



City of North Adams

In City Council

August 24, 2021

BE IT ORDAINED by the City Council of the City of North Adams:

That Chapter Z of the Revised Ordinances of the City of North Adams be and is hereby amended by amending the zoning map, dated May 25, 2021, as amended, to establish a Smart Growth Overlay District, as shown on the map attached hereto.



CITY OF NORTH ADAMS, MASSACHUSETTS

Planning Board

August 16, 2021

Honorable Lisa Hall Blackmer
North Adams City Council
10 Main Street
North Adams, MA 01247

- Re: (1) Amendment to Section 9 of Chapter Z of the Revised Ordinances of the City of North Adams inserting a new Section 9.4, entitled “Smart Growth Overlay District”, thereby establishing a new zoning overlay district entitled “Smart Growth Overlay District (SGOD)”;
- (2) Amendments the Zoning Map of the City of North Adams to illustrate the boundaries of the SGOD and its underlying districts, as shown on a plan entitled “North Adams Smart Growth Overlay District”, dated August 2, 2021.

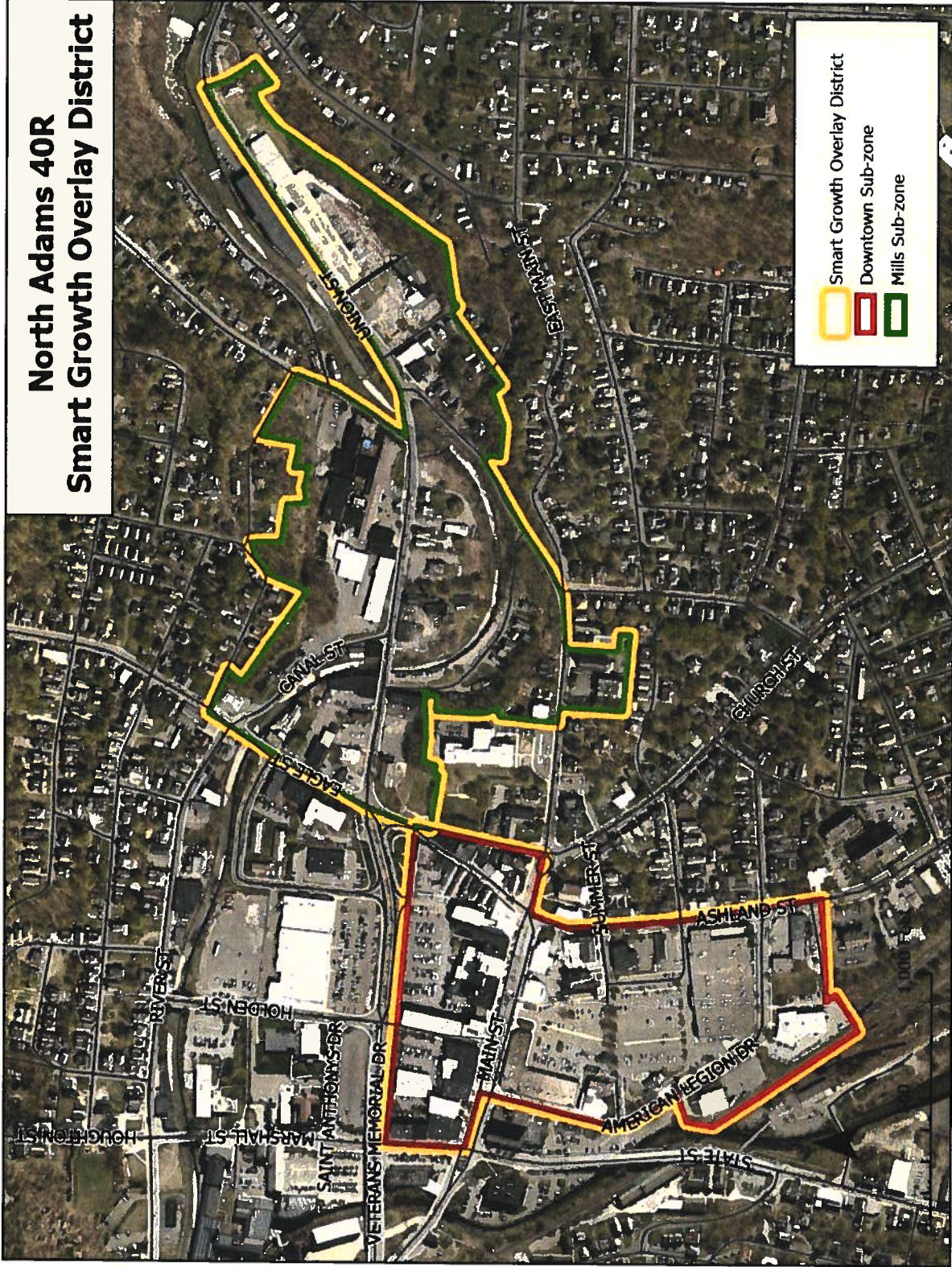
Dear President Blackmer,

Please be advised that the North Adams Planning Board, at its regular meeting held on August 9, 2021, voted to recommend that the North Adams City Council adopt the above referenced zoning amendments as presented at the Public Hearing held jointly by the North Adams City Council and the North Adams Planning Board on August 9, 2021.

Sincerely,

Michael Leary, Chairman
North Adams Planning Board

North Adams 40R Smart Growth Overlay District



AND BE IT FURTHER ORDAINED by the City Council of the City of North Adams:

That Section 9 of Chapter Z of the Revised Ordinances of the City of North Adams be and is hereby amended by inserting in numerical order therein the following Section 9.4:

9.4 SMART GROWTH OVERLAY DISTRICT (SGOD)

9.4.1. PURPOSE

The purpose of this section 9.4 is:

1. To establish a Smart Growth Overlay District and encourage smart growth in accordance with the purposes of MGL c.40R;
2. To encourage new development close to existing infrastructure and services in order to protect open space;
3. To support private developers in their efforts to provide a range of safe, quality housing options for households of all sizes, ages, and incomes;
4. To develop new homes that are in keeping with the character existing North Adams neighborhoods; and
5. To the extent consistent with the Governing Laws, to encourage the types of development consistent with the City's comprehensive Vision 2030 Plan.

9.4.2. DEFINITIONS

For the purposes of this Section 9.4, the following words, terms, and phrases shall have their corresponding definitions. All such words, terms, and phrases appearing in capitalized letters shall be defined in accordance with the Governing Laws, this Section 9.4.2, or as set forth in the North Adams Smart Growth Design Standards. To any extent that conflict arises with respect to the definition of such words, terms, and phrases as defined in the aforesaid local regulations and the Governing Laws, the terms of the Governing Laws shall govern unless, to the extent authorized, otherwise expressly approved by DHCD.

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 in accordance with the requirements set forth by Section 9.4.6.4 herein.

Affordable Housing Restriction - a deed restriction of Affordable Housing meeting the statutory requirements in G.L. Chapter 184, Section 31 and the requirements of Section 9.4.5.6 of this ordinance.

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

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

As-of-right - a use allowed under Section 5.0 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 9.0 through 13.0 shall be considered an as-of-right Project, subject to review and approval by DHCD of any Municipal 40R regulations, guidelines, application forms, or other requirements applicable to review of Projects by the Plan Approval Authority under the 40R Zoning and 760 CMR 59.00.

Bicycle Parking Facilities - Bicycle racks or other provisions for indoor or outdoor locked storage of bicycles.

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

Design Standards – provisions of Section 9.4.13 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 or equal to 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.

Governing 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 Section 9.4.5.

Monitoring Agent - The North Adams Housing Authority or other qualified housing entity designated by the PAA, pursuant to Section 9.4.6.2, to review and implement the Affordability requirements affecting Projects under Section 9.4.6.

PAA Regulations – The rules and regulations of the PAA adopted pursuant to Section 9.4.9.3.

Plan Approval – The standards and procedures which all Plan Approval Projects in the SGOD must meet pursuant to Sections 9.4.9 through 9.4.13 and the Governing Laws.

Plan Approval Authority (PAA) - The local approval authority authorized under Section 9.4.9.2 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 9.4.

Residential Project - a Project that consists solely of residential, parking, and accessory uses, as further defined in Section 9.4.5.

SGOD – the Smart Growth Overlay District established in accordance with this Section 9.4.

Zoning Ordinance - Chapter Z of the Revised Ordinances of the City of North Adams.

9.4.3. OVERLAY DISTRICT

9.4.3.1 Establishment. The North Adams Smart Growth Overlay District, hereinafter referred to as the “SGOD,” is an overlay district having a land area of approximately 57.56 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 “North Adams Smart Growth Overlay District,” dated ____, prepared by Berkshire Regional Planning Commission. This map is hereby made a part of the Zoning Ordinance and is on file in the Office of the City Clerk.

9.4.3.2 Subdistricts. The SGOD contains the following subdistricts:

P: Use Permitted As-of-right;

PA: Use Permitted with Plan Approval in accordance with Section 9.4.9; and

N: Not permitted.

9.4.5.2 Residential Requirement: All Projects in the SGOD must have a residential use. Retail, services, and manufacturing will not be permitted without a residential component.

9.4.5.3 Sub-districts: The following are abbreviations used in Table 1 hereinafter to identify the SGOD Sub-districts

MD: Mill District

DD: Downtown District

Table 1: Schedule of Uses

Use	Standards and Conditions	MD	DD
Residential			
Single-Family Detached		N	N
Townhouse	Townhouses require individual lots and zero side setbacks.	PA	N
Two and Three Family		PA	N
Multi-family (4 or more units)		PA	PA
Assisted Living		PA	N
Mixed-Use Development Projects**			
Neighborhood-scale Mixed-Use Development Projects, containing at least one residential and one non-residential use within the same building	Mixed uses within a building must be allowed in the underlying district.	PA	N
Downtown-scale Mixed Use Development Projects, containing at least one residential and one non-residential use within the same building	Mixed uses within a building must be allowed in the underlying district.	N	PA
Commercial - in a Mixed-Use Development Project**			
Dining Establishments	Not including drive-in or drive-through restaurants	PA	PA

Office Building	Office use must be permitted in the underlying district.	PA	PA
Retail	Retail use must be permitted in the underlying district.	PA	PA
Banks		N	PA
Services	Automobile body shops, sales lots, and service and repair stations are prohibited.	PA	PA
Industrial – in a Mixed-Use Development Project**			
Light Manufacturing	Industrial uses must be permitted in the underlying district.	PA	N
General Industrial Uses	Industrial uses must be permitted in the underlying district.	PA	N
Government, Institutional, and Public Service			
Religious		PA	PA
Educational		PA	PA
Parks, Playgrounds, Recreation and Community Centers		P	P
Municipal Government Buildings		PA	PA

** Not permitted unless within a Mixed-use Development Project

Additional Notes:

- a. All uses not specifically identified in Table 1 are prohibited.
- b. The total gross floor area devoted to residential uses within a mixed-use development Project shall not be less than 51% and 75% of the total gross floor area of the project in the Downtown and Mill sub-districts, respectively.
- c. Neighborhood-scale shall mean no more than three (3) stories and no fewer than two (2) stories.
- d. Downtown-scale shall mean no more than five (5) stories and no fewer than two (2) stories.
- e. The minimum allowable residential density requirements specified elsewhere in Section 9.4.7 shall apply to the residential portion of any Mixed-use Development Project.
- f. If the approval of a Government, Institutional, or Public Service Use pursuant to Section 9.4 occurs on land within the SGOD that contributed to the number of Incentive Units recognized by DHCD and factored into a Zoning Incentive Payment paid or otherwise due to the city, the number of recognized Incentive Units shall be reduced by a corresponding number of units with a corresponding adjustment to the Zoning Incentive Payment paid or otherwise due to the city. To the extent an application for approval of such use is received, the PAA shall obtain approval from DHCD before granting such use to the extent that this requirement is not in conflict any state or federal law.

9.4.6. HOUSING AND HOUSING AFFORDABILITY

9.4.6.1 Number of Affordable Housing Units. For all Projects containing at least 13 residential units, not less than twenty percent (20%) of housing units constructed shall be Affordable Housing, and, subject to the foregoing, not more than sixty percent (60%) of the aggregate housing units approved in the District pursuant to Section 9.4 shall be Affordable Housing. For purposes of calculating the number of units of Affordable Housing required within a Project, any

fractional unit shall be deemed to constitute a whole unit. A Project shall not be segmented to evade the Affordability threshold set forth hereinabove.

9.4.6.2 Monitoring Agent. A Monitoring Agent which may be the North Adams Housing Authority or other qualified housing entity shall be designated by the PAA, the “designating official”. 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 the Governing Laws, and recorded with the Northern Berkshire Registry of Deeds.

9.4.6.3 Submission Requirements. As part of any application for Plan Approval for a Project within the SGOD submitted under Sections 9.4.9 through 9.4.13 (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 9.4.6.4;
2. Project plans that demonstrate compliance with the requirements of Section 9.4.6.5; and
3. a form of Affordable Housing Restriction that satisfies the requirements of Section 9.4.6.6.

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 and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

9.4.6.4 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.
2. For an Affordable Rental Unit, the monthly rent payment, including applicable utility allowances, 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 housing program rent limits or calculation methodologies, approved by 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 (if applicable, as determined by the Monitoring Agent), 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 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 City of North Adams.

9.4.6.5 Design and Construction. Units of Affordable Housing shall be finished housing units. Unless otherwise approved by the PAA and DHCD, under the 40R Program, with respect to the minimum required percentage of Affordable Housing for the Project under Section 9.4, units of Affordable Housing shall be equitably integrated and proportionately dispersed throughout the entire residential portion of the Project of which they are a part, across all residential buildings, floors, and distinct unit types in accordance with the Affordable Housing Restriction and marketing and tenant selection plan approved by DHCD. The Affordable Housing Units shall be comparable to the other units within the Project in terms of size and quality of interior and exterior design and construction. The total number of bedrooms in the Affordable Housing units shall be proportionate to the total number of bedrooms in all other dwelling units in the Project.

9.4.6.6 Affordable Housing Restriction. Each Project shall be subject to a DHCD-approved Affordable Housing Restriction which shall be recorded with the Northern Berkshire Registry of Deeds and contain the following:

1. specification of the term of the Affordable Housing Restriction which shall be no less than thirty (30) 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(s) by address and unit type/model in a Project or portion of units within a Project that are Affordable Homeownership Units; a description of the overall quantity, number of bedrooms, and number of bedroom types of Affordable Rental Units in a Project or portion of units within a Project that are Affordable Rental Units. 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 with the initially designated Affordable Rental Units identified in, and able to float, subject to specific approval by DHCD, in accordance with, the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and DHCD's AFHMP guidelines.
4. reference to an affirmative fair 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. Such plan shall be consistent with DHCD guidance and approved by DHCD. Consistent with DHCD guidance, such plan shall include a preference based on need for the number of bedrooms in a unit and a preference based on need for the accessibility features of a unit where applicable, and may only provide for additional preferences in resident selection to the extent such preferences are also consistent with applicable law and approved by DHCD. The marketing and selection 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 an Affordable Rental Unit or the maximum resale price of an Affordable Homeownership Unit 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 AHR on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and/or the municipality, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
10. provision that the AHR 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.

9.4.6.7 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.

9.4.6.8 Age Restrictions. Nothing in this Section 9.4 shall permit the imposition of restrictions on age upon Projects unless proposed by or agreed to voluntarily by the Applicant. The PAA may, in its review of a submission under Section 9.4.6.3, 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 Housing units.

9.4.6.9 Phasing. For any Project that is approved and developed in phases in accordance with Section 9.4.9.4, unless otherwise approved by the PAA and DHCD, the proportion of Affordable Housing Units in each phase shall be at least equal the minimum percentage of Affordable Housing required for the Project under Section 9.4.6.1 or 9.4.6.8, as applicable. Where the percentage of Affordable Housing is not uniform across all phases, the unit dispersal and bedroom proportionality requirements under Section

9.4.6.5 shall be applied proportionately to the Affordable Housing provided for in each respective phase.

9.4.6.10 No Waiver. Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 9.4.6.0 shall not be waived unless such waiver is expressly approved in writing by DHCD.

9.4.7. DIMENSIONAL AND DENSITY REQUIREMENTS

9.4.7.1 Schedule of Requirements. Notwithstanding anything to the contrary in this Zoning Ordinance, the dimensional requirements applicable in the SGOD are as follows:

Table 2: Dimensional and Density Requirements for Mill District

Use	Maximum Height (stories)	Minimum Density (units/acre)	Maximum Density (units/acre)
Townhouse	3	12	20
Two and Three Family	3	12	20
Multi-family (4+ units)	3	20	30
Assisted Living	3	20	30
Mixed-Use Development Project (Neighborhood Scale)	3	20	30

Table 3: Dimensional and Density Requirements for Downtown District

Use	Maximum Height (stories)	Minimum Density (units/acre)	Maximum Density (units/acre)
Multi-family (4+ units)	5	20	30
Mixed-Use Development Project (Downtown Scale)	5	20	30

9.4.8. PARKING REQUIREMENTS & RESTRICTIONS

The parking requirements applicable to Projects within the SGOD are as follows:

9.4.8.1 Number of parking spaces. Unless otherwise approved by the PAA, and to the extent any required automobile parking prevents the allowed residential density, DHCD, the maximum number of off-street automobile parking spaces, permitted by use, either in surface parking, within garages or other structures, as well as the minimum number of spaces for bicycle parking shall be as follows:

Table 5: Parking Requirements & Restrictions

Use	Automobile Standards		Bicycle Standards	
	Minimum Spaces Required	Maximum Spaces Permitted	Minimum Spaces Required	Maximum Spaces Permitted
Duplex and Triplex	None required	2 spaces per dwelling unit	None required	Unlimited***
Multi-family units w/one bedroom per unit	None required	1.5 spaces per dwelling unit	None required	Unlimited***
Multi-family units w/two or more bedrooms per unit	None Required	2 spaces per dwelling unit for the first 6 units and 1.5 spaces per each thereafter	None required	Unlimited***
Senior Housing	None Required	1 space per unit	1 space per 20 employees	Unlimited***
Professional use (offices, banks, etc.)	None required	2.5 spaces for each 1,000 s.f. of gross floor area	1 space per 10 code required automobile space	Unlimited***
Retail establishments, services	None required	the greater of 2.5 spaces for each 1,000 s.f. of gross floor area or 5 spaces for each separate enterprise	1 space per 10 code required automobile space	Unlimited***
Restaurants, taverns, etc.	None required	the greater of 1 space for each 200 s.f. of gross floor area or 5	1 space per 10 code required automobile space	Unlimited***

		spaces for each separate enterprise		
Medical and dental offices	None required	3 spaces for each 1,000 s.f. of office area	1 space per 20 code required automobile space	Unlimited***
Industrial uses, generally	None required	1 space per 500 s.f. of gross floor area or 1 1/2 spaces for each employee on the maximum work shift, whichever is less	1 space per 50 code required automobile space	Unlimited***

*** to the extent an accessory use

9.4.8.2 Additional Conditions. The PAA may nonetheless require some minimum number of parking spaces for automobiles or require or allow a greater number of parking spaces for automobiles if deemed appropriate in consideration of the design, layout, and density of the Project, provided that DHCD must also approve if any parking required in excess of the maximum automobile parking permitted would prevent the Project from achieving the density that would otherwise be allowed under Section 9.4.7.1.

9.4.8.3 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.

9.4.8.4 Bicycle Parking Standards. Bicycle parking facilities shall, to the maximum extent feasible, be located within fifty feet (50') of a building entrance and in a convenient well-lit, and highly visible area that is not within a public right-of-way. Bicycle parking shall be at least two feet (2') in width by six feet (6') in length thereby allowing sufficient space between parked bicycles. A minimum five foot (5') wide aisle or space behind all bicycle parking requires as part of a Project should be provided to allow room for bicycle maneuvering. If the PAA determines that there are unique constraints to the Project such that providing the otherwise required bicycle parking would place an undue burden on the Applicant to an extent that compliance with the requirements would be inconsistent with the purpose of the Governing Laws, it may exercise its authority under Section 9.4.11.3 and waive all or a portion of such requirements.

9.4.9. PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS

9.4.9.1 Plan Approval. An Application for Plan Approval shall be reviewed by the PAA for consistency with the purpose and intent of Sections 9.4.9 through 9.4.13. Such Plan Approval process shall be construed as an As-of-right review and approval process as required by and in accordance with the Governing Laws. Projects requiring Plan Approval are identified in Table 1 of Section 9.4.5 hereinabove.

9.4.9.2 Plan Approval Authority (PAA). The Planning Board, consistent with the Governing Laws, shall be the Plan Approval Authority (the "PAA"). As such, the Planning Board, acting as the PAA in accordance herewith, is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

9.4.9.3 PAA Regulations. The PAA may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations and any amendments thereof shall be approved by the Department of Housing and Community Development.

9.4.9.4 Project Phasing. An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases, provided that the submission demonstrates the full and final construction of the Project, as well as all associated impacts thereof. Project Phasing is subject to the approval of the PAA and such phased Projects shall comply with the provisions of Section 9.4.6.9.

9.4.10. PLAN APPROVAL PROCEDURES

9.4.10.1 Preapplication. Prior to the submittal of a Plan Approval submission, Applicants are encouraged to submit a "Concept Plan" to help guide the development of the definitive submission for Project construction 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.

9.4.10.2 Required Submittals. An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA and approved by DHCD, 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 9.4.6, the application shall be accompanied by all materials required under Section 9.4.6.3. 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.

9.4.10.3 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 City Clerk and a copy of the Application including the date of filing certified by the City Clerk shall be filed forthwith with the PAA.

9.4.10.4 Circulation to Other Boards. Upon receipt of the Application, the PAA shall immediately provide a copy of the application materials to the City Council, Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Services, the Monitoring Agent, and any other Boards, Commissions, municipal departments, officers or agents deemed relevant, which shall provide any written comments within sixty (60) days of its receipt of a copy of the plan and application for approval. Failure to provide written comment within said sixty (60) day period shall be considered approval of an application.

9.4.10.5 Hearing. The PAA shall hold a public hearing for which notice has been given as provided in MGL c.40A §11. The decision of the PAA shall be made, and a written notice of the decision filed with the City Clerk, within one-hundred and twenty (120) days of the receipt of the application by the City 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 City Clerk. Failure of the PAA to act on an application within said one-hundred and twenty (120 day) period, or the end of the extension thereof, if applicable, shall be deemed to be an approval of the Plan Approval application.

9.4.10.6 Peer Review. The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to MGL c.40R §11(a). Such fees shall be held by the City 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 other qualified professionals as deemed appropriate by the PAA. Any surplus funds remaining after the completion of said review, including any interest accrued, shall be returned to the Applicant forthwith.

9.4.11. PLAN APPROVAL DECISIONS

9.4.11.1 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 9.4 inclusive 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 9.4.6, compliance with condition two (2) above shall include written confirmation by the Monitoring Agent that all requirements of that Section have been satisfied. Any Plan Approval decision for a Project subject to the affordability restrictions of Section 9.4.6 shall specify the term of such affordability, which shall be no less than thirty years. The PAA may attach conditions to the Plan Approval decision that are necessary to ensure substantial compliance with this Section 9.4 inclusive, or to mitigate any extraordinary adverse potential impacts of the Project on nearby properties.

9.4.11.2 Plan Disapproval. A Plan Approval application may be denied only where the PAA finds that:

1. the Applicant has not submitted the required fees and information as set forth in the PAA regulations;
2. the Project as described in the application does not meet all of the requirements and standards set forth in this Section 9.4 inclusive and the PAA Regulations, or that a requested waiver therefrom has not been granted; or
3. it is not possible to adequately mitigate extraordinary adverse Project impacts on nearby properties by means of suitable conditions.

9.4.11.3 Waivers. Upon the request of the Applicant, the Plan Approval Authority may waive dimensional and other requirements of this Section 9.4 (excluding Section 9.4.6, except where expressly permitted herein, and only to the extent consistent with the Governing Laws), 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, Affordable Housing objectives, mix of uses, and/or physical character allowable under this Section 9.4.

9.4.11.4 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 for the purposes of coordinating its development with construction of Planned Infrastructure Improvements (as 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 explicitly approved in writing by the Department in relation to the specific Project, the proportion of Affordable units shall be at least twenty percent (20%) of all units constructed in each phase in non-age-restricted Projects and at least twenty-five (25%) of all units constructed in each phase within age-restricted Projects.

9.4.11.5 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 City 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 City Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the City 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 City 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 Northern Berkshire Registry of Deeds 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.

9.4.11.6 Validity of Decision. A Plan Approval shall remain valid and shall run with the land indefinitely, provided that construction has commenced within two (2) 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.

9.4.12. CHANGE IN PLANS AFTER APPROVAL BY PAA

9.4.12.1 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 City Clerk.

9.4.12.2 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 9.4.9 through 9.4.13.

9.4.13. DESIGN STANDARDS

9.4.13.1 Adoption and Amendment of Design Standards. The PAA may adopt and, from time to time, amend, by a simple majority vote, Design Standards, which shall be applicable to all Projects subject to Plan Approval by the PAA. Such Design Standards shall be objective and not subjective, and may only address the scale and proportions of building, 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 space, 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.

9.4.13.2 DHCD Approval: DHCD must approve any Design Standards, and after any subsequent amendment of such Design Standards, the PAA shall submit said amended Design Standards to DHCD for approval. Design Standards shall not take effect until approved by DHCD and filed with the City Clerk. In submitting proposed Design Standards 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 thereof. 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, has not submitted such sufficient feasibility documentation, or has not otherwise demonstrated that such Design Standards are consistent with the Governing Laws.

9.4.14. SEVERABILITY.

If any provision of this Section 9.4 is found to be invalid by a court of competent jurisdiction, the remainder of this Section 9.4 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 9.4 shall not affect the validity of the remainder of the City's Zoning Ordinance.