

TOWN OF LUDLOW
SMART GROWTH OVERLAY DISTRICT BYLAW

Draft 10/13/10, 1/31/11, 2/11/11, 2/22/11, 3/4/11, 3/25/11, 4/14/11

COMMENTS: The Regulations state that the Smart Growth Zoning must be all-inclusive. This means that the development of a Project within the District shall be governed solely by the Smart Growth Zoning, without reference to any standards or procedures contained elsewhere in the Zoning Bylaw.

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 PAA 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.

Monitoring Agent – the local housing authority or other qualified housing entity designated by [the PAA, chief executive, or other designated municipal official], pursuant to Section 6.2, to review and implement the Affordability requirements affecting Projects under Section 6.0.

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.

COMMENTS: The Smart Growth Zoning may further decrease the maximum income limits of eligible households (below 80 percent of the area-wide median income as determined by HUD). The Municipality shall be required to prove to the Department in its submission that any such decrease will not “unduly restrict” opportunities for development within the proposed District under the Smart Growth Zoning: that means that the decrease may not add unreasonable costs or unreasonably impair the economic feasibility of proposed Projects.

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.

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.

COMMENTS: A Municipality has the option, in Section 5.5.9.1, either to subject all Projects within the SGOD to the Plan Approval process, or to limit the review process to certain categories of Projects.

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 5.5.5.1.

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

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

COMMENTS: Because of the requirement in the Regulations that the local Smart Growth Zoning must be all-inclusive, it must contain a definitions Section with all defined terms, rather than referring the reader to other sections of the local zoning code. In particular, to satisfy the requirements of Chapter 40R and the 40R Regulations regarding Affordable Housing, the following definitions are required by the Department:

- *Monitoring Agent*
- *Affordable Homeownership Unit*
- *Affordable Housing*
- *Affordable Housing Restriction*
- *Affordable Rental Unit*
- *Eligible Household*

The sample bylaw includes certain definitions required by the text. Other definitions are likely to be required (for example, terms used in relation to the use and dimensional provisions). The drafter may choose to locate certain text elements, including Design Standard and certain definitions, in the PAA Regulations, rather than in the Smart Growth Zoning, Note, however, that under the 40R Regulations any change in the PAA Regulations must be reviewed and approved by the Department.

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 ____, 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.

COMMENTS: The Smart Growth Zoning must specify that the District is an overlay district. The Department will further require that the Smart Growth Zoning sufficiently identify the smart growth district overlay map. The Smart Growth Zoning must state that the map is part of the local zoning bylaw and is on file in the office of the municipal 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
- d. Scotts Corner Mixed Use Sub-District

COMMENTS: A District may contain one or more sub-districts. The Smart Growth Zoning may limit a sub-district to certain type(s) of residential use(s), or the minimum allowable density may vary for the permitted residential use(s) so long as each residential sub-district meets the minimum allowable as-of-right density requirements (see COMMENTS under Section 7.0).

Chapter 40R authorizes municipalities to permit business, commercial or other uses that are consistent with primary residential use. Therefore, a District may also contain one or more sub-districts in which Mixed-use Development Projects are allowed, or in which only non-residential uses are allowed.

If a District includes "Substantially Developed Land," as defined under the 40R Regulations, it may contain a separate Substantially Developed Sub-district. See COMMENTS under Section 5.0 for permitted uses within a Substantially Developed Sub-district, and under Section 7.0 below for dimensional requirements applying within a Substantially Developed 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.

COMMENTS: The 40R Regulations state that Projects within a District shall not be subject to limitation of the issuance of building permits for residential uses or a local moratorium on the issuance of such permits. Therefore, the Smart Growth Zoning must specify that Projects in the SGOD are not subject to any such provisions within the Zoning Bylaw. It is also recommended that the Smart Growth Zoning state that a local rate of development provision (if any) does not apply to Projects in the SGOD.

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).

COMMENTS: Chapter 40R and the 40R Regulations state that within the boundaries of a District, 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 the requirements of the Underlying Zoning. Therefore, for the sake of clarity the Smart Growth Zoning must acknowledge that the underlying zoning remains in effect, except for Projects specifically being developed under the Smart Growth Zoning.

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 SGZD must have a residential use. Retail, service, and manufacturing uses will not be permitted without a residential component.

COMMENTS: Chapter 40R and the 40R Regulations state that if the Smart Growth Zoning allows Mixed-use Development Projects, such projects must also be allowed as-of-right. The minimum allowable as-of-right density requirements for residential use apply to the residential portion of a mixed-use development project. The Smart Growth Zoning may limit Mixed-use Development Projects to certain sub-districts of a District.

Under Chapter 40R and the 40R Regulations, provisions of the Smart Growth Zoning and/or the Design Standards may require that the non-residential elements of any Mixed-Use Development Project are planned and designed “in an integral manner to complement the residential uses, and help foster vibrant, workable, livable, and attractive neighborhoods” consistent with the smart growth goals of the Act. For further discussion of this issue, see the Design Standards guidance document.

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
SC	Scott’s Corner Mixed Use Sub-District

Table 1: Table of Use Regulations

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

** Not permitted unless within a Mixed-Use Project

Additional notes:

- a. All uses not specifically mentioned in Table 1 are prohibited.
- b. The total gross floor area devoted to non-residential uses within a mixed-use development project shall not exceed 50 % of the total gross floor area of the Project.

COMMENTS: The 40R Regulations state that the Smart Growth Zoning must specify the minimum portion of a mixed-use development project that must be devoted to residential use.

- c. Neighborhood scale shall mean buildings with a maximum height of three (3) stories.
- d. Downtown scale shall mean a maximum height of five (5) stories.
- e. 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.

COMMENTS: Chapter 40R allows a municipality to permit business, commercial, or other uses that are consistent with the permitted primary residential use in a District. Such uses may be permitted as-of-right, through the Plan Approval process, or (in the case of projects consisting solely of non-residential uses) by special permit review.

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.

COMMENTS: Chapter 40R and the 40R Regulations require that under the Smart Growth Zoning, not less than 20 percent of all units constructed within Projects containing at least 13 units shall be Affordable. The 20% affordability standard and the 13-unit threshold apply to all units in a Project that is developed under the Smart Growth Zoning and is subject to this Section. Therefore, the Smart Growth Zoning must contain the above language.

The 40R Regulations state that the Smart Growth zoning must require that Projects are not segmented to evade the size threshold for the Affordability requirements. As discussed below, the Municipality also has the option to apply the Affordability requirements to smaller Projects, or to all Projects within the District. In the latter case, the bracketed sentence on segmentation would not be required.

The Smart Growth Zoning and/or the Community Housing Plan shall contain mechanisms to ensure that the total number of Affordable units constructed in the District equals not less than twenty percent (20%) of the total number of all units constructed within Projects in the District. Such mechanisms might include some or all of the following:

- *Applying the 20% affordability standard to some or all Projects with fewer than 13 units;*
- *Increasing the affordability standard beyond 20% for certain categories of Projects; and*
- *Identifying specific Projects within the District that are projected to have significantly greater than 20% of their units Affordable (for example, Projects undertaken by a local housing authority or community development corporation).*

The Municipality shall be required to prove to the Department in its submission that its use of such mechanisms will not “unduly restrict” opportunities for development within the proposed District under the Smart Growth Zoning: that means that the mechanisms may not add unreasonable costs or unreasonably impair the economic feasibility of proposed Projects. Note that for the purposes of satisfying the twenty percent (20%) overall Affordability requirement, any project located within the geographic boundaries of the District, and which receives a comprehensive permit under M.G.L. c.40B after the date upon which the application was submitted to the Department, shall be treated as if it were a Project developed under the Smart Growth Zoning.

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 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 recorded with the Hampden County Registry of Deeds.

COMMENTS: Chapter 40R and the 40R Regulations state that the Smart Growth Zoning shall contain provisions to ensure that there shall be effective monitoring and enforcement of the affordable housing restriction during the term of Affordability. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.

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.

COMMENTS: Chapter 40R and the 40R Regulations require within a District the development of housing which is appropriate for a diverse population, including households with children, other households, individuals, households including individuals with disabilities, and the elderly. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.

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 Administering Agency, 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.

COMMENTS: The Smart Growth Zoning must contain this provision, or language of substantially equal effect. Chapter 40R and the 40R Regulations require assurances in the Smart Growth Zoning that under the affordable housing restriction on an Affordable unit, it shall be occupied by an eligible household paying an affordable rent or affordable purchase price during the term of the restriction. The Smart Growth Zoning shall contain provisions specifying the method by which such affordable rents or affordable purchase prices shall be computed.

- 5.5.6.5 Design and Construction. Units of Affordable Housing shall be finished housing units. Units of Affordable Housing shall be dispersed throughout 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.

COMMENTS: The Smart Growth Zoning must contain this provision, or language of substantially equal effect.

- 5.5.6.6 Affordable Housing Restriction. Each Project shall be subject to an Affordable Housing Restriction which is 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.

COMMENTS: Chapter 40R and the 40R Regulations state that the Smart Growth Zoning shall contain provisions to ensure that there shall be effective monitoring and enforcement of the affordable housing restriction during the term of Affordability. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.

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 Administering Agency to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.

COMMENTS: To ensure that the costs of the marketing and enforcement measures are not unduly burdensome, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.

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.

COMMENTS: Chapter 40R and the 40R Regulations state that the Smart Growth Zoning for the proposed District shall not impose restrictions on age or any other forms of occupancy restrictions upon the District as a whole. This provision does not preclude the development of specific Projects within the District that may be exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable fair housing laws. Not less than twenty-five percent (25%) of the housing units in such a Project shall be Affordable. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.

5.5.6.9 Phasing. For any Project that is approved and developed in phases in accordance with Section 5.5.9.4, the proportion of Affordable Housing Units (and the proportion of Existing Zoned Units to Bonus Units as defined in 760 CMR 59.04 1(h)) shall be consistent across all phases.

COMMENTS: To address the proportionality requirements of the 40R Regulations, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.

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.

COMMENTS: The 40R Regulations state that the Affordability requirements may not be waived as part of the Plan Approval process for a Project. Therefore, the Smart Growth Zoning must contain this provision.

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
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
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
Multi-Family (over 4 units)	5	20
Assisted Living	5	20
Mixed Use - Downtown Scale	5	20

Table 5: Dimensional and Density Requirements, Scott's Corner Mixed Use Sub-District

Use	Maximum Height (stories)	Minimum Density
Single Family Detached	2	8
Townhouses	3	8
Two and Three Family	3	12
Mixed Use – Neighborhood Scale	3	12

COMMENTS: Without limitation, the Smart Growth Zoning shall set out the dimensional, use, parking, and other standards applicable to Projects within the District (including within any Substantially Developed sub-district) including but not limited to height limits, setbacks, lot areas, lot dimensions, unit to lot ratios, floor area ratios, lot coverage ratios, and open space ratios. (For discussion of parking ratios, parking locations, and roadway design standards, see Sections 5.5.8.0 and 5.5.13.0.)

For large Projects containing multiple buildings and uses, it may preserve greater flexibility for minimum lot size, setback, and yard standards to apply to the Project site as a whole, and not to internal dimensions.

The Smart Growth Zoning must provide for any one or more of the following minimum allowable as-of-right density requirements unless the Department has previously approved a density reduction:

1. a density of at least 8 units per acre for Developable Land zoned for single-family residential use;
 2. a density of at least 12 units per acre for Developable Land zoned for 2- and/or 3-family residential use; or
 3. a density of at least 20 units per acre for Developable Land zoned for multi-family residential use.
- If the SGOD is anticipated to contain only a single Project, then restricting the total number of residential units developable within the SGOD is permissible, provided that the maximum number will permit the SGOD to achieve the minimum applicable as-of right density required by chapter 40R.

A District may contain one or more sub-districts. The allowable residential density and other dimensional requirements may vary within different sub-districts (even for the same permitted residential use), so long as each residential sub-district meets the minimum allowable as-of-right density requirements. For Substantially Developed Sub-districts, see COMMENTS on Section 5.5.7.2 below.

Under Chapter 40R and the 40R Regulations, a Municipality may adopt Design Standards to ensure that the physical character of Projects within the District will be “complementary to nearby buildings and structures,” and will provide for “high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Municipality or in the region of the Municipality.” On the possible inclusion of the Design Standards within the Smart Growth Zoning, see COMMENTS on Section 5.5.13. For discussion of the relationship between dimensional requirements and Design Standards in meeting these goals, see the Design Standards guidance document.

- 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.

COMMENTS: The Chapter 40R Regulations allow that for some or all of the “substantially developed land” (as defined in the Regulations) within a District, the Smart Growth Zoning need not satisfy the minimum As-of-right residential densities, so long as the allowable residential densities in the Substantially Developed sub-district are no less than those in the Underlying Zoning. Within the sub-district, the Smart Growth Zoning shall modify the dimensional and other applicable standards of the Underlying Zoning when the Smart Growth Zoning provides for a greater residential density than the Underlying Zoning, in order to permit the As-of-right construction of infill housing on existing vacant lots. The Smart Growth Zoning may impose reasonable lot area, frontage, setback and other dimensional requirements within such Substantially Developed sub-districts, consistent with neighborhood building and use patterns, and building, fire, and safety codes.

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:

Use	Auto Parking Standards	Bicycle Parking Standards
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 4seating spaces	1 bike space per 12 code-requiring auto parking spaces

The PAA may allow for 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.

COMMENTS: To support the smart growth goals of Chapter 40R and encourage alternatives to automobile travel, the Department encourages communities to consider provisions allowing the reduction of minimum parking requirements beyond what is commonly required. Particularly for locations near transit stations, defining maximum as well as minimum parking requirements can further support the smart growth goals of Chapter 40R. For further discussion of this issue, see the Design Standards guidance document.

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).

COMMENTS: The Department encourages communities to consider provisions allowing the reduction of minimum parking requirements if parking is shared by different uses, within Mixed-use Development Projects or otherwise.

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.

COMMENTS: The Department encourages communities to consider provisions allowing the reduction of minimum parking requirements.

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.

COMMENTS: For further discussion of issues relating to the location and design of parking, in order to achieve Chapter 40R's goal of creating "high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Municipality or in the region of the Municipality," see the Design Standards guidance document.

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

COMMENT: The 40R Regulations state that the Plan Approval provisions of the Smart Growth Zoning and/or any separate Design Standards must be clearly written, fairly and consistently applied, and allow for flexibility and creativity, consistent with the goals of the Act. The contents of the following Sections 5.5.9 through 5.5.13 are intended to satisfy these regulatory requirements. For any community that subjects Projects to Plan Approval, the Smart Growth Zoning must contain these provisions, or language of substantially equivalent effect.

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).

COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the categories of Projects that will be subject to Plan Approval(defined by size, type, or otherwise). The sample bylaw suggests that a reasonable threshold of review for Residential Projects would be the size of Project that would be subject to the Affordability requirements of Section 5.5.6 – see COMMENTS on that section. The sample bylaw also suggests that all Mixed-use Development Projects and all projects consisting solely of non-residential uses should be subject to Plan Approval, to ensure that the non-residential elements are planned and designed in an integral manner to complement the residential uses – see Sections 5.5.5.2 and 5.5.13.4.

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.

COMMENTS: If the Smart Growth Zoning empowers the PAA to adopt rules and regulations for the Plan Approval of Projects, such regulations must be dated and approved by DHCD.

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 buildout 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.

COMMENTS: The 40R Regulations permit Projects to be phased; see also Section 5.5.11.4 below. Therefore, the Department will require the Smart Growth Zoning to contain this provision. (However, the 40R Regulations also state that the Smart Growth Zoning must require that Projects are not segmented to evade the size threshold for the Affordability requirements. See Section 5.5. 6.1.)

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 buildout 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.

COMMENTS: Voluntary pre-application provisions are recommended, although Chapter 40R does not permit a municipality to require a mandatory pre-application process.

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. 6.0, 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.

COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the procedures for such review, including the contents of an application for approval of a Project. The Department recommends that the form of application, and rules governing the content of the application to be filed with the PAA, be included in the PAA Regulations, rather than including such requirements in the Smart Growth Zoning. Note that the PAA Regulations will be subject to review and approval by the Department. Where filing fees are required, documentation must be submitted justifying the required fee(s).

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.

COMMENTS: The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.

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.

COMMENTS: If an application is to be referred to any municipal officer, agency or board, including but not limited to the Administering Agency referenced in Section 6.0, the Department will require the Smart Growth Zoning to contain this provision.

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.

COMMENTS: The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.

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.

COMMENTS: If an application is to be reviewed by outside consultants, the Department will require the Smart Growth Zoning to contain this provision.

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 therefrom; 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 Administering Agency 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.

COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria upon which the Approving Authority may condition its approval. The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.

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 therefrom 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.

COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria upon which the Approving Authority may disapprove a proposed Project, or condition its approval. Chapter 40R states that a proposed Project may be denied Plan Approval only on the grounds that:

- 1) *the Project does not meet the conditions and requirements set forth in the Smart Growth Zoning;*
- 2) *the applicant failed to submit information and fees required by the Smart Growth Zoning and necessary for an adequate and timely review of the design of the Project or potential Project impacts; or*
- 3) *it is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.*

To implement this provision, the Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.

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, 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.

COMMENTS: Chapter 40R states that the Smart Growth Zoning may allow the Approving Authority, through the Plan Approval process, to waive specific dimensional and other standards (other than Affordability requirements) otherwise applicable to a Project, if it finds that the waiver will allow the Project to achieve the density, Affordability, mix of uses, and/or physical character allowable under the Smart Growth Zoning, and that the Project is consistent with the Design Standards. The 40R Regulations state that the waiver criteria must be defined in the Smart Growth Zoning. Therefore, if the community

intends to grant waivers through the Plan Approval process, the Smart Growth Zoning must contain this provision.

- 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, the proportion of Affordable to market rate units shall be consistent across all phases, and the proportion of Existing Zoned Units to Bonus Units (as those terms are defined under 760 CMR 59.00) shall be consistent across all phases.

COMMENTS: The Chapter 40R Regulations state that the Smart Growth Zoning may permit the Plan Approval approvals of proposed Projects to be phased for the purpose of coordinating development with the construction of Planned Infrastructure Upgrades or that are required to mitigate any extraordinary adverse Project impacts on neighboring properties. For Projects that are approved and developed in phases, the proportion of Affordable units and the proportion of Existing Zoned Units to Bonus Units shall be consistent across all phases. Therefore, the Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.

- 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.

COMMENTS: The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.

- 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.

COMMENTS: The Department recommends that the Smart Growth Zoning contain this provision if Projects are subject to Plan Approval.

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 buildout 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.

COMMENTS: The Department recommends that the Smart Growth Zoning contain this provision if Projects are subject to Plan Approval.

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.

COMMENTS: The Department recommends that the Smart Growth Zoning contain this provision if Projects are subject to Plan Approval

5.5.13 DESIGN STANDARDS

5.5.13.1 Adoption and Amendment of Design Standards. The Plan Approval Authority 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.

COMMENTS: Under the Chapter 40R Regulations, the Municipality has the option either to include the Design Standards within the Smart Growth Zoning, or to make them a part of the PAA Regulations. In either case, they must be reviewed and approved by the Department before they can take effect.

The Municipality must demonstrate to the satisfaction of the Department that its Design Standards will not “unduly restrict” the development of Projects in the District: that means that the Design Standards may not add unreasonable costs or unreasonably impair the economic feasibility of proposed Projects. The Department may disapprove a proposed District if the Design Standards fail to meet this test.

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.

COMMENTS: The Department recommends that the Smart Growth Zoning should contain this section.