

**TOWN OF HARVARD  
PLANNING BOARD AGENDA  
MONDAY FEBRUARY 7, 2022 @ 7:00PM**

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**Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021, this meeting will be conducted via remote participation. Interested individuals can listen in and participate by phone and/or online by following the link and phone number below.**

Hildreth Pro is inviting you to a scheduled Zoom meeting.

**Join Zoom Meeting**

<https://us02web.zoom.us/j/85415144103?pwd=T3ZvYUY3VWhjUzI1bG42U242anFxUT09>

**Meeting ID: 854 1514 4103**

**Passcode: 817089**

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**Public Comment**

**New Business:** a) Election of Vice Chair

b) Montachusett Regional Planning Commission (MRPC) District Local Technical Assistance (DLTA) Grant

**Standard Business:** a) Board Member Reports

- Representatives & Liaisons Update
- Community Matters

b) Director's Report

c) Approve Minutes

**Old Business:** a) Bi-annual Review of Planning Board Goals from Strategic Planning Session

b) Update on the Ayer Road Visioning Plan

c) Discuss the State's Multi-Family District Requirements

- Review Schedule
- Draft Comments

d) Chapter 125 Bylaw Amendment – 125-35 Open Space Residential Development (OSRD)

- Review schedule
- Comments on Proposed Draft

**NEXT SCHEDULED MEETING:  
FEBRUARY 28, 2022**











## Director of Community and Economic Development

# UPDATE

February 7, 2022

### ■ Planning Board Resource Folder

I may have communicated about this previously, but I have created a Dropbox folder called “HPB Resource Folder and it has the following folder structure:

Name	Date modified	Type
 Meetings and Conflict Resolution	6/29/2021 3:33 PM	File folder
 Multifamily	2/2/2022 8:51 AM	File folder
 Powerpoint Slide Shows for members	6/29/2021 3:27 PM	File folder
 Resources	6/29/2021 3:29 PM	File folder
 Zoning	7/26/2021 9:43 AM	File folder
 Planning_Board_Resource_Book_-_Final_...	8/18/2020 8:15 AM	Adobe Acrobat

One folder is for conducting meetings and conflict resolution, a very important skill for members. I recently created a folder for MBTA Communities Multifamily Guidelines called “Multifamily” and also have many of the PowerPoint slide shows I have given over the past few years. The “Resources” folder is sort of a catch-all with a variety of reports and documents. I may add new folders soon and will try to keep adding files over the next few weeks and months. Let me know if there is anything specific that you would like to see there. You can access this folder at the link below:

<https://www.dropbox.com/sh/taw7ud48k87dzol/AADJN-4verRaDPYLziLZiBrNa?dl=0>

## ■ Ayer Road Market Study Progress Report

The market survey has closed and I understand that just over 500 were collected. I did hear a rumor that some people pledged to sabotage the survey with bad information, but Howard is good at weeding that type of stuff out when he does his *data cleaning* step.

Right now, Howard is conducting interviews of locals and other parties like real estate companies and investors. As his behest, I also gave him several names of people in the community who have expressed opposition to developing Ayer Road.

Finally, I understand that Carson Bise (Tischler Bise) has begun to collect data for the fiscal impact analysis. He is looking to come to Harvard and interview staffers as soon as we can meet in person.

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## ■ Strategic Planning Goals

The priorities listed for FY 2022 and discussed last meeting include the following:

1. Ayer Road, Commercial District, economic development
2. Open Space residential Development & Senior Housing - Spring 2022;
3. Town Center Zoning
4. Multifamily re-writing zoning and mapping
5. Rural Life/Ag Tourism
6. Re-codify Zoning Bylaw

I recommend moving item 6 and maybe item 5 out of current priorities. There will not be time for them and having them on the list is not necessary. Maybe we have a short list for the year and then prioritize the long-term list so we can move items seamlessly between the lists as opportunities dictate.

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## ■ DRAFT Compliance Guidelines for Multi-family Districts Under Section 3A of the Zoning Act

This is the schedule that we agreed to adhere to:

**Feb 1** - Kara reports out to SB with request to review guidelines and prepare comments

**Feb 15** - You & Justin attend SB meeting to discuss any comments SB may have and provide update on Ayer Road Visioning Plan

**March 1** - SB finalize their comments and provide to PB

**March 7** - Draft comment letter reviewed by PB

**March 21** - PB finalizes comments and submits

We agreed to pull together a set of comments and questions to discuss further on February 7<sup>th</sup> and so far I have not received anything, but I have developed a few questions myself to get us started:

1. How to reduce the 750 to a manageable and fair number for Harvard?
  2. Could we consider using MAPC's November 17, 2021 alternative methodology?
  3. How can limitations due to lack of water and sewer impact our requirement?
-

4. Can we meet the guidelines as part of a mixed-use development zoning?
5. Can districts also be MGL 40R and 40S districts?
6. Why can't the state allow local governments to use impact fees like they do on the Cape for something like this?
7. It is understood that over age 62 restricted housing cannot count in the totals, but what about over 55 units

The goal is to have a productive discussion on Monday and come up with comments and questions for a first draft memo to the Select Board for our discussion on February 15<sup>th</sup>.

**■ Other Topics in Planning and Development**

**OSRD** – Please review the UPDATE from January 24<sup>th</sup> as I won't re-paste that material here. Justin and Staci recommended just calling the draft up on the screen and going through it with anyone able to chime in on any section. Let me emphasize where I think our time is best spent regarding what I think most people care about:

**“What could this result in for Harvard?”**

**“What would it look like”**

**“Where would it go”**

**What impact would it have?”**

I think we'll be productive to target those provisions that address these areas and focus on process...applications, review steps, paperwork, etc., later.

<b>CURRENT OSC-PRD BYLAW</b>	<b>PROPOSED OSRD BYLAW</b>
<b>Base Development Density</b> = 1 unit per 1.5 acres	<b>Base Development Density</b> = 1 unit per 1.5 acres
<b>Development Incentive</b> (Density Bonus)	<b>Density Bonus</b>
Up to a 25% density bonus for:	Up to a 50% density bonus for:
<ol style="list-style-type: none"> <li>1. More open space and preservation of agriculture (5%)</li> <li>2. Public improvements or amenities (5%)</li> <li>3. Small attached dwellings (5%)</li> <li>4. Affordable housing (20%)</li> </ol>	<ol style="list-style-type: none"> <li>1. More open space (5%)</li> <li>2. Affordable housing (15%)</li> <li>3. Age restricted housing (10%)</li> <li>4. Starter homes (10%)</li> <li>5. Green score (10%)</li> <li>6. Sustainable development (5%)</li> </ol>
<b>Minimum Open Space</b> = 50% of parcel	<b>Minimum Open Space</b> = 50% of parcel
<b>Permitted Uses:</b> single-family, attached units, agriculture and horticulture, open space, trails, passive recreation, education and religious uses, accessory residential	<b>Permitted Uses:</b> single-family, two, family, townhouses, agriculture and horticulture, open space, accessory residential, clubhouse, civic uses

The chart above is a quick and dirty comparison between what we have on the books now and what we are proposing. Really the only major difference is the 50% density bonus versus the 25% bonus now. In a 20-acre project, this this is the difference between 17 units and 20 units. The final density is still no more than 1 unit/acre overall and shouldn't be threatening.

**Transportation Plan** – The draft transportation plan from MRPC is now in hand and needs some work. I have distributed to the Planning Board, Transportation Advisory Committee, the HCIC, and Mr. Kilhart. We must determine a process for comments and edits and convey back to MRPC. After they finalize the plan, MRPC will present to Select Board and perhaps we can make this a joint meeting with all the stakeholder boards there. Let me know what you think.

**Hazard Mitigation Plan** – Tim Bragan chose Horsley Witten (HW) as the consultant for this project. I have already interacted with them and have a draft contract and scope ready for Tim to sign. I have also been collecting data for HW.

**Devens** – There is an HDJC meeting on Thursday which I will attend. I have done all I can for this issue for now unless you need anything else..

**Harvard Climate Initiative Committee (HCIC)** – I attended the first meeting of the new group and contributed to the discussion on the Climate Action Plan. I noted that some land use elements needed to be boosted in stature a little bit. It will be important for the Planning Board to continue to interact with HCIC over the duration of the Plan.

**DLTA** – DLTA applications are due very soon and the Board needs to determine what ONE project, if any, we'd like to apply for. I understand that the Conservation Commission is interested in an application but the Planning Board could still offer ideas and the TAC may want some remedial funds to improve last year's DLTA Transportation Plan project.

**MVP Grants** – Submitted an Expression of Interest (EOI) for the MVP culvert replacement design project this past week. I also submitted EOI for environmental zoning bylaw amendments including flood zone, electric vehicle chargers, open space, buffers, landscaping, and low impact development among many others.

## Appendix A – Summary of Draft Multifamily Guidelines

### Draft Guidelines Summary

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 today. I expect that we can determine how lack of current water and sewer infrastructure might impact this number. I understand that this is a “freak out” number but to me and my research, it is not ambiguous, and it is important that we be transparent about this but also emphasize that we may make formal comments to the state pushing back at this threshold.
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
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.
14. To remain in compliance while DHCD is collecting public comment on the Draft Guidelines, an MBTA community must:
- Submit the MBTA Community Information Form by 5:00 p.m. on May 2, 2022.
  - 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.

More on this will be noted below under **Important Dates**

### **Available Resources for Harvard**

Today's webinar noted a range of technical resources available to assist MBTA communities to respond to the guidelines. 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.

### **Important Dates**

Please see below the set of important dates related to the new MBTA multifamily zoning district guidelines. We should add them to our calendars.

- **March 31, 2022** – Deadline for submitting comments on Draft Guidelines.
- **Before May 2, 2022** – The Select Board must hold a briefing on the Draft Compliance Guidance.
- **May 2, 2022 @ 5:00 pm** – The MBTA Community Information Form must be submitted.
- **July 1, 2023** – Deadline for obtaining DHCD approval of a timeline and action plan.
- **December 31, 2024** – Deadline for adopting an appropriate zoning amendment that complies with guidelines.



**HARVARD PLANNING BOARD  
MEETING MINUTES  
JANUARY 24, 2022**

1  
2  
3  
4  
5 Chair Justin Brown called the meeting to order at 7:03pm virtually, pursuant to Chapter 20 of the Acts of  
6 2021, An Act Relative to Extending Certain COVID-19 measures adopted during the State of Emergency  
7 and signed into law on June 16, 2021, under M.G.L. Chapter 40A and Code of the Town of Harvard  
8 Chapter 125  
9

10 **Members Present:** Justin Brown, Stacia Donahue, Richard Cabelus, Brian Cook and Doug Thornton  
11

12 **Others Present:** Christopher Ryan (Director of Community & Economic Development), Liz Allard (Land Use  
13 Administrator), Valerie Hurley (Harvard Press), Chris Tracey (Zoning Board of Appeals), Michael Maglothin  
14 and Howard Kohn (The Chesapeake Group)  
15

16 **Public Comment**

17 There were no comments from the public this evening  
18

19 **Bi-annual Review of Planning Board Goals from Strategic Planning Session**

20 Priorities for FY2022 were set in the following order at the Strategic Planning Session in August:

- 21 • Ayer Road, Commercial District, economic development
- 22 • Open Space Residential Development & Senior Housing
- 23 • Town Center Zoning
- 24 • Multifamily re-writing zoning and mapping
- 25 • Rural Life/Ag Tourism
- 26 • Re-codify Zoning Bylaw  
27

28 After briefly discussing the State's requirements to establish a multi-family district, along with other  
29 zoning needs, the Board agreed to the following priority list of its goals for the remainder of fiscal year  
30 2022:

- 31 • Ayer Road Commercial District, economic development
- 32 • Multifamily re-writing zoning and mapping
- 33 • Open Space Residential Development & Senior Housing
- 34 • Town Center Zoning
- 35 • Rural Life/Ag Tourism
- 36 • Re-codify Zoning Bylaw  
37

38 Cabelus stated he would like to see a relationship between the Rural Life/Ag Tourism and the Ayer Road  
39 Visioning Plan. Ryan will reach out to the Hazel's tomorrow to determine where they are at with the  
40 Rural Life Bylaw.  
41

42 **Ayer Road Market Study Update from Howard Kohn of The Chesapeake Group**

43 Ryan provided an introduction to the process thus far, which includes the survey and interviews being  
44 conducted by The Chesapeake Group (TCG). Ryan stated if there is someone TCG should be interviewing  
45 please let him know and he will make that connection happen. Howard Kohn, from TCG, stated to date  
46 there have been 340 survey responses, which is sufficient to produce data, although 500 responses is  
47 preferred. The survey fits into a modeling process that focuses on the three things households spend  
48 money on: housing, food, and transportation. Kohn is seeking the Planning Board assistance in promoting  
49 the survey to get the responses up to 500. The survey will remain open for a few more weeks in hopes of  
50 achieving 500 responses.  
51

52 The Board members are eager to know the number of respondents from outside of Harvard. The survey is  
53 laying the ground work for other parts of the plan, with this phase to be completed by the end of May.  
54 Kohn stated he has already gathered a lot of research for the final report. Ryan has provided a list of 31  
55 individuals to be interviewed, with six completed to date. Kohn is hoping for a total of 15 – 20 interviews.  
56 Brown encouraged anyone interested in being interviewed to reach out to Ryan.

57

#### 58 **Harvard-Devens Jurisdiction Committee (HDJC) Position Paper**

59 Cabelus reported the Devens Enterprise Commission is meeting tomorrow night to discuss this matter.  
60 Cabelus stated the HDCJ Position Paper had been in the works long before he became a member of the  
61 Committee. Cabelus feels the HDJC did a good job summing up the concerns, including answers that are  
62 necessary before moving on with the development of Vicksburg Square. Although it is not laid out in  
63 Chapter 498, Devens residents need to be part of the conversation. Ryan stated the integration of the  
64 historic boundaries of Harvard is fairly single-minded; additional details can be found within his Director's  
65 Update for this evening. The Position Paper takes a general position on the issues that need to be  
66 addressed, such as the education of school-aged children.

67

68 Brown had a different read on this Paper; he found there to be no solutions or clear path forward for  
69 addressing the issues. Brown stated the Paper outlines the problems and could be thought of as a delay  
70 tactic by the Town of Harvard. Demanding certainty is not realistic and without a plan forward, Harvard is  
71 stuck waiting to see what shakes out with all of this. Ryan stated the Paper assumes one thing – Harvard  
72 taking back its historical boundaries of Devens. Other solutions or multiple scenarios should be  
73 considered.

74

75 After discussing at great length, Cook made a motion the Planning Board does not support the Harvard-  
76 Devens Jurisdiction Committee Position Paper, however the Board does agree with the rationale that these  
77 are the issues and encourages the HDJC to propose solutions for the Board to review. Donahue seconded  
78 the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cabelus, aye;  
79 Cook, aye; Thornton, aye; and Brown, aye.

80

#### 81 **Review the 2021 Annual Report**

82 Members were reminded to send any additional comments they may have to Ryan by end of day  
83 Thursday, January 27<sup>th</sup>.

84

#### 85 **Discuss Proposed Change to Vice Chair Position**

86 Brown explained with his departure at the end of his term and the strong desire of Donahue not wanting  
87 to take on the role of chair, he thought it would make for a better transition for a potential new chair to  
88 be elected to the position of vice chair to be able to get up to speed on the process before Brown's  
89 departure in June. During his one-on-one discussions with new members, Brown had discussed secession  
90 options. The next agenda will include an item to elect a new vice chair with the anticipation that Donahue  
91 will return to that role at the start of the new fiscal year in July, with the vice chair stepping into the chair  
92 role.

93

#### 94 **Board Member Reports**

95 • **Member Roles & Responsibilities** – Members were reminded that the rules set forth by the Town  
96 have to be followed. It can be very uncomfortable to have to apply a fine to a fellow resident, but when  
97 the Town approves a bylaw that include the clear enforcement of that bylaws it is the Boards  
98 responsibility to fairly apply those fines. Additionally, when representing the Board on another Board  
99 or Committee it is essential to follow up with the Planning Board on any major votes that are being  
100 made. At times schedules may not allow for a member to follow up with the Board and should be taken  
101 into consideration.

102

103

104 • Representatives & Liaisons Updates

- 105 ○ Loaves & Fishes – Brown thanked the members for their contribution in lieu of gifts to the  
106 staff this past holiday season. The thank you letter from Loaves & Fishes was read into the  
107 record.  
108 ○ Community Preservation Committee (CPC) – Thornton shared the requested and approved  
109 applications for Fiscal Year 2023. Thornton explained the Community Preservation Act (CPA)  
110 requires each town that has accepted CPA is obligated to provide not less than 10% of overall  
111 funding to one of three categories, annually: housing, historical and open space. Thornton  
112 explained he intended to present the applications to the Board this evening, but things  
113 moved along quicker than anticipated at the last CPC meeting. Thornton further explained he  
114 was the last individual to vote on each of the applications, with only one descending vote, and  
115 that none of his votes changed the decision to approve the applications. Thornton was more  
116 than willing to change any of his votes if the Board felt it necessary to do so. Although after  
117 the fact, Donahue made a motion to support all of the applications submitted to the CPC for  
118 funding in Fiscal Year 2023. Cook seconded the motion. The vote was unanimously in favor of  
119 the motion by roll call, Donahue, aye; Cabelus, aye; Cook, aye; Thornton, aye; and Brown;  
120 aye.  
121 ○ Historical Commission – Cabelus stated the Commission is seeking to add the Bromfield  
122 House to the Historic District and hopes to present this at the fall town meeting.

123 • Community Matters - None this evening

124  
125  
126 **Director's Report**

- 127 • District Local Technical Assistance (DLTA) Grant – No feedback as of yet on potential projects  
128 from the Board; any thoughts or ideas can be shared with Ryan  
129 • Hazard Mitigation Plan – A final consultant should be selected within the next week. A  
130 representative from the Board will be necessary for the development of the plan. Donahue  
131 stated she was willing to be that representative if Burson is unable to do so.  
132 • Housing Production Plan – Expires in June of this year; the Board should not let this expire.  
133 • Protective Bylaw Re-write – Ryan has created a Request for Information regarding funding for  
134 this process. Brown suggested, as the lowest priority, Ryan focusing his efforts on other tasks.  
135 Donahue agreed.

136  
137 **Approve Minutes**

138 Donahue made a motion to approve the minutes of January 3, 2022 as amended. Thornton seconded the  
139 motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Thornton, aye; and  
140 Brown; aye. Cook and Cabelus abstained from the vote.

141  
142 **Discuss the State's Multi-Family District Requirements**

143 Donahue wondered if this bylaw could be drafted under a District Local Technical Assistance (DLTA) Grant.  
144 Ryan suggested that MassHousing or the Department of Housing and Community Development (DHCD)  
145 may be offering funding as well; he will research this.

146  
147 The Board has three tasks to focus on pertaining to this bylaw, which are:

- 148 1. Prepare and submit comments to the State and Montachusett Regional Planning Commission by March  
149 31, 2022;  
150 2. Before May 2, 2022 brief the Select Board on what these requirements mean for the Town of Harvard  
151 and process to achieve those requirements; and  
152 3. Submit Massachusetts Bay Transit Authority Community Information Form by May 2, 2022

153  
154 Harvard currently allows for a Multi-family District, however that district was never added to the zoning  
155 map as part of the process of creating it. The current bylaw will need to be re-written to comply with the

156 new State guidelines. The biggest concern right now is the required number of units; this remains an  
157 uncertainty for many communities; regardless of the current housing stock the regulations require a  
158 minimum of 750 units/community. The comment period, which is open until March 31<sup>st</sup>, is the time to  
159 express concerns over this requirement. It also needs to be determined if existing multi-family, such as  
160 Harvard Green, can be counted toward the 750 units requirement. If a development is not meeting the  
161 15units/acre requirement it can be made up on another development. The lack of infrastructure, such as  
162 water and sewer, is not a concern of the State; it will be up to a developer to determine how to navigate  
163 those aspects. The density (15 units/acre) requirement is within Massachusetts General Law Chapter  
164 40A, but not the size (50 acres).

165  
166 It seems reasonable to the Board to be able to express how these requirements would be a burden to the  
167 Town. Donahue suggested the bylaw be presented at the fall town meeting, because if it fails the Board  
168 will have to wait 2-years to bring it back again and the deadline to have adopted such a provision is  
169 December 2024. The Massachusetts Municipal Association would be a great resource for support.  
170 Comments from the Board will be discussed at the February 7<sup>th</sup> meeting, as well as discussing the  
171 approach for the timeline and Action Plan that needs to be approved by DHCD by July 1, 2023.

172  
173 The approach should be discussed by the Planning Board prior to meeting with the Select Board. The  
174 Select Board liaison, Kara Minar, will be briefed as well prior to the Planning reporting out to them, which  
175 will be discussed with her on Wednesday at the weekly preparation meeting attended by the chair, vice  
176 chair and staff. Minar will be asked to brief the Select Board at their February 1<sup>st</sup> meeting, with Ryan and  
177 Brown attending the February 15<sup>th</sup> meeting to provide a full report.

178  
179 **Chapter 125 Bylaw Amendment – 125-35 Open Space Residential Development (OSRD)**

- 180 > Review schedule  
181 > Comments on Proposed Draft  
182     o Ryan has relocated the process of applying for an OSRD out of the bylaw and into the regulations  
183     o Comments received this far have been incorporated into the bylaw

184  
185 **Adjournment**

186 Donahue made a motion to adjourn the meeting at 10:03pm. Thornton seconded the motion. The vote  
187 was unanimously in favor of the motion by roll call, Donahue, aye; Cabelus, aye; Cook, aye; Thornton, aye;  
188 and Brown; aye.

189  
190 Signed: \_\_\_\_\_ Liz Allard, Clerk

191  
192 **EXHIBITS & OTHER DOCUMENTS**

- 193 • Planning Board Agenda January 24, 2022  
194 • Director of Community and Economic Development UPDATE, January 24, 2022  
195 • Letter from Loaves & Fishes, dated December 30, 2021



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

**DRAFT Compliance Guidelines for Multi-family Districts**  
**Under Section 3A of the Zoning Act**

**1. Overview of Section 3A of the Zoning Act**

Section 18 of chapter 358 of the Acts of 2020 added a new section 3A to chapter 40A of the General Laws (the Zoning Act) applicable to MBTA communities (referred to herein as “Section 3A”). Subsection (a) of Section 3A provides:

*An MBTA community shall have a zoning ordinance or by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as of right; provided, however, that such multi-family housing shall be without age restrictions and shall be suitable for families with children. For the purposes of this section, a district of reasonable size shall: (i) have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A; and (ii) be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.*

The purpose of Section 3A is to encourage MBTA communities to adopt zoning districts where multi-family zoning is permitted as of right, and that meet other requirements set forth in the statute.

The Department of Housing and Community Development, in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, is required to promulgate guidelines to determine if an MBTA community is in compliance with Section 3A. DHCD promulgated preliminary guidance on January 29, 2021. DHCD updated that preliminary guidance on December 15, 2021. These guidelines provide further information on how MBTA communities may achieve compliance with Section 3A.

**2. Definitions**

“Adjacent community” means an MBTA community with no transit station within its border or within 0.5 mile of its border.

“Age-restricted housing” means any housing unit encumbered by a title restriction requiring occupancy by at least one person age 55 or older.

“Bus service community” means an MBTA community with a bus station within its borders or within 0.5 miles of its border, or an MBTA bus stop within its borders, and no subway station or commuter rail station within its border, or within 0.5 mile of its border.

“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.

“Chief executive officer” means the mayor in a city, and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

“Commonwealth’s sustainable development principles” means the principles set forth at <https://www.mass.gov/files/documents/2017/11/01/sustainable%20development%20principles.pdf> as such principles may be modified and updated from time to time.

“Commuter rail community” means an MBTA community with a commuter rail station within its borders, or within 0.5 mile of its border, and no subway station within its borders, or within 0.5 mile of its border.

“Developable land” means land on which multi-family housing units have been or can be permitted and constructed. Developable land shall not include land under water, wetland resource areas, areas lacking adequate water or wastewater infrastructure or capacity, publicly owned land that is dedicated to existing public uses, or privately owned land encumbered by any kind of use restriction that prohibits residential use.

“Gross density” means a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial, and other nonresidential uses.

“Housing suitable for families” means housing comprised of residential dwelling units that are not age-restricted housing, and for which there are no legal restriction on the number of bedrooms, the size of bedrooms, or the number of occupants.

“MBTA community” means a city or town that is: (i) one of the 51 cities and towns as defined in section 1 of chapter 161A; (ii) one of the 14 cities and towns as defined in said section 1 of said chapter 161A; (iii) other served communities as defined in said section 1 of said chapter 161A; or (iv) a municipality that has been added to the Massachusetts Bay Transportation Authority under section 6 of chapter 161A or in accordance with any special law relative to the area constituting the authority.” A list of MBTA communities is attached, including the designation of each MBTA community as a rapid transit community, a bus service community, a commuter rail community or an adjacent community for purposes of these compliance guidelines.

“Multi-family housing” means a building with 3 or more residential dwelling units or 2 or more buildings on the same lot with more than 1 residential dwelling unit in each building.

“Multi-family district” means a zoning district, including an overlay district, in which multi-family uses are allowed by right.

“Rapid transit community” means an MBTA community with a subway station within its borders, or within 0.5 mile of its border. An MBTA community with a subway station within its borders, or within 0.5 mile of its border, shall be deemed to be a rapid transit community even if there is one or more commuter rail stations or MBTA bus lines located in that community.

“Reasonable size” means not less than 50 contiguous acres of land with a unit capacity equal to or greater than the unit capacity specified in section 5 below.

“Residential dwelling unit” means a dwelling unit equipped with a full kitchen and bathroom.

“Unit capacity” means an estimate of the total number of multi-family housing units that can be developed as of right within the multi-family district, made in accordance with the requirements of section 5.b below.

### **3. General Principles of Compliance**

a. These compliance guidelines describe how an MBTA community can comply with the requirements of Section 3A. The guidelines specifically address:

- What it means to permit multi-family housing “as of right”;
- The metrics that determine if a multi-family district is “of reasonable size”;
- How to determine if a multi-family district has a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code;
- The meaning of Section 3A’s mandate that “such multi-family housing shall be without age restrictions and shall be suitable for families with children”; and
- The extent to which MBTA communities have flexibility to choose the location of a multi-family district.

b. The following general principles have informed the more specific compliance criteria that follow:

- All MBTA communities should contribute to the production of new housing stock.
- MBTA communities with subway stations, commuter rail stations and other transit stations benefit from having these assets located within their boundaries and should provide opportunity for multi-family housing development around these assets. MBTA communities with no transit stations within their boundaries nonetheless benefit from being close to transit stations in nearby communities.
- MBTA communities should adopt multi-family districts that will lead to development of multi-family housing projects of a scale, density and character that are consistent with a community’s long-term planning goals.

- “Reasonable size” is a relative rather than an absolute determination. Because of the diversity of MBTA communities, a multi-family district that is “reasonable” in one city or town may not be reasonable in another city or town. Objective differences in community characteristics must be considered in determining what is “reasonable” for each community.
- To the maximum extent possible, multi-family districts should be in areas that have safe and convenient access to transit stations for pedestrians and bicyclists.

#### 4. **Allowing Multi-Family Housing “As of Right”**

To comply with Section 3A, a multi-family district must allow multi-family housing “as of right,” meaning that the construction and occupancy of multi-family housing is allowed in that district without the need to obtain any discretionary permit or approval. Site plan review and approval may be required for multi-family uses allowed as of right. Site plan review is a process by which a local board reviews a project’s site layout to ensure public safety and convenience. Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building, and screening of adjacent properties. Site plan review may not be used to deny a project that is allowed as of right, nor may it impose conditions that make it infeasible or impractical to proceed with a multi-family use that is allowed as of right.

#### 5. **Determining “Reasonable Size”**

In making determinations of “reasonable size,” DHCD will take into consideration both the area of the district and the district’s multi-family unit capacity (that is, the number of units of multi-family housing that can be developed as of right within the district).

##### a. *Minimum land area*

Section 3A’s requirement that a multi-family district be a “reasonable size” indicates that the purpose of the statute is to encourage zoning that allows for the development of a reasonable amount of multi-family housing in each MBTA community. A zoning district is a specifically delineated land area with uniform regulations and requirements governing the use of land and the placement, spacing, and size of buildings. A district should not be a single development site on which the municipality is willing to permit a particular multi-family project. To comply with Section 3A’s “reasonable size” requirement, multi-family districts must comprise at least 50 acres of land—or approximately one-tenth of the land area within 0.5 mile of a transit station.

An overlay district is an acceptable way to achieve compliance with Section 3A, provided that such an overlay district should not consist of a collection of small, non-contiguous parcels. At least one portion of the overlay district land areas must include at least 25 contiguous acres of land. No portion of the district that is less than 5 contiguous acres land will count toward the minimum size requirement.

##### b. *Minimum multi-family unit capacity*

A reasonably sized multi-family district must also be able to accommodate a reasonable number of multi-family housing units as of right. MBTA communities seeking a determination of compliance with Section 3A must provide to DHCD an accurate assessment of the number of multi-family housing units that can be developed as of right within the multi-family district, referred to as the district’s unit capacity.



A compliant district’s multi-family unit capacity must be equal to or greater than a specified percentage of the total number of housing units within the community. The required percentage will depend on the type of transit service in the community, as follows:

<b>Category</b>	<b>Minimum multi-family units as a percentage of total housing stock</b>
Rapid transit community	25%
Bus service community	20%
Commuter rail community	15%
Adjacent community	10%

The minimum unit capacity applicable to each MBTA community is determined by multiplying the number of housing units in that community by 0.25, 0.20, 0.15 or 0.10, depending on the type of service in that community. For example, a rapid transit community with 7,500 housing units is required to have a multi-family district with a multi-family unit capacity of  $7,500 \times 0.25 = 1,875$  multi-family units. When calculating the minimum unit capacity, each MBTA community should use 2020 census data to determine the number of total housing units, unless another data source has been approved by DHCD.

When determining the unit capacity for a specific multi-family district, each MBTA community must estimate how many units of multi-family housing could be constructed on each parcel of developable land within the district. The estimate should take into account the amount of developable land in the district, as well as the height limitations, lot coverage limitations, maximum floor area ratio, set back requirements and parking space requirements applicable in that district under the zoning ordinance or bylaw. The estimate must also take into account the restrictions and limitations set forth in any other municipal bylaws or ordinances; limitations on development resulting from inadequate water or wastewater infrastructure, and, in areas not served by public sewer, any applicable limitations under Title 5 of the state environmental code or local septic regulations; known title restrictions on use of the land within the district; and known limitations, if any, on the development of new multi-family housing within the district based on physical conditions such the presence of waterbodies, and wetlands.

If the estimate of the number of multi-family units that can be constructed in the multi-family district is less than the minimum unit capacity, then the MBTA community must change the boundaries of the multi-family district or make changes to dimensional regulations applicable to that district (or to other local ordinances or bylaws) to allow for the development of a greater number of multi-family units as of right.

It is important to understand that a multi-family district’s unit capacity is not a mandate to construct a specified number of housing units, nor is it a housing production target. Section 3A requires only that each MBTA community has a multi-family zoning district of reasonable size. The law does not require the production of new multi-family housing units within that district. There is no requirement nor expectation that a multi-family district will be built out to its full unit capacity.

In some communities, there may be a significant number of multi-family units already existing in the multi-family district; those communities should generally expect fewer new units to be produced in the district, because it is more fully built out. Conversely, there may be some communities with relatively little multi-family housing in its multi-family district; there generally will be more opportunity for new

housing production in those districts in which there is a large gap between unit capacity and the number of existing multi-family units.

## 6. Minimum Gross Density

Section 3A states that a compliant multi-family district must have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A. DHCD will deem a zoning district to be compliant with Section 3A's minimum gross density requirement if the following criteria are met.

### a. *District-wide gross density*

Section 3A expressly requires that a multi-family district—not just the individual parcels of land within the district—must have a minimum gross density of 15 units per acre, subject to any further limitations imposed by section 40 of chapter 131 and title 5 of the state environmental code established pursuant to section 13 of chapter 21A. To comply with this requirement, the zoning must legally and practically allow for a district-wide gross density of 15 units per acre. The Zoning Act defines “gross density” as “a units-per-acre density measurement that includes land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.”

To meet the district-wide gross density the municipality must demonstrate that the zoning for the district permits a gross density of 15 units per acre of land within the district, “include[ing] land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.” By way of example, to meet that requirement for a 50-acre multi-family district, the municipality must show at least 15 existing or potential new multi-family units per acre, or a total of at least 750 existing or potential new multi-family units.

### b. *Achieving district-wide gross density by sub-districts*

Zoning ordinances and bylaws typically limit the unit density on individual parcels of land. To comply with the statute's density requirement, an MBTA community may establish sub-districts within a multi-family district, with different density requirements and limitations for each sub-district, provided that the gross density for the district as a whole meets the statutory requirement of not less than 15 multi-family units per acre.

## 7. Determining Suitability for Families with Children

Section 3A states that a compliant multi-family district must be without age restrictions and must be suitable for families with children. DHCD will deem a multi-family district to comply with these requirements as long as the zoning does not require multi-family uses to include units with age restrictions and does not place any limits or restrictions on the size of the units, the number of bedrooms, the size of bedrooms, or the number of occupants.

## 8. Location of Districts

Section 3A states that a compliant multi-family district shall “be located not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.” DHCD will interpret that requirement consistent with the following guidelines.

### *a. General rule for measuring distance from a transit station.*

To maximize flexibility for all MBTA communities, the distance from a transit station may be measured from the boundary of any parcel of land owned by a public entity and used for purposes related to the transit station, such as an access roadway or parking lot.

### *b. MBTA communities with some land area within 0.5 miles of a transit station*

An MBTA community that has a transit station within its boundaries, or some land area within 0.5 mile of a transit station located in another MBTA community, shall comply with the statutory location requirement if a substantial portion of the multi-family district is located within the prescribed distance. Absent compelling circumstances, at least [one half] of the land area of the multi-family district should be located within 0.5 mile of the transit station. The multi-family district may include land areas that are further than 0.5 mile from the transit station, provided that such areas are easily accessible to the transit station based on existing street patterns and pedestrian connections.

In unusual cases, the most appropriate location for a multi-family district may be in a land area that is further than 0.5 miles of a transit station. Where none of the land area within 0.5 mile of transit station is appropriate for development of multi-family housing—for example, because it comprises wetlands or land publicly owned for recreation or conservation purposes—the MBTA community may propose a multi-family use district that has less than one-half of its land area within 0.5 miles of a transit station. To the maximum extent feasible, the land areas within such a district should be easily accessible to the transit station based on existing street patterns, pedestrian connections, and bicycle lanes.

### *c. MBTA communities with no land area within 0.5 miles of a transit station*

When an MBTA community has no land area within 0.5 mile of a transit station, 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—for example, near an existing downtown or village center, near an RTA bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new multi-family housing.

## 9. Determinations of Compliance

DHCD will make determinations of compliance with Section 3A upon request from an MBTA community, in accordance with the following criteria and schedule. An MBTA community may receive a determination of full compliance when it has a multi-family district that meets all of the requirements of Section 3A. An MBTA community may receive a determination of interim compliance for a limited duration to allow time to enact a new multi-family district or amend an existing zoning district in order to achieve full compliance with Section 3A.

*a. Requests for determination of compliance*

When an MBTA community believes it has a multi-family district that complies with the requirements for Section 3A, as set forth in these guidelines, it may request a determination of compliance from DHCD. Such a request may be made for a multi-family district that was in existence on the date that Section 3A became law, or for a multi-family district that was created or amended after the enactment of Section 3A. In either case, such request shall be made on a form required by DHCD and shall include, at a minimum, the following information, which shall be provided in a format or on a template prescribed by DHCD:

General district information

- i. A map showing the municipal boundaries and the boundaries of the multi-family district;
- ii. A copy of those provisions in the municipal zoning code necessary to determine the uses permitted as of right in the multi-family district and the dimensional limitation and requirements applicable in the multi-family district;
- iii. A plan showing the boundaries of each parcel of land located within the district, and the area and ownership of each parcel as indicated on current assessor records;

Location of districts

- iv. A map showing the location of the nearest transit station and how much of the multi-family district is within 0.5 miles of that transit station;
- v. In cases where no portion of the multi-family district is located within 0.5 miles of a transit station, a statement describing how the development of new multi-family housing within the district would be consistent with the Commonwealth's sustainable development principles;

Reasonable size metrics

- vi. A calculation of the total land area within the multi-family district;
- vii. A calculation of the multi-family district's unit capacity, along with a statement describing the methodology by which unit capacity was determined, together with:
  - a. A description of the water and wastewater infrastructure serving the district, and whether that infrastructure is sufficient to serve any new multi-family units included in the unit capacity;
  - b. A description of any known physical conditions, legal restrictions or regulatory requirements that would restrict or limit the development of multi-family housing within the district;
  - c. The number and age of multi-family housing units already existing within the multi-family district, if any.

District gross density

- viii. The gross density for the multi-family district, calculated in accordance with section 6 of these guidelines.

## Housing suitable for families

- ix. An attestation that the zoning bylaw or ordinance does not place any limits or restrictions on the size of the units, the number of bedrooms, the size of bedrooms, or the number of occupants in multi-family housing units within the multi-family district.

## Attestation

- x. An attestation that the application is accurate and complete, signed by the MBTA community's chief executive officer.

As soon as practical after receipt of a request for determination of compliance, DHCD will either send the requesting MBTA community a notice that it has provided all of the required information, or identify the additional information that is required to process the request. Upon reviewing a complete application, DHCD will provide the MBTA community a written determination either stating that the existing multi-family use district complies with Section 3A, or identifying the reasons why the multi-family use district fails to comply with Section 3A and the steps that must be taken to achieve compliance.

An MBTA community shall be deemed to be in compliance with Section 3A for the period of time during which a request for determination of compliance, with all required information, is pending at DHCD.

### *b. Action plans and interim compliance—New or amended district*

Many MBTA communities do not currently have a multi-family district of reasonable size that complies with all of the requirements set out in Section 3A and these guidelines. These MBTA communities must take affirmative steps towards the creation of a compliant multi-family district within a reasonable time. To achieve interim compliance, the MBTA community must, by no later than the dates specified in section 9.c, send to DHCD written notice that a new multi-family district, or amendment of an existing multi-family district, must be adopted to come into compliance with Section 3A. The MBTA community must then take the following actions to maintain interim compliance:

- i. *Creation of an action plan.* Each MBTA community must provide DHCD with a proposed action plan and timeline for any planning studies or community outreach activities it intends to undertake in order to adopt a multi-family district that complies with Section 3A. DHCD may approve or require changes to the proposed action plan and timeline by sending the MBTA community written notice of such approval or changes. Rapid transit communities and bus service communities must obtain DHCD approval of an action plan by no later than March 31, 2023. Commuter rail communities and adjacent communities must obtain DHCD approval of a timeline and action plan by no later than July 1, 2023.
- ii. *Implementation of the action plan.* The MBTA community must timely achieve each of the milestones set forth in the DHCD-approved action plan, including but not limited to the drafting of the proposed zoning amendment and the commencement of public hearings on the proposed zoning amendment.

- iii. *Adoption of zoning amendment.* An MBTA community must adopt the zoning amendment by the date specified in the action plan and timeline approved by DHCD. For rapid transit communities and bus service communities, DHCD will not approve an action plan with an adoption date later than December 31, 2023. For commuter rail communities and adjacent communities, DHCD will not approve an action plan with an adoption date later than December 31, 2024.
- iv. *Determination of full compliance.* Within [90] days after adoption of the zoning amendment, the MBTA community must submit to DHCD a complete application requesting a determination of full compliance. The application must include data and analysis demonstrating that a district complies with all of the compliance criteria set forth in these guidelines, including without limitation the district's land area, unit capacity, gross density and location.

During the period that an MBTA community is creating and implementing its action plan, DHCD will endeavor to respond to inquiries about whether a proposed zoning amendment will create a multi-family district that complies with Section 3A. However, DHCD will issue a determination of full compliance only after final adoption of the proposed zoning amendment and receipt of a complete application demonstrating the unit capacity.

*c. Timeframes for submissions by MBTA communities*

To remain in interim compliance with Section 3A, an MBTA community must take one of the following actions by no later than December 31, 2022:

- i. Submit a complete request for a determination of compliance as set forth in section 9.a above; or
- ii. Notify DHCD that there is no existing multi-family district that fully complies with these guidelines, and submit a proposed action plan as described in section 9.b above.

**10. Renewals and Rescission of a Determination of Compliance**

*a. Term and renewal of a determination of compliance*

A determination of compliance shall have a term of 10 years. Each MBTA community shall apply to renew its certificate of compliance at least 6 months prior to its expiration. DHCD may require, as a condition of renewal, that the MBTA community report on the production of new housing within MBTA community, and in the multi-family district that was the basis for compliance. Applications for renewal shall be made on a form proscribed by DHCD.

*b. Rescission of a determination of compliance*

DHCD reserves the right to rescind a determination of compliance if DHCD determines that (i) the MBTA community submitted inaccurate information in its application for a determination of compliance, (ii) the MBTA community amended its zoning or enacted a general bylaw or other rule or regulation that materially alters the Unit capacity in the applicable multi-family use district.

## **11. Effect of Noncompliance**

If at any point DHCD determines that an MBTA community is not in compliance with Section 3A, that MBTA community will not be eligible for funds from the following grant programs: (i) the Housing Choice Initiative as described by the governor in a message to the general court dated December 11, 2017; (ii) the Local Capital Projects Fund established in section 2E of chapter 29; or (iii) the MassWorks infrastructure program established in section 63 of chapter 23A. DHCD may, in its discretion, take non-compliance into consideration when making other discretionary grant awards.





**HARVARD DRAFT OPEN SPACE RESIDENTIAL DESIGN (OSRD) DEVELOPMENT  
DECEMBER 23<sup>28</sup>, 2021 – 3<sup>rd</sup> DRAFT**

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- A. Purpose and Intent**
  - B. Applicability**
  - C. Open Space**
  - D. Development Density**
  - E. Permitted Uses**
  - F. Dimensional and Design Requirements**
  - G. Project Site Design Process**
  - H. Formal Process and Application**
- 

**A. Purpose and Intent**

The purpose and intent of the Open Space Residential Development (OSRD) development option is to permit high-quality residential development in harmony with the natural features of the land that is consistent with historic land use patterns of village-like areas where residences are grouped, surrounded by areas of open space used for agriculture, forestry, recreation and similar purposes. It is also the purpose of the OSRD option to:

- (1) Preserve open space, scenic landscapes, water resources, wetlands, natural (particularly native) vegetation, habitat, prime agricultural land, key natural features, and cultural and historic resources with emphasis on goals and actions included in Harvard's 2016 Master Plan and 2016 Open Space and Recreation Plan.
- (2) Reduce site development and public and private maintenance costs.
- (3) Promote a diversity of housing opportunities within the Town, while respecting and enhancing neighborhoods, and promoting attractive standards of appearance and aesthetics consistent with town character.
- (4) Reduce the anticipated negative fiscal impact on the Town associated with conventional residential development by reducing street length and width, public utility extent, providing efficient stormwater runoff technology, and other public infrastructure.
- (5) Encourage the siting of homes in a manner that clusters units together in well-designed village settings, on buildable portions of the site, as a distinct alternative to the more arbitrary siting associated with lot-by-lot development typically reflected in plans submitted pursuant to Massachusetts General Laws Chapter 41, Sections 81K through 81GG, the Subdivision Control Law. At least 80 percent of dwellings shall be contiguous with some type of Open Space, and all OSRDs shall generally contain at least one neighborhood green or common, bounded by a street or streets in the traditional New England manner.
- (6) Prohibit a lot that has been approved for OSRD to apply for further subdivision of the lot for ten (10) years after the first approval.

**B. Applicability**

OSRD is Special Permit development option for residential development. The Planning Board may grant approval of an OSRD on an Agricultural-Residential (AR) zoned tract of land.

- ~~(1) If the proposed OSRD involves one or more common driveways, density bonuses, and/or any other use that requires a Special Permit, the proceedings for all such Special Permits and the Site Plan review shall occur in one Consolidated Special Permit proceeding before the Planning Board.~~

Commented [CR1]: Moved to Section 133-60

### C. Open Space

Open Space is the organizing principle for OSRD projects and as such, requires the bulk of the up-front project tasks. The following sections describe (1) how open space is calculated, (2) how open space may be classified, and (3) the logistics regarding ownership and maintenance.

- (1) ~~Generally~~ Calculation of Open Space – A minimum of fifty (50%) percent of an OSRD must be open space made up of conservation areas and other open spaces such as commons or greens, parks, historic or cultural sites and features, and passive and active recreation areas. The specific allocation of this open space shall be as follows:
- (a) Determine the acreage of Primary Resource Protection Areas (PRPAs), as defined in Section 125-2.
  - (b) Determine the acreage of Secondary Resource Protection Areas (SRPAs), as defined in Section 125-2.
  - (c) The combination of PRPA and SRPA area must equal at least 50% of the total site area.
  - (d) At least 50% of the SRPA must remain in its natural state, completely devoid of any structure, parking, loading and unloading space, or as private yards, patios, or gardens for the exclusive or principal use by residents of individual dwelling units, unless the conservation or preservation value is as an improved asset such as a farm field, stone wall, well, historic building or structure, or other modified landscape, protecting and maintaining those assets that were agreed upon by the Planning Board and Conservation Commission.
  - (e) The remaining 50% of SRPA may be improved into commons or greens, parks, and passive and active recreation areas, which may include unpaved walking paths and trails. All OSRDs shall generally contain at least one neighborhood green or common, bounded by a street in the traditional New England manner. The common open space described herein is in substitution of and supersedes any other reference to common open space that may be described elsewhere in the Bylaw.
  - (f) All Open Space, to the extent possible, shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, and where appropriate, a recreational area, and be a visual and natural amenity for the development and the Town. Preserved open space shall also be contiguous to the greatest extent practicable, except for neighborhood greens. Where noncontiguous pockets of open space are preferable to protect features of high conservation value, applicants shall attempt to connect these resource areas to the greatest extent practicable through the use of trails, vegetated corridors, or to adjacent external open space. Open Space will still be considered contiguous if it is separated by common elements such as a shared driveway, roadway, or an accessory amenity (such as a barn, paved pathway or trail, or shed for the storage of recreational equipment).

(g) The remaining land area, after all open space has been established, is available for the infrastructure, dwelling units, accessory buildings, and exclusive use areas (if a part of the design scenario).

(h) Plan-Site plan shall include a notation that states: “*Designated Open Space shall not be further subdivided or used for future building lots.*”

(2) Open Space Classification – For the purpose of this Section, open space, as defined generally in Section 125-2, shall include ~~and be qualified as active recreation space, common open space, conservation open space, stormwater open space, or utility open space.~~ The following are the ~~three~~<sup>two (2)</sup> primary types of open space within an OSRD parcel (See Section 125-2 for definitions):

- (a) Open Space, Primary Resource Protection Area
- (b) ~~Open Space, Non-Common~~
- (c) Open Space, Common Use (Secondary Resource Protection Area)

(3) Permanent Open Space Logistics

Open space set aside in an OSRD or as a condition of any Special Permit or Site Plan approval shall be permanently preserved from development as required by this Section. The Planning Board may not require such open space land to be accessible to the public, ~~unless a density bonus is allowed under Subsection D (4).~~ Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such open space land, based upon the conservation findings of the Planning Board, determined in consultation with the Conservation Commission as provided in Section 130. This section shall also provide for how Open Space may be owned and maintained.

[1] Permanent Preservation of Open Space Land – All land, except to be town-owned, required to be set aside as open space in connection with any OSRD shall be so noted on any approved plans and shall be protected by a 1) permanent conservation restriction, as defined in Article XIII, or 2) agricultural preservation restriction (APR), to be held by the Town of Harvard, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under G.L. Chapter 184, Section 31, and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. The restriction shall specify the permitted uses of the restricted land. The restriction may permit, but the Planning Board may not require public access or access by residents of the development to the protected open space land.

[2] Ownership of Open Space Land

At the Planning Board’s ~~discretion~~discretion, the Open Space may be owned by:

- (1) The Town or its Conservation Commission;
- (2) A nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;
- (3) A corporation or trust owned jointly or in common by the owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for

mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

[3] Maintenance Standards for Open Space

- [a] Ongoing maintenance standards shall be established in a formal Maintenance Plan as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials, and to ensure that it is maintained properly. Maintenance Plans shall therefore delineate all conservation lands within the OSRD into various land-types (such as woodlands, fields, meadows, pastures, neighborhood greens, active recreation areas, etc.) and shall describe in some detail the maintenance regime and schedule for each of those areas, to be implemented by the owners of those conservation lands. (For example, neighborhood greens and active recreation areas shall be mowed weekly during the growing season.) Standards and maintenance frequency and thresholds shall be specific enough so that violations are clear and unassailable.
- [b] Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.
- [c] If the Select Board finds that the provisions of Subsection [a] above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the cost of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

**D. Development Density**

The method for determining the maximum number of residences is defined as the Formula Method:

- (1) The maximum number of residences is determined by dividing the total area of the tract of land by the minimum conventional lot size specified in the zoning district. This base density may be increased by density bonuses as noted in Section (2) below up to a maximum of an additional ~~25~~33% permitted additional units.

(1) Determine Parcel Size: - The gross acreage of the parcel or parcels under consideration for the project shall be the starting point in determining density. This number shall be designated as Gross Area (GA).

(2) Minimum Open Space-The minimum acreage required to be set aside for open space is 50% of Gross Area.

Refer to Section C(2) above to determine the minimum requirements for open space.

(3) **Base Development Density (BD)** – The maximum number of dwelling units per acre permitted in an OSRD shall not exceed one (1) unit per 1.5 acres and no more than 2.0 bedrooms per acre of the net density of the land area.

(4) **Permitted Yield (PY)** – The Permitted Yield (PY) is the maximum number of residential units in an Open Space Residential Design and is calculated by multiplying the allowed (base) density or BD by the Gross Acreage (GA). Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.

(5) **Total Open Space Set Aside (TOS)** is the total amount of open space set aside for the project. This is calculated by taking the Minimum Open Space from (2) above and adding any additional open space set aside to achieve a density bonus for Bonus Open Space or BOS to the minimum 50%.

In these calculations, density credit may be applied to certain other unconstrained parts of the site, such as land used for onsite sewage disposal, including nitrification fields and fields used for “spray irrigation” (sometimes called “land treatment”). Unless specified otherwise, these lands may also be counted toward meeting the minimum open space requirements for Open Space developments.

(6) **Bonus Units** – The unit count determined above (PY) may be increased by a density bonus at the discretion of the Planning Board based upon the eligible density bonuses listed in (2) below. The density bonuses allowed above may not increase the density by more than ~~25~~ 50 percent of the base number of units and said density bonuses may only be used if the resulting development complies with Title 5 of the State Environmental Code as determined by the Board of Health. Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.

(2) **Residential Density Bonuses** – Eligible residential density bonuses include the following as specific public benefits:

(a) **Additional Open Space** – For projects that provide SRPA open space in excess of the minimum fifty percent (50%), a by-right density bonus of one (1%) percent (minimum 1 unit) for each five (5%) percent of additional open space (minimum 7,500 s.f.) provided, up to a five (5%) percent bonus.

(b) **Affordable Housing Component** – The Planning Board may award a density bonus to increase the number of dwelling units/lots beyond the maximum number where affordable housing or affordable Over 55 Housing is provided. All affordable units shall meet the requirements of M.G.L. Chapter 40B and the developer shall demonstrate that said units will count towards the Town of Harvard’s 10% affordable quota as determined by the Massachusetts Department of Housing and Community Development. When affordable units exceed 15% and up to 25%, all of the affordable units on site must be Over 55 Housing. Computations shall be rounded to the highest number. The density bonus units may only be granted if they are restricted perpetually as SHI eligible affordable housing. The permanent restriction shall be approved as to form by legal counsel to the Planning Board, and a right of first refusal upon the transfer of such restricted units shall be granted to the Town of Harvard or its designee for a period of not less than 120 days after notice thereof. Designating 15% affordable units may be awarded a ten (10%) density bonus whereas any percentage in excess of 15% may be awarded one (1%) additional density for each percentage increase in affordability up to fifteen (15%) percent.

Developers may pay a fee in lieu of unit designation to the Harvard Municipal Affordable Housing Trust to receive the density bonus. This fee is based on a formula established by the Harvard Housing Production Plan;

- (c) Age Restricted or Age Targeted Housing – The Planning Board may award a density bonus of up to ten (10%) percent for a development that is certified as restricted age 62 and older active adult independent living units;
- (d) Starter Home Development – The Planning Board may award a density bonus of up to five ten (510%) percent for a development containing at least ~~five~~ ten (5010%) percent of the units as “starter” homes each with less than 1,850 s.f. of floor area but no more than fifty (50%) -percent. Each ten percent increment shall result in up to a 2% bonus. Should a MGL 40R Starter Home Zoning District be utilized, density, siting, and other requirements of the program shall be incorporated herein and density bonus will reflect such compliance.
- (e) Green Score Landscaping - If the applicant provides a minimum Green Score for the site of at least 0.35, a density bonus of 10%. See Section 133, Article XII for Green Score criteria and scoring.
- (f) Sustainable Development – There are two categories of sustainable development including:
  - [1] Green Buildings
  - [2] Green Roofs and Stormwater Management

Applicants may gain an additional five (5%) percent density bonus for each category met. See Section 133, Article XII for Sustainable Development criteria and scoring.

*Table 1 - Unit Calculation for Hypothetical 40 Acre Scenario*  
 Table 1 - Unit Calculation for Hypothetical 40 Acre Development Scenario

<u>Total Acres</u>	<u>Open Space (Acres)</u>	<u>Base Density (Units/Acre)</u>	<u>Base Units</u>	<u>Maximum Units (+5035%)</u>	<u>Final Gross Density (Units/Acre)</u>	<u>Final Net Density (Units/Acre)</u>
40	20	0.667	27	40.536	1.010.9	1.8

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**E. Permitted Uses**

Permitted uses include the following:

- (a) Single-family and two-family detached dwellings;
- (b) Townhouse dwellings;
- (c) Agriculture and horticultural uses including but not limited to orchards, vineyards, forestry, farming for fruits and vegetables, and grazing animals including horses, donkeys, sheep, llamas, vicunas, and similar animals;
- (d) Open space, active and passive; trails; and bikeways.
- (e) Accessory residential/recreational uses (e.g., tennis court, pool, playground);
- (f) Clubhouse or community building;

(g) Civic uses (e.g. library);

**F. Dimensional and Design Requirements**

(1) Development Types – There are three (3) primary OSRD development types as follows:

- (a) Condominium w/ Exclusive Use Areas
- (b) Condominium

(2) Dimensional Requirements – The following provisions shall apply:

(a) Project Scale Requirements

- [1] Project Size: Minimum (none), Maximum (none)
- [2] Setbacks:
  - [a] 50’ to external side and rear lot lines
  - [b] For projects smaller than 3 acres, the Design Review Board shall establish setbacks.
- [3] Frontage: 50’
- [4] Maximum Build Out: Base Zoning Plus Density Bonus
- [5] Applicable Zoning District: Agricultural-Residential (AR)

(b) Dimensional Requirements Table:

The table below provides a set of dimensional requirements for the three land use types permitted in an OSRD development. Since projects will not involve separate building lots, dimensional criteria shall follow these conventions:

- [1] Land Use Area Size – Area dedicated to specific land uses will not be on the basis of lot size but rather will use an equivalent called an Exclusive Use Area or site pad.
- [2] Setbacks – shall be measured from the structure to the extents of the EUA or site pad.
- [3] Frontage – refers to the horizontal ground measurement of the front of a EUA or site pad facing an internal circulation roadway.
- [4] Building Size – Limits on the amount of floor area a specific use may have.

Table 2 - OSRD Land Use Dimensional Requirements

Land Use	Exclusive Use Area (EUA) or Pad Size	Setbacks (Minimum) From EUA Boundary or Site Pad <sup>1</sup>	Frontage	Building Size (Maximum)
<b>Open Space</b> Passive and active recreation, parks, squares, natural areas, plazas and courtyards (see definition)	Minimum 50% of Net Acreage (NA)	NA	NA	N/A
<b>Civic/Institutional Building</b> Community space, library, house of worship, museum, theater, or similar	Minimum: 5,000 s.f.	Front: 10’ Side: 8’ Rear: 30’	Minimum: 24’ Maximum 75’	5,000 s.f.
<b>Residential</b> One and two-family	Minimum: 4,000 s.f. No Maximum	Front: 10’ Side: 8’	Minimum: 36’ No Maximum	None

<sup>1</sup> Minimum rear setbacks will be waived if a rear facing garage and alley is proposed.

detached dwellings	s.f.	Rear: 25'	75'	
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- (c) The Planning Board may waive the minimum requirements for frontage and/or exclusive use area requirements that would normally be applicable in order to achieve maximum open space area and to facilitate a creative or innovative design;

A buffer and/or screening may be required adjacent to sites outside of the OSRD if it is determined that such a buffer will provide relief from potential nuisances. Such buffers shall provide visual screening at all times of year, and preferred options include evergreen planted screening, except those that lose their lower branches as they grow (such as pines) or which are highly susceptible to deer damage (such as arborvitae).

- (d) Exclusive Use Areas (EUAs) or lots proposed for a width of 60' or less, townhomes, or duplexes shall use rear-facing garages on alleys or back lanes. EUAs wider than 60' are encouraged to have rear yard garages, side yard garages, or front facing garages offset behind the façade.

(3) Arrangement of Structures – Structures and other site features shall be located and arranged in a manner that protects:

- (a) Views from public roads and other publicly accessible points such as parks or land trust preserves;
- (b) Farmland, including fields and pastures;
- (c) Wildlife habitat;
- (d) Large intact forest areas, particularly ones older than 75 years, as seen on early aerial photographs;
- (e) Hilltops;
- (f) Ponds, creeks, and streams;
- (g) Steep slopes; and
- (h) Other sensitive environmental, historic, or cultural resources deemed important (including resources noted by the 2016 Master Plan and the 2016 Open Space and Recreation Plan).

Siting shall be designed to facilitate pedestrian circulation and connect to other development assets such as common areas and facilities. Pedestrian facility type may be a formal sidewalk in a village center type of project or a pedestrian or multi-purpose path in a rural hamlet type of project.

The Planning Board shall take into consideration the conservation analysis and findings in approving the arrangement of lots but, to the extent possible, each lot shall either front or rear on Open Space.

- (4) Design Requirements – OSRD projects are also characterized by special attention to site and architectural design that directly reflects or highly complements the principles of town and architectural design that represents the character and history of the Town of Harvard. Specific design criteria are as follows:



(a) Project Site

- [1] Developments shall be designed in the manner of a rural New England village, hamlet, or neighborhood with clusters of residences within a square or fronting on a town common or green.
- [2] The development shall establish narrow, shaded streets conducive to pedestrians and cyclists.
- [3] Buildings shall be established close to the street to facilitate a pedestrian scale.
- [4] To the extent practicable and applicable, developments shall be integrated into the existing townscape by common edge treatments. This shall include frequent street connections and pathways to surrounding areas and a high degree of internal connectivity within the development.
- [5] Projects are encouraged to possess a wide range of housing types and sizes—such as large and small townhouses, duplexes, single-family homes, small apartment buildings, or special needs housing.

(b) Exclusive Use Areas and Buildings

- [1] All Exclusive Use Areas shall share a frontage line with a street, square, courtyard, neighborhood green, or park (public access).
- [2] All buildings, except accessory structures, shall have their main entrance (include in definitions) opening onto a street, square, courtyard, neighborhood green, or park.
- [3] Unenclosed porches may encroach into front setbacks as indicated in this bylaw.
- [4] All residences shall be within 600 feet of trailheads or other pedestrian facilities.
- [5] Garages entrances for Exclusive Use Areas 60' width or less shall be facing the rear of the EUA. Access to rear-facing garages should be from an alley or back lane, which may be a private common drive.
- [6] Proposed two-family residences shall either be designed as a "Shaker Double" or a corner opposed front entrance double.

(a) Miscellaneous Design Standards

- [1] Porches. Unenclosed front or side Porches are encouraged for residential uses and may be built within the setback line or required front area.
- [2] Appearance/Architectural Design: Architectural design shall be compatible with the character and scale of buildings on the site, in the neighborhood, and in the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air circulation, and separation between buildings where appropriate.

[3] Design Review: OSRD projects shall be reviewed by the Design Review Board based on the criteria in this Section G. The design review process is outlined in Chapter 133, Article XII, of the Planning Board Rules and Regulations.

### G. Project Site Design Process

The site design process for OSRD is provided in Chapter 133, Planning Board Rules and Regulations, Section 133-21(A). This process, in summary, mirrors the four (4) step design process as recommended by Randall Arendt, and is as follows:

- (1) Step One: Identifying All Potential Resource Protection Areas
- (2) Step Two: Locating the Building Sites
- (3) Step Three: Designing Street Alignments and Trails
- (4) Step Four: Drawing in Exclusive Use Areas or Site Pads

Site improvements including requirements for water and wastewater, stormwater and erosion control, road design, and pedestrian and bicycle facilities are found in Section 133-21(B).

### H. Formal Process and Application

The process for seeking approval of an OSRD project requires the following steps:

- (1) Pre-Application – Preliminary document development and discussion
- (2) Resource Protection Findings – Resulting in a conceptual plan for proposed development
- (3) Long-Range Development Plan (Optional) – Only for phased projects
- (4) Preliminary Project Approval
- (5) Formal Application Process – Design Review, Special Permit, and Site Plan Review processes

The full process for seeking approval of an OSRD project is provided in Chapter 133-21(C), Planning Board Rules and Regulations, which provides applicants with details of all of the required steps, plans, and documents that will be required.