

Article #8 MBTA Communities Overlay District Frequently Asked Questions



What is the MBTA Communities Law?

- The MBTA Communities Law, also known as Section 3A of MA General Law, Chapter 40A (The Zoning Act), was passed as part of the State's economic development bill in January 2021. The final 3A guidelines were issued in 2022.
- It affects communities with MBTA stations (commuter rail, bus, subway) and adjacent MBTA-serviced communities.
- Southborough is a MBTA Community because of our commuter rail station on the Framingham-Worcester line.
- 177 municipalities in MA are considered MBTA communities.
- The law requires that an MBTA community have at least one reasonable-sized zoning district that allows multifamily housing by right with a minimum gross density of 15 units per acre.

Why is the MBTA Communities Law Important?

- The Commonwealth is facing the greatest housing crisis in the state's history. We feel it here in Southborough – housing is scarce and financially unattainable for too many.
- According to the Executive Office of Housing and Livable Communities, the state has among the highest and fastest-growing home prices. High rents are causing financial pressures on low and middle-income families. High housing costs are a primary driver of homelessness.
- Overcoming restrictions for multi-family housing can help us maintain a diverse Southborough and address specific gaps in our housing supply. More housing options will enable seniors to downsize, families to stay here, and local employees to live where they work.

What is Multifamily Housing?

- Multi-family is defined as “a building with three (3) or more residential dwelling units, or two (2) or more buildings on the same lot with more than one (1) residential dwelling unit in each building.”
- Various building types, including townhomes, triple-deckers, single-family cluster developments, and townhouses, could all meet this definition. These are often referred to as the “missing middle” or “workforce” housing types.
- Examples of different forms of “missing middle” housing are depicted below:



What are the Benefits for Southborough?

- Developing underutilized and vacant lots will create new tax revenue for the Town.
- Increasing the diversity of housing options will enable older adults to downsize and continue to live in Southborough.
- Increasing the supply of smaller units—such as duplexes, townhouses, and small apartment or condo buildings—will help moderate prices and make homeownership more affordable for young families.
- Southborough's Housing Production Plan and 2021 Master Plan aim to allow for a diversity of housing options.
- Compliance with 3A will maintain Southborough's state grant eligibility (see below the consequences for non-compliance).

What Does the Law NOT Do?

- The law does not mandate the construction of any new housing.
- The law does not dictate which type of multi-family housing (i.e. apartments, condos) may be permitted under new zoning.
- The law does not change Southborough's underlying zoning. The proposed new zoning districts are overlays in areas zoned for residential or industrial uses

What Does the Law Require in Southborough?

Southborough, as a Commuter Rail Community, must adopt zoning that designates:

- At least one district(s) of reasonable size, 50 acres that permits multi-family housing “by right.”
 - 4 overlay districts are proposed in Southborough
- At least 20% of the district(s), 10 acres, shall be located not more than 1/2 mile from the train station.
- The overall gross density of the districts must be a minimum of 15 units per acre.
- Multi-family housing must be without age restrictions and is suitable for families with children.

Why Doesn't the Town Push Back?

Although 3A is a mandatory requirement for MBTA communities and the Governor and the Attorney General of Massachusetts have been emphatic that compliance is mandatory, the Planning Board and the Select Board have collaborated in advocating for Southborough to the state and have lobbied the state for concessions in the law that are more in line with Southborough's interests.

- Following the release of the original compliance guidelines which required the entire 3A-compliant district, 50 acres, to be located within a half mile of the MBTA station, the Planning Board and Select Board lobbied the state to reduce the requirement within that half mile. The state amended those guidelines in response to the comments from Southborough and other municipalities. The result for Southborough was that the acreage required to be within a half mile of the train station was reduced to 10 acres from 50.
- In addition, although the original compliance guidelines did not mention affordable housing, the revised guidelines allowed municipalities to require that 10% of the units in a 3A-compliant district be affordable.
- The Planning Board attempted to create 3A-compliant overlay districts based on the areas mapped at the Planning Board-sponsored public mapping sessions and public comments received by residents. Through this process, it became apparent that it would be difficult to obtain a 3A compliant district in the area a half mile from the MBTA station, abide by residents' requests to maintain the underlying zoning and avoid overlaying historic properties. The Planning Board and Select Board again appealed to the state for additional flexibility to achieve 3A compliance within a half mile of the train station. The state responded by allowing the Planning Board to shift the half-mile district to the east and include an abutting lot that is outside the half-mile and be in compliance with 3A.
- To date, only the Town of Milton is considered out of compliance, and they will be headed to court in October 2024 as the Attorney General has sued them. There have been 14 communities that have not approved the

MBTA law in their towns, but they are not considered out of compliance until December 31, 2024. 13 Towns are hosting Special Town Meetings to approve the proposed overlay zoning districts, Holden is holding out but will not be considered out of compliance until after December 31, 2024.

How is the District Within a Half-Mile Radius From The Train Station Determined, and Has It Changed?

The district within a half mile of the train station was provided to the Town by the state and measured from the middle of the MBTA parking lot. This map was utilized at the mapping sessions. The first overlay district within a half-mile of the train station submitted for 3A compliance testing was deemed non-compliant. The Planning Board determined it would be difficult to obtain a 3A complaint district in the station area and abide by residents' request to maintain the underlying zoning and avoid overlaying historic properties due to the prevalence of smaller lots and historic structures in the area.

The Planning Board appealed to the state for additional flexibility to achieve 3A compliance within a half-mile of the train station and scheduled a third public mapping session on June 3rd, 2024. The state responded and indicated it would be open to additional flexibility including measuring the half mile from the eastern edge of the MBTA parking lot and therefore shifting the station area district to East where there were lots more likely to be 3A compliant.

The state response was shared with the participants at the June 3rd mapping session. Shifting the district to the East was chosen as the number 1 preference of several tables at the June 3rd mapping session. The Planning Board then confirmed with the state that the station district measured from the eastern portion of the parking lot and the addition of an abutting lot would be deemed 3A compliant.

Admittedly there were 13 parcels (reflected below between the first and second bubble outlines) who are within the revised half-mile station district when it was shifted east who did not receive a postcard invitation to the June 3rd, 2024 public mapping session as the mailing was based on the original map. Importantly, the mapping session was publicized at Planning Board meetings, the Town website, and My Southborough.



Southborough's Commuter Rail Station is Located on the Town Line, is Hopkinton Required to Comply With 3A?

Yes, Hopkinton is designated as an Adjacent Community and is required to have a zoning district of at least 50 acres and a 750-unit capacity. Hopkinton originally voted against the Town proposal by 8 votes in Town Meeting in May and will now hold a December Special Town Meeting to meet the state deadline of December 31, 2024 for approval of the law in Hopkinton.

The original guidelines for 3A required the entire 50-acre district to be located within a half-mile of the commuter rail station. The State revised the 3A guidelines after receiving feedback from many municipalities, including Southborough, and based the percentage of the 3A district required to be within a half-mile of the MBTA station on the amount of developable land within that half-mile. In Southborough, that revision reduced the acreage required to be within the half-mile radius of the MBTA station from 50 acres to 10.

Does The Law Require Affordable Units?

There are no express requirements for affordable housing. However, a maximum of 10% of the dwellings can be required to be affordable. The cap on income of families or individuals who are eligible to occupy the affordable units cannot be less than 80% of the area median income. Southborough proposes that projects applied through the 3A overlay district require 10% of units to meet the requirements for affordable housing to be included in the Town's Subsidized Housing Inventory.

What is Zoning?

Zoning is a set of rules that regulates how we can and cannot use land within a municipality. This includes regulating the types of uses allowed within defined locations, size and siting of structures, amount of required parking, open space considerations, and much more. Zoning is one of the most important tools that a municipality can use to shape and regulate development.

What is "By-Right" or "As Of Right" Development?

"By right" or "as of right" means development that may proceed under a zoning by-law without the need for a special permit, variance, or other discretionary zoning approval.

What is a Zoning District?

A municipality designates certain allowable use districts or zones within its borders. You can identify these zoning districts through a Town's zoning map. Typical zoning districts include, but are not limited to, residential, commercial, and industrial.

What is a Zoning Overlay District?

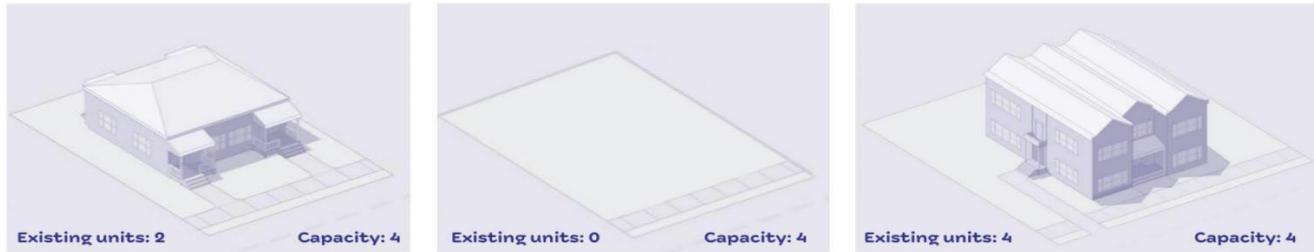
A zoning overlay district is laid on top of an existing zoning district(s) to create additional use and/or dimensional regulations for that specific location to address a site or area-specific needs. The intent is to provide relief for that particular use in an area without altering the underlying zoning district. By doing this, a developer can utilize either the zoning of the overlay district or develop a property under the existing zoning district.

Southborough's proposed MBTA overlay districts maintain the underlying zoning district development standards (lot size, frontage, setbacks, maximum building height maximum floor area ratio). District 1 utilizes the development standards of the Residential B district. Districts 2 & 3 use the development standards of the Industrial Park district.

What Does Unit Capacity Mean?

- Unit capacity is a measure of the number of multi-family units that the zoning allows by right in the district. Each community's minimum unit capacity is based on a percentage of its total existing housing stock and transit community type.
- Southborough's minimum total capacity for our new district number is 750 units. While this may at first sound like a large number of units, keep in mind it is a theoretical determination of how many multi-family units the zoning district would allow by right on a parcel if it were undeveloped (as illustrated below), and not an

indication of how much housing will actually be built.



- While the goal of the law is to produce more housing opportunities, we are not mandated to build any units — only to create zoning districts that allow for them.

What is Gross Density?

Gross density is calculated by adding together the number of multifamily units that could be built on every parcel in a Section 3A-compliant zoning district(s) and then dividing by the total acreage of the district. The total “gross” acreage includes buildable parcels and unbuildable areas like roads or recreation lands. Subdistricts of lower densities are allowed as long as they are counterbalanced by subdistricts with higher densities so that the average gross density is at least 15 units per acre.



The look of 15 units per acre at the parcel level will vary based on the parcel size. It could mean a three-unit townhouse on a 10,000 square foot (approximately $\frac{1}{4}$ of an acre) parcel or a 45-unit building on a three-acre parcel. This density doesn't mean high-rises will be built. In many places, this density can be achieved by allowing for a maximum height of only two or three stories. The following visualizations show what 15 units per acre looks like on sites of different scales:



What Does Multifamily Housing Look Like in Southborough?



3 units
.15 acres
20 units/acre

3 units
.25 acres
15 units/acre



9 units
.75 acres
12 units/acre



Will There be Site Plan Review For a 3A District Development?

YES, site plan review is required for multifamily housing in the proposed 3A district overlay districts. Site Plan review by the Planning Board during a Public Hearing process helps to identify issues and concerns. It provides the Town and developer an opportunity to revise the design in a way that addresses those issues. Additionally, the Board may impose reasonable conditions in their decision to further mitigate the impacts of a project, such as:

- Vehicular access and circulation on the site
- Architectural design of a building
- Screening of adjacent properties
- Requiring dark-sky compliant exterior lighting

Can Our Infrastructure Handle It?

- State building code already requires the provision of adequate basic utilities (including water/sewer) before a building permit can be issued. Because Southborough lacks sewer service, new buildings will continue to be on septic systems.
- It is the responsibility of a developer to provide utilities, and a site plan review of any potential multi-family projects will determine these impacts. If current infrastructure capacity does not allow for new development, none will occur

Will New Multifamily Housing Cause Our School Enrollment Numbers to Increase Too Much?

MAPC has conducted substantial research on the relationship between new multifamily development and school enrollment numbers. Analyzing changes in housing units and school enrollment across 231 public school districts in Massachusetts from 2010 to 2020, MAPC found that the development of new housing units does not account for the changes in school enrollment seen over the decade. Instead, the analysis found that demographic trends, parental preferences, and the characteristics and affordability of available housing often play a much larger role than housing development in enrollment growth and decline.

What Happens if Southborough Does Not Comply?

An MBTA community that does not comply is not eligible for funding from three Massachusetts programs:

- The Housing Choice Initiative—Southborough is not a Housing Choice Community,
- The Local Capital Projects Fund—The Southborough Housing Authority receives funding each year from this funding program,

- The MassWorks Infrastructure Program—12 programs focused on housing and economic development, infrastructure, and community. This program funds many things including water and sewer work, sidewalk and road improvement, housing, and much more.

The State has indicated compliance with the Law will be considered for many other discretionary grants from the Commonwealth.

The following discretionary grant programs will take compliance with Section 3A into consideration when making grant award recommendations:

- Community Planning Grants, EOHLG,
- Massachusetts Downtown Initiative, EOED,
- Urban Agenda, EOED,
- Rural and Small-Town Development Fund, EOED,
- Brownfields Redevelopment Fund, MassDevelopment,
- Site Readiness Program, MassDevelopment,
- Underutilized Properties Program, MassDevelopment,
- Collaborative Workspace Program, MassDevelopment,
- Real Estate Services Technical Assistance, MassDevelopment,
- Commonwealth Places Programs, MassDevelopment,
- Land Use Planning Grants, EOEEA,
- Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA, and
- Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA
- Massachusetts Public Library Construction Program, MBLC

Additionally, in March 2023 State Attorney General Campbell additionally clarified that failure to comply may result in civil enforcement action or liability under federal and state fair housing laws e.g. the state will sue municipalities that do not comply.