



Commonwealth of Massachusetts
EXECUTIVE OFFICE OF HOUSING &
LIVABLE COMMUNITIES

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

November 25, 2023

James J. Malloy
Town Manager
1625 Massachusetts Avenue
Lexington, MA 02420

Re: Lexington - District Compliance Determination for MBTA Communities under Section 3A of the Zoning Act (Section 3A)

Dear Mr. Malloy:

The Executive Office of Housing and Livable Communities (EOHLC) received a district compliance application from the Town of Lexington submitted electronically on June 26, 2023. The application requested that EOHLC grant a determination of compliance for the Town of Lexington's three zoning overlay districts, namely the "Village Overlay" (VO), "Multi-Family Overlay" (MFO), and "Village High-Rise Overlay" (VHO) districts, which are together considered the district put forward for compliance (District), 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 determined that Lexington is **compliant** with Section 3A, as it finds that Lexington meets, or exceeds, the requirements of Section 3A and the Guidelines. This determination is contingent upon Lexington making a technical revision to certain language providing dimensional relief for multifamily housing within the District, as described in more detail in this letter. Congratulations on achieving this determination.

Lexington is designated as an adjacent community with 12,310 existing housing units per the 2020 United States Decennial Census. The Town is required to have a district with a minimum land area of 50 acres, and a minimum multi-family unit capacity of 1,231 units. At least half of the district must be comprised of contiguous lots of land.

EOHLC conducted a thorough review of the application, and made the following determinations:

1. The District comprises **228.2 acres**.
2. As of right multi-family unit capacity for the District is estimated at **12,546 units**.
3. The gross density of the District is estimated at **57.9 dwelling units per acre**.
4. The District meets the **fifty (50%) percent** contiguity requirement because at least half of one area (Bedford/Worthen Street), that meets minimum land area, minimum multi-family unit capacity, and gross density, comprises contiguous lots of land.

5. The multi-family housing allowed as of right in the District is suitable for families with children pursuant to Section 3A and Section 7 of the Guidelines.
6. There are no dimensional zoning requirements not captured by the compliance model that are likely to substantially affect the District's estimated multi-family unit capacity.¹
7. Taken as a whole, the District meets the land area, multi-family unit capacity, gross density, and contiguity requirements of Section 3A and the Guidelines.
8. EOHLIC reviewed the Economic Feasibility Analysis submitted by the Town in connection with Section 4b(ii) of the Guidelines and determined that the analysis fails to demonstrate feasibility for a reasonable variety of multi-family housing types requiring fifteen percent of units to be set aside as affordable. The smallest sample project was 24 units, however the inclusionary zoning applies to developments as small as 8 units and the district includes many parcels that are less than an acre. In order to be affordable to a household at 80% AMI, the 24 unit sample project would need additional subsidies that were not modeled, and thus the smallest sample project did not demonstrate feasibility. Without the smallest sample project, the analysis only supports 160 unit developments, which does not meet the requirement of showing feasibility for a reasonable variety of multi-family housing types.

The following table shows the **required** District minimums, the estimates **submitted** in the District application, and estimates as **determined** by EOHLIC following its review:

	Required	Submitted	Determined
Land area (acres)	50	253.25	228.20
Multi-family unit capacity (units)	1,231	13,421	12,546
Gross density (units per acre)	15.00	55.54	57.92
One 50% contiguous area	Yes	Yes	Yes

EOHLIC determinations differ from the application estimates for the following reasons:

- The portion of the District entitled "Lexington Center" does not allow multi-family housing as of right. Section 7.5.4(3) of Lexington's zoning bylaw requires non-residential uses on the ground floor of developments where the underlying zoning district is the Central Business (CB) district. The underlying zoning in the "Lexington Center" portion of the District is the CB district. Therefore, EOHLIC removed the acreage (25.05), and unit capacity (875) of the Lexington Center portion from compliance calculations.

EOHLIC noted **additional factors** that could affect as of right multi-family housing development in the District:

1. Multi-family housing developed in the District is subject to site plan review pursuant to Section 9.5 of Lexington's zoning bylaw and Planning Board regulations. The criteria and procedures set forth in the site plan review appear consistent with the requirements of Section 4.a. of the Guidelines.

¹ Other than certain dimensional relief that is limited to lots with existing buildings, and further described as the first district compliance condition in this letter.

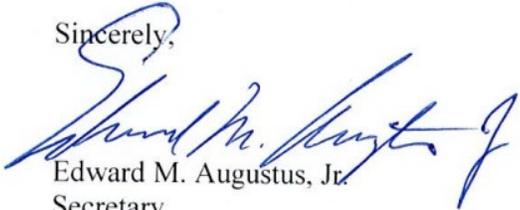
2. The District is affected by multiple local historic districts and historic resources, including the Fair Oaks, Lexington Central Business, Concord Road Area, and East Village districts.
3. The District is minimally affected by the National Flood Insurance (NFI) overlay District. Since the overlap of the NFI overlay district and the District is minimal, and the District meets approval criteria without including the capacity of the affected parcels, EOHLC did not review the flood zone permitting process to determine whether it is consistent with the as of right zoning requirements of Section 3A.

Please note that continued district compliance is **conditioned** upon the following requirements:

1. Lexington Zoning Bylaw Section 7.5.5(2) requires that lots in the District have “existing buildings” to qualify for dimensional zoning relief for Lot Regularity, Lot Area, and Lot Frontage requirements set forth in underlying zoning districts. This condition conflicts with EOHLC’s interpretation of “as of right” zoning. Therefore, Lexington **must** document that it has removed the requirement that lots have existing buildings to qualify for that dimensional relief, by its district compliance deadline of December 31, 2024.
2. Permitting decisions made in connection with **additional factors** 1-3 above must not effectively reduce the estimated as of right multi-family unit capacity of the District. If permitting decisions do reduce the estimated multi-family unit capacity of the District, EOHLC may revisit Lexington’s compliance with Section 3A, and could require the Town to remedy any deficiency with amendments to its zoning.
3. Lexington must notify EOHLC in writing of any proposed or active zoning amendment that affects the District, or of any other by-law, ordinance, rule, regulation, or municipal action that limits the development of multi-family housing in the District.
4. EOHLC may establish a system to monitor compliance over time to ensure that approved districts allow multi-family housing in accordance with the criteria under which they were approved.
5. EOHLC may rescind a determination of district compliance or require changes to the District to remain in compliance if information submitted in the application was inaccurate, if the Town failed to notify EOHLC of a zoning amendment that affects the District, if the Town takes other action that causes the District to no longer comply with Section 3A, or if the Town’s transit category changes because of new MBTA service or stations. Section 10 of the Guidelines describes rescissions in further detail.

If you have questions or need further assistance regarding this determination, please contact MBTA Communities Compliance Coordinator Nathan Carlucci, at nathan.carlucci@mass.gov.

Sincerely,



Edward M. Augustus, Jr.
Secretary

cc: Senator Cindy F. Friedman
Representative Michelle L. Ciccolo