



## MEMORANDUM

To	Elizabeth Hughes, Town Planner, Town of Concord
From	Emily Keys Innes, AICP, LEED AP ND, President
Date	March 3, 2025 (v2)
Project	24138 – Concord Mixed-Use Zoning
Subject	Mixed-Use and Section 3A
Cc:	Jimmy Rocha, Spatial Analyst and Data Scientist

This memorandum provides an analysis of the requirements for considering a Mixed-use District as part of the strategy for complying with MGL c.40A Section 3A.

The Executive Office of Housing and Livable Communities (EOHLC) has created a set of regulations, 760 CMR 72.00 Multi-Family Zoning Requirements for MBTA Communities, dated January 14, 2025. This draft is open for public comment until February 21, 2025. These regulations identify the requirements for any community considering the use of a mixed-use zoning district (one in which ground floor commercial is a mandatory component) as part of its strategy for compliance with Section 3A.

### Findings

To incorporate a Mixed-use district into its MBTA Communities zoning, the Town of Concord would need to modify Section 4.2.3 Combined business/residence to be able to use it as an offset for the total unit capacity requirement. The benefit would be a reduction of no more than 274 dwelling units, for a revised unit capacity of 820 dwelling units.

The changes that would need to be made to address compliance are as follows:

1. **72.05(1)(c)2.c.** Reduce the affordability requirement, which is 20% for development of four or more units, with a minimum of one unit (which would be 25%) to match the requirements of Section 7.11 MBTA Multi-family Overlay District.
2. **72.05(1)(c)2.c.** Reduce the open space requirement in Section 4.2.3 as it is likely to be viewed as onerous by EOHLC.
3. **72.05(1)(c)2.d.** Reduce the requirement of 100% non-residential on the first floor in the WCV to no more than 33% non-residential as stated in this section or remove the WCV from the calculation.
4. **72.05(1)(c)2.g.** Remove the requirement for parking for non-residential uses in the areas subject to Section 4.2.3.

Limited Business 2, 3, and 7 are subject to Section 4.2.3. Innes Associates modeled those districts as an initial test; the project capacity is not sufficient to achieve 274 dwelling units.

## Analysis

This analysis uses the draft regulations, with the understanding that if the final regulations differ from the draft, this analysis will need to be updated.

### Definitions

MGL c.40A, Section 1A defines **Mixed-use development** as “development containing a mix of residential uses and non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.” In **72.02 Definitions, Mixed-use development zoning district** is defined as “a zoning district where multiple residential units are allowed as of right if, but only if, combined with non-residential uses, including, without limitation, commercial, institutional, industrial or other uses.”

### Minimum Unit Capacity Requirement

The minimum unit capacity requirement is defined in **72.05 Determining “Reasonable Size.”** Unit capacity is a measure of the number of housing units that could, in theory, be developed within a zoning district. For the purposes of compliance with Section 3A, EOHL has assigned a unit capacity to each community based on its category and number of housing units in the 2020 US Census. The calculation requirements for the unit capacity are described in **72.05(1)(b) Minimum Multi-family unit capacity.**

The Town of Concord is a Commuter Rail community with 7,295 housing units identified in the 2020 US Census. The assigned minimum unit capacity is 1,094 dwelling units.

### Offset from Mixed-use Development Zoning District

EOHLC allows a community to offset the calculated unit capacity of a Mixed-use development zoning district against the overall required unit capacity for compliance with Section 3A. The regulations for this offset are in **72.05(1)(c) Unit Capacity in Mixed-Use Development Districts.**

**72.05(c)1.** allows a municipality to consider the existence and impact of Mixed-use development districts when considering whether the municipality meets the requirements for a Multi-family zoning district of “reasonable size.”

The Town of Concord’s Zoning Bylaws includes **Section 4.2.3 Combined business/residence** that would allow for a Mixed-use development. This section will be reviewed for compliance with **72.05(1)(c) Unit Capacity in Mixed-Use Development Districts.** The Town has a similar bylaw for a mixed-use industrial district (Section 4.2.4 Combined industrial/business/residence) that was not within the scope of this project and therefore not reviewed.

Under **72.05(1)(c)2.**, the Mixed-use development district must meet a series of requirements, which is shown in Table 1, below, along with the existing provisions of **Section 4.2.3.**

**Table 1: Comparison of 72.05(1)(c)2 with Section 4.2.3**

72.05(1)(c)2	Requirement	Section 4.2.3
a	the Mixed-use development zoning district is in an eligible location where existing village-style or downtown development is essential to preserve pedestrian access to amenities;	Combined business/residence is allowed in the B, CCCB, TDB, and NACB districts as of right and in the WCV (no residential use on the first floor) and LB districts 2, 3, and 7. Site Plan Approval is required for this use.
b	there are no age restrictions or limits on unit size, number of bedrooms, bedroom size or number of occupants and the residential units permitted are suitable for families with children;	None listed.
c	Mixed-used development in the district is allowed As of right as that phrase has been interpreted by EOHL (for example, in 760 CMR 72.04(1)(b) with respect to affordability requirements);	<p>Development of four or more units must have at least 20% of the units as affordable housing with a minimum of one affordable unit.</p> <p>If more than 10% of units are available as affordable units, a special permit can waive the required open space, increase the height, and decrease the number of parking spaces. This option is not allowed in Limited Business District #2.</p> <p>Open space must be provided as twice the gross floor area of the residential portion of the building; a special permit may be used to reduce this requirement.</p>
d	the requirement for non-residential uses is limited to the ground floor of buildings, and in no case represents a requirement that more than thirty-three percent of the floor area of a building, Lot, or project must be for non-residential uses;	No limitation on the location of the mixed of uses within the building or the lot except for the WCV, which prohibits residential on the ground floor.
e	the requirement for non-residential uses does not preclude a minimum of three residential dwelling units per Lot;	No limitation on the number of dwelling units.
f	the requirement for non-residential uses allows a broad mix of non-residential uses As-of-right in keeping with the nature of the area;	No limitation on the non-residential uses in 4.2.3. Assumed to be limited to the allowable business uses by district in Table 1. Principal Use Regulations.
g	there are no minimum parking requirements associated with the non-residential uses allowed As of right.	Special permit allowed for reducing the amount of parking for units with more than 10% affordable housing.

Under the second **72.05(1)(c)2.** (this should be 3, but it is also shown as 2 in the draft), the municipality submits EOHLC’s form to EOHLC for request for a determination that the Mixed-use development district is in an eligible location meeting the requirements of **760 CMR 72.05(1)(c)2.a.** This must be submitted at least 90 days prior to the municipality’s vote.

Under **72.05(1)(c)3.** (as numbered in the draft), if the municipality has both a Multi-family zoning district and a Mixed-use development zoning district that meets the requirements of 72.05(1)(c)2.a through g., the unit capacity requirement shall be reduced by the lesser of two calculations. This paragraph means that if the conditions are met in the Mixed-use development zoning district, the reduction is automatic (“shall be reduced”). The calculations are as follows:

- a. The unit capacity of Residential dwelling units in the Mixed-use development district; or
- b. 25% of the unit capacity requirement for the municipality as stated in the regulations.

This means that Concord, with a unit capacity requirement of 1,094 dwelling units, would be able to offset no more than 274 units based on b., above. EOHLC has provided a Mixed-Use District Offset Compliance Model for use in the calculation for a., above.

**Mixed-Use District Offset Compliance Model**

As an initial test, Innes Associates ran the Mixed-Use District Offset Compliance Model on Limited Business 2, 3, and 7 to understand the potential impact of using Section 4.2.3 as an offset to the unit capacity requirements.

Limited Business District	Unit Capacity per Model	Notes
2	6	LB2 has a maximum height of 27.5 feet. The model used 1.5 stories for residential.
3	43	LB3 has a maximum height of 35 feet. The model used 2 stories for residential.
7	0	Both parcels in LB7 are non-conforming because the lot sizes are less than 40,000 SF.
Total	57	This is less than the maximum offset of 274 units.

Additional districts in which Section 4.2.3 applies may be modeled to see if all districts to which Section 4.2.3 applies can achieve the minimum 274 units; however, it is likely that the Open Space requirement in Section 4.2.3 (which is not able to be modeled using the Mixed-Use District Offset Compliance Model) will act as an additional constraint. The model assumed the minimum of 2 spaces per dwelling unit for parking (Table IV Minimum Parking Spaces) and no parking for the non-residential uses, consistent with **72.05(1)(c)2.g.**