



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Edward M. Augustus Jr., Secretary

Sent via email to townplanner@wnewbury.org

April 2, 2024

Susan Brown
Town Planner
381 Main Street
West Newbury, MA 01985

Re: Town of West Newbury: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Ms. Brown:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of West Newbury on January 3, 2024. The application requested that EOHLC conduct a pre-adoption review for the Town of West Newbury's proposed district called the "MBTA Communities Multi-family Housing Overlay District," (District) based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines).

EOHLC appreciates all the work the town has done to prepare for compliance with Section 3A. After careful review and analysis, EOHLC has the following technical feedback to aid the Town in achieving compliance. We hope the descriptions of technical corrections will assist the Town in creating zoning that can be deemed compliant. The MBTA Communities program staff are available to work through these technical details with you and your staff.

West Newbury is designated as an Adjacent small town community with 1,740 existing housing units per the 2020 United States Decennial Census. The Town is required to have a district with a minimum multi-family unit capacity of 87 units and a gross density of 15 dwelling units per acre.

EOHLC identified the following issues which may affect the District's compliance with Section 3A:

1. The GIS shapefiles provided show a district that excludes street and rail right of way areas. The definition of gross density in G.L. Chapter 40A, Section 1A requires including right of way areas in calculations. Therefore, these areas must be included in district shapefiles even if local practice is to not include them in zoning districts.

2. When applying for district compliance, please include a brief statement about how development at the density and scale of 3A requirements is allowed, and include the calculated density denominator in that statement.
3. Section 8.4.3 includes, in the definition for “Building Type, Stacked Flats,” a “medium sized residential building.” EOHLC recommends defining the unit count range of a medium sized building to avoid confusion and align the definition with descriptions of other size residential buildings.
4. Section 8.4.5 requires a plan submission, but does not specify to whom the plan is submitted. EOHLC recommends clarifying this requirement to avoid confusion.
5. EOHLC recommends reviewing Sections 8.4.11 and 11.3, Site Plan Review, to ensure that the standards set forth are objective and nondiscretionary and consult with town counsel to ensure that this section aligns with the existing case law concerning site plan review for as of right uses.
6. If a zoning map amendment is required for this bylaw change, please ensure that it occurs before applying for district compliance.

For the foregoing reasons, EOHLC recommends that the Town address the issues outlined before putting the District to a legislative vote.

Please note that this pre-adoption review is limited to the specific issues identified at this stage of review and is based on materials provided by the Town of West Newbury. It does not constitute a representation that resolution of the identified issues would result in a compliant zoning district. We encourage the town to review its existing zoning carefully to make sure there are no provisions that would affect the proposed overlay zoning district.

MBTA Communities staff at EOHLC will meet with you and your staff should you want to review the details of this letter. If you have questions or need further assistance regarding this determination, please contact MBTA Communities Compliance Coordinator Nathan Carlucci, at nathan.carlucci@mass.gov.

Sincerely,



Caroline “Chris” Kluchman
Director, Livable Communities Division

cc: Senator Bruce E. Tarr
Representative Adrienne Pusateri Ramos
Dillon Sussman, Dodson Flinker