

OFFICE OF THE PLANNING BOARD

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March 31, 2022

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 March 15, 2022 has reviewed the Massachusetts Department of Housing and 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 need for more housing in Massachusetts and it is prepared to make substantial, positive contributions; however, the "one-size-fits-all" approach that is currently proposed places an undue burden on small rural communities such as Harvard. In response, the Town of Harvard submits the following commentary for consideration and proposes viable solutions that will help meet the Commonwealth's housing goals while being pragmatic about what is actually feasible in our community and those other communities similarly situated.

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 as 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 only 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 does not substantially define "reasonable size". Presumably, the General Court recognizes that a top-down, one-size-fits-all criteria for 175 diverse "MBTA communities" could not be reasonably codified in 3A and therefore delegated its authority to the appropriate state agency with

sufficient expertise and knowledge in this area, namely the Department of Housing and Community Development (DHCD).

The mission of DHCD, a sub-agency within the Executive Office of Housing and Economic Development (EOHED), is to provide affordable housing options, financial assistance and other support to Massachusetts communities through its business and community partners. The Town of Harvard believes the current guidelines are unworkable on several different fronts, resulting in DHCD being unable to effectuate its “targeted” housing goals and benchmarks, per its mission statement.

Across seven counties, the 175 communities that are designated in 3A represent towns with widely different land areas—ranging from just a few square miles to more than one-hundred square miles—making it more difficult for most towns to identify a contiguous fifty acre parcel for development. Further, these communities have different population densities, topography, water and sewer infrastructures and a myriad of other unique characteristics that constitute these individual communities that are integral to the rich and diverse fabric of cities and towns in the Commonwealth.

Harvard is ready, willing and able to continue doing its part, and hopes the other 174 communities feel as strongly as we do about bolstering economic opportunity, socioeconomic mobility, and education excellence while providing the diverse housing stock needed to support these goals in the Commonwealth. However, the agency's proposed top-down approach delineates communities only from the perspective of their proximity to transit services rather than taking into account the intrinsic unique components, characteristics and challenges of an individual community. Lumping these 175 communities into 4 broad sweeping categories from the perspective of transit service provided does exactly what the General Court sought to avoid and implicitly rejected in 3A by not categorically defining a “reasonable size”. We believe 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.

In 3A, the General Court specified the density to be “15 units per acre” but delegated to EOHED the authority to determine how such a sweeping measure would be implemented in over half of the State's cities and towns. 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”. It also does not foster good planning practice or necessarily effectuate “smart growth principles”, allowing each town or city to calibrate a district or districts to fit the characteristics of the unique community. The Town of Harvard respectfully asserts that this proposed guidance, if implemented as is, will have disparate, wide-ranging impacts of enormous scale, including economic and budgetary repercussions, educational impacts, and municipal capacity issues, if applied

in such a way to the 175 communities. In effect, it will lead to a homogenization that is precisely what good local planning is intended to avoid. It is unreasonable for communities to be expected to implement these provisions which will profoundly alter their communities in significant ways without providing actual long-term, sustainable strategies to meet needed housing goals.

As 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 750 units—less than 10% of its housing stock. Harvard would be required to zone by-right for the equivalent of 33.3% of its housing stock in additional housing units but does not currently have the municipal capacity to service them adequately. Under these proposed guidelines, it is clear that the significantly increased costs of services such as schools, fire and police safety, water and sewer infrastructure, public works, and so on have not been fully considered or analyzed 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
Amesbury	7,889	789	10.0%
Foxborough	7,682	768	10.0%
Holden	7,439	750	10.1%
Rockland	7,243	750	10.4%
Norton	6,971	750	10.8%
Duxbury	6,274	750	12.0%
Harvard	2,251	750	33.3%
Ashby	1,243	750	60.3%
Plympton	1,068	750	70.2%

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 approach that requires 750 minimum units is an unreasonable provision that will have a disparate impact on differently sized communities. Harvard is a small, rural community and the 750-unit number is equal to 1/3 of its existing housing stock, which would 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 devised¹. Such an approach focuses on net yield of units rather than acreage, considers targets for region wide multifamily zoning, and incorporates a formula to tailor net yield based on community specific conditions (land availability, transit access, housing exclusion etc.). It should take into account a percentage of total housing units divided by the codified minimum density of 15 units/acre.

2. Harvard believes the December 31, 2024 deadline for adopting complying regulations is too rushed and is an unrealistic time period to adopt these changes. For open town meeting communities that typically address zoning once annually, this gives the town, 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 under 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 Massachusetts² 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 in what form?
4. For other fiscal impacts, Harvard would like the Commonwealth 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 units. The State should clarify how the lack of this infrastructure will impact these requirements

¹ https://www.mapc.org/wp-content/uploads/2022/01/MAPC_Sec3A_11_18_21.pdf

² Public Policy Center, University of Massachusetts-Dartmouth. (March 2016). The Costs and Hidden Benefits of New Housing Development in Massachusetts (2016).

i.e. 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 already emphasize smart growth and sustainable development including planning for walkable, mixed-use districts, but building out a single-use multifamily zoning district of this size is a concern. Therefore, Harvard would assert that these guidelines should be able to be met, and in fact encouraged, by implementing a mixed-use development 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 concluded 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 municipal and administrative capacity to handle such 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. It is understood that over age 62 restricted housing cannot count in the totals, but what about over 55 units?
9. We recognize the original legislation omits specific reference to affordable housing and thereby we assume that this cannot be addressed in the DHCD guidelines. However, this fails to address what the State asserts—that Massachusetts, most critically, needs more *affordable* housing. Harvard has steadily been working toward getting its housing stock to 10% affordable and is now at 5.8%. If Harvard were to adopt these guidelines as written, without any affordability component, Harvard's overall housing stock would not only rise by one-third but this would also raise the housing production number of new affordable units needed to meet the 10% goal. In effect, it would undermine the progress we have made in reaching 10% affordability, as per DHCD policy.
10. The Town of Harvard recently built a \$53M elementary school with assistance from the Massachusetts School Building Authority (MSBA). At that time, MSBA projected little growth in the school population and therefore required that the capacity of the school meet those projections to receive funding. Using the Commonwealth's standard formula of 0.68 children per household, building out 750 new units of housing would result in ~500 more students enrolling in the Harvard school district. Neither the new elementary school nor the high school,

as currently built, would be able to absorb this many new students into its system.

11. In line with the infrastructure concerns noted generally above, we wish to emphasize that Harvard is a community with substantial impediments to housing development in general and specifically for the "gross density" described in the Guidelines. Harvard soils are poorly suited for subsurface sewage disposal systems (SDS) given the predominance of soils which are slow to drain and usually have a shallow depth to high groundwater. In addition to restrictive soil properties, a vast area of Harvard lacks the minimum depths of soils to site an SDS as required by The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems for the Transport and Disposal of Septage (herein "Title 5").

In addition to poor soil (and lack of soil) which could potentially support an SDS per Title 5, development is further restricted due to the lack of a Municipal Public Water Supply. In accordance with Title 5, a property served by a well and an SDS is limited to one (1) bedroom per 10,000 square feet of land or in simpler terms, 4 bedrooms per acre. It is not possible to achieve the guidance document's goal of 15 units per acre with a well and SDS.

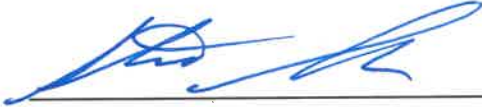
If a multi-family district were to be created in Harvard, it would be required to create its own Public Water Supply (PWS) under MA Department Environmental Protection's (DEP) drinking water regulations 310 CMR 22.00. A PWS by definition has a restrictive area for water supply protection which may limit housing density due to the nitrogen loading limitations contained within Title 5. It is worth noting that the State requires a PWS when a well serves 25 persons or more or has 15 or more service connections.

While the Harvard Board of Health, along with all our municipal partners, recognize the need for housing, it is also cognizant of the very real physical, geologic, and hydrologic impediments that exist in our community which severely limits any real application of the Compliance Guidelines for Multi-family Districts. The Board of Health is supportive of a delay in the compliance deadline as noted in #2 above and agrees that the goal of 750 additional housing units is impractical, if not impossible, and would have a tremendous negative environmental and municipal services impact on the town. It would be prudent to consider the true cost to the town and the developer of a multi-family district and whether the resulting housing units would be affordable and sustainable with the SDS and water supply impedances.

In conclusion, while Harvard is aware of and is sensitive to housing needs in the Commonwealth, it feels strongly that each community should be more of a stakeholder working with the State to craft a solution for housing production that fits their unique qualities, characteristics, and land area. This proposed set of guidelines, that are clearly

intended to align with recent amendments to MGL Ch. 40A, are too rigidly inflexible and will negatively impact many communities, including ours. We have proposed a number of practical amendments to the guidelines and proposed additional measures to ameliorate the likely impacts of rapid residential development. We hope you will carefully review and consider these comments in the spirit of collaboration and respond to our questions. If you have any questions or wish to discuss further, please contact Christopher J. Ryan, Director of Community and Economic Development at 978-456-4100 x.323 or cryan@harvard-ma.gov anytime:

Harvard Select Board

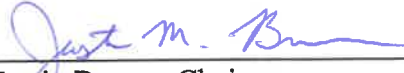


Stu Sklar, Chair

3/28/22

Date

Harvard Planning Board



Justin Brown, Chair

March 28, 2022

Date

