

MBTA Multifamily Zoning Facts & Myths

April 11, 2024



Agenda

- Overview of MBTA Communities Act
- Status of Shrewsbury's Plan
- Legal Update
- Question and Answer

ZONING FOR CHANGE

Insights from the MBTA Communities Act Implementation



MBTA Communities Act Overview

Section 3A of MGL c. 40A

Section 3A: Multi-family zoning as-of-right in MBTA communities

- Section 3A. (a)(1) 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.
- (b) An MBTA community that fails to comply with this section shall not be eligible for funds from: (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 2EEEE of chapter 29; (iii) the MassWorks infrastructure program established in section 63 of chapter 23A, or (iv) the HousingWorks infrastructure program established in section 27 of chapter 23B.
- (c) The executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, shall promulgate guidelines to determine if an MBTA community is in compliance with this section.



What is *As* of Right Zoning?

As of Right Zoning

“As of right” means development may proceed in that district under a zoning ordinance or by-law without the need for a discretionary process such as a special permit, variance, zoning amendment or other discretionary zoning approval

In many cities and towns, when multi-family housing is allowed it is often subject to an expensive, unpredictable, and time-consuming review process. Special permits are discretionary and can require multiple public hearings, resulting in additional requirements for the project proponents.

Massachusetts courts have recognized site plan review as a permissible regulatory tool, including for uses that are permitted as of right. These court decisions establish that when site plan review is required for a use permitted as of right, site plan review involves the regulation of a use and not its outright prohibition. The scope of review is therefore limited to imposing reasonable terms and conditions on the proposed use, consistent with applicable case law.

As of Right Zoning - Continued

EOHLC may rescind a determination of district compliance, or require changes to a multi-family zoning district to remain in compliance, if EOHLC determines that:

A board, authority or official in the MBTA community does not issue permits, or otherwise acts or fails to act, to allow construction of a multi-family housing project that is allowed as of right in the multi-family zoning district (or any mixed-use zoning development district taken into account in determining the required multi-family unit capacity in the multi-family zoning district);

MEETING *the* MOMENT

WITH A BRAND NEW

**EXECUTIVE OFFICE OF
HOUSING AND LIVABLE
COMMUNITIES**

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Executive Office of Housing and Livable Communities (EOHLC)



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The Executive Office of Housing and Livable Communities (EOHLC) **was established in 2023 to create more homes** and lower housing costs for Massachusetts residents. EOHLC also distributes funding to municipalities, oversees the state-aided public housing portfolio, and operates the state's Emergency Family Shelter (EA) program.

Example Project – The Pointe at Hills Farm

526 Hartford Turnpike

93 Housing Units

Developer: WinnCompanies



Public Funding: (\$42.1M)

- \$28M in state and federal Low-Incoming Housing Tax Credit allocated by EOHLC
- EOHLC is also providing \$3M direct support and \$7M in American Rescue Plan Act along with \$4.1M in ARPA financing through Affordable Housing Trust Fund managed by MassHousing on behalf of EOHLC

https://www.masshousing.com/en/press/2024-01-04_point-hills-farm



What are their guidelines?

Section 3A: Guidelines

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.

(c) The executive office of housing and livable communities, in consultation with the executive office of economic development, the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, **shall promulgate guidelines** to determine if an MBTA community is in compliance with this section.



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

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

Issue Date: August 10, 2022
Revised: October 21, 2022
Revised: August 17, 2023

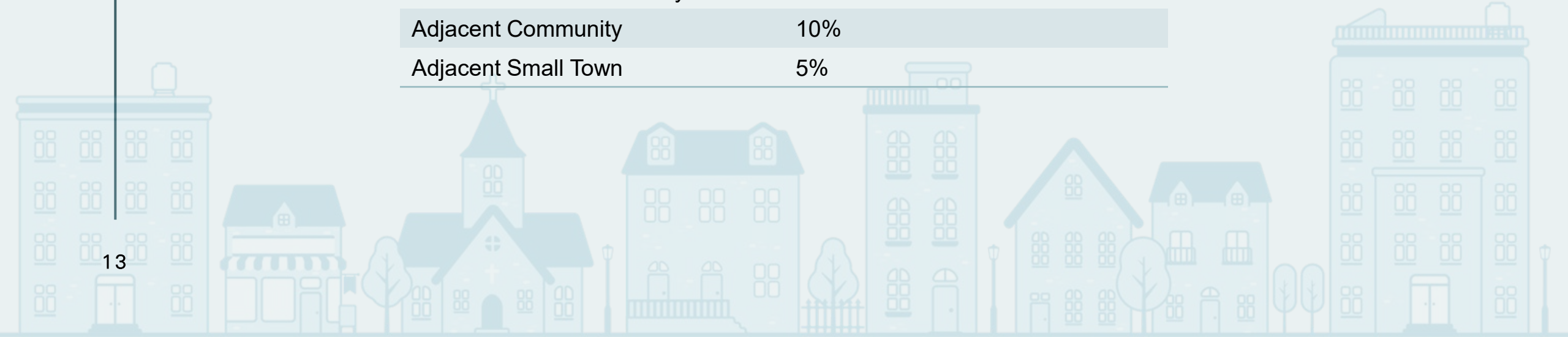
Compliance Guidelines for Multi-family Zoning Districts
Under Section 3A of the Zoning Act

The paragraph above translates into 18 pages
of guidelines from the EOHLC

Section 3A: Guidelines Key Points

- **Affordability:** Section 3A does not include any express requirement or authorization for an MBTA community to require affordable units in a multi-family housing project that is allowed as of right.
- **Minimum Land Area Defined:** “Minimum land area of the multi-family zoning district is 50 acres, or 1.5% of the developable land in an MBTA community, whichever is less.”
- **Minimum Multi-Family Unit Capacity Defined:**

Category	Percentage of Total Housing Units
Rapid Transit Community	25%
Commuter Rail Community	15%
Adjacent Community	10%
Adjacent Small Town	5%



Grant Eligibility

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

- Community Planning Grants, EOHLC,
- 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



What is an advisory?

AG Advisory



ANDREA JOY CAMPBELL
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

Advisory Concerning Enforcement of the MBTA Communities Zoning Law

“MBTA Communities cannot avoid their obligations under the Law by foregoing this funding. The Law requires that MBTA Communities “shall have” a compliant zoning district and does not provide any mechanism by which a town or city may opt out of this requirement.”

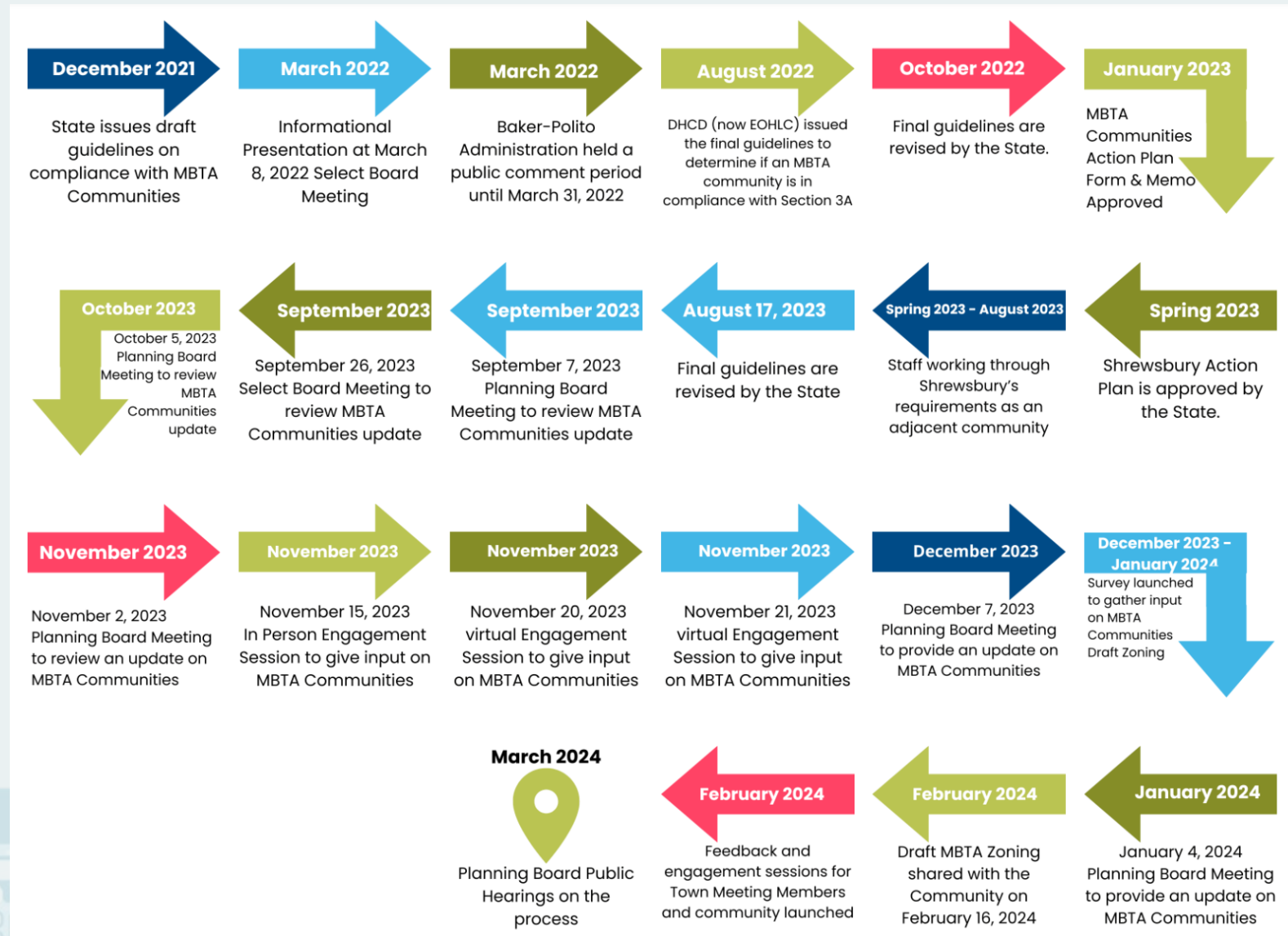
“MBTA Communities that fail to comply with the Law’s requirements also risk liability under federal and state fair housing laws. The Massachusetts Antidiscrimination Law and federal Fair Housing Act prohibit towns and cities from using their zoning power for a discriminatory purpose or with discriminatory effect.”



Shrewsbury's Proposed Plan



Timeline



Shrewsbury Official Status

Municipality	Compliance Status	Compliance Details	Compliance Deadlines	Submitted for Pre-adoption review (Y/N)
Sherborn	Interim Compliance	Action Plan Approved	12/31/2025	Yes
Shirley	Interim Compliance	Action Plan Approved	12/31/2024	No
Shrewsbury	Interim Compliance	Action Plan Approved	12/31/2024	No
Somerville	Interim Compliance	District Compliance Application in review	12/31/2023	No
Southborough	Interim Compliance	Action Plan Approved	12/31/2024	No

Criteria & Goals

Key Compliance Criteria:

- Minimum Acreage:50ac
- “Capacity”:1,497 Units
- Mandatory mixed use (Commercial Underlying):
 - 25% allowable “offset” permitted with (374 units)
 - Reduces Capacity requirement to 1,123 units

Key Community Goals:

- Redevelopment & Existing Density
- Commercial Component (where feasible)
- Shorter Structures limiting density over open space

Staff identified and evaluated 6 possible district sites across the community.

Proposed Overlay Draft

Site Characteristics*

Acres: ~173ac

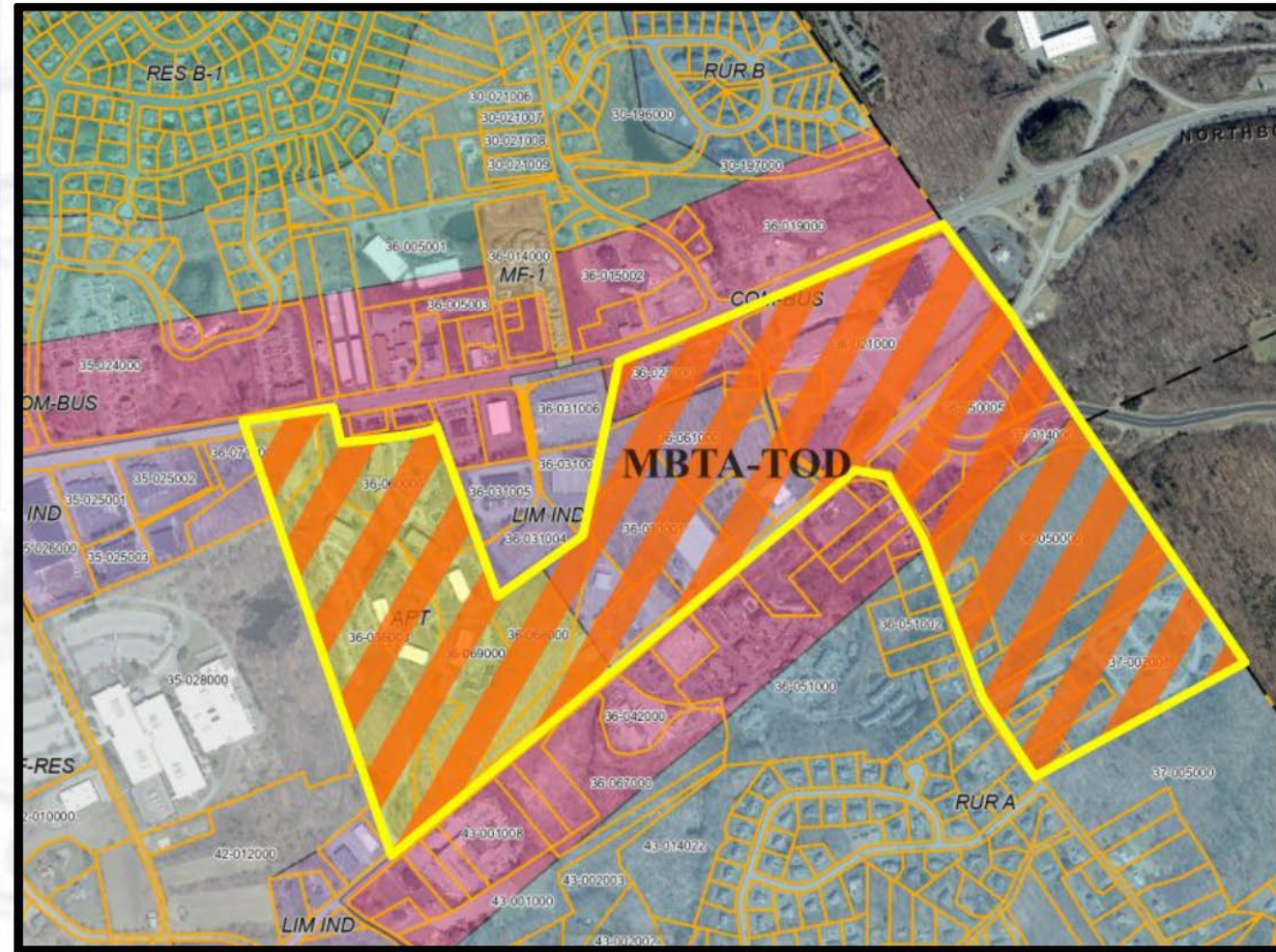
R Under: ~95ac

C/I Under: ~78ac

The additional acreage allows us to pursue minimum density while meeting the capacity requirements and also include mandatory mixed use in commercial/industrial zones

Considerations

- Proximity to N.Borough proposed district
- Access to Rt 9 & Rt 20
- Redevelopment Opportunity
- Existing Density
- Water Constraints
- Proximity to Westborough Station
- Minimum Effective Compliance



**These are preliminary estimates subject to change with compliance model analysis*

Draft Language Highlights

- Underlying zoning not affected may choose to pursue permitting under one or the other (not both)
- Max Residential Density by right: 15 units per acre
- “Transit Oriented Development”
- Extensive Design Guidelines
- Required Studies depending upon project scope:
 - *Local & Regional Transit Analysis*
 - *School Bus Route Analysis*
 - *Sidewalks & “Mobility Hub”*
- Mandatory Mixed Use requirement if underlying zone is Commercial/Industrial
- Vertical Mixed Use by right, Horizontal Mixed Use requires Special Permit via Planning Board

Grant Opportunities at Risk

Total: \$4,827,000

These Grant Opportunities often open doors to other funding sources for subsequent phases of work, implementation and more.

Mass Works Grants



MBTA Communities



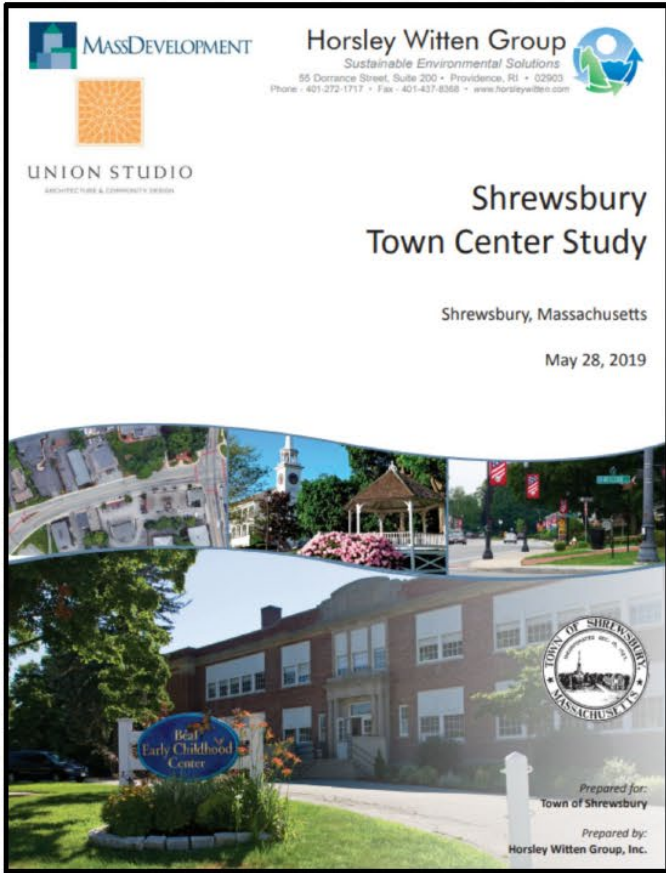
<https://www.telegram.com/story/news/local/east-valley/2018/06/24/20m-sewer-line-on-route-20-boosts-economic-development/11871031007/>

- **\$3,750,000** for Route 20 Improvements
- **\$600,000** for design of sewer extensions

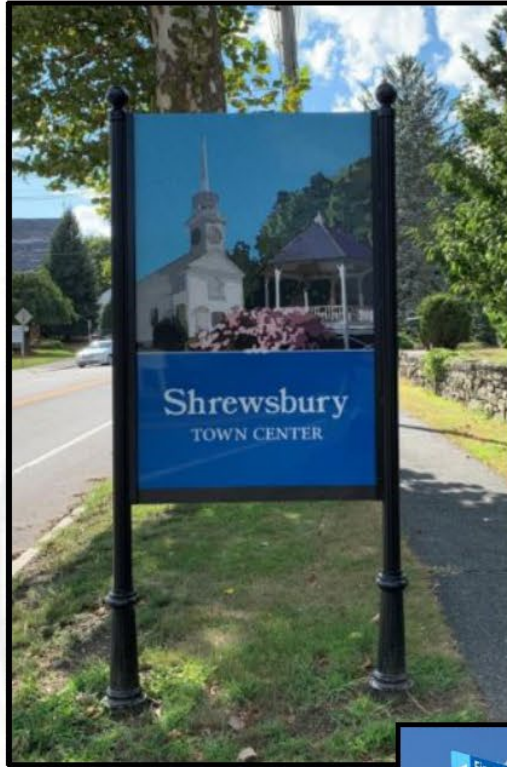
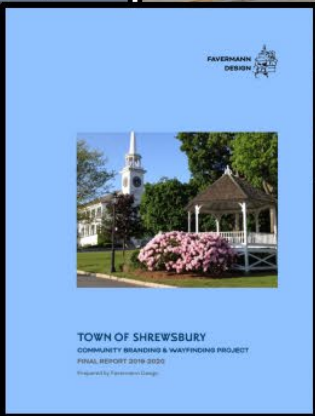
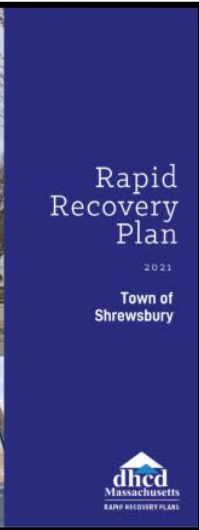
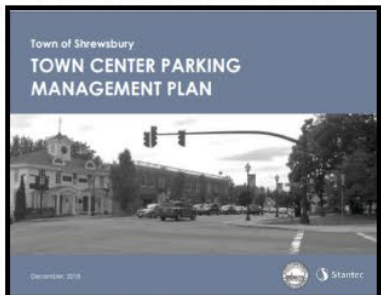
MassDevelopment Grants



- **\$302,000** Site Readiness at Centech Park
- **\$50,000** Town Center Visioning Study



Massachusetts Downtown Initiative Grants



- **\$25,000** BID Feasibility Study
- **\$60,000** Local Rapid Recovery Plan
- **\$15,000** Wayfinding Study
- **\$15,000** Parking Management Plan
- **\$10,000** Lakeway Business District



Town Meeting

Article #44



Town Meeting Article #44

To see if the Town will vote to amend the Zoning Bylaw of the Town of Shrewsbury, as follows:

In Section II.A Definitions, amend the definition of Mixed-Use Development Vertical Mix and Mixed-Use Development Horizontal Mix; In Section III.A Establishment of Districts, insert "Transit Oriented Development Overlay District"; **In Section III.B District Intent, insert narrative describing the Transit Oriented Development Overlay (TOD) District as intended to encourage additional smart growth development in accordance with the purposes of MGL c. 40R, satisfy the requirements of MGL c. 40A 3a, and contribute to the Town's housing growth goals.;** In Section 111.C Location of Districts, insert a new Section VII.X to be entitled "TOD Overlay District"; and To amend the Zoning Map of the Town of Shrewsbury by adding the TOD Overlay District as shown on the Exhibit Plan on file with the Office of the Town Clerk, or to take any other action in relation thereto.

Warrant Article #44 Notes

- No mention of MBTA Communities Act
- States by amending zoning bylaw Shrewsbury “**satisfy the requirements of MGL c. 40A 3a**”



Pre-adoption Review



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Pre-Adoption Review Application Form

MBTA Communities seeking assurance that proposed zoning will meet Section 3A requirements before bringing that zoning to a local legislative session may submit a pre-adoption review application.

Examples



Commonwealth of Massachusetts EXECUTIVE OFFICE OF HOUSING & LIVABLE COMMUNITIES

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February 6, 2024

Lynn Bermudez
Admin. Assistant – Planning and Zoning
8 West Common Street
Topsfield, MA 01983

Re: Town of Topsfield: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Ms. Bermudez:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of Topsfield submitted electronically on November 8, 2023. The application requested that EOHLC conduct a pre-adoption review for the Town of Topsfield's proposed district called the "MBTA Communities Multi-family Overlay District" (District) based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines).

EOHLC appreciates all the work the town has done to prepare for compliance with Section 3A. The MBTA Communities program staff are available to work through these technical details with you and your staff. **After careful review and analysis, EOHLC has determined that the Application as submitted does not demonstrate that the District will meet the requirements of Section 3A and the Guidelines if the new zoning is adopted as submitted.** We hope the descriptions of these two technical corrections will assist the Town in creating zoning that can be deemed compliant.



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February 12, 2024

Stephanie Danielson
Director of Planning & Economic Development
136 Elm Street
Easton, MA 02356

Re: Town of Easton: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Ms. Danielson:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of Easton submitted electronically on November 14, 2023. The application requested that EOHLC conduct a pre-adoption review for the Town of Easton's proposed district called the "Community Housing Overlay District" (District) based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines).

EOHLC appreciates all the work the town has done to prepare for compliance with Section 3A. The MBTA Communities program staff are available to work through these technical details with you and your staff. **After careful review and analysis, EOHLC has determined that the Application as submitted does not demonstrate that the District will meet the requirements of Section 3A and the Guidelines if the new zoning is adopted as submitted.** We hope the descriptions of these technical corrections will assist the Town in creating zoning that can be deemed compliant.



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Sent via email to vgingrich@wilmingtonma.gov

February 7, 2024

Valerie Gingrich
Director of Planning and Conservation
121 Glen Road
Wilmington, MA 01887

Re: Town of Wilmington: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Ms. Gingrich:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of Wilmington submitted electronically on November 9, 2023. The application requested that EOHLC conduct a pre-adoption review for the Town of Wilmington's proposed district called the "MBTA Communities Multi-family Overlay District" (District) based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines).

EOHLC appreciates all the work the town has done to prepare for compliance with Section 3A. The MBTA Communities program staff are available to work through these technical details with you and your staff. **After careful review and analysis, EOHLC has determined that the Application as submitted does not demonstrate that the District will meet the requirements of Section 3A and the Guidelines if the new zoning is adopted as submitted.** We hope the descriptions of technical corrections will assist the Town in creating zoning that can be deemed compliant.



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January 4, 2024

Brian Szekely
Planning Director
1 Sylvan Street
Danvers, MA 01923

Re: Town of Danvers: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Mr. Szekely:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of Danvers submitted electronically on October 6, 2023. The application requested that EOHLC conduct a pre-adoption review for the Town of Danvers' proposed subdistricts called Downtown Core, Downtown Live Work, High Street Mixed Use and Maple Square 40R based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines). **After careful review and analysis, EOHLC has determined that the Application submitted does not demonstrate that these subdistricts will meet the requirements of Section 3A and the Guidelines if the new zoning is adopted as submitted.** We hope these comments will assist the Town in creating zoning that can be deemed compliant.



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Sent via email to hdoyle@sherbormma.org

February 9, 2024

Heidi Doyle
Town Planner
19 Washington Street
Sherborn, MA 01770

Re: Town of Sherborn: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Ms. Doyle:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of Sherborn submitted electronically on November 11, 2023. The application requested that EOHLC conduct a pre-adoption review for the Town of Sherborn's proposed district called the "Multi-family Overlay District" (District) based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines).

EOHLC appreciates all the work the town has done to prepare for compliance with Section 3A. The MBTA Communities program staff are available to work through these technical details with you and your staff. **After careful review and analysis, EOHLC has determined that the Application as submitted does not demonstrate that the District will meet the requirements of Section 3A and the Guidelines if the new zoning is adopted as submitted.** We hope the descriptions of these technical corrections will assist the Town in creating zoning that can be deemed compliant.



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November 27, 2023

Stephen Wallace
Town Planner
1 Park Street
Butterick Municipal Building
Sterling, MA 01564

Re: Town of Sterling: Pre-Adoption Review Application for Compliance with MBTA Communities/Section 3A of the Zoning Act

Dear Mr. Wallace:

The Executive Office of Housing and Livable Communities (EOHLC) received a pre-adoption review application from the Town of Sterling submitted electronically on August 29, 2023. The application requested that EOHLC conduct a pre-adoption review for the Town of Sterling's proposed "Multi-Family Overlay District" (MFOD) based on the criteria set forth in the Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act (Guidelines). **After careful review and analysis, EOHLC has determined that the Application submitted does not demonstrate that the MFOD will meet the requirements of Section 3A and the Guidelines if it is adopted.**

Typical Feedback



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- “After careful review and analysis, EOHLIC has determined that the Application as submitted does not demonstrate that the District will meet the requirements of Section 3A and the Guidelines if the new zoning is adopted as submitted.”
- “For the foregoing reasons, EOHLIC recommends that the Town address the issues outlined before putting the District to a legislative vote.”



What if Town Meeting Members Vote NO?

Questions?

