



Commonwealth of Massachusetts  
EXECUTIVE OFFICE OF HOUSING &  
LIVABLE COMMUNITIES

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

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.

Topsfield is designated as an Adjacent Small Town community with 2,358 existing housing units per the 2020 United States Decennial Census. The Town is required to have a district with a minimum multi-family unit capacity of 118 units with a gross density of 15 units per acre.

EOHLC identified the following issues which may affect the District's compliance with Section 3A:

1. EOHLC recommends reviewing the Article IX: Site Plan Review to ensure that the standards set forth are objective and nondiscretionary, and consult with town counsel to ensure that this section aligns with the existing case law concerning site plan review for as of right uses, especially whether a disapproval under Section 9.05.d.ii conforms with as of right uses.
2. Due to the requirement in Article VI: Floodplain District for a special permit for residential development within the floodplain, the unit capacity of the parcels within the floodplain must be removed from the compliance model. Additional alternatives include (a) removing the affected

areas of the parcels from consideration in the compliance model, or (b) revising the zoning to exempt the District from the special permit requirement of the Floodplain District (but retaining the Floodplain District's other substantive requirements).

For the foregoing reasons, EOHLC determined that the application as submitted does not demonstrate that the District will comply with Section 3A as proposed. The Town must take the steps outlined in this letter to position the District for a determination of compliance.

Please note that this pre-adoption review is limited to the specific issues identified at this stage of review, based on materials provided by the Town of Topsfield. It does not constitute a representation that resolution of the identified issues would result in a compliant zoning district.

MBTA Communities staff at EOHLC will meet with you and your staff should you want to review the details of this letter. If you have questions or need further assistance regarding this determination, please contact MBTA Communities Compliance Coordinator Nathan Carlucci, at [nathan.carlucci@mass.gov](mailto:nathan.carlucci@mass.gov).

Sincerely,

A handwritten signature in blue ink that reads "Caroline 'Chris' Kluchman". The signature is fluid and cursive.

Caroline "Chris" Kluchman  
Acting Director, Community Services Division

cc: Senator Bruce E. Tarr  
Representative Sally P. Kerans