

Town of Clinton, Massachusetts Downtown Housing Study

**Prepared by
Montachusett Regional Planning Commission
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Development (DHCD) with assistance from
The Town of Clinton, MA**

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Town of Clinton, Massachusetts Downtown Housing Study

Objective: Examine the viability of creating “as-of-right” housing (residential) on the upper floors of Clinton’s downtown buildings.

Current Zoning of Targeted Area:

- Clinton’s downtown area is zoned as Business Retail (BR). The district runs roughly from Union Street on the south, Main Street on the west, splitting the blocks east of High Street, ending at Brook Street on the north (see Attachment A). The area tapers from a width of approximately four blocks at the southern end to two blocks at the northern end. In total the area encompasses roughly 9 blocks (approximately 61 acres).
- A second area considered for potential inclusion in this assessment is located partially adjacent to and southwest of the Business Retail district. This is a 43D/Priority Development site occupied by the former Bigelow Mills. This area is zoned Industrial (I) and is also covered by a BioScience Enterprise overlay district. This area encompasses approximately 15 acres.

These areas are shown in Clinton’s zoning map (see Attachment A).

Permitted Residential uses in target areas:

- The Town of Clinton zoning bylaws have zoned residential uses in the target areas as follows:

Principal Use (Residential)	Business/Retail (BR)	Industrial (I)
Single-family dwelling	PB	PB
Two-family dwelling	PB	PB
Three or more Unit Multifamily	PB	PB
Boarding House	N	N
Mobile Home Park/trailer camp	N	N
Planned unit development/mill conversion	PB	PB
Flexible development	PB	PB

Y=Permitted as of right

N= Prohibited

PB=Special Permit/Planning Board

- In the Bioscience Enterprise Overlay District, all requirements of the underlying district remain in effect except where Overlay District regulations provide an alternative to such requirements. However, with regard to residential use, the overlay district regulations make no changes to permitted uses or uses allowed with a special permit.

Modification of Zoning Regulations to Allow Residential As-of-Right

The purpose of this effort is identify possible changes in the Town's zoning bylaws to support the commercial vitality of Clinton's downtown area, supplement the community's housing stock, and to enhance the local economy by allowing for productive use of vacant space in downtown buildings. This would give property owners an opportunity to generate additional revenue by enabling them to lease vacant space on upper floors of their building(s) while providing an incentive to invest in and improve their property. Given the intent to maintain Clinton's downtown area as the community's primary commercial district, it would not appear to meet community objectives to allow residential uses "by right" at street level but to maintain street level property for commercial uses. However, residential use could be allowed by right on floors above street level. Essentially this would mean allowing dwelling units in a structure but require a legal non-residential (or, in this case, commercial) use on the ground floor.

This could be accomplished through rezoning in either of two ways. One would involve amending the zoning bylaw's table of use regulations for the entire district or districts. This may be desirable if the intent is to allow this change in allowable uses to extend over an entire district. The other option would involve establishing an overlay district which retains the use regulations of the underlying district but could limit an expansion of allowable uses to a designated area. This may be an appropriate approach given that these provisions may only be applicable to a subarea of a given district.

Amendment of Current Zoning Bylaw

One approach to the rezoning would be to add a new use category to the existing Table of Uses under Residential Uses to allow dwelling units in a building with a legal non-residential use on the ground floor. This could be included under Residential Uses in the Business Retail district simply as "Dwelling units in a building with a legal non-residential use on the ground floor." The maximum number of units could be specified or defined as a maximum based on floor area ratio (FAR). This use could be specified as "Permitted as of right" (Y), understanding that under the current bylaws, any "construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure involving more than 1000 square feet" requires site plan review by the Planning Board. This site plan review process can be used to provide oversight over the conversion process and assure that the quality of any construction or modification is consistent with town standards. The Town may wish to review its current site plan review criteria to see if it adequately addresses the types of use and conversions that would be permitted. It may also wish to consider the development of more detailed design guidelines to establish standards for the review process.

Using this approach in the Industrial (I) district, namely applied to the Bigelow Mills property, would be more problematic, given that the industrial processes which are currently conducted at the ground level would not be compatible with dwelling units on the floors above. In this case, rezoning of the entire Bigelow Mills property would be necessary to permit residential development. While this could be accomplished as an overlay district (see below), maintaining industrial uses as they currently exist in the

Industrial district would be incompatible. Mixed-use zoning which would potentially allow residential along with certain retail and commercial uses would be more likely to achieve community objectives. However, using this approach, the current industrial uses in the properties would no longer be allowed.

Alternatively, the town could create a formal mixed-use zoning district that allows a variety of compatible uses in the downtown area. Mixed-use is a fundamental principle of “smart growth,” allowing for efficient and economic use of land and resources while reducing vehicular use. According to the model mixed-use zoning district ordinance developed by the American Planning Association (APA), a mixed-use district “accommodates a physical pattern of development often found along village main streets and in neighborhood commercial areas of older cities.” Clinton’s downtown already provides these attributes but a modified zoning bylaw could permit many of these uses by right. Mixed-use may also be appropriate for the Bigelow Mills property. (This would certainly be necessary if the town were interested in adopting 40R zoning for the property, as discussed below.) APA’s model mixed-use zoning district ordinance is attached as Attachment B. As it states, its provisions represent a commercial zoning classification that permits, rather than mandates, a vertical mix of commercial and residential uses within the same building. It should also be noted that the model ordinance provides a “reward” for buildings with more flexible development standards. As an incentive for mixed-use, higher residential densities are allowed in mixed-use buildings than single-use buildings, based on a smaller required minimum lot area per dwelling unit.

Application of an Overlay District

The advantage of an overlay district is that it preserves the existing uses and requirements in areas in which it is applied but provides an additional layer of uses that can be targeted toward achieving specific planning and development objectives for designated areas. Furthermore, an overlay district can be targeted to specific subareas with common characteristics rather than an entire district. Overlay districts are in common use throughout Massachusetts and, in a number of cases, were established to achieve specific Smart Growth development objectives and establish eligibility as a Chapter 40R district (discussed below). As discussed above, Clinton has experience in the establishment of overlay districts and recently established a BioScience Enterprise overlay district in three separate locations in the community with the intention of encouraging new development and redevelopment for bioscience uses. This overlay district permits development to exceed density and dimensional requirements that would otherwise apply if in compliance with the requirements of the underlying district.

The most likely area for an overlay district to address upper floor residential use in Clinton’s downtown commercial area would appear to run along High Street from Union Street on the south to Prospect Street in the north. Assuming it would apply to existing commercial properties in this vicinity, the area covered would extend approximately two parcels deep along either side of High Street, covering an area of approximately 17.5 acres.

As a possible model for Clinton, the City of Pittsfield, Mass. established a Smart Growth Overlay District in its downtown and adjacent areas to encourage smart growth consistent with Chapter 40R and to promote development of a range of housing opportunities in the city’s urban center. The Pittsfield

bylaw is attached as Attachment C. Their overlay district covers approximately 10.7 acres with 9 subzones. All subzones allow mixed-use, but at least 75 percent of the gross floor area in mixed-use development must be residential. Office, retail and consumer services, and eating establishments (sit-down only) are allowed as of right. The bylaw also specifies design standards and stringent affordability requirements which may or may not be appropriate for Clinton. (It should be noted, however, that Clinton has not met the State's Chapter 40B goal of 10 percent affordable housing and it could be in the town's interest to encourage production of more affordable housing in order to take control of the 40B comprehensive permit process.)

Parking

Based on site observations, the town of Clinton appears to have a substantial amount of off-street parking available behind existing structures along High Street. An inventory of available parking and a time-of-day occupancy survey would be useful to determine whether the current supply and utilization of parking would be sufficient to support additional residential development in the downtown, particularly given the variations in commercial and residential parking utilization by time of day.

Consideration could be given to "shared parking" as a means of managing parking demand without necessarily substantially increasing the number of spaces in the vicinity of downtown. The Town of Pittsfield specifically uses the concept of shared parking to address parking demand in their Smart Growth Overlay District. As stated in the Pittsfield bylaw:

Shared Parking (Section I-3)

The use of shared parking to fulfill the parking demands that occur at different times of day may be considered by the Permit Approval Authority (PAA). The minimum parking requirements above may be reduced at the discretion of the PAA, provided the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared Parking Report, the ITE Shared Parking Guidelines or other approved studies). The applicant is encouraged to use public parking facilities in the downtown area, if available.

Consideration of Applying Chapter 40R

Chapter 40R of the Massachusetts General Laws, enacted as the Smart Growth Zoning and Housing Production Act, encourages cities and towns to zone for compact residential and mixed-use development in "smart growth" locations by offering financial incentives and control over design. It provides a means of increasing housing production and reducing housing costs in Massachusetts by creating zones pre-approved for higher density development which would be potentially attractive to developers. It also provides for direct cash payments to cities and towns that create zoning overlay districts that meet the statute's location and procedural standards. Among the conditions that apply:

- Districts must be in "smart growth" locations, that is, near transit or commercial centers, in areas with existing infrastructure, or otherwise "highly suitable."

- The district overlay must allow housing to be built as of right at densities of at least 8 to 20 units per acre depending on the type of housing.
- 20 percent of the new units must be “affordable.”

Chapter 40R also allows communities to set detailed design standards for projects built in the districts and to reject projects that do not meet the standards. It is also an alternative to the Chapter 40B comprehensive permit process which can be advantageous to Clinton since it has not met the state’s affordable housing goals (less than 10 percent of the community’s year round housing is affordable), meaning that a 40B residential housing development could be developed by a Comprehensive Permit in Clinton without review or input by the town’s Zoning Board of Appeals. Planning projects in 40R districts could save developers significant amounts of both time and money otherwise spent on getting zoning approved for multifamily housing or higher-density single-family housing at the local level. With 40R, that work has already been accomplished by the city or town.

27 Massachusetts cities and towns have fully-approved 40R districts with plan approvals in 17 districts for a total of 3,200 units. Many of these districts involve projects where local planning/rezoning efforts were underway or developers had already started the comprehensive permitting process before the locality began creating the 40R district. Some of these municipalities created their district after a developer approached them with a specific project proposal. Others created them as part of an effort to meet affordable housing goals.

It should be noted that most approved 40R districts are not “transit” or “concentrated development” locations but instead qualify under the “highly suitable” standard. These locations are presumed to be “highly suitable” if they have been identified as an appropriate location for high-density development in a local plan adopted prior to the submission of the 40R application. In some cases, they may have been able to qualify as being within an area of concentrated development. The fact that Clinton may be interested in pursuing 40R status for at least a portion of its densely developed downtown and an adjacent area that has already qualified as a 43D/Priority Development site would appear to establish some basis for considering the area as “highly suitable.”

On the other hand, the time and cost required to create a 40R district can be significant and needs to be taken into account. Planning and legal costs according to the Citizens’ Housing and Planning Association (CHAPA) can run from \$35,000 to \$65,000 and more in some cases where significant infrastructure planning may be required. It may also take a year or more to go through the planning, public hearing, application, local zoning approval and final State approval process. However, once a district is created, developers can expect an expedited review process since Chapter 40R requires localities to issue a decision on a project approval application within 120 days unless the parties agree to waive the requirement.

It should also be understood that 40R zoning alone cannot attract developers to weak markets. Brockton, Lawrence, and Holyoke are examples of communities that have created 40R districts and are still struggling with weak market demand. They believe that their best option will be to make extensive infrastructure improvements if they are to succeed which, of course, can be costly.

With regard to State funding, the 40R statute authorizes two types of payments to municipalities with 40R districts:

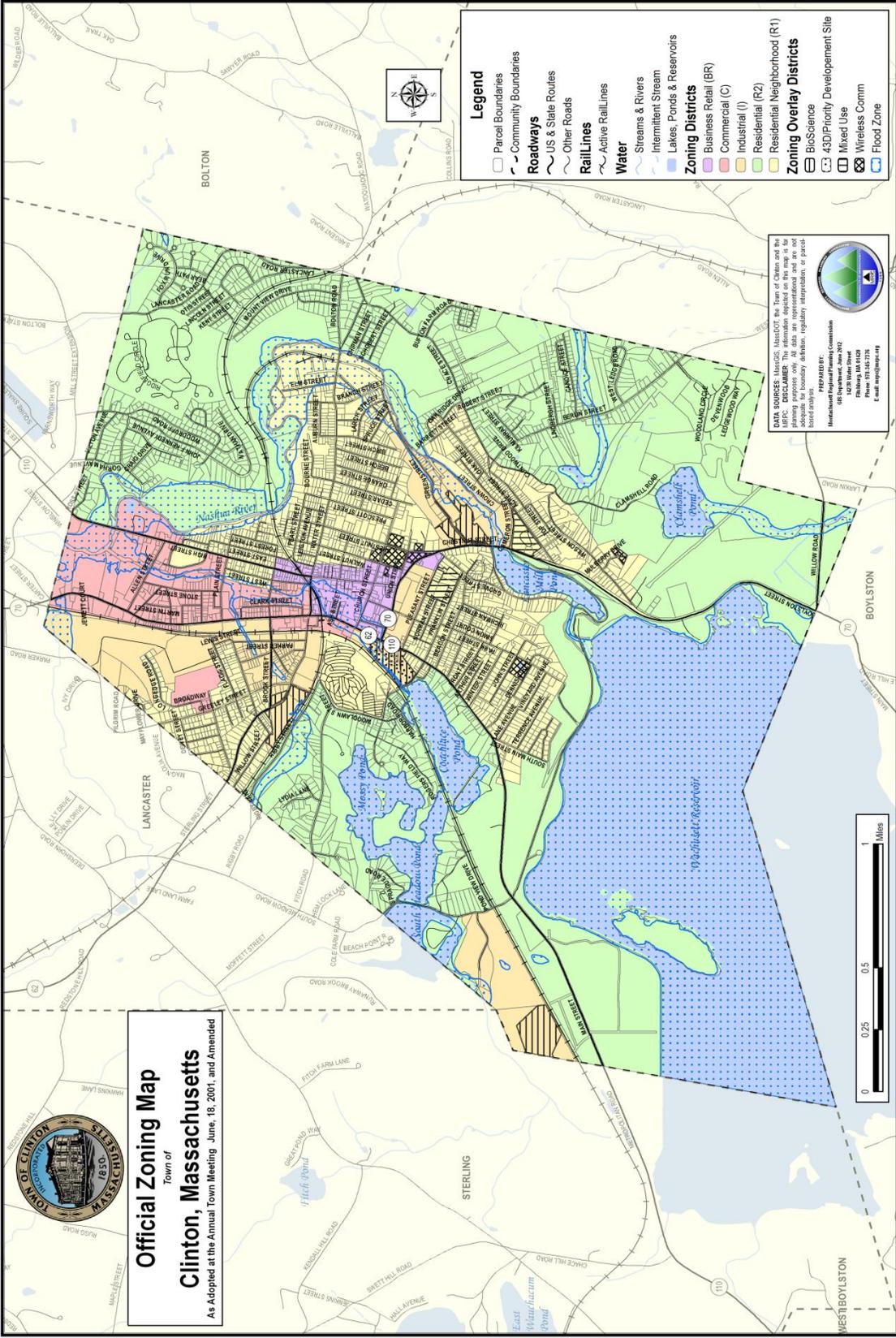
- An upfront “zoning incentive payment” of \$10,000 to \$600,000 depending on the increase in the number of new units that can be built in the district as of right, compared to the underlying zoning, and
- A “density bonus payment” of \$3,000 per unit when building permits are issued for projects using the overlay zoning or Chapter 40B

A companion law (Chapter 40S) provides “school cost insurance” as an additional incentive. Under this law, communities are eligible to receive payments from the state to fill the gap if approximately half of the new property and excise taxes generated by development in the 40R district plus the Chapter 70 (state school aid) payments for public school students living in new housing in the district does not fully cover the cost of educating these children.

Questions for Consideration before Proceeding with Next Steps:

1. Does the Town wish to retain current zoning requirements but change allowable residential uses within existing districts or should an overlay district be designated?
2. What are the boundaries of the district or districts that the Town wishes to address through these zoning changes? Should the Bigelow Mills parcels be included, zoned as a separate district, or addressed through a separate set of actions?
3. What residential uses should be permitted, i.e. how many dwelling units should be allowed by right or only by special permit?
4. Does the Town wish to pursue a Chapter 40R designation for the areas under consideration for rezoning?
5. How does the Town wish to address parking requirements for the rezoned area(s)? (Initially, a parking supply and utilization study is recommended as a basis for addressing this question.)
6. Is the current site plan review process adequate to assure that conversions will meet the Town’s standards? Are additional design guidelines necessary (or desirable)?

Attachment A – Clinton Zoning Map



Official Zoning Map
 Town of
Clinton, Massachusetts
 As Adopted at the Annual Town Meeting June, 18, 2001, and Amended

- Legend**
- Parcel Boundaries
 - Community Boundaries
 - Roadways**
 - US & State Routes
 - Other Roads
 - RailLines**
 - Active RailLines
 - Water**
 - Streams & Rivers
 - Intermittent Stream
 - Lakes, Ponds & Reservoirs
 - Zoning Districts**
 - Business Retail (BR)
 - Commercial (C)
 - Industrial (I)
 - Residential (R1)
 - Residential Neighborhood (R2)
 - Zoning Overlay Districts**
 - BioScience
 - 43D/Priority Development Site
 - Mixed Use
 - Wireless Comm
 - Flood Zone

DATA SOURCES: MassDOT, the Town of Clinton and the MUPC. **DISCLAIMER:** The information depicted on this map is for planning purposes only. It does not represent an official regulatory interpretation, or permit based analysis.

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Map Date: 06/18/2001 10:00 AM

Attachment B – APA Model Mixed-Use Zoning Code

4.1 MODEL MIXED-USE ZONING DISTRICT ORDINANCE

The following model zoning district provisions represent a commercial zoning classification that permits, rather than mandates, a vertical mix of commercial and residential uses within the same building. The district is intended to accommodate a physical pattern of development often found along village main streets and in neighborhood commercial areas of older cities.

Primary Smart Growth Principle Addressed: Mix land uses

Secondary Smart Growth Principle Addressed: Compact building design

CX1, Neighborhood Commercial, Mixed-Use District

101. Purpose

The purposes of the CX1, Neighborhood Commercial, Mixed-Use District are to:

- (1) Accommodate mixed-use buildings with neighborhood-serving retail, service, and other uses on the ground floor and residential units above the nonresidential space;
- (2) Encourage development that exhibits the physical design characteristics of pedestrian-oriented, storefront-style shopping streets; and
- (3) Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

“Floor Area Ratio” means the ratio of a building’s gross floor area to the area of the lot on which the building is located.

“Gross Floor Area” is the sum of the gross horizontal areas of all floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings. Gross floor area does not include basements when at least one-half the floor-to-ceiling height is below grade, accessory parking (i.e., parking that is available on or off-site that is not part of the use’s minimum parking standard), attic space having a floor-to-ceiling height less than seven feet, exterior balconies, uncovered steps, or inner courts.

“Mixed-use Building” means a building that contains at least one floor devoted to allowed nonresidential uses and at least one devoted to allowed residential uses.

103. Allowed Uses

Uses are allowed in “CX1” zoning districts in accordance with the use table of this section.

USE GROUP		Zoning District
Use Category		CX1
		Specific Use Type
P= permitted by-right C = conditional use N = Not allowed		
RESIDENTIAL		
Household Living		
	Artist Live/Work Space located above the ground floor	P
	Artist Live/Work Space, ground floor	C
	Dwelling Units located above the ground floor	P
	Detached House	C
	Multiunit (3+ units) Residential	C
	Single-Room Occupancy	C
	Townhouse	C
	Two-Flat	C
Group Living		
	Assisted Living	C
	Group Home	P
	Nursing Home	C
	Temporary Overnight Shelter	C
	Transitional Residences	C
	Transitional Shelters	C
PUBLIC AND CIVIC		
Colleges and Universities		P
Cultural Exhibits and Libraries		P
Day Care		P
Hospital		N
Lodge or Private Club		N
Parks and Recreation		P
Postal Service		P
Public Safety Services		P
Religious Assembly		P
School		C
Utilities and Services, Minor		P
Utilities and Services, Major		C
COMMERCIAL		
Adult Use		N
Animal Services		
	Shelter/Boarding	N

Comment: *This use table should be refined to reflect local characteristics and planning objectives. The range of uses allowed should be kept as broad as possible in order to ensure that the district is economically viable. Note that this model allows, as a conditional use, drive-through facilities. Drive-through facilities may be appropriate in such areas in connection with banks and pharmacies. Whether to allow them is a policy choice, no different than other policy choices in selecting permitted uses. Also keep in mind that in buildings with residential units, commercial use issues will be largely self-policing because owner associations and builder/developers will ensure that commercial uses in mixed-use buildings will be compatible with upper-story residential uses.*

104. Commercial Establishment Size Limits

The gross floor area of commercial establishments in the CX1 district shall not exceed [15,000] square feet.

Comment: *Floor area limits are proposed in the model ordinance to help ensure that allowed commercial uses would be geared toward a neighborhood market area. Some local ordinances impose much more restrictive floor area limits in neighborhood-oriented districts. The limit proposed in this model ordinance would accommodate a modern drug store. If floor area limits are employed, the standards should not be so restrictive as to hamper the economic viability of the district.*

105. Indoor/Outdoor Operations

All permitted uses in the CX1 district must be conducted within completely enclosed buildings unless otherwise expressly authorized. This requirement does not apply to off-street parking or loading areas, automated teller machines, or outdoor seating areas.

106. Floor-to-Floor Heights and Floor Area of Ground-floor Space

(1) All commercial floor space provided on the ground floor of a mixed-use building must have a minimum floor-to-ceiling height of [11] feet.

(2) All commercial floor space provided on the ground floor of a mixed-use building must contain the following minimum floor area:

(a) At least [800] square feet or [25] percent of the lot area (whichever is greater) on lots with street frontage of less than [50] feet; or

(b) at least 20 percent of the lot area on lots with [50] feet of street frontage or more.

Comment: *In areas with strong residential real estate markets, ground-floor space is sometimes viewed as an afterthought, particularly when developed by those with a poor understanding of mixed-use development. These types of provisions can help ensure that ground-floor space will meet the needs of future retailers and not sit vacant for years after upper-floor residential units have been leased or sold.*

107. Lot Area per Unit (Density)

The minimum lot area per dwelling unit shall be [1,000] square feet for mixed-use buildings and [1,500] square feet for all other buildings.

Comment: *If mixed-use buildings are desired, such buildings should be rewarded with more flexible development standards. The model ordinance allows higher residential densities in mixed-use buildings than it does in single-use buildings.*

108. Floor Area Ratio

The maximum FAR shall be [2.0] for mixed-use buildings and [1.25] for all other buildings.

Comment: *To encourage mixed-use buildings, the model ordinance allows higher FARs for mixed-use projects.*

109. Setbacks

(1) The entire building façade must abut front and street side property lines or be located within [10] feet of such property lines.

Comment: *Rather than mandating a zero-foot “build-to” line for all properties in CX1 zoning districts, this model offers flexibility to accommodate shallow building setbacks that are sometimes necessary to accommodate features such as outdoor seating/display areas, stoops and sidewalk widening. Alternately, it is possible for the ordinance to establish a formula to determine setbacks based on the average setback of buildings in a block face. For an example of this, see Section 108 of the Model Town Center Ordinance (below).*

(2) The minimum rear setback is [0–30] percent of the lot depth.

Comment: *The appropriate minimum building setback will depend on lot and development patterns in the area. When alleys abut the rear of CX1 lots, no rear setback may be necessary, except perhaps for upper floors. On the other hand, when CX1-zoned lots will abut the rear property line of residential lots, buildings in the CX1 district should be set back from rear property lines in order to protect the privacy and open feeling expected within residential rear yards.*

(3) No interior side setbacks are required in the CX1 district, except when CX1-zoned property abuts R-zoned property, in which case the minimum side setback required in the CX1 district shall be the same as required for a residential use on the abutting R-zoned lot.

Comment: *Most pedestrian-oriented shopping streets are lined with buildings that span the entire width of the lot. The standard proposed here will help reinforce that pattern, while also ensuring that if a CX1 district abuts a residential zoning district, a “typical” residential side yard will be provided.*

110. Building Height

The maximum building height shall be [38–50] feet for mixed-use buildings and [35–47] feet for all other buildings.

Comment: *Some communities will want to regulate height by stories rather than feet above grade, since stories will allow for greater flexibility in building design. The standards proposed allow greater height for mixed-use buildings than for single-use buildings because mixed-use buildings are required to have taller floor-to-ceiling heights on the ground floor. The proposed standards will accommodate three- or four-story buildings.*

111. Off-Street Parking

(1) [Insert off-street parking standards]

(2) No off-street parking is required for nonresidential uses in CX1 districts unless such uses exceed [3,000] square feet of gross floor area, in which case off-street parking must be provided for the floor area in excess of [3,000] square feet.

Comment: *Paragraph (2) may be incorporated into paragraph (1). Exempting small retail businesses from compliance with off-street parking requirements will help promote pedestrian-oriented character and encourage use/reuse of storefront retail space. Communities should also examine off-street parking ratios with an eye toward reducing the amount of off-street parking required overall and encouraging shared and off-site parking arrangements.*

(3) Off-street parking spaces must be located to the rear of the principal building or otherwise screened so as to not be visible from public right-of-way or residential zoning districts.

112. Transparency

(1) A minimum of [60–75] percent of the street-facing building façade between two feet and eight feet in height must be comprised of clear windows that allow views of indoor space or product display areas.

(2) The bottom of any window or product display window used to satisfy the transparency standard of paragraph (1) above may not be more than [3–4.5] feet above the adjacent sidewalk.

(3) Product display windows used to satisfy these requirements must have a minimum height of [4] feet and be internally lighted.

113. Doors and Entrances

(1) Buildings must have a primary entrance door facing a public sidewalk. Entrances at building corners may be used to satisfy this requirement.

(2) Building entrances may include doors to individual shops or businesses, lobby entrances, entrances to pedestrian-oriented plazas, or courtyard entrances to a cluster of shops or businesses.

Comment: *Requiring ground-floor windows and sidewalk-facing entrances help make for a more pleasing pedestrian environment.*

114. Vehicle and Driveway Access

No curb cuts are allowed for lots that abut alleys.

Comment: *Driveways that cross sidewalks disrupt pedestrian movements and pose safety threats. They should be the rare exception in neighborhood-oriented mixed-use districts.*

Attachment C – Pittsfield Zoning Overlay District Bylaw

SECTION 4.321 SMART GROWTH OVERLAY DISTRICT (SGOD)

A. Purpose

It is the purpose of this Section to establish a Smart Growth Overlay District (SGOD) and to encourage smart growth in accordance with the purposes of G.L. c. 40R, and to foster a range of housing opportunities in the urban center of the city. Other objectives of this Section are to:

- Promote the public health, safety and welfare by encouraging the development of a diversity of housing opportunities offering housing choices for households of all incomes, ages and sizes.
- Provide a mechanism for increasing the supply and diversity of housing to meet existing and anticipated housing needs.
- Establish requirements, standards and guidelines, and ensure predictable, fair and cost-effective development review and permitting.
- Establish development standards to allow context-sensitive design and creative site planning.
- Enable the City to receive Zoning Incentive Payments and Density Bonus Payments in accordance with G.L. c. 40R and 760 CMR 59.06, arising from the development of housing in the SGOD.

B. Definitions

For purposes of this Section 4.321, the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Enabling Laws or this Section 4.321, or as set forth in the rules and regulations of the Permit Approval Authority (“Regulations”). To the extent that there is any conflict between the definitions set forth in this Section 4.321 and the Enabling Laws, the terms of the Enabling Laws shall govern.

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

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

Affordable Housing Restriction. A deed restriction of Affordable Housing meeting statutory requirements in G.L. c. 184, § 31, and the requirements of Section 4.321(G) of this Ordinance.

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

Artist and/or Creative Services Live/Work Unit. A residential use that permits up to 50% of the gross floor area of a building or buildings, for the production, showing and sale of arts and crafts produced by the residents thereof.

As-of-right Project or Project. A Multifamily Development, mixed use development, or townhouse development allowed under Section 4.321(E) as of right without recourse to a special permit, variance, zoning amendment or other form of zoning relief.

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

Enabling Laws. G.L. c. 40R and 760 CMR 59.00.

Multifamily Development. A residential structure containing four (4) or more dwelling units.

Plan Approval. Standards and criteria which a Project in the SGOD must meet under the procedures established herein and in the Enabling Laws.

Plan Approval Authority. For purposes of reviewing Project applications and issuing decisions on development Projects within the SGOD, the Community Development Board, consistent with G.L. c. 40R and 760 CMR 59.00, shall be the Plan Approval Authority (the "PAA"), and is authorized to approve a site plan to implement a Project.

Recreational Uses. Active recreational uses, including but not limited to ball fields, and passive recreational uses, including but not limited to walking and bicycle paths. Amusements or motorized uses shall not be considered eligible recreational uses.

Townhouse Development. A residential structure containing two (2) or three (3) dwelling units.

Zoning Ordinance. The City of Pittsfield Zoning Ordinance.

C. Overlay District

1. Establishment

The Smart Growth Overlay District, hereinafter referred to as the SGOD, is an overlay district comprised of nine subzones having a combined land area of approximately 10.72 gross acres that is superimposed over the underlying zoning district(s) applicable to a portion of the property shown on the map entitled "Downtown Smart Growth Overlay District (DSGOD) Zoning Map," dated June 30, 2008 (the "SGOD Map"). The SGOD Map is hereby made a part of the Zoning Ordinance and is on file in the Office of the City Clerk.

2. Subzones

There are hereby established nine (9) subzones within the SGOD:

Subzone A: Wood Brothers Subzone B: New Amsterdam Subzone C: Clocktower Subzone D: Paul Rich & Sons Subzone E: Notre Dame Subzone F: Saint Mary's Subzone G: Mount Carmel Subzone H: Silk Mill Subzone I: White Terrace/Madison

The location of these subzones is shown on the SGOD Map.

3. 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 Ordinance governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section 4.321. Within the boundaries of the SGOD, a developer may elect either to develop a Project in accordance with the requirements of this Section 4.321, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Ordinance governing the underlying zoning district(s). When a building permit is issued for any Project approved in accordance with this Section 4.321, the provisions of the underlying district(s) shall no longer be applicable to the land shown on the site plan which was submitted pursuant to Section 4.321(J) for such Project, with the exception of the following:

- Article 23-10 of the Pittsfield Zoning Ordinance, entitled “Off-Street Parking and Loading,” in effect as of March 31, 2005; and
- the City of Pittsfield Sign Ordinance, in effect as of June 28, 2005; provided, however, that the requirements of said Section 23-10 and Sign Ordinance may be waived in accordance with Section 4.321(M)(1) hereof.

D. Applicability of SGOD

In accordance with the provisions of G.L. c. 40R and 760 CMR 59.00, an Applicant for a Project located within the SGOD may seek Plan Approval in accordance with the requirements of this Section 4.321. In such case, notwithstanding anything to the contrary in this Zoning Ordinance, such application shall not be subject to any other provisions of this Zoning Ordinance, including limitations upon the issuance of building permits for residential uses related to a rate of development; a phased growth limitation; a local moratorium on the issuance of such permits; or building permit or dwelling unit limitations.

E. Permitted Uses

The following uses are permitted as of right in the SGOD Subzones, except as specified below:

1. Multifamily Development

Multifamily Development is permitted in all Subzones provided, however, that Multifamily Development in Subzones A and D shall include nonresidential uses on the first floor.

2. Townhouse Development

Townhouse Development is permitted only in Subzones B, F, G and H.

3. Mixed-Use Development

Mixed-use development is permitted in all Subzones. However, the proportion of residential-to-nonresidential uses within a mixed-use development shall be as follows:

- a. At least 75% of the gross floor area of any Project shall be residential.
- b. All nonresidential uses shall be located on the first floor only, except in Subzone H, where nonresidential uses may be located on other floors provided said uses comprise no more than twenty-five percent (25%) of the overall square footage of the Project. Only nonresidential uses are permitted on the first floor in Subzones A and D.
- c. Free-standing nonresidential uses are not permitted, except in Subzone H, where free-standing nonresidential uses shall be permitted provided said uses comprise no more than ten percent (10%) of the overall square footage of the Project.

4. Nonresidential Uses

The following nonresidential uses are allowed as of right in a mixed-use development:

- a. Office uses: all.
- b. Retail and consumer services;
- c. Eating establishments, not including drive-in,-up or through.
- d. If the development is located in the Downtown Arts Overlay District, any use allowed therein.

5. Other

The following uses are permitted in all Subzones:

- a. artist and/or creative services live/work units;
- b. recreational uses;
- c. parking, including surface, garage-under and structured parking (e.g. parking garages); and
- d. accessory uses customarily incidental to any of the above-permitted uses and in accordance with this Ordinance.

6. Prohibited Uses

Any use not listed as an allowed use is expressly prohibited.

F. Project Phasing

The PAA, as a condition of any Plan Approval, may require a Project to be phased in order to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, the PAA shall assure the required number of Affordable Housing Units in the

Project, as per Section G.2. Such assurance may be provided through use of the security devices referenced in G.L. Ch. 41, § 81U, or through the PAA's withholding of certificates of occupancy until proportionality has been achieved. No Density Bonus Payment will be received by the City until such proportionality has been achieved by the issuance of occupancy permits for the Affordable Housing Units in the Project.

G. Housing and Housing Affordability

1. Marketing Plan

Prior to granting Plan Approval for housing within the SGOD, an Applicant for such approval must submit a narrative document and marketing plan that establishes that the proposed development of housing is appropriate for diverse populations, including individuals, households with children, households including individuals with disabilities and the elderly. These documents in combination, to be submitted with an application for Plan Approval pursuant to Section 4.321(K) below, shall include details about construction related to the provision, within the development, of units that are accessible to the disabled.

2. Number of Affordable Housing Units

a. For all Projects including more than twelve (12) dwelling units, not less than 20% of housing units constructed shall be Affordable Housing.

b. Projects including twelve (12) or fewer total dwelling units are not required to include Affordable Housing. For Projects that are approved and developed with less than 20% Affordable Housing, no Density Bonus Payment will be received by the City until not less than 20% Affordable Housing has been achieved for the district as a whole, as determined by the issuance of occupancy permits for Affordable Housing Units in the district. The PAA shall maintain records of permitting to assure the required number of Affordable Housing Units in the district as a whole, as per Section G.2.

c. Projects shall not be segmented to evade the size threshold for provision of Affordable Housing. Within its Plan Approval of a proposed development including twelve (12) or fewer total dwelling units, the PAA shall issue a written finding that the project was not segmented based on its review of relevant records including, but not limited to, ownership of directly abutting parcels. For the purposes of this Section G.2.c., parcels divided only by a right-of-way shall be deemed to abut one another. In the event that an applicant that receives Plan Approval proposes residential development of one or more directly abutting parcel(s) pursuant to this Section 4.321 within three years after plan approval, the PAA shall require as a condition of Plan Approval provision of a number of Affordable Housing dwelling units adequate to achieve not less than 20% Affordable Housing for the combined project based on the total number of dwelling units proposed in both development projects.

d. For purposes of calculating the number of units of Affordable Housing required, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit.

3. Requirements

Affordable Housing shall comply with the following requirements:

- a. For an Affordable Rental Unit, the monthly rent payment, including utilities and parking, shall not exceed 30% 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 DHCD shall apply.
- b. 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% 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.
- c. Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

4. Design and Construction

Units of Affordable Housing shall be finished housing units. Units of Affordable Housing shall be dispersed throughout the development of which they are part and be comparable in initial construction quality and exterior design to other housing units in the development. The total number of bedrooms in the Affordable Housing shall, insofar as practicable, be proportionate to the number of bedrooms in all units in the Project of which Affordable Housing is part.

5. Affordable Housing Restriction

Each unit of Affordable Housing shall be subject to an Affordable Housing Restriction which is recorded with the appropriate registry of deeds or district registry of the Land Court and contains the following:

- a. Specification of the term of the Affordable Housing Restriction which shall be no less than 30 years, but which may, as a requirement of Plan Approval, be for the longest period of time customarily allowed by law.
- b. The name and address of the Monitoring Agent, as hereinafter defined, with a designation of its power to monitor and enforce the Affordable Housing Restriction.
- c. 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 without specific unit identification.
- d. 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 local preferences in resident selection for the Affordable Housing Units. 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.

e. 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.

f. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership will be set.

g. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.

h. A requirement that only an Eligible Household may reside in Affordable Housing, and that notice of any lease or sublease of any unit of Affordable Housing shall be given to the Monitoring Agent.

i. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.

j. Provision that the Restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the City, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household.

k. 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 the City, in a form approved by municipal counsel and shall limit rental and occupancy to an Eligible Household.

l. 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 said Agency, certifying compliance with the affordability provisions of this Ordinance and containing such other information as may be reasonably requested in order to ensure affordability.

m. A requirement that residents in Affordable Housing provide such information as the Monitoring Agent may reasonably request in order to ensure affordability.

6. Monitoring Agent

A qualified housing entity shall be approved by the PAA as the Monitoring Agent for each Project in the SGOD. In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon notification of this fact by the PAA or by DHCD, such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the PAA. 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:

- a. Prices of Affordable Homeownership Units are properly computed and rental amounts of Affordable Rental Units are properly computed.
- b. Income eligibility of households applying for Affordable Housing is properly and reliably determined.
- c. The housing marketing and resident selection plan conforms to all requirements and is properly administered.
- d. 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.
- e. Affordable Housing Restrictions meeting the requirements of this Section are recorded with the proper registry of deeds.

7. 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.

8. Age Restrictions

The SGOD shall not include the imposition of restrictions on age upon the entire district, but the development of specific Projects within the district may be exclusively for the elderly, for persons with disabilities or for assisted living, provided that any such Project shall be in compliance with all applicable fair housing laws and not less than 25% of the housing units in such a restricted Project shall be further restricted as Affordable Housing. Any Project which includes age-restricted residential units shall comply with applicable federal, state and local fair housing laws and regulations.

9. Computation

Prior to the granting of any Plan Approval to 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, as applicable to the City of Pittsfield.

10. No Waiver

Notwithstanding anything to the contrary herein, the affordability provisions in this Section 4.321 shall not be waived.

H. Dimensional and Density Regulations

The as-of-right densities permitted in the SGOD shall be no more than as follows:

Subzone	As-of-right density permitted (dwelling units per acre)	Minimum Yards In Feet front/side/rear	Maximum coverage by all bldgs.	Maximum height of bldgs. feet
Subzone A	50	N/R / N/R / N/R	N/R	50
Subzone B	23	15 / 10 / 20	50%	60
Subzone C	24	N/R / N/R / N/R	N/R	80
Subzone D	24	N/R / N/R / N/R	N/R	80
Subzone E	31	15 / 10 / 20	50%	60
Subzone F	20	15 / 10 / 20	50%	60
Subzone G	20	15 / 10 / 20	50%	60
Subzone H	30	15 / 10 / 20	50%	60
Subzone I	49	N/R / N/R / N/R	N/R	50

NOTES: Abbreviation N/R in the above schedule indicates no requirements.

I. Parking Requirements

1. General

The purpose of these parking requirements is to encourage the use of public transportation and to make downtown Pittsfield more pedestrian-friendly. In the case of inconsistency between Article 23-10 of the Zoning Ordinance and this Section 4.321, the provisions of this Section 4.321 shall govern. Parking requirements within the SGOD are as follows:

- a. Surface parking lots and parking structures shall provide pedestrian walkways and connections to the sidewalk system.
- b. Parking structures shall be designed to be compatible with adjacent buildings and architecture.

2. Minimum Off-Street Parking Space Requirements

For residential uses, one (1) space shall be provided per dwelling unit. Such off-street parking spaces shall be established no further than 800 feet from the premises to which they are appurtenant,

measured from the nearest property line of the proposed development to the closest property line of the parking facility.

For non-residential uses in Subzones A, B, C, D, E, F, G and I, off-street parking spaces shall be provided as required by Article 23-10 of the Zoning Ordinance. For nonresidential uses in Subzone H, one (1) space shall be provided per 550 square feet of floor area.

3. Shared Parking

The use of shared parking to fulfill the parking demands that occur at different times of day may be considered by the PAA. The minimum parking requirements above may be reduced at the discretion of the PAA, provided the applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared Parking Report, the ITE Shared Parking Guidelines or other approved studies). The applicant is encouraged to use public parking facilities in the downtown area, if available.

4. Reduction of Parking Requirement

The required amount of parking may be reduced at the discretion of the PAA upon a showing that the proposed, lesser amount of parking will neither cause undue traffic congestion nor endanger public safety, or that the lesser amount will provide positive environmental or other benefits. The PAA may consider:

- a. The availability of surplus on-street and/or off-street parking in the vicinity of the use being served and/or the proximity of a bus or other public transit station.
- b. The availability of public or commercial parking facilities in the vicinity of the use being served.
- c. Shared use of off-street parking spaces serving other uses having peak user demands at different times.
- d. Age, income or other characteristics of the likely applicants which may result in a lower level of auto usage.
- e. Such other factors as may be considered by the PAA, including whether the reduction of the parking requirement is likely to encourage the use of public transportation or encourage a proposed development to be more pedestrian-friendly.

J. Design Standards

1. Design Standards

To ensure that new development will be complementary to nearby buildings and structures, consistent with public plans, and will provide for quality development, the PAA shall adopt the "Design Standards for the City of Pittsfield's Chapter 40R Smart Growth Overlay District," approved by the Department of Housing and Community Development on July 17, 2008, as may be amended as provided below,

governing the issuance of Plan Approvals for development approved pursuant to the SGOD, and shall file a copy with the City Clerk. In addition to the standards set forth in this ordinance, the physical character of development approved pursuant to the SGOD shall comply with such Design Standards, except where a specific waiver is granted. In the event of any conflict between this ordinance and the Design Standards, this ordinance shall govern and prevail.

2. Amendments

The PAA may adopt, by majority vote, amendments to the Design Standards. Any amendment to the 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 any amendment to the Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.

3. DHCD Approval

Before adopting any Design Standard, the PAA shall submit the proposed Design Standard to DHCD for approval. Any amendment to the Design Standards shall not take effect until approved by DHCD and filed with the City Clerk. In submitting a proposed Design Standard for DHCD approval, the PAA shall also submit sufficient documentation clearly showing that the proposed Design Standard will not add unreasonable costs 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 may be submitted for consideration, but not be deemed to constitute sufficient documentation.

4. Plan Approval

An application for Plan Approval that has been submitted to the City Clerk pursuant to Section 4.321(K) shall not be subject to any Design Standard that has not been approved by DHCD and filed with the City Clerk.

K. Application for Plan Approval

1. Required Submittals

The application for Plan Approval shall be accompanied by ten (10) copies of the following plans and documents, which shall demonstrate consistency with the standards set forth in this Ordinance. All site plans shall be prepared by a certified architect, certified landscape architect and/or 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, and shall show the following:

- a. The perimeter dimensions of the lot, and Assessors Map, Lot and Block numbers.
- b. All existing and proposed buildings, structures, building setbacks, parking spaces, driveway openings, distances between buildings, plan view exterior measurements of individual buildings, driveways, service areas and open areas.
- c. Internal roads, sidewalks and parking areas (with dimensions of paving and an indication of the number of parking spaces).
- d. All facilities for sewage, refuse and other waste disposal and for surface water drainage. A capacity analysis may be required.
- e. All proposed landscaping features, such as fences, walls, planting areas, planting list of proposed species and walks on the lot and tract.
- f. Existing major natural features, including streams, wetlands and all trees six (6) inches or larger in caliper (a.k.a. the girth of the tree at approximately waist-height).
- g. Scale (at a minimum of one inch equals forty feet) and "North" arrow.
- h. Total site area in square footage and acres and the area to be set aside as public open space, if appropriate.
- i. Percentage of lot coverage (including the percentage of the lot covered by buildings) and open space, if appropriate.
- j. The proposed residential density in terms of dwelling units per acre, the types of proposed commercial uses in terms of their respective floor areas, recreation areas and the number of units proposed by type – i.e. the number of one-, two- and three-bedroom units, if appropriate.
- k. Location sketch map (indicating surrounding streets and properties, and any additional abutting lands owned by the applicant).
- l. Representative elevation sketches of buildings (indicating the height of buildings and the construction material of exterior facades).
- m. Typical unit floor plan for residential uses and for each type of unit proposed, and the area in square feet of each typical unit.
- n. Developer's (or his/her/its representative's) name, address and phone number.
- o. Draft housing marketing and selection plan, as required by Section 4.321(G).
- p. Evidence that the Project complies with the cost and eligibility requirements of Section 4.321(G).

- q. Project plans that demonstrate compliance with the requirements of Section 4.321(G).
- r. A form of Affordable Housing Restriction that satisfies the requirements of Section 4.321(G).
- s. Any other information, including but not limited to traffic, school and/or utilities impact studies required to adequately evaluate the scope and potential impacts of the Project.

2. Rehabilitation Plan

If living quarters are to be rehabilitated or areas converted into living quarters, in addition to the required site plan, ten (10) copies of the following described plan shall be furnished:

- a. A floor plan of each floor on which remodeling is to be done or areas converted into living quarters.
- b. A floor plan showing the stairways, halls, door openings into the halls and exit doors of each floor or floors where remodeling or converting is to be done.
- c. An elevation of the parts of the building where outside stairways or fire escapes are to be located. The plans and elevations shall be clearly illustrated. The size of each plan shall be 11 inches by 17 inches or 22 inches and shall be drawn to scale of ¼ inch equals one (1) foot.

3. Records

All plans and elevations presented with the application shall remain a part of the records of the PAA. The provision of the plan and the application shall be the sole responsibility of the applicant.

L. Procedures

1. Filing

An applicant for Plan Approval shall file the application and all required submittals with the City Clerk, and shall file forthwith the required number of copies of the application form and the other required submittals as set forth above with the PAA, including notice of the date of filing with the City Clerk. A filing fee of \$500.00 plus \$25.00 per housing unit shall apply, and shall be submitted with said application.

2. Circulation to Other Boards

Upon receipt of the application, the PAA shall immediately provide a copy of the application materials to the Community Development Board, the Board of Appeals, the Board of Health, the Conservation Commission, the Fire Department, the Police Department, the Building Inspections Department, the Department of Public Works and Utilities, the City Planner and all other municipal officers, agencies, departments and/or boards designated by the PAA for comment. Any such officer, agency, department or board shall provide written comments, if any, within 60 days of its receipt of a copy of the plan and application for approval.

3. Hearing

The PAA shall hold a public hearing for which notice has been given as provided in G.L. c. 40A, § 11. The decision of the PAA shall be made, and a written notice of the decision filed with the City Clerk, within 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 take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the application and site plan.

4. Peer Review

The applicant shall be required to pay reasonable consulting fees to provide for peer review of the Plan Approval application, pursuant to G.L. c. 40R, § 11. 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, architects, housing consultants, planners and others. Any surplus remaining after the completion of such review, including any accrued interest, shall be returned to the applicant.

M. Decision

1. Waivers

Except where expressly prohibited herein, upon the request of the applicant, the PAA may waive dimensional and other requirements of this Section 4.321 either (a) 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 (b) 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 4.321.

2. Plan Review

An application for Plan Approval shall be reviewed for consistency with the purpose and intent of this Section, and such plan review shall be construed as an as-of-right review and approval process as required by and in accordance with the Enabling Laws.

3. Plan Approval

Plan Approval shall be granted where the PAA finds, by majority vote of the members present, all of the following:

- a. The applicant has submitted the required fees and information as set forth in this Section 4.321.
- b. The Project and site plan meet the requirements and standards set forth in this Section 4.321, or a waiver has been granted therefrom.
- c. Potential extraordinary adverse impacts of the Project on nearby properties have been adequately mitigated.

4. Plan Disapproval

A site plan may be disapproved only where the PAA finds one of the following:

- a. The applicant has not submitted the required fees and information as set forth in this Section 4.321.
- b. The Project and site plan do not meet the requirements and standards set forth in this Section 4.321, or a waiver therefrom has not been granted.
- c. It is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.

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 said decision are on file with the PAA. If 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 a certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county 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.

N. Change in Plans after Approval by PAA

1. Minor Change

After Plan Approval, an applicant may apply to make minor changes involving any of the following: (a) minor utility or building orientation adjustments; (b) minor adjustments to parking or other site details that do not affect the overall build-out or building envelope of the site; (c) the provision of open space; (d) the number of housing units; or (e) the 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(s), 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.

2. Major Change

Those changes deemed by the PAA to constitute major changes either because of the nature of the changes 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 this Section 4.321.

O. Enforcement and Appeal

The provisions of the SGOD shall be administered by the Building Inspections Department, except as otherwise provided herein. Any appeal arising out of action by the PAA regarding application for Plan Approval shall be governed by the applicable provisions of G.L. c. 40R. Any other request for enforcement or appeal arising under this Section 4.321 shall be governed by the applicable provisions of G.L. c. 40A.

P. Severability

If any provision of this Section 4.321 is found to be invalid by a court of competent jurisdiction, the remainder of Section 4.321 shall remain in full force and effect. The invalidity of any provision of this Section 4.321 shall not affect the validity of the remainder of the City of Pittsfield Zoning Ordinance.

Attachment C – Approaches to Determining Number of Allowable Residential Units

APPROACHES TO DETERMINING NUMBER OF ALLOWABLE RESIDENTIAL UNITS

The following material, excerpted from various reports and zoning bylaws/ordinances, presents alternative approaches to regulating the number of residential units that could be allowed in the downtown area of Clinton if a zoning bylaw revision were approved to permit residential uses in commercial properties. A number of different approaches are presented which are intended to show a range of mechanisms for further consideration. It should be noted that this is not necessarily an exhaustive inventory of the approaches which might be considered but is intended as a starting point for discussion. Further research can be conducted based on direction from the Planning Board.

The approaches describe below include:

1. Number of units is based on the proportion of residential space to the total floor area of the structure
2. Area of residential units is based on an absolute minimum number of square feet.
3. Number of units is a function of the lot area per dwelling unit and a maximum FAR.
4. Extent of residential development is based on a proportion of residential-to-nonresidential use and a minimum proportion of gross floor area for residential within the development. Number of as-of-right residential units per acre (density) is specified by subzone within a Smart Growth Overlay District
5. Maximum allowable number of dwelling units is determined by the Planning Board based on specified (but non-quantified) criteria.
6. Minimum floor area of dwelling units in two-family, etc. new or converted structures is specified.

Particularly relevant sections of the following documentation are highlighted in **yellow**.

1. Number of units is based on the proportion of residential space to the total floor area of the structure.

MODEL LIVE/WORK ORDINANCE

From ***Model Smart Land Development Regulations***, Planners Advisory Service, American Planning Association

Overview (selected text):

Communities today are once again embracing many features of traditional town planning, including allowing a mix of land uses both within a district and within a building. The modern iteration of the live/work option exists in two distinct forms: (1) home occupations and (2) live/work units. A home occupation ordinance is intended to allow modest, low-impact business or commercial uses within a residence in a residential zone. Such uses are subject to significant limitations on the permitted extent of commercial activities, hours of operation, parking, and number of employees to ensure that such uses do not upset the residential character of the neighborhood. In contrast, a live/work ordinance may allow incidental residential uses within commercial, office, or industrial buildings and zones.

Where such uses are allowed does depend on what the city's objective is for allowing such uses at all. Mark Troxel of the Seattle Planning Department says that the live/work concept—as applied through

the Seattle zoning ordinance—would be more aptly named a “work/live” ordinance because the emphasis is on maintaining the commercial or industrial character of the district while allowing some residences. Seattle also prohibits live/work units in industrial zones in adherence with the city’s policy to preserve industrial lands for industrial uses. At the same time the city recognizes that entrepreneurs and creative professionals in new media and more traditional businesses are seeking ways to integrate their home life and work life, and improved technology has allowed workers to telecommute from home. To help foster live/work units, the city allows them in all commercial districts (Troxel 2004).

The strategy of wanting to retain industrial land for industrial uses is understandable, especially where there is a strong demand for residential uses. Alternatively, live-work ordinances do help older cities with a surplus of underused or industrial land to revitalize such areas by providing development alternatives.

Primary Smart Growth Principle Addressed: Mixed land use.

Secondary Smart Growth Principle Addressed: Range of housing choices.

101. Definitions

As used in this ordinance:

“Live/work unit” or “live/work space” means a building or spaces within a building used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.

[or]

“Live-work unit” means a structure or portion of a structure:

- (a) That combines a commercial or manufacturing activity allowed in the zone with a residential living space for the owner of the commercial or manufacturing business, or the owner's employee, and that person's household;
- (b) Where the resident owner or employee of the business is responsible for the commercial or manufacturing activity performed; and
- (c) Where the commercial or manufacturing activity conducted takes place subject to a valid business license associated with the premises.

102. Purposes

The purposes of this ordinance are to:

- (a) Provide for the appropriate development of units that incorporate both living and working space;
- (b) Provide flexibility for the development of live/work units, particularly within existing buildings;

- (c) Provide locations where appropriate new businesses can start up;
- (d) Provide opportunities for people to live in mixed-use industrial and commercial areas where compatible with existing uses;
- (e) Protect existing and potential industrial uses and nearby residential uses from conflicts with each other; and
- (f) Ensure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial, and residential buildings in the area, while remaining consistent with the predominant workspace character of live/work buildings.

103. Where Live/Work Units Are Permitted

- (1) Live/work units are permitted in all commercial [and manufacturing] zones.

***Comment:** This provision allows the option of allowing live/work units in manufacturing or industrial zones. The city of Oakland authorizes this; Seattle does not. Seattle's decision to limit such uses to commercial districts reflects a city policy of protecting manufacturing districts from encroachment and displacement from residential or other uses. Seattle does, however, conditionally permit artist's studio/dwellings—which are regulated separately from general live/work units—in manufacturing zones.*

- (2) Any commercial use permitted in the zoning district applicable to the property is permitted in the live/work unit.

- (3) Live/work units at street level are prohibited where single-purpose residential structures are prohibited.

- (4) Where permitted, live/work units located at street level are subject to the development standards for ground-floor retail or commercial establishments as follows, and any additional standards for ground-floor commercial establishments provided in section ___ of the [zoning ordinance]:

***Comment:** The purpose of the following provisions is to allow live/work units in neighborhood commercial districts without compromising the districts' vibrant commercial environment. Seattle has several neighborhood commercial streets wherein single-purpose residential buildings are prohibited. In those areas, street-level live-work units are prohibited, but are allowed in the rear or on upper floors. Seattle's ordinance also contains provisions for the appearance and function of street-level live/work units adapted for this model.*

- (a) A minimum of 80 percent of a structure's street front facade at street level shall be occupied by nonresidential uses.

- (b) A minimum of 51 percent of the portion of a structure's street front facade that contains required nonresidential use shall be at or above sidewalk grade.

(c) In districts where live/work units are permitted at street level, the live/work unit shall have a minimum floor-to-floor height of [13] feet.

(d) In districts where live/work units are permitted at street level, parking for live-work units on neighborhood commercial streets and in mixed-use zones is prohibited in front of the building.

(e) Live/work units that exceed [2,000] square feet must have at least two exits.

[(f) Within each live/work unit, the living area shall not exceed [one-third] of the total floor area of the unit.]

Comment: Not every live/work ordinance contains a required living area/working area ratio or proportion. Oakland, California, requires a ratio of one-to-three living-to-working area. In an effort to provide flexibility, Seattle opted not to set proportion standards.

104. Business License Required

At least one resident in each live/work unit shall maintain a valid business license and [zoning permit] for a business on the premises.

Comment: Not all businesses may require a valid business license. For example, an artist may not be required to have one.

105. Parking

For live/work units of less than [2,500] square feet, one parking space is required for each unit. For live/work units greater than [2,500] square feet, required parking will be based on the applicable parking standard for the nonresidential use or the closest similar use as determined by the [zoning administrator].

Comment: The relatively non-stringent parking standards provided here reflect the fact that a person occupying a relatively small live/work unit may have less use for a car given that he or she works on the premises. Larger units may have additional residents as well as employees, and thus must provide more parking.

2. Area of residential units is based on an absolute minimum number of square feet.

DIMENSIONAL REQUIREMENTS FROM CITY OF LOWELL ZONING ORDINANCE FOR DOWNTOWN LOWELL SMART GROWTH OVERLAY DISTRICT (SGOD)

9.6.7 Dimensional Requirements

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

Height Limit: 7 stories

95 feet
Maximum FAR 5.0
Minimum Frontage none
Minimum Lot Area none
Maximum Dwelling Units Per Acre 101

2. Building Conversions. The maximum dwelling unit per acre requirement shall not apply for conversion of existing structures built over sixty years ago. For conversion of existing structures built over sixty years ago, total units allowed under a given SGOD district shall be calculated by dividing the total square footage of building floor area within the residential portion of the Project, including common areas, by 1100 square feet.

3. Access. Projects on lots with less than twenty-five (25) feet of frontage must establish to the PAA that they have provided adequate access to the Project. Easements across other lots may be used to provide adequate access.

4. Average Unit Size. For all Projects, the average floor area of residential and artist live/work units (excluding all common areas) must be greater than 750 square feet.

5. Maximum Non-Residential Use. No mixed-use project within the SGOD shall be allowed to develop a non-residential component that, when the development potential of the remainder of the district is calculated, would preclude the district as a whole from having at least 201 residential units, including those completed and those allowed to be built, under the SGOD regulations. [Ord. 2-07-12]

3. Number of units is a function of the lot area per dwelling unit and a maximum FAR.

FROM APA MODEL MIXED-USE ORDINANCE (partial -- complete text is included as Attachment B)

107. Lot Area per Unit (Density)

The minimum lot area per dwelling unit shall be [1,000] square feet for mixed-use buildings and [1,500] square feet for all other buildings.

Comment: If mixed-use buildings are desired, such buildings should be rewarded with more flexible development standards. The model ordinance allows higher residential densities in mixed-use buildings than it does in single-use buildings.

108. Floor Area Ratio

The maximum FAR shall be [2.0] for mixed-use buildings and [1.25] for all other buildings.

Comment: To encourage mixed-use buildings, the model ordinance allows higher FARs for mixed-use projects.

4. Extent of residential development is based on a proportion of residential-to-nonresidential use and a minimum proportion of gross floor area for residential within the development. Number of as-of-right residential units per acre (density) is specified by subzone within Smart Growth Overlay District.

PITTSFIELD SMART GROWTH OVERLAY DISTRICT BYLAW (partial – complete text is attached as Attachment C)

Excerpted from City of Pittsfield Zoning Bylaws

3. Mixed-Use Development

Mixed-use development is permitted in all Subzones. However, the proportion of residential-to-nonresidential uses within a mixed-use development shall be as follows:

- a. At least 75% of the gross floor area of any Project shall be residential.
- b. All nonresidential uses shall be located on the first floor only, except in Subzone H, where nonresidential uses may be located on other floors provided said uses comprise no more than twenty-five percent (25%) of the overall square footage of the Project. Only nonresidential uses are permitted on the first floor in Subzones A and D.
- c. Free-standing nonresidential uses are not permitted, except in Subzone H, where free-standing nonresidential uses shall be permitted provided said uses comprise no more than ten percent (10%) of the overall square footage of the Project.

4. Nonresidential Uses

The following nonresidential uses are allowed as of right in a mixed-use development:

- a. Office uses: all.
- b. Retail and consumer services;
- c. Eating establishments, not including drive-in,-up or -through.
- d. If the development is located in the Downtown Arts Overlay District, any use allowed therein.

Dimensional Requirements

The as-of-right densities permitted in the SGOD shall be no more than as follows:

Subzone	As-of-right density permitted (dwelling units per acre)	Minimum Yards In Feet front/side/rear	Maximum coverage by all bldgs.	Maximum height of bldgs. feet
Subzone A	50	N/R / N/R / N/R	N/R	50
Subzone B	23	15 / 10 / 20	50%	60
Subzone C	24	N/R / N/R / N/R	N/R	80
Subzone D	24	N/R / N/R / N/R	N/R	80
Subzone E	31	15 / 10 / 20	50%	60
Subzone F	20	15 / 10 / 20	50%	60
Subzone G	20	15 / 10 / 20	50%	60
Subzone H	30	15 / 10 / 20	50%	60
Subzone I	49	N/R / N/R / N/R	N/R	50

5. Maximum allowable number of dwelling units is determined by the Planning Board based on specified (but non-quantified) criteria.

**Amesbury Zoning Bylaw -2012
Section XI.J Multi-Family Special Permit**

J. Multi-Family Special Permit:

1. **Objectives:** The objectives of this subsection are to:

- a. Allow maximum flexibility for the provision of housing in Amesbury, and
- b. In the Central Industrial (IC), Commercial (C), and Central Business District (CBD) zones only, allow for mixed-use (residential and commercial in the same building) in existing or expanded multi-story buildings and further, allow for the conversion of existing, or expanded mixed-use, industrial or commercial buildings to multi-family residential buildings. New mixed-used buildings may be permitted provided they meet the Permitting Criteria below.

2. **Applicability:** The Planning Board may grant a special permit for dwelling units located above ground-floor commercial uses in existing, proposed or expanded multi-storied buildings in the Central Business or Commercial Districts and the Central Industrial District. In no instance, however, may a permit be granted that would allow industrial and residential uses to occupy the same building.

3. **Procedural Requirements:** These procedural requirements shall be in addition to the general requirements for a special permit specified in Section X.J of this Bylaw.

- a. **Pre-Application Review:** Potential applicants are encouraged to meet with the Planning Board and describe their project. The Planning Board shall then specify the written or mapped material they may require.
- b. **Application:** The applicant shall submit to the Planning Board an original and ten (10) copies of all materials requested by the Planning Board, and all materials required for a Site Plan Review as described in Section XI.C of this Bylaw.
- c. **Parking Plan:** Applicant for this special permit shall submit an original and ten (10) copies of a parking plan at a scale no larger than 1"= 100 feet which shall clearly show the relationship of off-street parking requirements to the building concerned. Such plan shall indicate lighting and landscaping if required by the Planning Board.

4. **Permit Criteria:**

- a. **Number of dwelling units:** The maximum allowable number of units shall be determined by the Planning Board. The decision of the Planning Board in this regard shall consider: 1) size and location of commercial space, if any; 2) physical limitations of building and lot; 3) provision of off-street parking; 4) traffic conditions in the general area; and 5) other conditions specified by the Planning Board.
- b. **Allowable Uses:** All Commercial uses allowed by the district shall be located at least on the ground floor of building and all residential dwelling units shall be located over the commercial

uses above the ground-floor or street level story of the building. Construction of new free standing single-use, multifamily structures are not permitted under this special permit.

c. Dimensional Regulations: The building and lot shall meet the dimensional regulations for commercial or industrial uses in the zoning district in which the building and lot are located except that the Planning Board may increase in part or totally said dimensional regulation when, in their opinion, the public interest would be served.

d. Parking Requirements: The Planning Board may require that off-street parking spaces and loading requirements for commercial uses shall be the same as required in Section VIII of this Bylaw. In addition the applicant shall provide one and a half (1 1/2) off-street parking space for each residential dwelling unit therein either on the lot or in a public off-street parking area located within 500 feet of the building and lot. Applicants planning to use public off-street parking areas to meet the requirements of this subsection must be prepared to demonstrate that prior special permits granted for this use do not exceed the capacity of the public off-street parking area. The Planning Board may choose to limit the amount of parking in public off-street parking areas, if in their opinion there would not be sufficient space to serve the general public.

6. Minimum floor area of dwelling units in two-family, etc. new or converted structures is specified.

South Hadley Zoning Bylaw (excerpt)

(K) Minimum Floor Area Requirements

Each dwelling unit in a two-family (new or converted), three-family, or multifamily structure shall contain a minimum floor area of four hundred twenty (420) square feet. In computing the required minimum floor area, only the area devoted to the exclusive use of the dwelling unit for living purposes shall be considered. Storage areas, hallways, breezeways, balconies, foyers, and other areas in common with other tenants shall not be included.