

§ 220-8.9: NORTH LANCASTER SMART GROWTH OVERLAY DISTRICT

A. PURPOSE.

The purpose of this Section 220-8.9 is to establish a North Lancaster Smart Growth Overlay District in order to encourage smart growth in accordance with M.G.L. Chapter 40R. The North Lancaster Smart Growth Overlay District provides housing opportunities in a mixed-use development that promotes compact design and pedestrian-friendly access to retail, employment, and other amenities. Additional objectives of this Section are to:

- (1) Promote public health, safety, and welfare by encouraging a diversity of housing opportunities.
- (2) Provide for a full range of housing choices for households of all incomes, ages, and sizes in order to meet the goal of increasing the diversity of housing and meet all residents' needs.
- (3) Ensure the Town of Lancaster meets the Commonwealth's affordable housing requirement of greater than 10% deed-restricted inventory, and to sustain this level to maintain local control over the Town's affordable housing program.
- (4) Establish requirements, standards, and guidelines to ensure predictable, fair, and cost-effective review and permitting of development.
- (5) To generate positive tax revenue from mixed-use development and benefit from the financial incentives provided by M.G.L. Chapter 40R, while providing opportunities for new business growth and additional local jobs.

B. DEFINITIONS.

For purposes of this Section 220-8.9, the following definitions shall apply. All bolded terms shall be defined in accordance with the definitions established under the Governing Laws or Section 220-8.9C, or as set forth in the Plan Approval Authority (PAA) Regulations. To the extent that there is any conflict between the definitions or terms set forth in, or otherwise regulated by, the Governing Laws and those defined or used in this Section 220-8.9, inclusive of any applicable Design Standards, PAA Regulations, or any other applicable associated local zoning requirement (e.g., zoning requirement contained in another section of the Zoning Bylaw that is nonetheless incorporated by reference), the terms of the Governing 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.

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Affordable Housing Restriction – A deed restriction of Affordable Housing meeting the statutory requirements in M.G.L. Chapter 184, Section 31, and the requirements of Section E.(5) of this Bylaw.

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

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

As-of-right – A use allowed under Section D. 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 H through L 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.

Department or DHCD – The Massachusetts Department of Housing and Community Development, or any successor agency.

Design Standards – Provisions of Section H made applicable to Projects within the SGOD that are subject to the Plan Approval process of the PAA.

Eligible Household – An individual or household whose annual income is less than or equal to 80 percent of the area-wide median income (or 60 percent as applicable) 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. (Click [here](#) to go to HUD.gov)

Governing Laws – M.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 Section D.(2), and subject to all applicable provisions of this Section 220-8.9.

Monitoring Agent or Administering Agent – The local housing authority or other qualified housing entity designated by the Select Board, pursuant to Section E.(2), to review and implement the Affordability requirements affecting Projects under Section E.

NLSGOD – The North Lancaster Smart Growth Overlay District established according to this Section 220-8.9.

PAA Regulations – The rules and regulations of the PAA adopted pursuant to Section H.(3).

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Plan Approval – Standards and procedures which all Projects in the SGOD must meet pursuant to Sections H through L and the Governing Laws.

Plan Approval Authority (PAA) – The local approval authority authorized under Section H.(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-an~~ SGOD in accordance with the requirements of this Section 220-8.9.

Residential Project – A Project that consists solely of residential, parking, and accessory uses, as further defined in Section D.(1).

SGOD – The Smart Growth Overlay District established in accordance with this Section 220-8.9.

Shall – For the purposes of this bylaw, the term “shall” has the same meaning as “must” and denotes a requirement.

Zoning Bylaw – The Zoning Bylaws of the Town of Lancaster.

C. APPLICABILITY OF SGODs – SCOPE AND AUTHORITY

- (1) **Establishment.** The North Lancaster Smart Growth Overlay District, hereinafter referred to as the “NLSGOD”, is established pursuant to the authority of M.G.L. Chapter 40R and 760 CMR 59.00 ~~and as an overlay district having a land area of approximately 64 acres in size shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Lancaster, as amended, and as in the location shown depicted on the map entitled “North Lancaster Smart Growth Overlay District”, prepared by the Montachusett Regional Planning Commission (attached as Exhibit 1). This map is hereby made a part of the Zoning Bylaw and Zoning Map and is on file in the Offices of the Town Clerk and Community Development and Planning Department. The NLSGOD contains no subdistricts.~~

- (2) **Applicability.** An applicant may seek development of a Project located within the NLSGOD in accordance with the provisions of the Governing Laws and this Section 220-8.9, including a request for Plan Approval by the PAA, if necessary. In such case, notwithstanding anything to the contrary in the Zoning Bylaw, such application shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations. To the extent that there is any conflict between the Governing Laws and this Section 220-8.9, inclusive of the Design Standards, the PAA Regulations, and any applicable associated local zoning

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requirement (e.g., zoning requirement contained in another section of the Zoning Bylaw that is nonetheless incorporated by reference), the Governing Laws shall govern.

- (3) **Underlying Zoning.** The NLSGOD is an overlay district superimposed on all underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section 220-8.9. Within the boundaries of the NLSGOD, a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).
- (4) **Administration, Enforcement, and Appeals.** The provisions of this Section 220-8.9 shall be administered by the Building Commissioner, except as otherwise provided herein. Any legal appeal arising out of a Plan Approval decision by the PAA under Sections H through L shall be governed by the applicable provisions of M.G.L. Chapter 40R. Any other request for enforcement or appeal arising under this Section 220-8.9 shall be governed by the applicable provisions of M.G.L. Chapter 40A.

D. PERMITTED USES. The following uses are permitted As-of-Right for Projects within the NLSGODs unless otherwise specified under the corresponding section of the District-specific requirements.

- (1) **Residential Projects.** A Residential Project within the NLSGOD may include:
 - (a) Single-family, 2- and 3-family, and/or multi-family Residential Use(s) through homeownership and/or rental;
 - (b) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
 - (c) Accessory uses customarily incidental to any of the above permitted uses as listed in §220-8.1AA-DD.
- (2) **Mixed-use Development Projects.** A Mixed-use Development Project within the SGOD may include:
 - (a) Single-family, 2- and 3- family, and/or multi-family Residential Use(s), provided that the minimum allowable as-of-right density requirements for residential use specified in Section F.(1) shall apply to the residential portion of any Mixed-use Development Project;
 - (b) Any of the following non-residential uses:
 - i. All uses listed in §220-8.4A.-G and accessory uses listed in §220-8.4AA-CC.
 - ii. All uses listed in §220-8.5A.-M. and accessory uses listed in §220-8.5AA-DD.

Commented [JDE1]: I don't understand what this phrase means or how it is meant to apply. Smart Growth Zoning allows residential use as-of-right in smart growth projects, and further requires that smart growth projects may not be made subject to or reference underlying zoning requirements. See 760 CMR 59.04(1)(l).

Commented [JDE2]: See comment above about the mandatory separation of Smart Growth Zoning and underlying zoning. In my opinion it would be fine to list here the accessory uses in those sections of the Use Table, but by simply referencing the use table the Smart Growth zoning requirements are tied to underlying zoning, which I understand is not permissible. I recommend that you confirm with DHCD if you haven't already that such references are permissible.

Commented [JDE3]: See comment above about references to the underlying zoning.

- iii. Health and fitness center
- iv. Commercial indoor amusement or recreation place or place of assembly.
- (c) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- (d) The total gross floor area devoted to non-residential uses within a Mixed-use Development Project shall not exceed 49% of the total gross floor area of the Project.
- (3) **Other Uses.** Any of the following non-residential uses may be permitted as-of-right, by Plan Approval:
 - (a) Farmers Market or Mobile Markets

E. HOUSING AND HOUSING AFFORDABILITY

- (1) **Number of Affordable Housing Units.** For all Projects containing at least 13 residential units, not less than twenty percent (20%) of homeownership housing units constructed shall be Affordable Housing ~~pursuant to M.G.L. Chapter 40R~~. For all projects under 13 units, the Town's Inclusionary Zoning Bylaw shall apply. Unless the PAA provides a waiver on the basis that the Project is not otherwise financially feasible, not less than twenty-five percent (25%) of rental dwelling units constructed in a Project containing rental units must be Affordable Rental Units pursuant to M.G.L. Chapter 40R. 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 above.
 - (a) Across all project sizes, whether ownership or rental, not less than eight percent (8%) of units shall be made affordable to eligible applicants at 60% AMI and the balance of the affordable units shall be restricted to eligible applicants at 80% AMI.
- (2) **Monitoring Agent.** The Lancaster Affordable Housing Trust, or its designee, shall be the Monitoring Agent designated by the Lancaster Select Board ("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 NLSGOD, and on a continuing basis thereafter, as the case may be:
 - (a) Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed.
 - (a) Income eligibility of households applying for Affordable Housing is properly and reliably determined;

Commented [JDE4]: See comment above about referencing underlying zoning. I recommend inserting the applicable requirements directly in this bylaw.

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- (b) 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. Chapter 40R and 760 CMR 59.00, and are 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; and
 - (e) Affordable Housing Restrictions meeting the requirements of this section are approved by DHCD specifically with regard to conformance with M.G.L. Chapter 40R and 760 CMR 59.00, and recorded with the proper registry of deeds.
- (3) **Submission Requirements.** As part of any application for Plan Approval for a Project within the NLS GOD submitted under Sections H through L (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:
- (a) Evidence that the Project complies with the cost and eligibility requirements of Section E.(4);
 - (b) Project plans that demonstrate compliance with the requirements of Section E.(5); and
 - (c) A form of Affordable Housing Restriction that satisfies the requirements of Section E.(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.

- (4) **Cost and Eligibility Requirements.** Affordable Housing shall comply with the following requirements:
- (a) Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
 - (b) 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 another affordable housing program methodology for calculating rent limits as approved by DHCD applies.

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- (c) 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, parking and insurance, 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 another affordable housing program methodology for calculating rent limits as approved by DHCD applies.

Commented [JDE5]: I believe this is a requirement under G.L. c.40R. Was there a reason to exclude it here?

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

- (5) **Design and Construction.** Units of Affordable Housing shall be finished housing units. With respect to the minimum required number for a given Project, units of Affordable Housing shall be equitably integrated and proportionately dispersed throughout the residential portion of the Project of which they are 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 and be comparable in initial construction quality, size and exterior design to the other housing units in the Project. The Affordable Housing shall be indistinguishable from the unrestricted/market-rate units. Unless expressly required otherwise under one or more applicable state or federal housing subsidy programs, the bedroom-per-unit average for the Affordable Housing must be equal to or greater than the bedroom-per-unit average for the unrestricted/market-rate units.
- (6) **Affordable Housing Restriction.** Each Project 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 which contains the following:
- (a) Specification of the term of the Affordable Housing Restriction which shall be in perpetuity or the longest time that is legally allowed.
 - (b) The name and address of the Monitoring Agent 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, initial unit designations and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project 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.

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- (d) 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.
 - (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 an Affordable Rental Unit, or the maximum resale price of an Affordable Homeownership Unit will be set.
 - (g) 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.
 - (h) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction (AHR) by the Monitoring Agent.
 - (i) 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.
 - (j) 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.
 - (k) 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.
 - (l) A requirement that residents in Affordable Housing provide such information as the Monitoring Agent may reasonably request in order to ensure affordability.
- (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.

- (8) **Age Restrictions.** Nothing in this Section 220-8.9 shall permit the imposition of restrictions on age upon Projects unless proposed or agreed to voluntarily by the Applicant. However, the PAA may, in its review of a submission under Section 220-8.9E.(3) allow a specific Project within the NLSGOD designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable units.
- (9) **Phasing.** For any Project that is approved and developed in phases in accordance with Section H.(4), the percentage of Affordable units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section E.(1). Where the percentage of Affordable Housing is not uniform across all phases, the unit dispersal and bedroom proportionality requirements under Section E.(5) shall be applied proportionately to the Affordable Housing provided for in each respective phase.
- (10) **No Waiver.** Notwithstanding anything to the contrary herein, the Affordability provisions in this Section E shall not be waived unless expressly approved in writing by DHCD.

Commented [JDE6]: I understand that 760 CMR 59.08 allows DHCD to waive any provision of 760 CMR 59.00, but it is not clear to me that pursuant to this authority DHCD may waive application of local Smart Growth requirements once adopted by Town Meeting. I recommend confirming with DHCD.

F. DIMENSIONAL AND DENSITY REQUIREMENTS - GENERAL

- (1) **Table of Requirements.** Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the NLSGOD are as follows:

Lot Area	Minimum lot area = 44,000 square feet. At least 90% of the lot area requirement must be met without including any "wetland" as defined in M.G.L. Chapter 131, §40.
Lot Frontage	Minimum lot frontage = 100 feet.
Front Yard Setback	Not less than 30 feet.
Side & Rear Setback	Not less than 20 feet unless abutting a residential use, then the setback shall be not less than 40 feet.
Building Height	No building or portion thereof or other structure of any kind shall exceed 40 feet excluding chimneys, towers, spires, cupolas, antennas, or other projections of or attachments to a building that do not enclose potentially habitable floor space, provided that they do not exceed the height of the building by more than ten (10) feet or 20% of building height, whichever is greater.

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Minimum As-of-Right Residential Density	(1) A density of at least eight (8) units per acre for Developable Land zoned for single-family residential use; (2) A density of at least twelve (12) units per acre for Developable Land zoned for 2- and/or 3-family residential use; or (3) A density of at least twenty (20) units per acre for Developable Land zoned for multi-family residential use.
Maximum As-of-Right Residential Density	Twenty-five (25) residential units per acre for Developable Land zoned for residential use.

- (2) **Dimensional Waivers in Substantially Developed Sub-district.** The PAA may, in order to encourage the development of infill housing units on undeveloped lots within a Substantially Developed Sub-district, grant a waiver to the dimensional standards of Section F.(1), in accordance with Section J.(3).

Commented [JDE7]: Does this apply to the NLSGOD? It does not appear to contain any subdistricts.

G. PARKING REQUIREMENTS - GENERAL

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

- (1) **Number of parking spaces.** Unless otherwise found to be Unduly Restrictive with respect to Project feasibility and approved by the PAA, the parking requirements in Article IV: Required Off-Street Parking shall be applicable to all projects in the SGOD by use, either in surface parking, within garages or other structures,

Commented [JDE8]: See comment above about referencing underlying zoning.

The PAA may allow for additional visitor parking spaces beyond the maximum spaces per unit if deemed appropriate given the design, layout, and density of the proposed residential or other development. The PAA may allow for a decrease in any required parking as provided in Sections (2) and (3) below.

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

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that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

- (a) The availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus stop or transit station.
 - (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) To the extent consistent with 760 CMR 59.04(1)(g) and 760 CMR 59.04(1)(i)1., age or other occupancy restrictions which are likely to result in a lower level of auto usage.
 - (e) Impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and
 - (f) Any applicable transportation demand management strategies that will be integrated into the Project or such other factors as may be considered by the PAA.
- (4) **Location of 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, but shall be allowed in the front of the building if doing so ensures safer parking areas.

H. PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS

- (1) **Plan Approval.** An application for Plan Approval shall be reviewed by the PAA for consistency with the purpose and intent of Sections H.9 through L.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. The following categories of Projects shall be subject to the Plan Approval process:
- (a) Any Residential Project containing at least thirteen [13] residential units;
 - (b) Any Mixed-use Development Project;
 - (c) Any project consisting solely of non-residential uses; and
 - (d) Any Project seeking a waiver.
- (2) **Plan Approval Authority (PAA).** The 40R Plan Approval Committee, consistent with M.G.L. Chapter 40R and 760 CMR 59.00, shall be the Plan Approval Authority (the "PAA"), and it is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within ~~the~~an SGOD. The 40R Plan Approval Committee shall include one (1) representative member chosen by each of the following Town of Lancaster Boards from their membership: Planning Board, Zoning Board of Appeals, Conservation Commission, Affordable Housing Trust, and Economic Development Committee. The 40R Plan

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Approval Committee shall be appointed by the Lancaster Select Board for three (3) years. The Zoning Board of Appeals representative will be ineligible to act on an appeal under Chapter 40A §8 to the Zoning Board of Appeals for a 40R application decision.

Commented [JDE9]: It's not clear to me why this provision is needed. Decisions of the Plan Approval Authority are appealed to court pursuant to G.L. c.40a, s.17. The ZBA member would not be precluded from hearing an appeal from a Project approval of the Building Commissioner

- (3) **PAA Regulations.** The Plan Approval Authority may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations and any amendments thereof must be approved by the DHCD.
- (4) **Project Phasing.** An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases, provided that the submission shows the full buildout of the Project and all associated impacts as of the completion of the final phase, and subject to the approval of the PAA. Any phased Project shall comply with the provisions of Section E.(9).

I. PLAN APPROVAL PROCEDURES

- (1) **Preapplication.** Prior to the submittal of a Plan Approval submission, a "Concept Plan" may be submitted to help guide the development of the definitive submission for Project buildout and individual elements thereof. Such Concept Plan should reflect the following:
 - (a) Overall building envelope areas;
 - (b) Open space and natural resource areas;
 - (c) 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 an~~ SGOD.
- (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 E, the application shall be accompanied by all materials required under Section E.(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.
- (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

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with the Town Clerk and a copy of the application including the date of filing certified by the Town Clerk shall be filed forthwith with the PAA.

- (4) **Circulation to Other Boards.** Upon receipt of the application, the PAA shall immediately provide a copy of the application materials to the Affordable Housing Trust (and Monitoring Agent, if already identified, for any Project subject to the Affordability requirements of Section E), Select Board, Board of Appeals, Board of Health, Conservation Commission, Economic Development Committee (if mixed-use), Fire Department, Planning Board, Police Department, Building Commissioner, Department of Public Works, and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.
- (5) **Hearing.** The PAA shall hold a public hearing for which notice has been given as provided in Section 11 of G.L. Chapter 40A. The decision of the PAA shall be made by simple majority vote, and a written notice of the decision filed with the Town Clerk, within 120 days of the receipt of the application by the Town Clerk. The required time limits for such action may be extended by written agreement between the Applicant and the PAA, with a copy of such agreement being filed in the office of the Town Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the Plan Approval application.
- (5) **Peer Review.** The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to M.G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Town in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

J. PLAN APPROVAL DECISIONS

- (1) **Plan Approval.** Plan Approval shall be granted where the PAA finds that:
 - (a) the Applicant has submitted the required fees and information as set forth in the PAA Regulations; and
 - (b) the Project as described in the application meets all of the requirements and standards set forth in this Section 220-8.9 and the PAA Regulations, or a waiver has been granted therefrom; and
 - (c) 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 E., compliance with condition (b) above shall include written confirmation by the Monitoring Agent that all requirements of that Section have been satisfied. Any Plan Approval decision for a

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Project subject to the affordability restrictions of Section E. shall specify the term of such affordability, which shall in perpetuity or the longest time that is legally allowed.

The PAA may attach conditions to the Plan Approval decision that are necessary to ensure substantial compliance with this Section 220-8.9, or to mitigate any extraordinary adverse potential impacts of the Project on nearby properties.

- (2) **Plan Disapproval.** A Plan Approval application may be disapproved only where the PAA finds that:
 - (a) The Applicant has not submitted the required fees and information as set forth in the Regulations; or
 - (b) The Project as described in the application does not meet all of the requirements and standards set forth in this Section 220-8.9 and the PAA Regulations, or that a requested waiver therefrom has not been granted; or
 - (c) It is not possible to adequately mitigate extraordinary adverse Project impacts on nearby properties by means of suitable conditions.
- (3) **Waivers.** Upon the request of the Applicant and subject to compliance with M.G.L. Chapter 40R, 760 CMR 59.00 and Section E.(10), the Plan Approval Authority may waive dimensional and other requirements of Section F., including the Design Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SGOD, or if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this Section 220-8.9.
- (4) **Project Phasing.** The PAA, as a condition of any Plan Approval, may allow a Project to be phased at the request of the Applicant, or it may require a Project to be phased for the purpose of coordinating its development with the construction of Planned Infrastructure Improvements (as that term is defined under 760 CMR 59.00), or to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, unless otherwise explicitly approved in writing by the Department in relation to the specific Project, the proportion of Affordable units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section E.(1).
- (5) **Form of Decision.** The PAA shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the

Commented [JDE10]: See comment above re: waiver. I do not see where DHCD approval is required.

Town Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the 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.

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

K. CHANGE IN PLANS AFTER APPROVAL BY PAA

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

L. DESIGN STANDARDS - GENERAL

- (1) **Adoption of Design Standards.** Any Project undergoing the Plan Approval process shall be subject to design standards as set forth below in this Section L. ("Design Standards").
- (2) **Purpose.** The Design Standards are adopted to ensure that the physical character of Projects within the SGOD:
 - (a) Will be complementary to nearby buildings and structures;
 - (b) Will be consistent with the Housing Production Plan, an applicable master plan,

Commented [JDE11]: There don't appear to be any design standards in the bylaw. I recommend you include design standards here, or indicate here that design standards will be set forth the PAA Regulations. You will not be able to apply design standards to projects unless you include them in the bylaw or regulations. I recommend that you include them in the bylaw if possible.

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an area specific plan, or any other plan document adopted by the Town; and

- (c) Will provide for high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Town or in the region of the Town.

M. SEVERABILITY. If any provision of this Section 220-8.9 is found to be invalid by a court of competent jurisdiction, the remainder of Section 220-8.9 shall not be affected but shall remain in full force. The invalidity of any provision of this Section 220-8.9 shall not affect the validity of the remainder of the Town's Zoning Bylaw.

N. ESTABLISHMENT AND DELINEATION OF THE SMART GROWTH OVERLAY DISTRICTS

(1) NORTH LANCASTER SMART GROWTH OVERLAY DISTRICT

- (a) **Establishment.** The North Lancaster Smart Growth Overlay District, hereinafter referred to as the "NLSGOD," is an overlay district having a land area of approximately 64 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 Lancaster Smart Growth Overlay District, dated _____, prepared by the Montachusett Regional Planning Commission's GIS Department." This map is hereby made a part of the Zoning Bylaw and is on file in the Office of the Town Clerk.

- (b) **Subdistricts.** The NLSGOD contains no subdistricts.

(2) PERMITTED USES – (DISTRICT-SPECIFIC)

The following uses are permitted As-of-Right for Projects within the NLSGOD but will be subject to Plan Approval by the PAA.

- (a) **Residential Projects.** A Residential Project within the NLSGOD may include:
 - i. Single-family, 2- and 3- family, and/or Multi-family Residential Use(s);
 - ii. Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
 - iii. Accessory uses customarily incidental to any of the above permitted uses.
- (b) **Mixed-use Development Projects.** A Mixed-use Development Project within the NLSGOD may include:
 - i. Single-family, 2- and 3- family, and/or Multi-family Residential Use(s), provided that the minimum allowable as-of-right density requirements for residential use specified in Section F.(1) shall apply to the residential portion of any Mixed-use Development Project;

Commented [JDE12]: This section appears to duplicate to a large extent what is already in the bylaw. I recommend that you eliminate this section and include any relevant provisions in the earlier sections.

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- ii. Any of the Non-residential uses listed in D.(2)(b).
- (c) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- (d) Accessory uses customarily incidental to any of the above permitted uses.

The total gross floor area devoted to Non-residential uses within a Mixed-use Development Project shall not exceed 49% of the total gross floor area of the Project.

(3) **DIMENSIONAL AND DENSITY REQUIREMENTS – (DISTRICT-SPECIFIC)**

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

Lot Area	Minimum lot area = 44,000 square feet. At least 90% of the lot area requirement must be met without including any “wetland” as defined in M.G.L. Chapter 131, § 40
Lot Frontage	Minimum lot frontage = 100 feet
Front Yard Setback	Not less than 30 feet
Side & Rear Setback	Not less than 20 feet unless abutting a residential use, then the setback shall be not less than 40 feet.
Building Height	No building or portion thereof or other structure of any kind shall exceed 40 feet excluding chimneys, towers, spires, cupolas, antennas, or other projections of or attachments to a building that do not enclose potentially habitable floor space, provided that they do not exceed the height of the building by more than ten (10) feet or 20% of building height, whichever is greater.
As-of-Right Residential Density	(1) A density of at least eight (8) units per acre for Developable Land zoned for single-family residential use; (2) A density of at least twelve (12) units per acre for Developable Land zoned for 2- and/or 3-family residential use; or (3) A density of at least twenty (20) units per acre for Developable Land zoned for multi-family residential use.
Maximum As-of-Right Residential Density	Twenty-five (25) residential units per acre for Developable Land zoned for residential use.