

**SMART GROWTH OVERLAY DISTRICT BYLAW (Added 10/7/13)**

**SECTION 5.5 SMART GROWTH OVERLAY DISTRICT (SGOD)**

**5.5.1 PURPOSE**

The purposes of this Section 5.5 are:

1. To establish a Smart Growth Overlay District and encourage smart growth in accordance with the purposes of M.G. L. Chapter 40R;
2. To encourage new development close to existing infrastructure and services in order to protect open space and farmland in the outer reaches of the town;
3. To support private developers in their efforts to provide a range of safe, quality housing options for individuals and families of all ages and incomes;
4. To develop new homes which are consistent with the character of Ludlow's existing neighborhoods
5. To encourage development types as delineated in the 2011 Master Plan

**5.5.2 DEFINITIONS**

For purposes of this Section 5.5, the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Enabling Laws or Section 5.5.2, or as set forth in the Plan Approval Authority Regulations. To the extent that there is any conflict between the definitions set forth in Section 5.5.2 or the PAA Regulations and the Enabling Laws, the terms of the Enabling Laws shall govern.

***Affordable Homeownership Unit*** - an Affordable Housing unit required to be sold to an Eligible Household.

***Affordable Housing*** - housing that is affordable to and occupied by Eligible Households.

***Affordable Housing Restriction*** - a deed restriction of Affordable Housing meeting statutory requirements in M.G.L. Chapter 184, Section 31 and the requirements of Section 5.5.6.5 of this Bylaw.

***Affordable Rental Unit*** - an Affordable Housing unit required to be rented to an Eligible Household.

***Applicant*** – the individual or entity that submits a Project for Plan Approval.

***As-of-right*** - a use allowed under Section 5.5.5 without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Project that requires Plan Approval by the PAA pursuant to Sections 5.5.9 through 5.5.13 shall be considered an as-of-right Project.

***Bicycle Parking Facilities*** - Bicycle racks or other provision for indoor or outdoor storage of bicycles. Storage must allow for the locking of bicycles to racks or inside storage containers.

***Department or DHCD*** - the Massachusetts Department of Housing and Community Development, or any successor agency.

***Design Standards*** – means provisions of Section 5.5.13 made applicable to Projects within the SGOD that are subject to the Plan Approval process.

***Eligible Household*** - an individual or household whose annual income is less than 80 percent of the area-wide median income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

***Enabling Laws*** - G.L. Chapter 40R and 760 CMR 59.00.

***Mixed-Use Development Project*** – a Project containing a mix of residential uses and non-residential uses, as allowed in Table 1, and subject to all applicable provisions of this Section 5.5.

***Monitoring Agent*** – the local housing authority or other qualified housing entity designated by the PAA pursuant to Section 5.5.6.2, to review and implement the Affordability requirements affecting Projects under Section 5.5.6.0.

***PAA Regulations*** – the rules and regulations of the PAA adopted pursuant to Section 5.5.9.3.

***Plan Approval*** - standards and procedures which all Plan Approval Projects in the SGOD must meet pursuant to Sections 5.5.9 through 5.5.13 and the Enabling Laws.

***Plan Approval Authority (PAA)*** - The local approval authority authorized under Section 5.5.9.2 to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

***Project*** - a Residential Project or Mixed-use Development Project undertaken within the SGOD in accordance with the requirements of this Section 5.5.

***Residential Project*** - a Project that consists solely of residential, parking, and accessory uses, as further defined in Section 5.5.5.

***SGOD*** – the Smart Growth Overlay District established in accordance with this Section 5.5.

***Zoning Bylaw*** - the Zoning Bylaw of the Town of Ludlow.

### **5.5.3 OVERLAY DISTRICT**

**5.5.3.1 Establishment.** The Ludlow Smart Growth Overlay District, hereinafter referred to as the “SGOD,” is an overlay district having a land area of approximately 226 acres in size that is superimposed over the underlying zoning district(s) and is shown on the Zoning Map as set forth on the map entitled “Ludlow Smart Growth Overlay District, dated May 12, 2011, prepared by Pioneer Valley Planning Commission.” This map is hereby made a part of the Zoning By-law and is on file in the Office of the Town Clerk.

**5.5.3.2 Sub-Districts.** The SGOD contains the following sub-districts:

- a. East Street Corridor Mixed Use Sub-District
- b. Riverside Mixed Use Sub-District
- c. Ludlow Mills Mixed Use Sub-District

### **5.5.4 APPLICABILITY OF SGOD**

**5.5.4.1 Applicability of SGOD.** An applicant may seek development of a Project located within the SGOD in accordance with the provisions of the Enabling Laws and this Section 5.5, including a request for Plan Approval by the PAA, if necessary. In such case, notwithstanding anything to the contrary in the Zoning Bylaw, such application shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations.

**5.5.4.2 Underlying Zoning.** The SGOD is an overlay district superimposed on all underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section 5.5. Within the boundaries of the SGOD, a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).

**5.5.4.3 Administration, Enforcement, and Appeals.** The provisions of this Section 5.5 shall be administered by the Zoning Enforcement Officer, except as otherwise provided herein. Any legal appeal arising out of a Plan Approval decision by the PAA under Sections 5.5.9 through 5.5.13 shall be governed by the applicable provisions of M.G. L. Chapter 40R. Any

other request for enforcement or appeal arising under this Section 5.5 shall be governed by the applicable provisions of M. G. L. Chapter 40A.

**5.5.5 PERMITTED USES**

The restrictions and controls intended to regulate development in each district are set forth in Table 1 as follows:

- P** Use Permitted by Right in the District
- PA** Use Permitted with Plan Approval in the District from the Planning Board in accordance with Section 5.5.9
- N** Not permitted

All Projects in a SGOD must have a residential use. Retail, service, and manufacturing uses will not be permitted without a residential component.

Use regulations for the following Sub-Districts are detailed in Table 1:

- ES** East Street Corridor Mixed Use Sub-District
- RS** Riverside Mixed Use Sub-District
- LM** Ludlow Mills Mixed Use Sub-District

**Table 1: Table of Use Regulations**

Use Type	Standards and Conditions	ES	RS	LM
<b><u>RESIDENTIAL</u></b>				
Single Family Detached		N	N	N
Townhouse	Townhouses will be built on individual lots with zero side setback requirements.	PA	PA	N
Two and Three Family		N	PA	N
Multi-Family (over 4 units)		PA	PA	PA
Assisted Living		PA	N	PA
<b><u>BUSINESS**</u></b>				
Dining Establishments	Not including drive-in or drive-through restaurants	PA	PA	PA
Office Building		PA	PA	PA
Banks	Not including drive-in or drive-through banks	PA	PA	PA
Retail		PA	PA	PA
Services	Auto Body Shop, Auto Sales Lot and Auto Service Station and Repair Service are not permitted.	PA	PA	PA
<b><u>MIXED USE**</u></b>				
Neighborhood scale mixed use development projects, allowing two or more uses within the same building		PA	PA	N
Downtown scale mixed use development projects, allowing two or more uses within the same building		N	PA	PA
<b><u>INDUSTRIAL**</u></b>				
Light Manufacturing		N	N	PA
General Industrial Uses		N	N	PA
<b><u>GOVERNMENT, INSTITUTIONAL &amp; PUBLIC SERVICE</u></b>				
Religious		PA	PA	PA
Educational		PA	PA	PA
Parks, Playgrounds, Recreation & Community Centers		P	P	P
Municipal Government Buildings		PA	PA	PA

\*\* Not permitted unless within a Mixed-Use Development Project

Additional notes:

- All uses not specifically mentioned in Table 1 are prohibited.
- The total gross floor area devoted to non-residential uses within a mixed-use development project shall be less than 50 % of the total gross floor area of the Project.
- Neighborhood scale shall mean buildings with a maximum height of three (3) stories.
- Downtown scale shall mean a maximum height of five (5) stories.
- The minimum allowable As-of-right density requirements for residential uses specified in Section 5.5.7 shall apply to the residential portion of any Mixed-Use Development Project.

## **5.5.6 HOUSING AND HOUSING AFFORDABILITY**

**5.5.6.1 Number of Affordable Housing Units.** For all Projects, not less than twenty percent (20%) of housing units constructed shall be Affordable Housing. For purposes of calculating the number of units of Affordable Housing required within a Project, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Unless the PPA provides a waiver on the basis that the Project is not otherwise financially feasible, twenty-five percent (25%) of rental dwelling units constructed in a rental Project must be Affordable Rental Units. A Project shall not be segmented to evade the Affordability threshold set forth above.

**5.5.6.2 Monitoring Agent.** A Monitoring Agent which may be the local housing authority or other qualified housing entity shall be designated by the PAA. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the designating official or by DHCD such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the designating official. In any event, such Monitoring Agent shall ensure the following, both prior to issuance of a Building Permit for a Project within the SGOD, and on a continuing basis thereafter, as the case may be:

1. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
2. Income eligibility of households applying for Affordable Housing is properly and reliably determined;
3. The housing marketing and resident selection plan conform to all requirements have been approved by DHCD specifically with regard to conformance with M.G.L. c.40R and 760 CMR 59.00 and are properly administered;
4. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
5. Affordable Housing Restrictions meeting the requirements of this section are approved by DHCD specifically with regard to conformance with M.G.L. c.40R and 760 CMR. 59.00, and recorded with the Hampden County Registry of Deeds.

**5.5.6.3 Submission Requirements.** As part of any application for Plan Approval for a Project within the SGOD submitted under Sections 5.5.9 through 5.5.13 (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), the Applicant must submit the following documents to the PAA and the Monitoring Agent:

1. Evidence that the Project complies with the cost and eligibility requirements of Section 5.5.6.4;
2. Project plans that demonstrate compliance with the requirements of Section 5.5.6.5; and
3. A form of Affordable Housing Restriction that satisfies the requirements of Section 5.5.6.6.

These documents in combination, to be submitted with an application for Plan Approval (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), shall include details about construction related to the provision, within the development, of units that are accessible to the disabled.

**5.5.6.4 Cost and Eligibility Requirements.** Affordable Housing shall comply with the following requirements:

1. Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households. If approved by DHCD, preference will be given to local residents.
2. For an Affordable Rental Unit, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless other affordable program rent limits approved by the DHCD shall apply.
3. For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one.

Prior to the granting of any Building Permit or Plan Approval for a Project, the Applicant must demonstrate, to the satisfaction of the Monitoring Agent, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town of Ludlow.

**5.5.6.5 Design and Construction.** Units of Affordable Housing shall be finished housing units. Unless otherwise approved by DHCD, under the 40R Program, units of Affordable Housing shall be dispersed proportionately throughout all residential unit types contained within the Project of which they are part and be comparable in initial construction quality and exterior design to the other housing units in the Project. The total number of

bedrooms in the Affordable Housing shall be at least proportionate to the total number of bedrooms in all units in the Project of which the Affordable Housing is part.

**5.5.6.6 Affordable Housing Restriction.** Each Project shall be subject to an Affordable Housing Restriction which is approved by DHCD for 40R purposes, recorded with Hampden County Registry of Deeds or Registry of the Land Court and which contains the following:

1. Specification of the term of the affordable housing restriction which shall be no less than fifty years;
2. The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the affordable housing restriction;
3. A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project without specific unit identification;
4. Reference to a housing marketing and resident selection plan, to which the Affordable Housing is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by DHCD, the housing marketing and selection plan may provide for preferences in resident; the plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that the preference for such Unit shall be given to a household of the appropriate size;
5. A requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
6. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership will be set;
7. A requirement that only an Eligible Household may reside in Affordable Housing and that notice of any lease of any Affordable Rental Unit shall be given to the Monitoring Agent;
8. Provision for effective monitoring and enforcement of the terms and provisions of the affordable housing restriction by the Monitoring Agent;
9. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and/or the Town of



- Ludlow, in a form approved by Town Counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
10. Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Monitoring Agent and/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;
  11. Provision that the owner[s] or manager[s] of Affordable Rental Unit[s] shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the Affordability provisions of this Bylaw and containing such other information as may be reasonably requested in order to ensure affordability; and
  12. A requirement that residents in Affordable Housing provide such information as the Monitoring Agent may reasonably request in order to ensure affordability.

**5.5.6.7 Costs of Housing Marketing and Selection Plan.** The housing marketing and selection plan may make provision for payment by the Project applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.

**5.5.6.8 Age Restrictions.** Nothing in this Section 5.5 shall permit the imposition of restrictions on age upon Projects throughout the entire SGOD. However, the PAA may, in its review of a submission under Section 5.5.6.3, allow a specific Project within the SGOD designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable Units.

**5.5.6.9 Phasing.** For any Project that is approved and developed in phases in accordance with Section 5.5.9.4, unless otherwise approved by the Department, the proportion of Affordable Housing Units shall be at least 20 percent of all units constructed in each phase.

**5.5.6.10 No Waiver.** Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 5.5.6.0 shall not be waived.

**5.5.7. DIMENSIONAL AND DENSITY REQUIREMENTS**

**5.5.7.1 Table of Requirements.** Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the SGOD are as follows:

**Table 2: Dimensional and Density Requirements, East Street Corridor Mixed Use Sub-District**

Use	Maximum Height (stories)	Minimum Density (units per acre)
Townhouse	3	8
Multi-Family (over 4 units)	3	20
Assisted Living	3	20
Mixed Use- Neighborhood Scale	3	20

**Table 3: Dimensional and Density Requirements, Riverside Mixed Use Sub-District**

Use	Maximum Height (stories)	Minimum Density (units per acre)
Townhouse	3	8
Two and Three Family	3	12
Multi-Family (over 4 units)	5	20
Mixed Use – Neighborhood Scale	3	20
Mixed Use – Downtown Scale	5	20

**Table 4: Dimensional and Density Requirements, Ludlow Mills Mixed Use Sub-District**

Use	Maximum Height (stories)	Minimum Density (units per acre)
Multi-Family (over 4 units)	5	20
Assisted Living	5	20
Mixed Use - Downtown Scale	5	20

**5.5.7.2 Dimensional Waivers in Substantially Developed Sub-district.** The PAA may, in order to encourage the development of infill housing units on undeveloped lots within a Substantially Developed Sub-district, grant a waiver to the dimensional standards of Section 5.5.7.1, in accordance with Section 5.5.11.3.

**5.5.8 PARKING REQUIREMENTS**

The parking requirements applicable for Projects within the SGOD are as follows.

**5.5.8.1 Number of parking spaces.** Unless otherwise approved by the PAA, the following minimum numbers of off-street automobile parking spaces shall be provided by use, either in surface parking, within garages or other structures, [or on-street:], as well as the minimum numbers of bicycle parking:

<b>Use</b>	<b>Auto Parking Standards</b>	<b>Bicycle Parking Standards</b>
Single Family Dwellings	2 spaces per dwelling unit	None required
Duplex and Triplex	2 spaces per dwelling unit	None required
Multi-family units with one bedroom or efficiency units	1.5 spaces per unit	None required
Multi-family units with two or more bedrooms	2 spaces per unit	None required
Housing for the elderly	1 spaces per unit	1 bike space per 20 employees
Professional, Business, Insurance Offices and Banks	1 space per 300 s.f. of gross floor area exclusive of basements and garages used solely for utility and storage purposes	1 bike space per 10 code-requiring auto parking spaces
Retail Establishments, Services	1 space per 200 s.f. of gross floor area exclusive of basements and garages used solely for utility and storage purposes	1 bike space per 10 code-requiring auto parking spaces
Restaurants, Taverns, and other eating places	1 space per 4 seats	1 bike space per 10 code-requiring auto parking spaces
Medical and Dental Offices and Office Buildings	1 space per 300 s.f. of gross floor area exclusive of basements and garages used solely for utility and storage purposes	1 bike space per 20 code-requiring auto parking spaces
Light Manufacturing and General Industrial Uses	1 space per 2 employees of the two largest shifts combined and customarily employed on the premises	1 bike space per 50 code-requiring auto parking spaces
Religious	1 per 4 seating spaces	1 bike space per 12 code-requiring auto parking spaces

The PAA may require additional visitor auto and bicycle parking spaces if deemed appropriate given the design, layout and density of the proposed residential or other development. The PAA may allow for a decrease in the required parking as provided in Sections 5.5.8.2 and 5.5.8.3 below.

**5.5.8.2 Shared Parking.** Notwithstanding anything to the contrary herein, the use of shared parking to fulfill automobile and bicycle parking demands noted above that occur at different times of day is strongly encouraged. Minimum parking requirements above may be reduced by the PAA through the Plan Approval process (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), if the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other approved studies).

**5.5.8.3 Reduction in auto parking requirements.** Notwithstanding anything to the contrary herein, any minimum required amount of automobile parking may be reduced by the PAA through the Plan Approval process (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), if the applicant can demonstrate that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

1. The availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus stop or transit station;
2. The availability of public or commercial parking facilities in the vicinity of the use being served;
3. Shared use of off street parking spaces serving other uses having peak user demands at different times;
4. Age or other occupancy restrictions which are likely to result in a lower level of auto usage;
5. Impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
6. Such other factors as may be considered by the PAA.

**5.5.8.4 Location of Automobile Parking.** Any surface parking lot shall, to the maximum extent feasible, be located at the rear or side of a building, relative to any principal street, public open space, or pedestrian way.

**5.5.8.5 Bicycle Parking Standards.** Bicycle parking facilities shall be located in a convenient, highly visible and well lighted area to minimize theft and vandalism, generally within fifty (50) feet of a building entrance and within view of pedestrian traffic and should be kept out of the public right of way. At a minimum, bicycle parking spaces shall be at least two (2) feet in width by six (6) feet in length to allow sufficient space between parked bicycles. A minimum five (5) foot wide aisle or space behind all required bicycle parking should be provided to allow room for bicycle maneuvering.

## **5.5.9 PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS**

**5.5.9.1 Plan Approval.** An Application for Plan Approval shall be reviewed by the PAA for consistency with the purpose and intent of Sections 5.5.9 through 5.5.13. Such Plan Approval process shall be construed as an as-of-right review and approval process as required by and in accordance with the Enabling Laws. Projects requiring Plan Approval are identified within Section 5.5.5 (Table 1).

**5.5.9.2 Plan Approval Authority (PAA).** The Planning Board, consistent with M.G.L. Chapter 40R and 760 CMR 59.00, shall be the Plan Approval Authority (the “PAA”), and it is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

**5.5.9.3. PAA Regulations.** The PAA may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations must be approved by the Department of Housing and Community Development.

**5.5.9.4 Project Phasing.** An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases, provided that the submission shows the full build out of the Project and all associated impacts as of the completion of the final phase, and subject to the approval of the PAA. Any phased project shall comply with the provisions of Section 5.5.6.9.

## **5.5.10 PLAN APPROVAL PROCEDURES**

**5.5.10.1 Pre-application.** Prior to the submittal of a Plan Approval submission, a “Concept Plan” may be submitted to help guide the development of the definitive submission for Project build out and individual elements thereof. Such Concept Plan should reflect the following:

1. Overall building envelope areas;
2. Open space and natural resource areas; and

3. General site improvements, groupings of buildings, and proposed land uses.

The Concept Plan is intended to be used as a tool for both the applicant and the PAA to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGOD.

**5.5.10.2 Required Submittals.** An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA, along with application fee(s) which shall be as set forth in the PAA Regulations. The application shall be accompanied by such plans and documents as may be required and set forth in the PAA Regulations. For any Project that is subject to the Affordability requirements of Section 5.5.6, the application shall be accompanied by all materials required under Section 5.5.6.3. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of one inch equals forty feet (1"=40') or larger, or at a scale as approved in advance by the PAA.

**5.5.10.3 Filing.** An applicant for Plan Approval shall file the required number of copies of the application form and the other required submittals as set forth in the PAA Regulations with the Town Clerk and a copy of the application including the date of filing certified by the Town Clerk shall be filed forthwith with the PAA.

**5.5.10.4 Circulation to Other Boards.** Upon receipt of the Application, the PAA shall immediately provide a copy of the application materials to the Board of Health, Conservation Commission, Safety Committee, Building Commissioner, Department of Public Works, the Ludlow Housing Authority (for any Project subject to the Affordability requirements of Section 5.5.6), and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.

**5.5.10.5 Hearing.** The PAA shall hold a public hearing for which notice has been given as provided in Section 11 of M.G.L. Chapter 40A. The decision of the PAA shall be made, and a written notice of the decision filed with the Town Clerk, within 120 days of the receipt of the application by the Town Clerk. The required time limits for such action

may be extended by written agreement between the applicant and the PAA, with a copy of such agreement being filed in the office of the Town Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the Plan Approval application.

**5.5.10.6 Peer Review.** The applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to M.G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Town in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith.

## **5.5.11 PLAN APPROVAL DECISIONS**

**5.5.11.1 Plan Approval.** Plan Approval shall be granted where the PAA finds that:

1. The applicant has submitted the required fees and information as set forth in the PAA Regulations; and
2. The Project as described in the application meets all of the requirements and standards set forth in this Section 5.5 and the PAA Regulations, or a waiver has been granted there from; and
3. Any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.

For a Project subject to the Affordability requirements of Section 5.5.6, compliance with condition (2) above shall include written confirmation by the Monitoring Agent that all requirements of that Section have been satisfied. The PAA may attach conditions to the Plan Approval decision that are necessary to ensure substantial compliance with this Section 5.5, or to mitigate any extraordinary adverse potential impacts of the Project on nearby properties.

**5.5.11.2 Plan Disapproval.** A Plan Approval application may be disapproved only where

the PAA finds that:

1. The applicant has not submitted the required fees and information as set forth in the Regulations; or
2. The Project as described in the application does not meet all of the requirements and standards set forth in this Section 5.5 and the PAA Regulations, or that a requested waiver there from has not been granted; or

3. It is not possible to adequately mitigate significant adverse project impacts on nearby properties by means of suitable conditions.

**5.5.11.3 Waivers.** Upon the request of the Applicant, the Plan Approval Authority may waive dimensional and other requirements of Section 5.5 (excluding Section 5.5.6, except where expressly permitted herein), including the Design Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SGOD, or if it finds that such waiver will allow the Project to achieve the density, Affordability, mix of uses, and/or physical character allowable under this Section 5.5.

**5.5.11.4 Project Phasing.** The PAA, as a condition of any Plan Approval, may allow a Project to be phased at the request of the Applicant, or it may require a Project to be phased for the purpose of coordinating its development with the construction of Planned Infrastructure Improvements (as that term is defined under 760 CMR (59.00), or to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, unless otherwise approved by the Department, the proportion of Affordable units shall be at least 20 percent (20%) of all units constructed in each phase.

**5.5.11.5 Form of Decision.** The PAA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the Town Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the Hampden County Registry of Deeds and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the applicant.

**5.5.11.6 Validity of Decision.** A Plan Approval shall remain valid and shall run with the land indefinitely, provided that construction has commenced within two years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the Project proponent is actively pursuing other required permits for the Project or there is other good cause



for the failure to commence construction, or as may be provided in a Plan Approval for a multi-phase Project.

## **5.5.12 CHANGE IN PLANS AFTER APPROVAL BY PAA**

**5.5.12.1 Minor Change.** After Plan Approval, an applicant may apply to make minor changes in a Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall build out or building envelope of the site, or provision of open space, number of housing units, or housing need or affordability features. Such minor changes must be submitted to the PAA on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the applicant for filing with the Town Clerk.

**5.5.12.2 Major Change.** Those changes deemed by the PAA to constitute a major change in a Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to Sections 5.5.9 through 5.5.13.

## **5.5.13 DESIGN STANDARDS**

**5.5.13.1 Adoption and Amendment of Design Standards.** The PAA may adopt and amend, by simple majority vote, Design Standards which shall be applicable to all Projects subject to Plan Approval by the Plan Approval Authority. Such Design Standards must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. DHCD may, at its discretion, require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.

**5.5.13.2 DHCD Approval.** After amending Design Standards, the PAA shall submit Design Standards to DHCD for approval. Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk. In submitting proposed Design Standard for DHCD approval, the PAA shall

also submit sufficient documentation clearly showing that the proposed Design Standards will not add unreasonable cost to development Projects or unreasonably impair the economic feasibility of a development Project. A letter from a developer, property owner or other interested party indicating that the Design Standards will not add unreasonable costs or unreasonably impair the economic feasibility of a development Project shall not constitute sufficient documentation. At its discretion, DHCD may disapprove Design Standards if it finds that the PAA has not adopted objective Design Standards or has not submitted such documentation.

**5.5.14 SEVERABILITY.** If any provision of this Section 5.5 is found to be invalid by a court of competent jurisdiction, the remainder of Section 5.5 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 5.5 shall not affect the validity of the remainder of the Town's Zoning Bylaw.

END OF SECTION 5