



# MBTA Zoning Frequently Asked Questions

---

The MBTA Zoning Task Force is providing these often-asked questions and answers to help explain the State's new zoning mandate. The State is requiring that cities and towns served by the MBTA must enact zoning laws to allow multifamily housing by right. This is a draft document, and the following are preliminary and may change as more data is gathered and we learn more about the MBTA zoning mandate and Guidelines provided by the State government. These are meant to help town residents understand what the mandate means for Manchester, some of the ambiguities that are in the Guidelines, and some alternatives that the Town's MBTA Task Force might explore in the coming months.

# MBTA Zoning

## Frequently Asked Questions

### 1. What is the MBTA zoning mandate? What is its objective?

The mandate is the result of a State Law passed by the Legislature in 2021 and codified as Section 3A of MGL c. 40A. It is an attempt to alleviate the severe shortage of housing in the State by requiring municipalities that are served by the MBTA to create a zoning district that allows multifamily development by right. The focus is to allow housing in proximity to train stations to encourage transit-oriented development (“TOD”), which provides housing that is less reliant on automobiles.

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 multifamily housing is permitted as of right; provided, however, that such multifamily 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.

The State has issued a set of Guidelines to help municipalities achieve compliance with the new zoning law. These Guidelines have been revised several times, most recently on August 17, 2023. The Guidelines are posted on the Town’s [MBTA Task Force](#) web page and at Section 3A Guidelines | [Mass.gov](#)

### 2. How big does the new district have to be?

For most municipalities, the district must contain at least 50 acres. However, the State has determined that the MBTA multifamily housing district for Manchester need only be 37 acres. The reduced size of the district takes into account unique geographic constraints including the proximity of the train station to the harbor. However, for the purposes of compliance, the 37 acres of the new district must exclude certain unbuildable land. These excluded land areas include bodies of water, wetland resource areas, conservation land, and land used for public and utility services such as streets, parks, schools, etc.

---

### 3. What exactly does the State require for this new district?

The State requires that multifamily housing be allowed by right within the new district with a minimum overall gross density of 15 units per acre. (Some existing apartment complexes in Town have much higher densities.) There is no requirement that new units have to be built; the law only requires that multifamily housing be allowed by right.

The Guidelines also state that the calculation of gross density for the entire district includes “land occupied by public rights-of-way and any recreational, civic, commercial and other nonresidential uses.” This means that it is unnecessary to draw patchwork multifamily zoning districts to avoid roads and other public lands. So, although some areas must be excluded from the calculating the size of the district, they are included in determining density.

The following are some examples of housing complexes that currently exist in Manchester:



12 Summer Street (39 units on 2.2 acres- density of 18 units per acre)



1-3 School Street (13 units on .14 acres- density of 92 units per acre)



Powder House Lane (29 units in 2 buildings on 2 acres- density of 15 units per acre)

# MBTA Zoning

## Frequently Asked Questions

### 3. Continued from page 1

The following is another example of housing complexes that currently exist in Manchester:



*2 Beach Street (Mixed commercial with 7 units on 0.18 acres – density of 39 units per acre)*

### 4. Does it have to be a single district?

No. There can be multiple districts with different density requirements as long as all districts total 37 acres and the overall gross density is at least 15 units per acre. Each separate district must contain a minimum of 5 acres. However, at least half of the area of the new districts (roughly 18 acres in total) must be within the half mile radius from the train station.

### 5. Can it be an overlay district? And what does that mean?

It can be an overlay district or districts. An overlay zoning district superimposes an additional set of regulations over existing zoning districts. The basic regulations for the underlying

districts remain unchanged, while special rules are applied to projects that are subject to the overlay district. Manchester has several such districts including a “Water Resource Overlay District” that includes additional regulations for protecting the water supply. In the case of the MBTA mandate, an overlay district (or districts) would have to allow for multifamily housing by right with specific design standards and site plan review criteria. It should be noted that based on decisions handed down by State Courts, site plan review cannot be denied or made so onerous as to make proposed development financially infeasible.

### 6. What is a half mile radius from the train station?

A half mile from the station extends to Singing Beach to the southeast, to the far end of Bennett Street to the west, to Newport Park along Pine Street to the north and to the High School and Lincoln Street to the northeast. See the red circle below.

### 7. What zoning districts are within the half mile radius?



Almost half of the circle is in the Residential E district, shown in yellow. Residence E allows only single-family homes with a minimum lot size of 2 acres. Residential District A, which only allows single-family homes on a minimum one-acre lot, is in light pink. The General District, which allows commercial uses as well as single and 2-family homes by right on a minimum 6,000 square foot lot is shown in darker pink and is entirely within the radius. The Residential D districts are shown in purple. The D-1 district allows single and 2-family homes by right with a minimum lot size of 6,000 square feet. The small bit of the D-2 district along Pine Street requires a special permit for 2-family homes. The green area is parkland of the Powder House Reservation which prohibits any development.

### 8. Does the district or districts have to be entirely within the 1/2 mile radius from the train station?

No. Only half of the 37 acres have to be within the circle. We could choose to extend the new district beyond the half-mile, or we could create an 18.5-acre district within the radius and add some smaller districts anywhere else in town. Each smaller district would have to contain at least 5 acres.

The General District which includes the downtown area contains well over 90 acres, so the Town could achieve compliance with the State mandate by simply changing the zoning regulations for just the General District.

# MBTA Zoning

## Frequently Asked Questions

### 9. How big would an MBTA district of 37 acres be compared to the half-mile radius?



The shaded rectangle (This is just an example) above contains around 50 acres. Excluding the portion of the inner harbor and wetlands would reduce the size to around 35-40 acres. A rectangle half this size would contain more than 18.5 acres, which is the minimum amount required within the half mile radius.

### 10. How many units have to be allowed? How many units might be built?

With a minimum density of 15 units per acre, the 37-acre MBTA district(s) must have the capacity for the potential development of 555 residential units. (15 X 37 = 555) To provide some context, 555 units represents about ¼ of Manchester's existing housing stock, which is about 2,400 units. It is important to note that since there are many existing residential units already built near and in the downtown area, this does not mean that we should expect the construction of 555 NEW units. This is the number that would have to be allowed by zoning, not that would necessarily be built. Almost

all the land within the half mile circle (and much of the rest of the Town) is either unbuildable, within the floodplain, or already developed. Furthermore, most of the parcels of land in Town are far too small to support any kind of significant multifamily development project. Assembling enough parcels to create a large development site would be especially challenging. There are some underutilized parcels of land or buildings that might be candidates for redevelopment. Given the lack of vacant land, especially near the downtown, much of any additional new housing that in theory could be built under the MBTA zoning might result in the repurposing or demolition of existing buildings.

### 11. Does the Town have the necessary infrastructure (water, sewer, schools, etc.) to support these units?

The short answer is a provisional yes. School enrollment is declining and has been for several years so there is very likely the capacity for new MERSD students from new development. However, the financial impact of the new students is unclear: a material increase in students would result in higher district costs, but it is undetermined if the additional property tax revenue from new development would offset, be greater or lower than the new student district costs. Even at full build-out, which is unlikely, our water and sewer system could handle the additional demands. And if there isn't enough capacity in future years, the State Guidelines further state that, "While the zoning must allow for gross average density of at least 15 units per acre, there may be other legal or practical limitations,

including lack of infrastructure or infrastructure capacity, that result in actual housing production at lower density than the zoning allows." For lots not serviced by town sewer, full compliance with Board of Health regulations under Title V would still prevail.

### 12. Can the Town limit new development to senior housing or smaller units?

No. The new zoning bylaw cannot exclude family housing by imposing age restrictions or limit the size of units. However, a development proposal with smaller units or occupancy restrictions such as senior housing would certainly be allowed or could even be encouraged with a density bonus or reduction of required parking.

# MBTA Zoning

## Frequently Asked Questions

### **13. Won't this cause the Town to fall even further behind in providing affordable units for the Subsidized Housing Inventory (SHI) making us even more vulnerable to 40B developments? Can the Town require that units be affordable and listed on the SHI?**

The State has recognized this as an important issue. The Guidelines for MBTA Zoning state that the Town may require that 10% of all units proposed within the MBTA district be affordable and restricted to households with limited incomes of 80% of Area Median Income. The number of required affordable units may be increased up to 20% as long as it is supported by a financial feasibility study. Of course, a development proposal with an even higher percentage of affordable units or lower income limits for residents would be allowed; it just can't be required. One thorny issue would be requiring an affordability requirement for an apartment complex of less than 5 units. We probably can't reasonably force a smaller development to set aside any units as affordable in these cases since a single unit would represent more than 20% of the total.

### **14. Can we count existing residential units within a new district toward this total?**

This is a complicated question that needs a careful explanation. The simple answer is that the number of existing units does not matter. The key is the number of multifamily housing units that are allowed by right, regardless of how many already exist. The reason it is important to call attention to the large number of existing residential units in the downtown is to point out that careful modifications to our zoning regulations to satisfy the mandate don't have to significantly change the character of the downtown. Even if the Town already had more than 1,000 housing units within a half mile of the train station, our current zoning bylaw is not in compliance since it does not allow multifamily units. What matters is the potential number of housing units allowed by right. To put this another way, existing multifamily units would theoretically count if they were allowed by right. However, most of the multifamily units that exist today in Manchester do not comply with zoning, and are therefore non-conforming. They would not count unless the zoning bylaw were changed to allow them by right. For example, consider a hypothetical zoning provision that would allow 9 residential units by right on a half-acre parcel of land. Now let's assume that there is an existing building on a half-acre lot that has 10 apartments. Since the bylaw would only allow 9 units, only 9 could be counted. It is not the number of units that have been built that matters; it is the number of units that are allowed by right.

### **15. Does Manchester's zoning bylaw currently allow any multifamily housing?**

The short answer is no, but with an exception. Multifamily housing is defined as a building with 3 or more residential units, or 2 or more buildings on the same lot with more than one residential dwelling unit in each building. Neither is currently allowed by right in any zoning district. However, within the General District, a single dwelling may be converted to a 3-family residential building by right as long as the building is not enlarged and there is parking for 5 cars. (A 4-family building is also allowed, but only with a Special Permit.) With many of the existing houses in the General District located on small lots, it is difficult to have enough land to convert a dwelling to a 3-family building while having enough land left over for parking spaces plus driveway. As a result, there are few 3-family buildings in the General District, except those units that were built prior to the adoption of zoning regulations.

Note that if a "dwelling" were located on a minimum sized lot (6,000 square feet in the General District) and were converted to a 3-family property, it would have a density of 21 units per acre, exceeding the required density of 15 units per acre. However, there are also many properties in or near the downtown that have less than 6,000 square feet. It would be difficult to accommodate a 3-family residence and parking for five cars on these smaller lots.

# MBTA Zoning

## Frequently Asked Questions

### **16. How many multifamily units could be built by right now under the current zoning bylaw?**

Within the General District, existing dwellings can be converted by right to 3-family buildings as long as the structure is not enlarged and parking for 5 cars is provided. It is not clear how many could be converted by right given the number of single-family dwellings and the small size of most lots. One might argue that within the General District existing parcels of land could theoretically be combined and sub-divided to create a large number of 6,000 square foot lots. A house could be built on each, and then subsequently converted to 3-family residences. That probably would yield well over 600 multifamily units in just the General District. However, it is unlikely that the State would approve this kind of purely hypothetical and impractical scheme.

It should be noted that there are already over 400 residential units within the General District according to the Assessor's records. Some are single-family homes; some are two-family homes; others are apartments in multi-family buildings. Some apartments are in multipurpose buildings with both commercial and residential units. The Task Force will have to identify all the residential units in the downtown area and determine how many are multifamily units. Very few of these units currently conform to current zoning regulations. Regardless of the number of units that currently exist, the new district must be zoned to allow the development of at least 555 multifamily units as required by the State to meet the mandate. So, a possible strategy might include a new zoning bylaw that would allow by right the multifamily units that currently exist, with enough leeway to allow for additional multifamily units to meet the mandate. Some of these could be allowed in a separate district.

### **17. What is an example of 15 units per acre?**

The condos and apartments at 12 Summer Street next to Standleys Garage is far denser than 15 units per acre. A typical 2 or 3 story townhouse development with front yards and one car garages is a good image to keep in mind. The photo to the right is an example of what a density of 15 units per acre might look like. Visit Elm Street and get a feel for the units tucked into the center of Town.

There are also several examples of 3-family buildings on School Street, Desmond Avenue and Bridge Street that approximate 15 units/acre. Some do not have the required parking for the units.



### **18. Are wetlands and flood plains excluded from the area of the MBTA district?**

Yes. Any unbuildable land such as wetlands, conservation land, etc. is excluded from the calculation. Filled tidal lands are another issue. There are many areas of filled land including the parking area near the train station along with Allen's Pharmacy and the commercial property at 40 Beach Street. Although it is possible to construct buildings on filled land, the current Zoning Bylaw may require a special permit from the Planning Board. This is a topic for further research and the Town is waiting for clarification from State officials on this issue.

---

### **19. Can the Town have any control over the design and layout of these housing projects?**

Yes. Any reasonable requirements and development design standards are allowed. Development within an historic district (there are two in the downtown) is subject to review. The Town can require normal off-street parking, as well as height and setback restrictions, and a formal Site Plan Review process by the Planning Board. As long as these standards are reasonable and are not an effort to make a housing development financially infeasible or further limit density, they may be enforced. (Examples of an unreasonable requirement would be 4 onsite parking spaces for each unit or a 50-foot setback from the street.) It is anticipated that architectural design standards would be adopted as part of the new zoning regulations in order to ensure that buildings are properly scaled and have appropriate architectural detail to maintain the feel and character of existing structures within the town center.

# MBTA

## Zoning

### Frequently Asked Questions

#### **20. Can we require that new projects maintain commercial and retail uses on the ground floor?**

The latest Guidelines state that units in mixed use properties can count and we can certainly encourage them. 12 Summer Street is a good example of the kind of mixed-use development that would benefit the downtown. To protect valuable commercial properties from being forced out and replaced with housing, the Town could establish special commercial subdistricts along the main streets which would limit the development of multifamily residential units to upper floors. This might protect the Town from losing retail establishments or restaurants which could otherwise be torn down and replaced with high-priced condos.



#### **21. Can we prevent historically significant structures from being demolished or significantly altered?**

Perhaps. This requires additional research. Although the Town does not have any bylaws concerning demolition of buildings, we might be able to require that within the MBTA district historically significant buildings may not be torn down without some kind of review and that any changes to significant buildings be reviewed by the Historic District Commission or another appropriate body.

---

#### **22. What happens if the Town fails to comply with the mandate?**

The State has declared that cities and towns that do not comply with the mandate will lose access to certain grants. Manchester has used these grants in past years for paying the cost of dredging the harbor, for infrastructure improvements, and for subsidies to the public housing units operated by the Manchester Housing Authority. Future grant opportunities are speculative, but the loss of these funds would likely impact future infrastructure improvements and might even lead to higher property taxes. More importantly, the Attorney General has made it clear that because the State Law requires compliance, legal action could be undertaken to force municipalities to comply. In addition to having to pay legal fees, it is certainly possible that some kind of court ruling could overrule the Town's zoning regulations and establish a court-imposed solution.

#### **23. Who is in charge and who makes the decision to adopt the new zoning?**

Ultimately any changes in the Zoning Bylaw must be approved by Town Meeting and endorsed by the State Attorney General. The Town must also submit necessary information to the Executive Office of Housing and Livable Communities (EOHLC) in order to obtain a certification of compliance with the MBTA mandate. To assist in evaluating the MBTA mandate and to come up with recommendations, the Select Board and the Planning Board have convened a Task Force of representatives from various town organizations and local citizens. The Task Force will collect data, evaluate alternative zoning solutions, and seek guidance from consultants and legal counsel. The Town has received a \$50,000 grant from the State to apply to this process. The Task Force will also encourage public participation and comment throughout the process, using workshops and community forums where the public will be invited to ask questions and offer comment. This work will culminate in a report to the Select Board and Planning Board before spring of 2024. Once the Task Force report is complete, the Planning Board will determine the best alternative (or alternatives), conduct formal hearings, and submit a proposal for consideration by Town Meeting. The Select Board will approve the placing of the formal article or articles on the official warrant