



MBTA Communities Multifamily Guidelines Discussion

Town of Harvard, MA

March 1, 2022

Table of Contents

1. Summary of Draft Guidelines for Compliance
 2. Important Dates and Milestones
 3. Commonwealth's Community Information Form
 4. Planning Board Draft Letter for Consideration by Select Board
 5. Next Steps
-

List of Guidelines¹

The following list is a summary of the draft guidelines released by the State on 12/15/2021 that directs the Town to establish a by-right multifamily zoning district no later than December 31, 2024. You can find the full guidelines document at the following link:

<https://www.mass.gov/info-details/draft-compliance-guidelines-for-multi-family-districts-under-section-3a-of-the-zoning-act>

1. Must establish a district of a “reasonable” size (at least 50 acres of land).
2. May have sub-districts with differing densities as long as the overall district meets the minimum requirement.
3. Must allow at least 15 units/acre (minimum gross density).
4. Must be without any age restrictions.
5. Must be legally and practically allowed.
6. Should be in areas that have safe and convenient access to transit by bicycles and pedestrians.
7. Must allow for at least 10% of units as share of total housing stock but also must allow at least 750 units (50 acres x 15 units/acre). The 750 unit minimum for Harvard was confirmed. I expect that we can determine how lack of current water and sewer infrastructure might impact this number.
8. Communities must estimate the unit capacity for each district. The minimum required capacity must be attainable in the district(s). The state and MHP will be developing tools that communities can use to make these calculations on a per lot basis.
9. Districts may be established that already include existing multifamily units. Therefore, Foxglove, Bowers Brook, and Harvard Green can be included in such a district and count toward both units and density if we wish.
10. When an MBTA community has no land area within 0.5 mile of a transit station (Harvard), the multi-family district should, if feasible, be located 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 otherwise is consistent with the Commonwealth’s sustainable development principles.
11. DHCD must make a “Determination of Compliance” for each applicable community, which may be interim, allowing Harvard to establish the requisite bylaws and mapped area(s).
12. Interim compliance requires:
 - [a] Creation of an Action Plan
 - [b] Implementation of Action Plan
 - [c] Adoption of Zoning Amendment
 - [d] Request Determination of Full Compliance

¹ Guidelines established based on authority provided by Economic Bond Bill (House No. 5250, An Act Enabling Partnerships for Growth) passed Mass Legislature in December 2020 and signed by Governor Baker in January 2021.

13. Effect of Non-Compliance – The MBTA community will not be eligible for funds from the following grant programs:

- [a] the Housing Choice Initiative;
- [b] the Local Capital Projects Fund; or
- [c] the MassWorks infrastructure program.

Note that [c] is a program that has been widely used by Harvard, most recently for the Slough Road project. It is an important means to fund road, bridge, and other infrastructure projects.

14. To remain in compliance while DHCD is collecting public comment on the Draft Guidelines, an MBTA community must:

- [a] Submit the MBTA Community Information Form by 5:00 p.m. on May 2, 2022.
- [b] Hold a briefing of your City Council, Town Council or Select Board on the Draft Compliance Guidance no later than May 2, 2022 and attest to that on the MBTA Community Information Form.

Important Dates and Milestones

- **March 31, 2022** – Deadline for submitting comments on Draft Guidelines.
 - ❖ **Comment:** Commonwealth cities and towns have until March 31, 2022 to get any comments or questions to the State Department of Housing and Community Development (DHCD). Communities may submit singularly or may collaborate with other towns. Comments may also be submitted to the regional planning agencies, the Mass Municipal Association, or other stakeholder organizations. The Harvard Planning Board has drafted a comment letter for discussion at tonight’s meeting. See pp. 10- below.
- **Before May 2, 2022** – The Select Board must hold a briefing on the Draft Compliance Guidance.
 - ❖ **Comment:** The Select Board must schedule a briefing (recommend a formal public hearing) on the guidelines. This briefing may be presented by any entity in the community such as a staffer of board member, but it must be hosted by the Select Board. This meeting must take place before May 2, 2022.
- **May 2, 2022** – The MBTA Community Information Form must be submitted.
 - ❖ **Comment:** Harvard must submit a Community Information Information Form (online) to DHCD by 5:00 pm on May 2, 2022. This form has been printed for your review on pp. 5-9 below. The purpose of this form is to provide DHCD with the current compliance status of the community and the plan to address any lack of compliance.
- **July 1, 2023** – Deadline for obtaining DHCD approval of a timeline and action plan.
 - ❖ **Comment:** A formal action plan to address lack of compliance must be submitted to DHCD by July 1, 2023. This plan must also include a timeline for the community to achieve action plan goals and actions.
- **December 31, 2024** – Deadline for adopting an appropriate zoning amendment that complies with guidelines.
 - ❖ **Comment:** For MBTA Adjacent communities (Harvard’s classification), a complying zoning amendment must be adopted by Town Meeting by December 31, 2024. This means that the zoning, which now only requires a simple majority, has to be approved at Town Meeting. Once this has occurred, the Town must send a certified copy to DHCD for final authorization of compliance.

MBTA Multifamily Guidelines

Community Information Form - Harvard

Due May 2, 2022

1. What is your Municipality*

Harvard ✓

Choose from the drop down list

2. Name of person filling out this form *

Christopher

First Name

Ryan

Last Name

3. Title of person filling out this form *

Director of Community and Economic Development

4. Email of the person filling out this form *

cryan@harvard-ma.gov

5. Phone number of the person filling out this form *

(978) 456-4100 ext. 323

5.a Will the person filling out this form ALSO be responsible to ensure compliance with section 3A of c40A and/or lead a committee that will undertake compliance with section 3A of c.40A?? *

☒ Yes

☐ No

[Save and Resume Later](#)

Section 2 - Community Information

6. Does your municipality have any land area within 0.5 miles of a public transit station, defined as a Subway station, Commuter rail station, Ferry terminal or Bus station. Note: the definition of "Bus Station" in the Draft Guidelines: "Bus station" means a building located at the intersection of two or more public bus lines, within which services are available to bus passengers; provided that a bus station does not include a shelter or other structure without walls and a foundation. *

☐ Yes

☒ No

Note: See Section 9 of the Draft Guidelines for details on measuring 0.5 miles from a transit station. Find Draft Guidelines here: www.mass.gov/mbta/communities

6.a. Does your municipality have areas of concentrated development, village center, mixed use or commercial district(s), especially areas served by public transit where future multifamily development would be consistent with any of these smart growth principles: Mix land uses; Take advantage of compact building design; Create a range of housing opportunities and choices; Create walkable neighborhoods; Foster distinctive, attractive communities with a strong sense of place; Preserve open space, farmland, natural beauty, and critical environmental areas; Strengthen and direct development towards existing communities; Provide a variety of transportation choices; Make development decisions predictable, fair, and cost effective; Encourage community and stakeholder collaboration in development decisions. *

☒ Yes

☐ No

For a more information about these smart growth principles, see <http://smartgrowth.org/smart-growth-principles>

6.a.1. Please describe the area(s) in your municipality that best meets the smart growth principles *

Ayer Road Commercial District

For a more information about these smart growth principles, see <http://smartgrowth.org/smart-growth-principles/>

7. Does your municipality have any zoning district(s) where multifamily development of 15 units/gross acre is allowed as of right without age restrictions and without restrictions on the number of bedrooms? *

- ☐ Yes, one district
- ☐ Yes, more than one district
- ☒ No
- ☐ Unsure

8. In accordance with the How to Comply in 2022 requirements for MBTA Communities issued on December 15, 2021, MBTA Communities are required to hold a briefing about the Draft Guidelines at a meeting of the Select Board, City Council or Town Council prior to May 2, 2022. Have you held such a meeting? **

- ☐ Yes
- ☒ No

Note: How to Comply in 2022 requirements can be found here: www.mass.gov/mbta-communities

Please note that non-compliance with the public meeting requirement in the **Interim Compliance Requirements for MBTA Communities** means that your community will not be eligible to apply for FY 23 MassWorks grants, FY 23 Housing Choice Community Grants, and Local Projects Funding established in MGL c. 29, §2E(1). Find the How to Comply in 2022 requirements at this [link](#).

Save and Resume Later

Section 3 Technical Assistance and Next Steps

9. Please tell us what, if any, technical assistance you might need in order to comply with section 3A of c40A based on the Draft Guidelines issued on December 15, 2021. *

- ☐ We can draft multifamily zoning without technical assistance
- ☐ We can calculate multifamily capacity without technical assistance
- ☒ We need technical assistance to draft multifamily zoning
- ☒ We need technical assistance to calculate multifamily capacity
- ☐ Unsure whether we need technical assistance to draft multifamily zoning
- ☐ Unsure whether we need technical assistance to calculate multifamily capacity

Select as many as apply.

10. If your municipality needs Technical Assistance, please indicate which resources you prefer. *

- ☐ Support from your Regional Planning Agency
- ☒ Funding from a state agency
- ☒ Consultant procured by a state agency
- ☒ Model bylaw or ordinance
- ☐ Other:

Choose as many as you would like, if you chose Other, please give us information about that source of Technical Assistance

11. Use the space below to provide other information that you were unable to answer in the questions above. Please do not provide comments on Draft Guidelines here. (optional)

One potential solution for Harvard is to be able to incorporate these standards in our Ayer Road Vision Plan project that is currently in Phase 1, Market Analysis. We lack funding for the Vision Plan process in Phase 2 but would want to be able to address these MBTA guidelines at that time, if feasible.

[Save and Resume Later](#)

[← Previous](#)

[SUBMIT FORM](#)

[Previous](#)

Planning Board Draft Letter for Consideration by Select Board

The following draft letter, developed by the Planning Board, addresses a range of concerns that the Planning Board holds regarding the MBTA Communities draft guidelines, as well as a number of comments and questions on the draft guidelines. Some comments include suggestions for modifying the guidelines and others contain additional recommendations that could make the application of the final guidelines more fair and less negatively impactful.

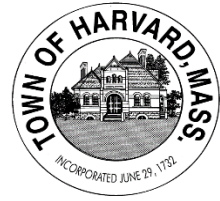
The Planning Board is hopeful that the Select Board would wish to collaborate on this draft letter which indicates a united and coordinated effort on the part of the Town. As such, we invite the Select Board to consider any edits or additional comments that should be added to this correspondence. Be cognizant that this letter must be received by the state no later than March 31, 2022 and thus all edits and comments must be incorporated before that time.

Should the Select Board wish that this letter, or a separate letter, be submitted to any other agency in the furtherance of Harvard's interest in seeing the draft guidelines modified to be fairer and more appropriate for the town, we look forward to your suggestions. At this point, we expect to carbon copy the Montachusett Regional Planning Commission. We could also consider this for the Massachusetts Municipal Association, the Mass Municipal Lawyers Association, the Mass Housing Partnership, the Assabet Regional Housing Consortium (ARHC), the 495 MetroWest Collaborative, and the Massachusetts Chapter of the American Planning Association.

Finally, we could consider a collaborative multi-community response that might receive even more attention and please note that the ARHC has indicated an interest in considering a joint letter should Harvard be interested.

OFFICE OF THE
PLANNING BOARD

13 AYER ROAD HARVARD, MA 01451 978-456-4106 EXT.321 FAX: 978-456-4119



March 6, 2012

Mr. Mike Kennealy, Secretary
Executive Office of Housing and Economic Development
Commonwealth of Massachusetts
One Ashburton Place, Room 2101
Boston, MA 02108

**RE: Formal Comments from Town of Harvard, MA in Regard to MBTA Communities
Multifamily Zoning Draft Guidelines**

Dear Secretary Kennealy:

The Town of Harvard, Massachusetts, as adopted by the Select Board on _____ has reviewed the Massachusetts Department of Housing & Community Development Draft Compliance Guidelines for Multi-family Districts Under Section 3A of the Zoning Act in consultation with the Harvard Planning Board and other Town stakeholders. The Town of Harvard recognizes the housing crisis and is prepared to make substantial positive contributions; however, the “one size fits all” approach proposed places an undue burden on small rural communities such as Harvard. As such, the Town of Harvard proffers for consideration the following commentary and proposed solutions.

On January 14, 2021 Massachusetts General Laws ch. 40A, § 3A entitled Multi-Family Zoning As-Of-Right in MBTA Communities was enacted into law. The statute directs a community designated an “MBTA community” as defined in Mass. Gen. Laws ch. 161A, §1 to have “...at least 1 district of reasonable size in which multi-family housing is permitted as of right....” Section 3A then defines what a “reasonable size” shall be. The statute defines “reasonable size” as having 2 elements: (1) the multifamily district or districts shall “...have a minimum gross density of 15 units per acre...” and (2) “...be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal, or bus station, if applicable.” The plain reading of 3A goes no further to define reasonable size. Presumably, the General Court realized that a one-size fits all criteria for 175 diverse MBTA communities could not be reasonably codified in 3A and therefore delegated such authority to the appropriate state agency with sufficient expertise and knowledge in this area, namely the Department of Housing & Community Development (DHCD).

DHCD is a subagency within the Executive Office of Housing and Economic development (EOHED). EOHED’s mission, as bannered on its website, states that the agency “prioritizes economic opportunity for residents, collaborative leadership in communities, and an environment that supports job creation and business growth. EOHED also supports new housing for residents through targeted investments.” See, <https://www.mass.gov/orgs/executive-office-of-housing-and-economic-development> The EOHED is the Executive Agency charged with the expertise to promulgate reasonable guidance to enable and implement 3A. Respectfully, the Town of Harvard submits that the EOHED and its subagency DHCD has abdicated its role to effectuate “targeted” goals and benchmarks for the 175 diverse community base in 7 different counties, with mixed

housing stock, divergent population density, area, and topography and a myriad of other characteristics that make up the rich fabric of the towns and cities of the Commonwealth.

The Town of Harvard is acutely aware of the housing crisis in Massachusetts. The Town of Harvard is ready, willing and able to do its part, and hopes the other 174 communities feel as strongly to economic opportunity, socioeconomic mobility, and meeting housing needs for the residents of the Commonwealth. However, the Agency's proposed "one size fits all" approach, that categorizes from the perspective of the transit service provided rather than the unique components of the actual community and thereby lumping these 175 communities into the 4 sweeping categories of rapid transit, bus service, commuter rail, and adjacent does exactly what the General Court sought to avoid and implicitly rejected in 3A in not categorically defining "reasonable size". The General Court did not categorically define reasonable size because to do so with such a broad brush would be inherently unreasonable. The statute's silence in this regard is telling. The General Court delineated in 3A the density per acre, "15 units per acre", but delegated to EOHED, and its administrative expertise, how that would be implemented in 175 communities. However, respectfully, what the Legislature sought to avoid, is unfortunately what the EOHED has done with its proposed guidance. The EOHED has promulgated proposed guidance that is categorically broad (a 50 acre district (yielding a 750 unit minimum), and fails to consider its mission of "targeted" investment and development, and "collaborative leadership in communities." The Town of Harvard respectfully submits that this proposed guidance, if implemented as is, will have a disparate impact of scale, size, economic and budgetary impact as applied to the 175 communities and is unreasonable.

At the table below illustrates, communities that are required to have a minimum of 750 units under the guidelines range from 1,068 housing units in Plympton (70.2% of housing stock) up to 7,439 units in Holden (10.1% of housing stock). A community as urbanized as Foxborough, with 7,682 housing units is still only required to provide 768 units. Harvard would be required to add 33.3% additional multifamily units to a community that does not currently have the capacity to service them adequately. It is anticipated that under this scenario, costs on services such as school, fire, public works, and so on are not fully considered by this plan.

Table 1 - Percentage of Total Housing Stock – Comparative Communities in Vicinity of 750 Units

Community	Total Housing Units	Min. 750 Required	Percentage of Housing Stock
Holden	7,439	750	10.1%
Duxbury	6,274	750	12.0%
Norton	6,971	750	10.8%
Rockland	7,243	750	10.4%
Ashby	1,243	750	60.3%
Plympton	1,068	750	70.2%
Harvard	2,251	750	33.3%
Foxborough	7,682	768	10.0%
Amesbury	7,889	789	10.0%

Table 1 Source: <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

Harvard Comments and Questions

Based on the above concerns and issues raised, the Town of Harvard has assembled a list of specific comments and questions that we would ask DHCD to address as part of the current open comment period closing on March 31, 2022.

1. A one size fits all 750 minimum units is an unreasonable provision and will have a disparate impact on differently sized communities. Harvard is a small, rural community and the 750 is 1/3 of existing housing stock and could fundamentally alter the community and its public institutions. Harvard proposes that an alternative methodology for the number of units similar to that previously proposed by the Metropolitan Area Planning Council (MAPC) be devised. This should be formula-driven based on specific criteria such as total housing stock. It should be focused on a percentage of total housing units divided by the codified minimum density of 15 units/acre.
2. Harvard feels that a deadline for adopting complying regulations as of December 31, 2024 is too short. For open town meeting communities that typically address zoning once annually, this gives, at most, three opportunities to develop complying bylaws and map amendments. Should any of these attempts fail, such communities would be required as per MGL 40A, Section 5, to wait two years to reintroduce the bylaw amendment. This could result in missing the proposed deadline. Harvard recommends that at least one (1) additional year be granted, extending the deadline for MBTA adjacent communities to December 31, 2025.
3. Harvard believes that for the current Guidelines, such development thresholds will have a significant impact on community services and infrastructure, particularly for municipal systems operating at or near capacity. The 2016 report by the UMass Dartmouth Public Policy Center entitled The Costs and Hidden Benefits of New Housing Development in Massachusetts outlines the impact of such scenarios and concludes that state payments should accrue to communities that can demonstrate a net negative fiscal impact on the community. With this in mind, we would ask DHCD whether this potential impact to communities near or at capacity was considered? If so, would the State be prepared to extend some form of assistance and what form?
4. For other fiscal impacts, Harvard would like the State to consider implementing an Impact Fee Law such that each new development of a specific threshold size can make a financial contribution to the community and defray costs (e.g., Chapter F, Cape Cod Commission). If Massachusetts wants to encourage sector targeted growth, it should seriously consider such a system—perhaps tied to a mandatory capital improvements element in master plans.
5. Harvard, like many other MBTA communities, lacks water and sewer infrastructure in areas that would be suitable for multifamily. The state should clarify how the lack of this infrastructure will impact these requirements. Would the state be willing to expand grant-in-aid to help rural communities without current capacity to create the necessary infrastructure to service this threshold of residential development?
6. Harvard's planning goals emphasize smart growth and sustainable development including having walkable, mixed-use districts, having a single-use multi-family zoning district is a concern. Therefore, Harvard would assert that these Guidelines should be able to be met in a mixed-use implementation in order to facilitate multifamily residential use in this area. Harvard would also want to be able to use MGL Chapters 40R and 40S in such a scenario.

Can DHCD provide more clarity as to whether a mixed-use district can meet the Guidelines?

7. MAPC has concluded² that, “*The 750-unit minimum could result in unreasonably high growth rates for many small towns.*” Many rural communities such as Harvard do not have the administrative capacity to handle large projects. Therefore, in the absence of DHCD not revising the required number downward as preferred, Harvard would want to have the ability to introduce a phasing provision or limit on the number of building permits in order to reasonably be able to absorb a certain number of units annually.
8. Question: It is understood that over age 62 restricted housing cannot count in the totals, but what about over 55 units?

In conclusion, while Harvard is aware of and sensitive to the housing crisis in the Commonwealth, we feel strongly that each community should be able to have a solution that fits their unique qualities and characteristics. This proposed set of guidelines, while well-meaning and intended to align with the recent amendments to MGL ch. 40A, is too rigidly inflexible and will negatively impact some communities far more than others. We have proposed a number of reasonable changes to the guidelines and also proposed additional measure that will ameliorate the likely impacts of rapid residential development. We hope you will accept these comments in the spirit of collaboration that they were intended. If you have any questions or wish to discuss further, please contact.....

Harvard Select Board	Harvard Planning Board
Stu Sklar	Justin Brown

² https://www.mapc.org/wp-content/uploads/2022/01/MAPC_Sec3A_CapacityAnalysis_1_10_221.pdf

Next Steps

This meeting is specifically intended to draw the Select Board's attention to the urgency of submitting formal comments to the state in response to the release of the draft guidelines and to preliminarily give the Board some resources in regard to the issue. The Planning Board has created a "Project" page on our website where we have posted a range of useful resources for both town boards and the general public:

Link: <https://www.harvard-ma.gov/planning-board/pages/mbta-communities-multifamily-guidelines>

Harvard has until March 31st to submit comments to the state. We are hopeful that this letter can be a joint effort between the Planning Board and Select Board. It should also include any comments from other boards and committees in Town that have an interest in doing so.

Submittal can be done via the online comment submittal form on the MBTA Communities website where you can attach a file. We recommend that the Select Board have any comments, questions, or letter edits finalized by your next meeting and we can ensure expeditious submittal of these comments.

The Planning Board will continue to discuss this issue in preparation for the deadline to submit the Community Information Form due to be completed by May 2, 2022. The Select Board should set a date to host the formal briefing required by the state. The Planning Board would be glad to make a presentation during this briefing. It is assumed but not assured that the state would wish such briefings to include public comment, and this we'd also recommend that this be a part of a briefing.

The Planning Board will also continue to discuss options for how Harvard may wish to devise a plan to be submitted by the July deadline. Note that there are a number of agencies in Massachusetts offering technical assistance for this work. These include:

1. Mass Housing Partnership – MHP has a Housing Toolbox on their website but is also offering personalized technical assistance to six (6) communities on a first come-first served basis with an application due in May.
2. One Stop for Growth Grant Program – This grant program, where we previously applied for Ayer Road but were declined, will now be prioritized for MBTA communities. We could revise our previous application to include these requirements and resubmit.
3. EEA Planning Technical Assistance Grant Program – This is the FY 2023 cycle of the grant we received for Ayer Road (\$45,000) this year. I understand that EEA will prioritize 2023 applications for MBTA communities.
4. DLTA Grant Program – As Stacia has already reported, MRPC is prioritizing DLTA grant applications for MBTA community projects.

If you have any questions, please do not hesitate to reach out to Chris at cryan@harvard-ma.gov or 978-456-4100.