

The Housing Choice Initiative

Chapter 358 of the Acts of 2020 and the Impacts to Municipal Planning and Zoning

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Topics to be Covered



- Changes to Definition within the Zoning Act;
- “MBTA Communities” and Multi-Family Housing;
- New Quantum of Vote for Zoning Amendments;
- New Quantum of Vote for Special Permits; and
- Appeal Bonds and Additional Planning and Zoning Amendments.



G.L. c. 40A, § 1A – New Definitions

Ten (10) new definitions added to the Zoning Act:

- Accessory Dwelling Unit;
- As of Right;
- Eligible Locations;
- Gross Density;
- Lot;
- MBTA Community;
- Mixed-Use Development;
- Multi-Family Housing;
- Natural Resource Protection Zoning; and
- Open Space Residential Development.



New Definitions - Accessory Dwelling Unit

"Accessory dwelling unit", a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling, subject to otherwise applicable dimensional and parking requirements, that:

- (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress;
- (ii) is not larger in floor area than $1/2$ the floor area of the principal dwelling or 900 square feet, whichever is smaller; and
- (iii) is subject to such additional restrictions as may be imposed by a municipality, including but not limited to additional size restrictions, owner-occupancy requirements and restrictions or prohibitions on short-term rental of accessory dwelling units.

Accessory Apartments in Lincoln's R-1 District

14.3.1 Definitions:

- a. Accessory Apartment: a distinct portion of a single-family dwelling, or a unit in an accessory structure on a single-family lot, having its own kitchen, sleeping, and bathroom facilities, and subordinate in size to the principal part of the dwelling or structure.
- b. Affordable Accessory Apartment: An Accessory Apartment that is affordable to low and moderate income households, as defined by the Massachusetts Department of Housing and Community Development ("DHCD"), and that meets DHCD requirements for accessory apartments under the Local Initiative Program ("LIP") and for inclusion in the Town's Subsidized Housing Inventory.

Accessory Apartments in Lincoln's R-1 District

14.3.2 Requirements for an Accessory Apartment:

The Board of Appeals may grant a Special Permit for an Accessory Apartment, provided that the unit meets the following requirements:

- a. Floor Area: the Accessory Apartment shall not exceed 1200 square feet, and (for a unit included in a single-family dwelling) shall not exceed 35% of the floor area of the principal dwelling unit and Accessory Apartment combined.
- b. Lot Size: the lot on which the Accessory Apartment and principal dwelling unit are located shall contain at least 40,000 square feet.

[MORE]

New Definitions - Eligible Locations

"Eligible locations", areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation:

- (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or
- (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.



Question:

Is a Town required to amend its Zoning Bylaws if municipal definitions conflict with the new Chapter 40A definitions?



Chapter 808 of the Acts of 1975

- “The Zoning Act” versus “The Zoning Enabling Act.”
- The Home Rule Amendment – Article 89 of the Amendments to the Massachusetts Constitution.

MBTA Communities and Multi-Family Housing

- G.L. c. 40A, § 3A requires a “MBTA Community” to provide at least one zoning district of reasonable size where multi-family housing is permitted **as of right**.
- Failure to comply with Section 3A will result in the loss of funding sources, e.g., the Housing Choice Fund, the Local Capital Projects Fund, and MassWorks Funding.
- The Town of Lincoln is a MBTA Community.



MBTA Communities and Multi-Family Housing (continued)

- The MBTA Community District must comply with the following:
 - No age restrictions;
 - Suitable for families with children;
 - Minimum density of 15 units/acre; and
 - Located with ½ miles from commuter rail/subway/ferry/bus station (if applicable).
- The MBTA Community District must also comply with the Massachusetts Wetlands Protection Act (G.L. c. 131, § 40) and Title V Regulations.



MBTA Communities and Multi-Family Housing (continued)

- Further guidance from DHCD, EOHED, and the MBTA will be issued concerning necessary requirements for MBTA Community Districts.
- In the interim, DHCD has determined that all communities are compliant until further guidelines are developed.
- Towns may request an Advisory Opinion from EOHED about whether a zoning proposal affects an eligible location.
- www.mass.gov/info-details/housing-choice-and-mbta-communities-legislation



G.L. c. 40A, § 5 – Zoning Amendments

Town Meeting may amend a Zoning Bylaw with a **simple majority vote** for the following:

1. An amendment to allow any of the following **as of right**:
 - Multi-family housing or mixed-use developments in an eligible location;
 - Accessory dwelling units, whether within the principal dwelling or a detached structure; and
 - Open-space residential developments.
2. An amendment to allow any of the following **by special permit**:
 - Multi-family housing or mixed-use developments in an eligible location;
 - An increase in the permissible density a proposed multi-family or mixed-use development;
 - Accessory dwelling units in a detached structure; and
 - A diminution of parking required for residential or mixed-use developments.



G.L. c. 40A, § 5 – Zoning Amendments (continued)

Town Meeting may amend a Zoning Bylaw with a **simple majority vote** for the following:

3. A zoning amendment that:

- Provides for TDR zoning or natural resource protection zoning; and
- Modifies regulations concerning the bulk, height, parking, and dimensional requirements to allow for additional housing beyond what would otherwise be permitted.

4. A zoning amendment that:

- Adopts a Smart Growth Zoning District or Starter Home District (Chapter 40R);



South Lincoln Zoning Overlay District

- Section 12.7.2 of the Lincoln Zoning By-Law:
“Unless and until Town Meeting approves by majority vote a portion of the SL-South Lincoln Overlay District as a South Lincoln Planned Development District, the permitted uses and dimensional controls shall be those of the underlying zoning district, without regard to its inclusion in the SL-South Lincoln Overlay District”



Question:

Can Town Meeting
adopt other
categories of zoning
amendments with a
simple majority
vote?



G.L. c. 40A, § 9 – Special Permits

A special permit issued by a SPGA shall require a **simple majority vote** for any of the following:

- Multi-family housing located within ½ miles of a transportation station, provided that not less than 10% of the housing shall be affordable;
- Mixed-use developments in centers of commercial activity, including town centers and rural village districts, provided that not less than 10% of housing shall be affordable;
- Reduced parking space to residential unit ratio requirements, provided that a reduction in parking will result in additional housing units.



G.L. c. 40A, § 17 – Appeal Bonds

A court, in its discretion, may require a plaintiff appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than \$50,000, if the court finds that the harm to the defendant or to the public interest resulting from delays caused by the appeal outweighs the financial burden of the surety or cash bond on the plaintiffs.





Any Questions or Comments?

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