

To: MBTA Zoning Task Force  
From: Betsy Ware, Interim Town Planner  
Date: July 28, 2023  
Subject: What is Manchester's Zoning Baseline in Considering MBTA Zoning

At the MBTA Zoning Task Force's last meeting, the question arose, "what is Manchester's zoning baseline in considering MBTA Zoning?" While zoning is often difficult to explain, this memo aims to explain and elaborate on the various zoning provisions and where MBTA zoning could or couldn't be allowed. Using the Town's existing zoning and zoning amendments that are to be considered by the Planning Board within the next year, as well as the State's guidelines for MBTA zoning, the goal is to be as factual as possible.

Since that meeting, we have had a mapping workshop to delineate the ½ mile radius around the train station, which requires 15 acres (of the 37 total acres) to be zoned for 15 housing units/acre "by right," meaning no special permit needs to be granted by the Zoning Board of Appeals or the Planning Board. Architectural design controls and site plan review are allowed to be implemented; however, these zoning tools cannot be used to deny, nor can conditions be imposed that are so onerous as to prevent the development from being financially feasible and, therefore not able to be constructed.

The ½ mile radius around the train station includes Singing Beach to the east, the harbor to the south, Bennett Street area to the west and Lincoln Street to the north. The radius area includes most of the center of Manchester by the Sea (MBTS), including its commercial district and town center, with town common. Within this radius area there are: single family homes; two family or duplex homes; multi-family homes (3 or more units), most of which do not conform to the present zoning due to the lack of lot area, location of the structure or both. Most of the structures built within the area were constructed prior to MBTS' zoning bylaw being adopted, resulting in their being "pre-existing, non-conforming structures" and/or "non-conforming lots". The "town character" or "charm" of the center of MBTS is the non-conforming nature (in terms of zoning compliance) of the structures within this area. In addition to the residential structures, there are churches, municipal buildings (town hall/police station, library, Seaside 1, fire station, Singing Beach facility, and wastewater treatment plant) as well as numerous parks, piers and other facilities.

To try to figure out where 15 acres of land within this radius area could be zoned for 15 units/acre "by right" is a challenge. Using the State's MBTA Zoning guidelines, as well as the MBTS' Zoning Bylaw, sites within the radius area can be eliminated based on these two documents. For example, the State's MBTA Zoning guidelines, the definition of "excluded land" provides guidance on what lands cannot be considered for development. Per the State's guidance document on this topic, the following language applies:

*“Excluded land” means land areas on which it is not possible or practical to construct multi-family housing. For purposes of these guidelines, excluded land is defined by reference to the ownership, use codes, use restrictions, and hydrological characteristics in MassGIS and consists of the following:*

- 1. All publicly owned land, except for lots or portions of lots determined to be developable public land.*
- 2. All rivers, streams, lakes, ponds and other surface waterbodies.*
- 3. All wetland resource areas, together with a buffer zone around wetlands and waterbodies equivalent to the minimum setback required by title 5 of the state environmental code.*
- 4. Protected open space and recreational land that is legally protected in perpetuity (for example, land owned by a local land trust or subject to a conservation restriction), or that is likely to remain undeveloped due to functional or traditional use (for example, cemeteries).*
- 5. All public rights-of-way and private rights-of-way.*
- 6. Privately-owned land on which development is prohibited to protect private or public water supplies, including, but not limited to, Zone I wellhead protection areas and Zone A surface water supply protection areas.*
- 7. Privately-owned land used for educational or institutional uses such as a hospital, prison, electric, water, wastewater or other utility, museum, or private school, college or university.*

Based on the excluded land definition and categories, within the ½ radius of the train station, the following land and/or buildings would be exempted from consideration of being zoned for MBTA zoning (15 units/acre by right):

1. Town Hall, Town Common, Library, Wastewater plant, school properties, cemetery on Summer Street,
2. All waters relating to the harbor, Sawmill Brook and its related wetlands, and various wetlands and areas subject to floodplain throughout the town center;
3. All wetlands subject to the Wetlands Protection Act, as well as their buffer zones;
4. Protected open space, such as Powder House Conservation Area, Masconomo Park, Reed Park, Singing Beach, etc;
5. All streets and rights of way-either public or private;
6. All land within Groundwater Overlay Districts
7. Manchester Historical Museum, Electrical Station on Summer Street, VFW, Masons, Wastewater Plant, Water treatment plant, etc.

The MBTS Zoning Bylaw contains provisions that would prevent further development due to the requirement for special permits and/or other “decisions” to be made by the Zoning Board of Appeals (ZBA) or the Planning Board. The Zoning Bylaw further eliminates the opportunities for use of land for MBTA Zoning unless and until zoning amendments are made to allow “by right” -i.e.. eliminating the need for special permits and other decisions. Examples of where the MBTS Zoning Bylaw prohibits “by right” development include, but are not limited to the following:

**Pre-existing, non-conforming lots/structures:** With most of the town center constructed prior to zoning (February 13, 1945), any pre-existing, non-conforming property needs to be reviewed by the ZBA and issued a special permit or variance for any work proposed. Several comments have been made about the ability of converting an existing house to a three-unit residential structure within the G District. While the intentions may have been good, there are limitations in doing this- most buildings are non-conforming, can’t be expanded without zoning relief and cannot accommodate the 5 vehicle spaces required to comply with the bylaw. Given a special permit or variance is required, any pre-existing, non-conforming building/lot could not be developed “by right”;

**The Floodplain Bylaw:** This zoning bylaw (Section 10.2) is being updated to require Planning Board special permit for work within a Federal Emergency Management Agency (FEMA) floodplain district or future floodplain area. Given a special permit will be required, any land within a FEMA floodplain or future floodplain could not be developed “by right”;

**Ground and Surface Water Resource Overlay Protection Districts:** Any work being completed in the Ground and Surface Water Overlay Protection Districts (Section 10.3) requires either a “determination” by the Planning Board for adequacy of the stormwater system or a special permit for lot coverage over 15%. Given a special permit or determination needs to be made by the Planning Board, any development is not “by right”;

**Area subject to Chapter 91 License:** Presently there is a section of the Table of Uses (Section 4.2) that reads “1 Matters (including the construction or alteration of any structure or the use thereof) all or any part of which is within tideland lying below Mean High Water (per U.S. Geodetic Survey) (15)” which requires a special permit from the Planning Board in the B, C, E and G districts. This is a local requirement which is required prior to an applicant securing a Chapter 91 license. (This provision is what the Crocker’s Boat yard special permit and Manchester Marine special permit came under.) Based on the language within the zoning bylaw, a special permit is required and therefore any development subject to tideland location cannot be considered “by right”.

### **Summary for Potential Development within the ½ Mile Radius.**

Between the Excluded Land definition of the MBTA Zoning Guidelines and the MBTS Zoning Bylaw, there are significant areas where “by-right” development is not allowed. By process of elimination, there are land areas that will not allow development of 15 acres within the ½ mile

radius of the train station. While most of the reasons are water/wetlands related reasons, there is also the fact that most of the existing town center was constructed prior to zoning and therefore considered “pre-existing, non-conforming lots or structures”, which require zoning relief.

Any new development within the ½ mile radius of the train station will need to be redevelopment of existing sites- buildings will need to be acquired and then demolished to make way for newer residential development. Land assembly will be required to amass a land area large enough for a meaningful development of substantial size and number of units as required by the MBTA Zoning Guidelines. This factor alone poses a significant challenge to the actual construction of new multi-family housing even with new “by right” zoning.

It should be noted that within the ½ mile radius of the train station, there are two historic districts. One district is a National Register District. The other is a locally adopted historic district. The purposes of these districts are to acknowledge the historic nature of these two areas and to understand that both districts were key in the evolution of Manchester by the Sea’s history. Regrettably, both the National Register and local historic districts designations do not provide any protection from demolition of these historic properties. Additionally, there is no demolition delay bylaw that has been adopted by the town, furthering the jeopardy of these historic structures.

On a final note, about the ½ mile radius area, there are areas where redevelopment could take place where excluded lands and lands that do not require zoning relief exist. These areas will be redevelopment areas where parcels will need to be assembled. These areas for redevelopment using MBTA Zoning Guidelines will need to be reviewed and recommended by the MBTA Zoning Task Force to the Planning Board, with the Planning Board holding a public hearing and making recommendations to Town Meeting, where voters will ultimately decide on the areas designated for MBTA Zoning developments.

### **Outside the ½ Mile Radius**

Of the 37 acres that the State requires be zoned for MBTA Zoning, 22 acres can be located outside the ½ mile radius of the train station. In this instance, the same requirements noted in the ½ mile radius apply, using the MBTA Zoning Guidelines. The lists of Excluded Land might include:

1. Town Properties: all schools (Jr-Sr. High School and Memorial School), all sports fields, all cemeteries (Rosedale and Pine Street), DPW site on Pleasant Street, former dump/now transfer station at 201 Pine Street, former compost facility location on School Street, water tank on Pine Street, conservation land, etc. It should be noted that MBTS has very little surplus land and any available land will be needed for a new DPW facility, new public safety complex, new wastewater plant and other facilities that may need to be reconstructed because of sea rise;

2. All waters relating to the harbor, Sawmill Brook and its related wetlands, and various wetlands and areas subject to floodplain throughout the town;
3. All wetlands subject to the Wetlands Protection Act, as well as their buffer zones;
4. Protected open space, such as Western Woods properties, Tuck's Point, Winthrop Field and other conservation land owned by the Town, etc.;
5. All streets and rights of way-either public or private;
6. All land within Groundwater Overlay Districts
7. Telecommunications facilities, located subject to leases on town land on School Street and 201 Pine Street, , etc.

Additionally, there are local zoning limitations within the MBTS Zoning Bylaw that would prevent "by right" development. These local limitations include, but are not limited to, the following: (but could a new overlay district supersede the requirement for a special permit in limited cases? Or carve out new districts (LCD in particular!)

**Flood Control District** (Section 10.1) of the MBTS Zoning Bylaw, applies to new development or redevelopment within certain areas . The Flood Control District, which consists of those areas designated as A1, A2 and B1 in Figure 8 of a report prepared for the Town of Manchester-by-the-Sea by the consulting firm of Camp, Dresser and McKee entitled "Storm Drainage Improvements for the Bennett's Brook Drainage Area" dated October, 1971, require a special permit from the ZBA. (The maps of this district are located within the Department of Public Works.) As a special permit is required to develop in this area, then the use is not "by right;"

**Groundwater Overlay District** (Section 10.3) of the MBTS's zoning, which includes significant acreage of the Essex County Club as well as other locations off Mill Street, etc. As a special permit is required, any development/redevelopment is not "by right;"

**Area subject to Chapter 91 License:** Presently there is a section of the Table of Uses (Section 4.2) that reads "1 Matters (including the construction or alteration of any structure or the use thereof) all or any part of which is within tideland lying below Mean High Water (per U.S. Geodetic Survey) (15)" which requires a special permit from the Planning Board in the B, C, E and G districts. This is a local requirement which must be fulfilled prior to an applicant securing a Chapter 91 license. (This provision is what the Crocker's Boat yard special permit and Manchester Marine special permit came under.) Based on the language within the zoning bylaw, a special permit is required and therefore any development subject to tideland location cannot be considered "by right".

**Section 4.2 (Table of Uses)** of the MBTS Zoning Bylaw requires a special permit for many new developments within the Limited Commercial District (LCD). Much of the LCD is also located in a Groundwater Overlay District, again, requiring a special permit, resulting in development not being "by right;"

**The LCD has limited water and sewer** without a major infrastructure improvement. While the Town of MBTS is pursuing grants to allow infrastructure expansion, the present lack of infrastructure limits the ability to develop housing at a density proposed of 15 units/acre;

**Conservation Land.** The acres of land that are limited from development due to conservation restrictions is significant, accounting for over a third of all land in MBTS. The Trustees of Reservations, Manchester Essex Conservation Trust (MECT) and local Conservation Commission oversee tracts of land that are subject to conservation restrictions and do not allow development. Additionally, Gordon College, a local independent college based in Wenham, owns a large parcel of land on the Manchester by the Sea/Wenham line. This parcel would qualify as an excluded parcel, even though the college bought the land for housing development for its students and faculty;

**Topographic Challenges.** Much of the land abutting Route 128 is either ledge and would require substantial blasting or is wetlands subject to the Wetlands Protection Act, the latter an Excluded Land area per the MBTA Zoning Guidelines.

#### **Summary for Potential Development Outside of the ½ Mile Radius.**

In summary, there are more opportunities to redevelop or develop outside the ½ mile radius from the train station, however lands may be more difficult to develop due to environmental constraints. That being stated, there are areas where redevelopment could take place however these areas will be redevelopment areas where parcels will need to be assembled. These areas for redevelopment using MBTA Zoning Guidelines will need to be reviewed and recommended by the MBTA Zoning Task Force to the Planning Board, with the Planning Board holding a public hearing and making recommendations to Town Meeting, where ultimately the decisions will be made on the areas to be designated for MBTA Zoning developments.