerely,



Bernard Greene  
Select Board Chair  
Town of Brookline, MA

ATTACHMENT

Brookline Select Board Resolution to Planning Department Staff (2/7/2023)

**RESOLUTION OF THE SELECT BOARD**  
**Regarding the MBTA Communities Act**

WHEREAS, at its January 31, 2023 meeting, the Select Board, by a vote of 3-0 with 2 abstentions, approved an ARPA allocation in the amount of \$277,000 to provide emergency funding for a form-based zoning (FBZ) consultant for the purpose of (a) supporting Harvard Street as an MBTA Communities mixed-use district (the District), (b) providing building/architectural standards and design review safeguards for as-of-right projects, (c) maintaining in the FBZ Code the four-story scale currently allowed under Zoning, and (d) achieving compliance with the MBTA Communities statute (Gen. Laws, Ch. 40A, §3A) by the December 2023 deadline; and

WHEREAS, the Select Board now desires to provide further guidance to the Planning and Community Development Department (the Department) regarding the implementation of FBZ Code for the District and the engagement of community stakeholders in that process; and

WHEREAS, the Select Board's guidance is intended to ensure that said implementation is, and is perceived by community members as complying with the MBTA Communities statute in a manner that is consistent with four-story scale buildings as well as the goals of the Town in protecting and expanding commercial uses and the commercial tax base of the Town; increasing the net amount of non-luxury housing that is suitable for all stages of life; and facilitating racial, ethnic, and income diversity.

NOW, THEREFORE, BE IT RESOLVED:

1. That on or before March 21, 2023, the Department present, at a public meeting of the Select Board, a schedule of proposed dates for (i) community workshops and (ii) Select Board hearings before and after draft versions of a Zoning By-Law are completed; and
2. That at the March 21 meeting, the Department report on how the draft zoning could (a) incentivize the creation and retention of mixed-use developments within the proposed district commensurate with its current character, (b) disincentivize the demolition of existing rental units on Harvard Street, and (c) maintain the Town's inclusionary zoning standards for affordable housing.
3. That at the March 21 meeting, the Department report on the relative constraints and benefits of parking minimums and maximums along Harvard Street.
4. That the Department ensure its Comprehensive Planning process include strategies to plan for infrastructure (including parks and schools, for example) due to external forces such as regional population and housing growth, known development plans, and potential changes in our built environment due to our Zoning By-Law and state mandates such as the MBTA Communities Act.

Voted by Brookline Select Board  
February 7, 2023