



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

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

Via Email: fuller@newtonma.gov

October 10, 2024

Mayor Ruthanne Fuller
City of Newton
1000 Commonwealth Avenue
Newton MA 02459

Re: Newton – Conditional District Compliance Determination for MBTA Communities under Section 3A of the Zoning Act (Section 3A)

Honorable Mayor Fuller:

Congratulations! The Executive Office of Housing and Livable Communities (EOHLC) has reviewed the district compliance application for the City of Newton, which is comprised of three districts Multi Residence Transit (MRT), Village Center 3 (VC3) and Village Center 2 (VC2) (District). After careful review and analysis, EOHLC has determined that Newton is **CONDITIONALLY compliant** with Section 3A. EOHLC recognizes the diligent work by the City of Newton to meet the requirements of the MBTA Communities Law. There are a few areas of the City's zoning that require refinement in order to meet the "as of right" requirements of the law.

Please note that this determination of conditional compliance by EOHLC does NOT qualify Newton for the MBTA Communities Catalyst Fund which was announced by Governor Healey in [June](#). When the City has a determination of compliance without conditions, it will qualify for this new capital funding program. You can learn more about the program at the web page [MBTA Communities Catalyst Fund](#) which has a link to the Notice of Funding Availability (NOFA). While housing production is not required, EOHLC is eager to hear about multi-family developments in your MBTA Communities District, please share permit activity with us at EOHLC3A@mass.gov.

Newton is designated as a Rapid Transit Community with 33,320 existing housing units per the 2020 United States Decennial Census. The City is required to have a district with a minimum land area of 50 acres, and a minimum multi-family unit capacity of 8,330 units.

EOHLC conducted a thorough review of the application, and makes the following **preliminary** determinations:

1. The District comprises **223 acres**.
2. As of right multi-family unit capacity for the District is estimated at **8,399 units**.

3. The gross density of the District is estimated at **37.7 dwelling units per acre**.
4. At least **fifty percent (50%)** of the District is one contiguous land area.
5. **At least ninety percent (90%)** of the required District land area and estimated unit capacity is within transit station areas.
6. For projects 7 units and over, the District contains an Inclusionary Zoning requirement as follows: 7 to 20 units = 15%, 21-99 units = 17.5%, and 100+ units = 20% must be deed restricted affordable to households at or below 80% of Area Median Income (AMI) for ownership projects and an average of 65% of AMI for rental projects. EOHLC finds the Economic Feasibility Analysis provided by the City supports the feasibility of multi-family development.
7. The City's zoning contains some special permit requirements that prevent "as of right" development of multi-family housing. Please see below for details on this finding.
8. The multi-family housing allowed in the District is suitable for families with children pursuant to Section 3A and Section 7 of the Guidelines.
9. There are no dimensional zoning requirements not captured by the compliance model that will clearly reduce the District's estimated multi-family unit capacity below its requirement. Please see below for details on this comment.
10. Taken as a whole, the geography of the District meets the land area, multi-family unit capacity, gross density, and contiguity requirements of Section 3A and the Guidelines.

The following table shows the **required** District minimums, the estimates **submitted** in the District application, and estimates as **determined** by EOHLC following its review:

	Required	Submitted	Preliminarily Determined
Land area (acres)	50	223	223
Multi-family unit capacity (units)	8,330	8,532	8,399
Gross density (units per acre)	15	38.3	37.7
One 50% contiguous area	Yes	Yes	Yes

EOHLC identified the following **discrepancies from the submitted area, unit capacity and density metrics**:

- Unit capacity: The VC3 district set forth lower height limits for buildings within 50' of a "residential district". EOHLC estimates that this additional dimensional restriction removes 133 units of capacity from the District.
- Gross density: Accounting for the loss of unit capacity in connection with the above reduces the estimated gross density to 37.7 units per acre.

EOHLC identified the following provisions in the Zoning Ordinance that **do not allow for multi-family as of right** in accordance with MGL c. 40A Section 3A and the MBTA Communities

Guidelines. These two items require action by the City Council to make revisions to the zoning ordinance.

1. Section 9.1.1.A.2 requires an “opt in” process where all lawful pre-existing uses and structures existing at time of site opt-in are deemed nonconforming, regardless of whether they actually meet requirements of the overlay district. This subjects projects to Section 7.8 and could trigger special permit requirements for multifamily housing.
2. Section 9.2.6.A.7 requires a special permit for any retaining wall over 4 feet high. This requirement could require a special permit for many development proposals, as retaining walls are often part of routine site work for multi-family housing. This requirement must be removed in order for the zoning to allow multi-family housing as of right.

EOHLC identified the following **additional factors** that could affect as of right multi-family housing development in the District:

- We caution the City that it must apply the requirement for prohibited uses to
- cease before a site may not opt in to the VCOD in a manner that will allow property owners to maintain those uses during the permitting process for proposed multi-family housing.
- The MRT district has a maximum building footprint of only 1500 square feet and requires a special permit for multiple buildings per lot. These dimensional limitations are not reflected in the Compliance Model submitted by the City. EOHLC recognizes the additional permissiveness of adaptive reuse in the MRT and will not require the City to revise this area of its zoning. However, we encourage the City to consider increasing the maximum building footprint for new development and eliminating the special permit trigger for multiple buildings per lot in the MRT, and will monitor whether the current requirements prevent the development of multi-family housing as of right in the MRT.

Please note that continued district compliance is **subject to** the following requirements:

- Municipalities must notify EOHLC in writing of any proposed or active zoning amendment that affects the district, or of any other by-law, ordinance, rule, regulation, or municipal action that limits the development of multi-family housing in the District. This notification must be sent to EOHLC3A@mass.gov prior to any planning board public hearing on the proposed zoning amendment.
- EOHLC may establish a system to monitor compliance over time to ensure that approved districts allow multi-family housing in accordance with the criteria under which they were approved.
- OHLIC may rescind a determination of conditional district compliance or require changes to the District to remain in conditional compliance as per Section 10 of the Guidelines if it becomes aware of additional information not identified in this conditional compliance review that would render the District noncompliant with Section 3A.
- Permitting conducted in connection with the additional factors listed above must not effectively reduce the estimated multi-family unit capacity of the District. If those factors reduce the estimated multi-family unit capacity of the District, EOHLC may revisit Newton’s

conditional compliance with Section 3A, and could require the City to remedy any deficiency with amendments to its zoning.

EOHLC will reconsider the City of Newton's application, and any additional materials it may provide, 180 days from the date of this letter, to determine whether the City has taken steps to make the changes required to address the conflicts with Section 3A and the Guidelines, which are noted above.

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,

A handwritten signature in blue ink, appearing to read "Edward M. Augustus Jr.", is written over the typed name and title.

Edward M. Augustus Jr.
Secretary

cc: Senator Cynthia Stone Creem, Cynthia.Creem@masenate.gov
Representative Ruth Balser, Ruth.Balser@mahouse.gov
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