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CITY OF HAVERHILL

In Municipal Council December 5 2006

~~ORDINANCE~~

MUNICIPAL ORDINANCE

CHAPTER

DOWNTOWN HAVERHILL SMART OVERLAY DISTRICT CHAPTER 40R

Note: This zoning text and map amendment establishes a new 40R Smart Growth Overlay District in the Haverhill Zoning Ordinance (HZO). In addition to establishing this district in Section 255-98, the City Council must also adopt an additional amendment to Section 255-7 "Establishment of Districts" to add this new district with the name shown below.

SECTION 255-98 DOWNTOWN SMART GROWTH OVERLAY DISTRICT (DSGOD)

A. PURPOSE

It is the purpose of this Section to establish a Downtown Smart Growth Overlay District and to encourage smart growth in accordance with the purposes of G. L. Chapter 40R, and to foster a range of housing opportunities along with a mixed-use development component, to be proposed in a distinctive and attractive site development program that promotes compact design, preservation of open space, and a variety of transportation options, including enhanced pedestrian access to employment and nearby rail access. Other objectives of this Section are to:

1. Promote the public health, safety, and welfare by encouraging 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 preserving municipal character and diversity;
3. Increase the production of a range of housing units to meet existing and anticipated housing needs;
4. Provide a mechanism by which residential development can contribute directly to increasing the supply and diversity of housing;
5. Establish requirements, standards, and guidelines, and ensure predictable, fair and cost-effective development review and permitting;
6. Establish development standards to allow context-sensitive design and creative site planning; and
7. Enable the City to receive Zoning Incentive Payments and/or Density Bonus Payments in accordance with G. L. Chapter 40R, 760 CMR 59.06, and G.L. Chapter 40S, arising from the development of housing in the DSGOD.

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(2 extra pages)

For hearing Dec 19

B. DEFINITIONS

For purposes of this Section 255-98, the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Enabling Laws or this Section 255-98, 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 255.98 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, Section 31 and the requirements of Section G of this Ordinance.

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

Artist Live/Work Unit - a residential use that permits up to 50% of the gross floor area of a residential dwelling unit to be used for the production of, showing, and sale of arts and crafts made on the premises by the occupant of said unit. Additionally, for the purposes of this DSGOD, this term shall also mean a building or buildings where a portion of the total space is used for residential purposes and other portions, not to exceed 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 - means a Multifamily Development, mixed use development, or townhouse development allowed under Section 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 percent of the area-wide median income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

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

Multifamily Development - A residential structure containing four or more dwelling units.

Plan Approval- standards and criteria which a Project in the DSGOD 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 DSGOD, the City Council, consistent with G.L. Chapter 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 ballfields; 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 or three dwelling units.

Zoning Ordinance - the Zoning Ordinance of the City of Haverhill.

C. OVERLAY DISTRICT

1. Establishment. The Downtown Smart Growth Overlay District, hereinafter referred to as the DSGOD, is an overlay district having a land area of approximately 54 gross acres in size that is superimposed over the underlying zoning district applicable to a portion of the property shown on the map entitled "Downtown Smart Growth Overlay District," dated August 8, 2006 (the "DSGOD Map"). This 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 five subzones within the DSGOD:

- High Density 220 (Subzone A)
- High Density 120 (Subzone B)
- High Density 65 (Subzone C)
- Multifamily 20 (Subzone D)
- Townhouse (Subzone E)

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

3. Underlying Zoning. The DSGOD is an overlay district superimposed on all underlying zoning districts. When a building permit is issued for any Project approved in accordance with this Section 255-98, 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 255-98(K) for such Project.

D. APPLICABILITY OF DSGOD

In accordance with the provisions of G.L. Chapter 40R and 760 CMR 59.00, an Applicant for a Project located within the DSGOD may seek Plan Approval in accordance with the requirements of this Section 255-98. In such case, then 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 or phased growth limitation or to a local moratorium on the issuance of such permits, or to building permit or dwelling unit limitations.

E. PERMITTED USES

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

1. Multifamily Development in Subzones A, B, C, and D only.
2. Mixed-Use Development in all subzones; provided, however, that in Subzones A, B and C, 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 the structure shall be residential;
 - b. Not more than 5% of the gross floor area of the structure shall be nonresidential and all such nonresidential uses shall be located on the first floor only.
3. The following nonresidential uses are allowed as of right in a Mixed Use Development:
 - Professional Offices
 - Retail, Business and Consumer Service Establishments
 - Commercial and Financial Services
 - Eating and Drinking Establishments
4. Artist Live/Work in Subzone D and E.
5. Townhouse Development, in Subzone E only.
6. Parking, including surface, garage-under, and structured parking (e.g., parking garages).
7. Open Space and Recreational Uses.

8. Accessory uses customarily incidental to any of the above permitted uses shall be permitted.

F. PROJECT PHASING

The PAA, as a condition of any Plan Approval, may require a Project to be phased to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, the proportion of Affordable units and the proportion of market rate units shall be consistent across all phases.

G. HOUSING AND HOUSING AFFORDABILITY

1. Marketing Plan. Prior to granting Plan Approval for housing within the DSGOD, 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 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. For all Projects, not less than twenty percent (20%) of housing units constructed shall be Affordable Housing. For purposes of calculating the number of units of Affordable Housing required, 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:

1. For an Affordable Rental Unit, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless other affordable program rent limits approved by the DHCD shall apply.

2. For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, insurance, and parking, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one.

3. Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

4. The DSGOD 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, 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 twenty-five percent (25%) of the housing units in such a restricted Project shall be 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.

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 have exteriors that are equivalent in design and materials to the exteriors of 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 which contains the following:

1. specification of the term of the affordable housing restriction which shall be no less than thirty years, but which may, as a requirement of Plan Approval, be for a longer period of time;
2. the name and address of an administering agency with a designation of its power to monitor and enforce the affordable housing restriction;
3. a description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project without specific unit identification.
4. reference to a housing marketing and resident selection plan, to which the Affordable Housing is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan may provide for preferences in resident selection to the extent consistent with applicable law 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;

5. a requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
6. reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership will be set;
7. designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions, provided that a first mortgage of a Homeownership Housing Unit to a commercial lender in an amount less than maximum resale price may have priority over the Affordable Housing Restriction if required by then current practice of commercial mortgage lenders;
8. 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 administering agency;
9. provision for effective monitoring and enforcement of the terms and provisions of the affordable housing restriction by the administering agency;
10. provision that the restriction on an Affordable Homeownership Unit shall run in favor of the administering agency 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;
11. 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 Administering Agency and the City, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;
12. provision that the owner[s] or manager[s] of Affordable Rental Unit[s] shall file an annual report to the administering agency, in a form specified by that 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;
13. a requirement that residents in Affordable Housing provide such information as the administering agency may reasonably request in order to ensure affordability.

6. Administering Agency. An administering agency which may be the Local Housing Authority, or other qualified housing entity (the "Administering Agency") shall be designated by the PAA as the Administering Agency for all Projects in the DSGOD. In a case where the Administering Agency cannot adequately carry out its administrative duties, upon certification 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 or, in the absence of such timely designation, by an entity designated by the DHCD. In any event, such Administering Agency shall ensure the

following both prior to issuance of a building permit for a Project within the DSGOD and on a continuing basis thereafter, as the case may be:

1. prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
2. income eligibility of households applying for Affordable Housing is properly and reliably determined;
3. the housing marketing and resident selection plan conforms to all requirements and is properly administered;
4. sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given;
5. Affordable Housing Restrictions meeting the requirements of this section are recorded with the proper registry of deeds;

8. Housing Marketing and Selection Plan. The housing marketing and selection plan may make provision for payment by the Project applicant of reasonable costs to the administering agency to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements. Such payment shall not exceed one-half (1/2%) percent of the amount of rents of Affordable Rental Units (payable annually) or one (1%) percent of the sale or resale prices of Affordable Homeownership Units (payable upon each such sale or resale), as applicable.

9. Computation. Prior to the granting of any Plan Approval of a Project, the applicant for such building permit must demonstrate, to the satisfaction of the Administering Agency, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to Haverhill;

10. No Waiver. Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 255-98 shall not be waived.

H. DENSITY

1. High Density 220 - Subzone A. The density in Subzone A shall be 220 dwellings as of right per acre. In the alternative, where an existing building is rehabilitated, the density (number of dwelling units) shall be the gross square feet contained in the existing building, minus twenty-five percent, divided by 1200 square feet.

2. High Density 120 - Subzone B. The density in Subzone B shall be 120 dwellings as of right per acre. In the alternative, where an existing building is rehabilitated, the density (number of

dwelling units) shall be the gross square feet contained in the existing building, minus twenty-five percent, divided by 1200 square feet.

3. High Density 65 - Subzone C. The density in Subzone C shall be 65 dwellings as of right per acre. In the alternative, where an existing building is rehabilitated, the density (number of dwelling units) shall be the gross square feet contained in the existing building, minus twenty-five percent, divided by 1200 square feet.

4. Multifamily 20 - Subzone D. The density in Subzone D shall be 20 dwellings as of right per acre.

5. Townhouse 12 - Subzone E. The density in Subzone E shall be 12 dwellings as of right per acre.

I. PARKING REQUIREMENTS

1. General. The purpose of these parking requirements is to encourage the use of public transportation and to make the downtown more pedestrian friendly. Parking requirements within the DSGOD are as follows.

1. Surface parking lots and parking structures shall provided pedestrian walkways and connections to the sidewalk system.
2. Parking structures shall be designed to be compatible with adjacent buildings and architecture.

2. Minimum Off-Street Parking Space Requirements.

Residential Use:	1.2 spaces per one bedroom unit
	1.4 spaces per two bedroom and three bedroom unit

Such off-street parking spaces shall be established no further than 800 feet from the premises to which they are appurtenant.

3. Shared Parking. The use of shared parking to fulfill parking demands noted above that occur at different times of day may be considered by the PAA. Minimum parking requirements above may be reduced at the discretion of the PAA 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). The applicant is encouraged to use the public parking facilities available in the downtown area and to lease those facilities in non-peak hours.

4. Reduction of Parking Requirement. The required amount of parking may be reduced at the discretion of the PAA upon a showing 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. The PAA may consider:

1. the availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus or an MBTA transit station;
2. the availability of public or commercial parking facilities in the vicinity of the use being served;
3. shared use of off street parking spaces serving other uses having peak user demands at different times;
4. age, income or other characteristics of the likely applicants which are likely to result in a lower level of auto usage;
5. 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.

K. DESIGN STANDARDS

1. General Design Standards. The following Design Standards shall apply in all subzones.

1. The design of new buildings shall preserve existing views to the Merrimack River, and incorporate site and building design features that may help to preserve those views from public rights-of-way.
2. New buildings shall be sited to preserve view corridors, particularly to the Merrimack River.
3. Drive-in facilities shall not have driveways entering or exiting over the main frontage sidewalk.
4. Signs shall conform to the requirements for C districts set forth in Article VII of the Zoning Ordinance dated in effect as of August 8, 2006; provided, however, that Sections 255-33.c and 255-34.i shall not apply in the DSGOD.
5. When dumpsters, utility meters, mechanical units and service areas cannot be located away from the street front, they shall be screened from view and shall not be located in the pedestrian right-of-way.
6. Lighting shall not create overspill onto adjacent properties or into the night sky.

2. Subzone Design Standards. The following Design Standards shall apply in the various subzones, as set forth below:

High Density 220 - Subzone A: Existing structures within the High Density 220 Subzone A are eight-plus story mill structures. It is anticipated that housing production within Subzone A will take place entirely as redevelopment of existing buildings.

1. Some mixed use is required on the first floor, restricted to allowed nonresidential uses, where oriented towards the street. No mixed use shall take place other than on the first floor. Not more than 5% of the gross floor area of the structure shall be devoted to such mixed use.
2. Maximum height of the building shall be no greater than the height of the existing structure in the subzone.

B. High Density 120 - Subzone B: Existing structures within the High Density 120 Subzone B are seven-plus story mill structures. It is anticipated that housing production within Subzone B will take place entirely as redevelopment of existing buildings.

1. Some mixed use is required on the first floor, restricted to allowed nonresidential uses, where oriented towards the street. No mixed use shall take place other than on the first floor. Not more than 5% of the gross floor area of the structure shall be devoted to such mixed use.
2. Maximum height of the building shall be no greater than the height of the existing structure in the subzone.

C. High Density 65 - Subzone C: Existing structures within the High Density 65 Subzone C are eight-plus story mill structures. It is anticipated that housing production within Subzone C will take place entirely as redevelopment of existing buildings.

1. Some mixed use is required on the first floor, restricted to allowed nonresidential uses, where oriented towards the street. No mixed use shall take place other than on the first floor. Not more than 5% of the gross floor area of the structure shall be devoted to such mixed use.
2. Maximum height of the building shall be no greater than the height of the existing structure in the subzone.

D. Multifamily 20 - Subzone D:

Washington Street Design Standards.

2. Along Locust Street frontage, step back requirement shall begin at 3 stories.

L. APPLICATION FOR PLAN APPROVAL

1. Required Submittals. The application for Plan Approval shall be accompanied by twenty (20) copies of the following plans and documents, which shall demonstrate consistency with the standards set forth in this DSGOD. 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, and shall show the following.

1. The perimeter dimensions of the lot; Assessors Map, lot and block numbers.
2. All existing and proposed buildings, structures, building setbacks, parking spaces, driveway openings, distance between buildings, plan view exterior measurements of individual buildings, driveways, service areas and open areas.
3. Internal roads, sidewalks and parking areas (width dimensions of paving and indication of number of parking spaces).
4. All facilities for sewage, refuse and other waste disposal and for surface water drainage.
5. All proposed landscaping features, such as fences, walls, planting areas and walks on the lot and tract.
6. Existing major natural features, including streams, wetlands and all trees six inches or larger in caliper (caliper is girth of the tree at approximately waist height).
7. Scale and North arrow (minimum scale of one inch equals 40 feet).
8. Total site area in square footage and acres and area to be set aside as public open space, if appropriate.
9. Percentage of lot coverage (including the percentage of the lot covered by buildings) and percentage of open space, if appropriate.
10. The proposed residential density in terms of dwelling units per acre and types of proposed commercial uses in terms of the respective floor area, and recreation areas, and number of units proposed by type: number of one bedroom units, two-bedroom units, etc., if appropriate.

1. New construction in this subzone shall provide public access and view corridors to the Merrimack River from Washington Street.
2. Mixed use is required, with first floor restricted to allowed nonresidential uses on street frontage.
3. Buildings shall be oriented perpendicular to the riverfront, or in such fashion as to maximize view corridors to the river.
4. Buildings shall be designed in a manner so as to present a “front” façade to both the Washington Street streetscape as well as to the riverfront. Dual entries from Washington Street and from the riverfront façade are required to promote the City’s vision for an active, public downtown waterfront.
5. First floor use along Washington Street and along the riverfront shall be of a public and/or commercial nature.
6. Maximum height shall not exceed 6 stories overall, with a 4 story maximum at Washington Street. If higher than 4 stories, building shall step from Washington Street frontage from the front cornice line along a 45 degree bulk control plane which begins at the cornice height at the front lot line.
7. In exchange for an easement for the public’s right to pass from Washington Street to the City’s planned Riverwalk, a proposed project may request an increase in height and density from standard dimensional regulations contained herein. No building shall exceed a maximum height of 8 stories under any circumstances. The PAA will weigh the value of the proposed public benefit against any potential impacts when deciding whether to grant such a request.

Historic District; Design Standards.

1. Proposed development shall be subject to advisory review by the Washington Street Historic District Commission.
2. Mixed use is required, with first floor restricted to allowed nonresidential uses on street frontages.
3. Maximum Height shall be 4 stories.

E. Townhouse 12 - Subzone E: This subzone is comprised of smaller scale structures than the rest of the DSGOD, and abuts single and two-family residential areas.

1. Maximum height shall not exceed 4 stories.

11. Location sketch map (indicate surrounding streets and properties and any additional abutting lands owned by the applicant).

12. Representative elevation sketches of buildings (indicate height of building and construction material of the exterior facade).

13. Typical unit floor plan for residential uses. (Floor plan should be indicated for each type of unit proposed: either one bedroom, two bedrooms or more.) The area in square feet of each typical unit should be indicated.

14. Developer's (or his representative's) name, address and phone number.

15. Draft Housing Marketing and Selection Plan as required by Section 255-98 G.1.

16. Evidence that the Project complies with the cost and eligibility requirements of Section 255-98 G.3

17. Project plans that demonstrate compliance with the requirements of Section 255-98 G.4

18. A form of Affordable Housing Restriction that satisfies the requirements of Section 255-98 G.5.

19. Any other information which may include required traffic, school, and/or utilities impact study and in order to adequately evaluate the scope and potential impacts of the proposed project.

2. Rehabilitation Plan. If living quarters are to be rehabilitated, or areas to be converted into living quarters, in addition to the required site plan, nine copies of the following described plan shall be furnished:

1. A floor plan of each floor on which remodeling is to be done or areas converted into living quarters;

2. 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; and

3. 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, it shall be drawn to scale 1/4 inch equals one 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.

M. PROCEDURES

1. Filing. An applicant for Plan Approval shall file the application and all required submittals with the City Clerk and shall also 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.

2. Circulation to Other Boards. Upon receipt of the Application, the PAA shall immediately provide a copy of the application materials to the Planning Board, Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, Community Development, and other municipal officers, agencies or boards designated by the PAA 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.

3. 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, 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 for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to G.L. c. 40R, s. 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 interest accrued, shall be returned to the applicant.

N. DECISION

1. Waivers. Except where expressly prohibited herein, upon the request of the Applicant, the Plan Approval Authority may waive dimensional and other requirements of Section 255-98 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 DSGOD, 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 255-98.

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 that:

1. the applicant has submitted the required fees and information as set forth in this Section 255-98; and
2. the Project and site plan meet the requirements and standards set forth in this Section 255-98, or a waiver has been granted therefrom; and
3. extraordinary adverse potential 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 that:

1. the applicant has not submitted the required fees and information as set forth in this Section 255-98; or
2. the Project and site plan do not meet the requirements and standards set forth in this Section 255-98, or a waiver has not been granted therefrom; or
3. 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 the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the City Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the City Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the City Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the 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.

O. CHANGE IN PLANS AFTER APPROVAL BY PAA

1. Minor Change. After Plan Approval, an applicant may apply to make minor changes involving minor utility or building orientation adjustments, or minor adjustments to parking or

