

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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August 13, 2007

Mary Lou Murzyn, Town Clerk
26 Evergreen Street
Kingston, MA 02364

RECEIVED
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TOWN OF
KINGSTON

**RE: Kingston Annual Town Meeting of April 9, 2007 — Case # 4258
Warrant Article # 15 (40R Smart Growth Zoning)**

Dear Ms. Murzyn:

Article 15 - I return with the approval of this Office the amendments to the town by-laws adopted under this Article on the warrant for the Kingston annual town meeting that convened on April 9, 2007, and the map pertaining to it, except as provided below.

The amendments adopted under Article 15 add to the town's zoning by-laws a new Section 4.15, "1021 Kingston's Place Smart growth District." The proposed by-law was adopted pursuant to General Laws Chapter 40R and the regulations adopted thereunder. General Laws Chapter 40R encourages housing production aligned with the principles of "smart growth," and by using G.L. c. 40R towns may obtain financial and other incentives accorded exclusively to Smart Growth Zoning Districts. General Laws Chapter 40R prescribes the methods for a town to establish a Smart Growth Zoning District and requires approval by this Office and by the Department of Housing and Community Development (DHCD).

We point out that the town must still comply with the provisions of G.L. c. 40R, § 4 (b), by obtaining final approval from DHCD of the Smart Growth Overlay District. Our partial approval of the amendments adopted under Article 15 is conditioned upon approval by DHCD. Thus, the amendments adopted under Article 15 do not take effect unless and until the town receives both such approvals and the town clerk posts and publishes the by-law provisions in accordance with G.L. c. 40, § 32. We also caution the town that it may not be eligible for financial and other incentives until it receives final approval from DHCD. We suggest that you discuss this issue in more detail with your town counsel and directly with DHCD.

We call the town's attention to Section 4.15.4, "Definitions," which would have defined the



phrase "Eligible Household" as follows:

4.15.4.17 ELIGIBLE HOUSEHOLD - An individual or household whose annual income is at or below eighty percent (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.

(Emphasis added.)

We disapprove and delete the above underlined text as inconsistent with the definition of "Affordable Housing" as defined in G.L. c. 40R, § 2, and 760 C.M.R. § 59.02. **[Disapproval # 1 of 1]** The definition of "Affordable Housing" provides as follows:

"Affordable housing", housing affordable to and occupied by individuals and families whose annual income is less than 80 per cent of the areawide median income as determined by the United States Department of Housing and Urban Development. Affordability shall be assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184.

(Emphasis added.)

The definition of Affordable Housing as quoted above provides that it is housing is affordable to and occupied by individuals and families whose annual income is less than 80 percent of the areawide median income However, Section 4.15.4.17 defines "Eligible Household" to be an individual or household whose annual income is at or below 80 percent of the area-wide median income. Under General Laws Chapter 40R, twenty percent of the housing in the 40R District must be affordable to those earning 80% or less of the median income and be deed restricted for at least 30 years. In order for the proposed by-law to be consistent with G.L. c. 40R, and the regulations adopted thereunder, the definition of "Eligible Household" must be written and applied in a manner consistent with the definition of "Affordable Housing" as provided in G.L. c. 40R, and 760 C.M.R. § 59.02. By defining "Eligible Household" to include those whose income is at 80 percent is inconsistent with the definition of Affordable Housing."

We next call the town's attention to Section 4.15.6.6, which pertains to air pollutants and provides as follows:

Except as herein provided, all use and conditions of land, buildings and structures shall be in conformance with the Regulations 310 CMR 6.00-8.00 of the Department of Environmental Protection, Commonwealth of Massachusetts, Dec. 31, 1981 and amendments thereto.

Sections 4.15.6.7 through 4.15.6.9 of the proposed by-law pertain to noise, odor, heat, glare, and vibration. In approving Sections 4.15.6.6 through 4.15.6.9, we point out that nothing in the

proposed by-law relieves an applicant from complying with DEP's regulations pertaining to noise, odor and dust found including 310 C.M.R. §§ 7.09 and 7.10.

We next call the town's attention to Section 4.15.6.12, which pertains to storage of materials and provides as follows:

All materials, supplies and equipment shall be stored in accordance with the Fire Prevention Standards of the National Fire Protection Association and shall be screened from view from public ways or abutting properties.

In approving the above underlined text, we offer the following caution concerning its application with the State Board of Fire Prevention Regulations. It is clear that the provisions of 527 CMR 1.00 *et seq.* anticipate that there may be local laws and regulations on the same subjects as those covered in 525 C.M.R.; 527 C.M.R. requires only that where state and local law address the same matter, the more stringent provision shall govern. The Code of Massachusetts Regulations [527 CMR 1.02(2)] provides:

Applicability of Other Laws. Nothing in 527 CMR shall be construed, interpreted or applied to abrogate, nullify or abolish any law, ordinance or code adopted by the jurisdiction governing the construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of buildings specifically provided herein. When any provision of 527 CMR is found to be in conflict with any building, zoning, safety, health or other applicable law, ordinance or code of the jurisdiction existing on the effective date of 527 CMR or hereafter adopted, the provision which establishes the higher standard for the promotion and protection of the safety and welfare of the public shall prevail.

We caution the town that if the State Board of Fire Prevention Regulations include provisions pertaining to the storage of certain materials, supplies, and equipment, and those provisions are more stringent than the Fire Prevention Standards of the National Fire Protection Association, the provision of the State Board of Fire Prevention Regulations govern.

Lastly, we call the town's attention to Section 4.15.13.2.a, which provides in pertinent part as follows:

As part of any application for Site Plan Approval for a Development Project within the Smart Growth District submitted under Section 4.15.13., the Applicant must submit the following documents to the Approving Authority and the Administering Agency: 1) evidence that the Development Project plans that demonstrate compliance with the requirements of Section 4.15.12.4.;

(Emphasis added.)

We point out that the above underlined text in Section 4.15.13.2.a does not make grammatical sense. We suggest that the town fix this text at a future town meeting.

Caution: Since the amendments voted under this Article were adopted under the provisions of G.L. c. 40R, any future amendment thereof may only be adopted in accordance with the requirements of that statute.

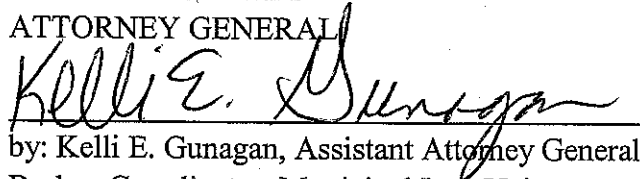
Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL



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enc.

pc:

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MMC/CMMC
Town Clerk

TOWN OF KINGSTON

Commonwealth of Massachusetts

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CERTIFICATE OF VOTE

I, MARY LOU MURZYN, Town Clerk of Kingston, do hereby certify that the following is a true copy of the final vote on Article 15 of the Minutes for the Annual Town Meeting duly called and held on April 9, 2007, April 10, 2007, April 11, 2007, and April 25, 2007, which vote was taken on April 11, 2007, and as amended and approved by the Attorney General:

Article 15. On the motion of Mark S. Beaton, VOTED that the Town amend the Town of Kingston Zoning By-Laws, by adding a new Section 4.15. "1021 Kingston's Place Smart Growth District" dated March 19, 2007 and amend the Town of Kingston's Zoning Map to include 1021 Kingston's Place Smart Growth District the land consisting of Assessors' Map 74, Lot 8; Map 75, Lots 2, 10, 12, 34, 35, 36, 37, 38, 39 and 40; Map 82, Lots 3 and 4 as shown on the "1021 Kingston's Place Zoning District Plan", both in the form approved by the Department of Housing and Community Development and on file with the Town Clerk and by adding to the list of Zoning Districts in Section 3.1. of the Zoning By-Laws reference to "1021 Kingston's Place Smart Growth District".

And further, to amend the following from the "1021 Kingston's Place Zoning District Plan" **4.15.2. Scope and authority.** by striking the words "contained within the Smart Growth District" and inserting in place thereof the words "shown on the Site Plan"; and further, to amend **4.15.14. Waivers.** by adding the following to the last sentence after the words "Affordable Units" ", nor may the Board waive the limitations on the number of allowable dwelling units in the Smart Growth District."

Said by-law to read as follows:

4.15. 1021 Kingston's Place Smart Growth District

4.15.1. Purposes. The purposes of the Smart Growth District are:

4.15.1.1. To provide an opportunity for residential, commercial and mixed-use development within a distinctive, attractive and livable environment.

- 4.15.1.2. To promote low impact, sustainable development that is pedestrian friendly, and to integrate the principles of smart growth and green building through conformance with the manual called "LEED for Neighborhood Developments Rating System - Preliminary Draft, September 6, 2005" (Draft Document), such that the Smart Growth District as a whole could be recognized by the U.S. Green Building Council as "LEED-ND-Certified" if the Draft Document were adopted as final.
- 4.15.1.3. To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of Kingston and provides an environment with safety, convenience and amenity.
- 4.15.1.4. To provide for a diversified housing stock at a variety of costs within walking distance of the Kingston commuter rail station, including affordable housing, and in housing types that meet the needs of the Town's population.
- 4.15.1.5. To generate positive tax revenue, and to benefit from the financial incentives provided by M.G.L. c.40R, while providing the opportunity for new business growth and additional local jobs.

4.15.2. Scope and authority. The Smart Growth District is established pursuant to the authority of M.G.L. c.40R and 760 CMR 59.00, and shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Kingston, as amended. At the option of the owner, development of land within the Smart Growth District may be undertaken by means of a Site Plan Approval pursuant to the zoning controls set forth in this Section 4.15., or by complying with all applicable zoning controls set forth in the Zoning By-Laws of the Town of Kingston. At such time as a building permit is issued for any Development Project for which Site Plan Approval has been granted, all of the land shown on the Site Plan shall be developed pursuant to this Section 4.15. and shall not be developed pursuant to the Underlying Zoning. Development Projects proceeding under this Section 4.15. shall be governed solely by the provisions of this Section 4.15. and shall be deemed exempt from the standards and/or procedures of the Underlying Zoning.

4.15.3. Establishment and delineation of Smart Growth District and Sub-Districts. Within the Smart Growth District, there are four Sub-Districts identified as Single-Family SG District, Mixed-Use Residential-Commercial SG Sub-District, Mixed-Use Live-Work SG Sub-District and Conservation/Recreation SG Sub-District. The boundaries of the Smart Growth District and the Sub-Districts are delineated on a sheet labeled "1021 Kingston's Place Smart Growth District and Sub-Districts" and are also delineated on a marked copy of the Official Zoning Map of the Town of Kingston on file in the office of the Town Clerk. For purposes of the application of this Section 4.15., for a proposed development the uses permitted and the bulk and dimensional controls applicable in a Sub-District may be extended into the adjacent Sub-District to the extent

of fifty (50) feet as long as the limit of said extension is reflected on the site plan for a proposed development for which Site Plan Approval is required under this Section 4.15. Unless the provision of Section 4.15.7.4. shall be applicable, any Dwelling Unit or portion thereof located within said extension shall not be included in the calculation of the maximum number of dwelling units allowed as specified in Section 4.15.7.3. in such adjacent Sub-District but shall be included in such calculation of the Sub-District to which such extension is made.

4.15.4. Definitions. As used in this Section 4.15., the following terms shall have the meanings set forth below:

- 4.15.4.1. AFFORDABLE UNIT - An Affordable Rental Unit or an Affordable Homeownership Unit - that is affordable to and occupied by an Eligible Household.

- 4.15.4.2. AFFORDABLE HOUSING RESTRICTION – A deed restriction of an Affordable Homeownership Unit meeting statutory requirements in M.G.L. c.184 § 31 and the requirements of Section 4.15.12. of this By-Law.

- 4.15.4.3. AFFORDABLE RENTAL UNIT – A dwelling unit required to be rented to an Eligible Household in accordance with the requirements of Section 4.15.12. of this By-Law.

- 4.15.4.4. AFFORDABLE HOMEOWNERSHIP UNIT – A dwelling unit required to be sold to an Eligible Household in accordance with the requirements of Section 4.15.12. of this By-Law.

- 4.15.4.5. ALLEY – A roadway or shared driveway on which no primary buildings have front doors and the primary purpose of which is to provide immediate access to garages and private parking spaces serving such buildings.

- 4.15.4.6. APPLICANT – A landowner or other petitioner that files a site plan for a Development Project subject to the provisions of the Smart Growth District.

- 4.15.4.7. APPROVING AUTHORITY – The Planning Board of the Town of Kingston acting as the authority designated to review projects and issue approvals under this Section 4.15.

- 4.15.4.8. AS-OF-RIGHT DEVELOPMENT - A Development Project allowable under this Section 4.15. without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to the Site Plan

Review requirement of this Section 4.15. shall be considered an As-of-right Development.

- 4.15.4.9. BASEMENT - The lowest floor level of a building which is either fully or partially below grade, whether or not fully enclosed.
- 4.15.4.10. BUILDING ENVELOPE – In connection with the development of Single-Family Dwelling Units, the area within an individual lot on which a Single-Family Dwelling Unit is required under the Design Standards to be constructed; provided such area is part of a Development Lot shown on a Site Plan.
- 4.15.4.11. CONSERVATION AND RECREATION USE - Any woodland, grassland, wetland, agricultural, horticultural or active or passive recreational use of land or the use of land for the construction and use of ponds, storm water management facilities or a Parkway.
- 4.15.4.12. DHCD – The Department of Housing and Community Development of the Commonwealth of Massachusetts or any successor agency.
- 4.15.4.13. DESIGN STANDARDS – The document entitled “Kingston Smart Growth District Design Standards and Procedures” dated March 19, 2007 as amended. Such Design Standards shall be applicable to all Development Projects within the Smart Growth District that are subject to Site Plan Review by the Approving Authority.
- 4.15.4.14. DEVELOPMENT LOT – One or more lots which are designated as a Development Lot on a site plan for a development proposed within the Smart Growth District and for which Site Plan Approval is required under the provisions of this Section 14.15. The lots comprising a Development Lot need not be in the same ownership. Where the Development Lot consists of more than a single lot, the lots, in combination, shall be treated as the Development Lot, may be contiguous or non-contiguous and shall be considered as one lot for the purpose of calculating parking requirements; minimum open space; and dwelling units per acre. Any development undertaken on a Development Lot is subject to the Design Standards established under Section 14.15.9. of this By-Law.
- 4.15.4.15. DEVELOPMENT PROJECT – A residential, commercial or Mixed-Use Development undertaken under this Section 4.15. A Development Project shall be identified on the Site Plan which is submitted to the Approving Authority for Site Plan Review.

- 4.15.4.16. DWELLING UNIT — One (1) or more rooms with cooking, living, sanitary and sleeping facilities arranged for the use of one (1) or more persons living together as a single housekeeping unit inclusive of, if applicable, an In-Law Apartment. The following types of Dwelling Units are specifically defined:
- 4.15.4.16.a. SINGLE-FAMILY DETACHED DWELLING UNITS — A detached residential dwelling unit, other than a mobile home, designed for occupancy by one family only and which may or may not be in single ownership;
 - 4.15.4.16.b. SINGLE-FAMILY ATTACHED DWELLING UNITS -- An attached residential dwelling unit, designed for occupancy by one family only and on a separate lot where the use of the lot is within the exclusive control of the owner thereof, subject to customary homeowner association controls on architectural design, landscaping and maintenance. A Single Family Attached Dwelling Unit that satisfies this definition shall not be considered a Multi-Family Dwelling Unit;
 - 4.15.4.16.c. MULTI-FAMILY DWELLING UNITS – A residential building containing four or more dwelling units designed for occupancy by the same number of families as the number of dwelling units where the individual dwelling units are not located on separate lots; and
 - 4.15.4.16.d. TWO-THREE FAMILY DWELLING UNITS -- A residential building containing two or three dwelling units designed for occupancy by the same number of families as the number of dwelling units and where the individual dwelling units are not located on separate lots.
- 4.15.4.17. ELIGIBLE HOUSEHOLD – An individual or household whose annual income is below eighty percent (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.
- 4.15.4.18. FAMILY – One (1) or more persons living together in one (1) dwelling unit, but not including sororities, fraternities and other

communal living arrangements.

- 4.15.4.19. FRONTAGE - The linear extent of a lot measured in a continuous line along the street or from the intersection of one side lot line to the intersection of the other side lot line of the same lot. In case of a lot which has more than one lot line on a street or way, the applicant for a building permit may designate which of said lot lines is to serve as the basis for measurement of the lot's frontage.
- 4.15.4.20. FRONT YARD - The distance between a building and the curb-line of the street or way on which such building has frontage. Such curb-line shall be depicted on the Site Plan for such building.
- 4.15.4.21. GROSS LEASABLE AREA - The area of a building exclusive of hallways, mechanical rooms and other space not exclusively occupied by a single tenant or occupant.
- 4.15.4.22. HEIGHT - The distance between averaged finished grade adjacent to the building (exclusive of basements) and the ceiling of the upper-most heated space in the building in the case of flat roofs and in the case of buildings with pitched roofs, at the point at which such ceiling intersects with the exterior portion of the building. The calculation of building height shall not apply to roof tanks and their supports, roof decks, ventilating, air conditioning and similar building service equipment, chimneys, railings, skylights and other similar features of buildings which are in no way designed or used for living purposes nor the portion of the pitched roof above the intersection of the ceiling of the upper-most heated space and the exterior of the building. A loft that has floor area of less than twenty-five percent (25%) of the first floor area of the building in which it is located shall not be considered as heated space for purposes of determining the height of the building.
- 4.15.4.23. HOME OFFICE - The use of a room or rooms in a Dwelling Unit as an office or studio by a resident provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 square feet, is regularly devoted to such use.
- 4.15.4.24. HOUSEHOLD INCOME, MEDIAN - The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

- 4.15.4.25. **INFRASTRUCTURE LETTERS** - The letters issued on behalf of the Town in fulfillment of M.G.L. C. 40R, § 6(a)(11) and 760 CMR 59.04(1)(h) identifying infrastructure improvements to be made incident to the construction of one or more Development Projects in the Smart Growth District.
- 4.15.4.26. **IN-LAW APARTMENT** - A separate dwelling unit located within a single-family detached dwelling or accessory building that is subordinate in size to and an accessory use to the single-family detached dwelling. The size of the in-law apartment shall not be less than 500 square feet plus 100 square feet for every bedroom over one (1) but not more than 30% of the normally habitable gross floor area of the principal residential structure. Either the in-law apartment or the principal residence shall be occupied by the owner of the lot on which the in-law apartment is located except for bona fide temporary absences.
- 4.15.4.27. **LIVE/WORK USE** – The use of a building or series of buildings devoted to commercial and residential use where the first floor of the building is primarily devoted to commercial use and the upper floors are primarily devoted to residential use.
- 4.15.4.28. **LOT** – A parcel of land described by metes and bounds on a plan or deed duly recorded in the Plymouth County Registry of Deeds.
- 4.15.4.29. **MIXED-USE DEVELOPMENT PROJECT** – A Development Project containing a residential Principal Use and one or more commercial or institutional Principal Uses.
- 4.15.4.30. **OFFICE** – A place in which functions such as directing, consulting, record keeping, brokerage, clerical work, and sales, without the presence of merchandise, of a firm are carried on. A place which provides medical or dental services on an out-of-pocket basis shall also be included in this definition.
- 4.15.4.31. **PARKWAY** - The principal collector road (within the Smart Growth District) designed as a landscaped parkway connecting the open space elements in the Smart Growth District and providing access from public ways to the Development Projects within the Smart Growth District and the adjacent properties and identified as such on a Site Plan.
- 4.15.4.32. **NOISE BUFFER** - The area of a Development Project which is devoted principally to the construction and maintenance of noise attenuation structures and equipment for the benefit of residential structures located adjacent to railroad lines or other facilities.

- 4.15.4.33. **SIDE YARD** - The distance between a building and the lot line which is most nearly perpendicular to the lot line on which the frontage of the lot is measured. In the case of a corner lot, the applicant for a building permit may designate which of the lot lines is to serve as the basis for the measurement of the side yard.
- 4.15.4.34. **REAR YARD** - The distance between a building and the lot line which is most nearly parallel to the lot line on which the frontage of the lot is measured. Where the lot has lot lines on more than one street or way and is not a corner lot, the applicant for a building permit may designate which lot lines is to serve as the basis for measurement of the rear yard.
- 4.15.4.35. **SHARED PARKING FACILITIES** – Off-street parking facilities designed and intended to serve more than a single use as shown on a Site Plan.
- 4.15.4.36. **SINGLE-FAMILY UNITS** - Single-Family Detached Dwelling Units and Single-Family Attached Dwelling Units.
- 4.15.4.37. **SITE PLAN** - A plan depicting a proposed Development Project for all or a portion of the Smart Growth District and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of Section 4.15.13. of this By-Law.
- 4.15.4.38. **SITE PLAN APPROVAL** – The Approving Authority’s authorization for a proposed Development Project based on a finding of compliance with this Section 4.15. of the By-Law and Design Standards after the conduct of a Site Plan Review.
- 4.15.4.39. **SITE PLAN REVIEW** – The review procedure established by this Section 4.15. and administered by the Planning Board of the Town of Kingston as the Approving Authority.
- 4.15.4.40. **SMART GROWTH DISTRICT** – An overlay zoning district adopted pursuant to M.G.L. c.40R, in accordance with the procedures for zoning adoption and amendment as set forth in M.G.L. c.40A and approved by the Department of Housing and Community Development pursuant to M.G.L. c.40R and 760 CMR 59.00.
- 4.15.4.41. **SUB-DISTRICT** – A specific and defined area of land within the Smart Growth District that is subject to specific requirements for allowable uses or dimensional requirements that may differ from

the requirements for allowable uses or dimensional requirements in other specific and defined areas within the Smart Growth District. The boundaries and the names of the Sub-Districts are referred to in Section 4.15.3. of this By-Law.

- 4.15.4.42. UNDERLYING ZONING – The zoning requirements adopted pursuant to M.G.L. c.40A that are otherwise applicable to the geographic area in which the Smart Growth District is located, as said requirements may be amended from time to time.
- 4.15.4.43. UNDULY RESTRICT – A provision of a Smart Growth District or a Design Standard that adds unreasonable costs or unreasonably impairs the economic feasibility of a proposed Development Project in a Smart Growth District.
- 4.15.4.44. UNRESTRICTED UNIT – A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.
- 4.15.4.45. USE, ACCESSORY – A use subordinate to the Principal Use on the same lot or in the same structure and serving a purpose customarily incidental to the Principal Use, and which does not, in effect, constitute conversion of the Principal Use of the lot, site or structure to a use not otherwise permitted in the Smart Growth District. Accessory uses are permitted or prohibited in the Smart Growth District to the same extent as if such uses were Principal Uses.
- 4.15.4.46. USE, PRINCIPAL – The main or primary purpose for which a structure, building, or lot is designed, arranged, licensed, or intended, or for which it may be used, occupied, or maintained under this Section 4.15. More than one principal use is permitted as-of-right on a lot or within a Development Project in a Mixed-Use Residential-Commercial SG Sub-District and a Mixed-Use Live-Work SG Sub-District.
- 4.15.4.47. YARD SETBACKS – The distances between a principal building and the principal buildings located immediately adjacent to such principal building whether or not on the same lot. The Yard Setbacks shall be depicted on the Site Plan for such building.

4.15.5. Permitted uses.

4.15.5.1. The following uses shall be permitted in the following Sub-Districts As-of-right upon Site Plan Approval pursuant to the provisions of this Section 4.15.:

TABLE 4.15-1								
	Single Family Detached Dwelling Unit	Single Family Attached Dwelling Unit	Multi-Family Dwelling Unit	Retail, Restaurant and Personal Service Use	Office Use	Live Work Use	Conservation and Recreation Use; Municipal Use	Two and Three Family Dwelling Units
Single Family SG Sub-District	Yes	Yes	Yes, but as limited under Section 4.15.5.2.	No	No	No	Yes	Yes, but as limited under Section 4.15.5.2.
Mixed-Use Residential-Commercial SG Sub-District	Yes ¹	Yes ¹	Yes	Yes	Yes	Yes	Yes	Yes
Mixed-Use Live-Work SG Sub-District	Yes ¹	Yes ¹	Yes	Yes	Yes	Yes	Yes	Yes
Conservation/Recreation SG Sub-District	No	No	No	No	No	No	Yes	No

4.15.5.2. Multi-Family Dwelling Units as well as Two and Three Family Dwelling Units may be located in the Single Family SG Sub-District adjacent to either a Mixed-Use Residential-Commercial SG Sub-District or a Mixed-Use-Live-Work SG Sub-District at the density permitted in those Mixed-Use Sub-Districts in accordance with Table 4.15-3 provided the number of Multi-Family Dwelling Units and Two and Three Family Dwelling Units that could be constructed in the Mixed-Use SG Sub-Districts shall be reduced by the number of Multi-Family Dwelling Units and Two and Three Family Dwelling Units so constructed in the Single Family SG Sub-District but in no event shall the number of Single Family Dwelling Units that are permitted to be constructed in the Single Family SG Sub-Districts be reduced by the construction of such Multi-family Dwelling Units and Two and Three Family Dwelling Units within the Single Family SG Sub-Districts. No more than sixty (60) Multi-Family Dwelling Units and Two and Three Family Dwelling Units, in the aggregate, shall be located in the Single Family SG Sub-District.

¹ Subject to the limitations of Section 4.15.7.4.

4.15.5.3. In addition to the foregoing principal uses, accessory uses shall be permitted in each of the Sub-Districts and as accessory to residential use, the following specific uses shall also be permitted: Home Office and In-Law Apartment. Home Office use shall be permitted as of the right as an accessory use; In-Law Apartment as an accessory use shall be permitted only by special permit issued by the Approving Authority. In as much as In-Law Apartments are an accessory use, permitted only by special permit in accordance with the requirements of G.L. 40A and the Kingston Zoning-By-Laws, they are not treated as Dwelling Units in the Smart Growth District.

4.15.6. Prohibited uses or activities in a Smart Growth District.

- 4.15.6.1 No more than one unregistered vehicle within a lot unless within a structure or screened from any adjacent residence or public way by a wall, fence, or densely planted trees or shrubs at least three (3) feet in height, or be equivalently obscured by natural vegetation.
- 4.16.6.2. Any unregistered vehicle in the front yard.
- 4.15.6.3. The withdrawal of water for transport and sale outside the Town of Kingston.
- 4.15.6.4. Any use not listed in Section 4.15. is expressly prohibited; provided, however, that uses permitted in the underlying zoning district are permitted as long as they are not exercised in connection with a Development Project.
- 4.15.6.5. All proposed uses of buildings, lots or premises within the Smart Growth District shall conform to the standards contained in Sections 4.15.6.5. through 4.15.6.16.
 - a. The applicant, at its own expense, shall furnish evidence sufficient to satisfy the Zoning Enforcement Officer that the proposed use of the building or premises will not produce any nuisances beyond the lot lines as measured by the performance standards listed in Sections 4.15.6.6. through 4.15.6.16. below or as existing in comparable operations allowed in the Smart Growth District.
 - b. Any nuisance produced in excess of the standards permitted in Sections 4.15.6.6. through 4.15.6.16. below or any other nuisance found after review by the Zoning Enforcement Officer in the course of his or her normal enforcement procedure to be excessive shall be reduced to acceptable standards or discontinued.

- 4.15.6.6. AIR POLLUTANTS - Except as is herein provided, all use and conditions of land, buildings and structures shall be in conformance with the Regulations 310 CMR 6.00 - 8.00 of the Department of Environmental Protection, Commonwealth of Massachusetts, Dec. 31, 1981 and amendments thereto.
- 4.15.6.7. NOISE
- 4.15.6.7.a. No noise shall be in excess of sixty (60) decibels at any lot line opposite or abutting a Residential 80, Residential 40, Residential 20, or Residential M District nor in excess of ninety (90) decibels at any other line.
- 4.15.6.7.b. In the Smart Growth District, noise shall not exceed sixty (60) decibels between the hours of 8:00 P.M. and 7:00 A.M. At all other times, noise shall not exceed sixty (60) decibels for more than twenty (20) minutes in each hour.
- 4.15.6.7.c. Noise shall be muffled so as not to become objectionable due to intermittence, beat frequency or high frequency.
- 4.15.6.8. ODOR - Emissions as measured at the users property line shall not exceed the established threshold limit values for odors as outlined in T.M. Hellman and F.H. Small, Journal Air Pollution Control Association, 24(10), 979-982, (1974); and amendments thereto added by the Manufacturing Chemists Association, Inc., Washington, D.C.
- 4.15.6.9. HEAT, GLARE AND VIBRATION
- 4.15.6.9.a. No heat, glare or vibration shall be discernible without instruments from the outside of any structure.
- 4.15.6.10. Wind energy conversion systems, machinery and equipment shall comply with the following provisions:
- 4.15.6.10.a. The system shall not cause interference with radio and/or television broadcasting or reception and shall comply with the provisions of 47 CFR Part 15 (Federal Communications Commission) as it exists, or as it may be amended.
- 4.15.6.10.b. The base of a windmill shall be set back from all property lines and principal buildings at least the setback distance shown on the "Wind Turbine Setback Graph" North East Solar Energy Center Report, March 1979.

- 4.15.6.11. WASTE DISPOSAL, WATER SUPPLY AND WATER QUALITY
- 4.15.6.11.a. Regulations of the Department of Public Health shall be met and when required by the Zoning Enforcement Officer, approval shall be indicated on the application for a Building Permit.
- 4.15.6.11.b. In no case shall discharge cause the waters of the receiving body to exceed the limits assigned by the Commonwealth of Massachusetts, Water Resources Commission, Division of Water Pollution Control, as published and entitled "Water Quality Standards", filed with the Secretary of State on September 21, 1978, and amendments thereto, for streams and water bodies within the Town.
- 4.15.6.11.c. Materials used on the exterior or cleanup of structures or vehicles or of any equipment shall be disposed of in accordance with the regulations of the Board of Health.
- 4.15.6.12. STORAGE - All materials, supplies and equipment shall be stored in accordance with the Fire Prevention Standards of the National Fire Protection Association and shall be screened from view from public ways or abutting properties.
- 4.15.6.13. HAZARDOUS AND TOXIC MATERIALS.
- 4.15.6.13.a. No use shall be allowed which would create clear or unlawful hazard through emission of dangerous elements into the air, any water body, or the ground; through vehicular egress at points of constricted visibility; through use of storage of toxic, hazardous, inflammable, radioactive, or explosive materials without evidence of compliance with all applicable regulations; or through lack of security measures to prevent exposure to potentially hazardous structural or site conditions.
- 4.15.6.13.b. All hazardous materials used, created, stored, processed, disposed of by processing, diluting, burying or containment, leaching or any other manner, or transported (including piping) in the Town shall be used, stored or transported in accordance with all applicable Federal, State and Local regulations.
- 4.15.6.13.c. A notice for use, creation, storage, processing, disposal and transport shall be filed with the Board of Selectmen, the Fire Department, the Board of Health, and the Water Board on such forms as they shall require.

4.15.6.13.c.1. Notification shall include, as a minimum, identification of material, the amount involved, the process, if any, the routes of transport, carrier and conveyance, if any.

4.15.6.14. **EROSION CONTROL**

4.15.6.14.a. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of water to or from abutting properties, and shall be suitably landscaped.

4.15.6.14.b. No use shall be allowed if it will leave the earth exposed for greater than fourteen (14) days, unless erosion control measures as defined in "Erosion and Sediment Control in Site Development and Vegetative Practices in Site Development", are employed.

4.15.6.14.c. No use shall be allowed which will damage or harm adjoining properties, waterways, or public utilities through uncontrolled erosion and sedimentation.

4.15.6.15. **ELECTRICAL INTERFERENCE** - No equipment or process shall be used which creates [visual] or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

4.15.6.16. Except as required for municipal waste pick-up and removal, junk, trash, or debris shall be stored so as not to be visible from adjacent properties or any street.

4.15.7. Dimensional and other requirements.

4.15.7.1. Buildings and Development Lots within a Smart Growth District shall be subject to the following bulk and dimensional requirements based on the use of the Development Lot. In the case of the Mixed-Use of a Development Lot, the setback requirements shall be applied based on the use of the specific building in question.

TABLE 4.15-2				
	Single-Family SG Sub-District	Mixed-Use Residential-Commercial Sub-Districts ²	Live-Work SG Sub-District ²	Conservation Recreation SG Sub-Districts
Minimum Lot Area in Square Feet for All Uses other than Single-Family Dwelling Units ³	N/A	10,000 sf	10,000 sf	N/A
Frontage ³	N/A	50 linear ft	50 linear ft	N/A
Front Yard ³	N/A	10 linear ft	10 linear ft	N/A
Side Yard ³	N/A	20 linear ft	20 linear ft	N/A
Rear Yard ³	N/A	15 linear ft	15 linear ft	N/A
Height	35 ft	50 linear ft	50 linear ft	N/A

4.15.7.2. Number of buildings on a lot. In the Smart Growth District, more than one principal building may be erected on a lot.

² Not applicable to Single Family Dwellings Units. The provisions of Sections 4.15.10.1. and 4.15.10.2. shall be applicable in lieu thereof.

³ For Single-Family Dwelling Units, each must be located within a Development Lot and shall satisfy the criteria governing Single Family Dwelling Units set forth in Sections 4.15.10.1. and 4.15.10.2. of this By-Law. Buildings permitted to be located in a Single-Family Smart Growth Sub-District under Sections 4.15.5.2. or 4.15.5.3. shall be subject to the dimensional requirements of a Mixed-Use Residential-Commercial Sub-District.

4.15.7.3. Maximum Residential Development. The aggregate number of dwelling units that may be constructed in the Smart Growth District is 730 and is calculated for each of the Sub-Districts as follows:

TABLE 4.15-3			
Sub-District	Type of Residential Use	Units Per Acre ⁴	Number of Units
Single-Family SG Sub-District:	Single-family ⁵	8	260 ⁵
Mixed-Use Residential-Commercial SG Sub-District: ⁶	Multi-family ⁷	20	437 ⁵
Mixed-Use Live-Work SG Sub-District: ⁶	Multi-family ⁷	20	33 ⁵

⁴ This standard shall be applied to the Sub-District as a whole and not to individual Development Projects or portions thereof.

⁵ To the extent land within the Single-Family SG Sub-District may not be developed at the density provided in this Table 4.15-3 due to site or other development constraints recognized under M.G.L. c. 40R, the number of Single-Family Units (but not in excess 60) that cannot, as a result thereof, be constructed may instead be constructed as Multi-Family Units either in the Mixed-Use Residential-Commercial SG Sub-District, the Mixed-Use Live-Work SG Subdistrict or the portions of the Single-Family SG Sub-District adjacent to the Mixed-Use Residential-Commercial SG Sub-District or the Mixed-Use Live-Work SG Sub-District.

⁶ Two-Three Family Dwelling Units may be constructed in the Mixed-Use Residential-Commercial SG Sub-District or the Mixed-Use Live-Work SG Sub-District, but at no greater density than 12 units per acre.

⁷ Single-family dwelling use also permitted but at no greater density than 8 units per acre but subject to the limitations set forth in this Section 4.15.7.4.

4.15.7.4. To the extent Single Family Dwelling Units are constructed in the Single-Family SG Sub-District at lesser densities than are permitted therein, Single-Family Dwelling Units, to the extent of such shortfall, may be constructed on the balance of a Mixed-Use Residential-Commercial SG District and the Mixed-Use Live-Work SG Sub-District provided the requirements of the next following paragraph are satisfied.

No building permit shall be issued for the construction of any Single-Family Dwelling Units in the Mixed-Use Residential SG Sub-District or the Mixed-Use Live-Work SG Sub-District unless there shall have been filed with the Building Inspector a Site Plan depicting the location of such Single-Family Dwelling Units proposed to be constructed, as applicable, in the Mixed-Use Residential-Commercial SG Sub-District or the Mixed-Use Live-Work SG Sub-District and the certificate of the owner of the portion of a Single-Family SG Sub-District confirming such owner's election not to construct such number of Single-Family Dwelling Units to the extent proposed on such Site Plan in such Single-Family SG Sub-District. Once such election is made, such Single-Family Dwelling Units may only be constructed in Mixed-Use Residential-Commercial Sub-District or Mixed-Use Live-Work SG Sub-District, and shall not be constructed in the Single-Family SG Sub-District. The number of Multi-Family Dwelling Units that are permitted to be constructed in the Mixed-Use SG Sub-Districts shall not be reduced by the construction of such Single Family Dwelling Units in the Mixed-Use SG Sub-District.

4.15.7.5. Total allowable non-residential uses. No single retail use in excess of 25,000 gross square feet shall be permitted in a Mixed-Use Development Project. Total allowable retail development permitted pursuant to this Section 4.15.7.5. shall not exceed 50,000 gross square feet. Total non-residential uses within the Smart Growth District, including retail, restaurant, office, and institutional uses, shall not exceed a total of 300,000 gross square feet.

4.15.8. Required parking.

4.15.8.1. Parking shall be provided in order to meet or exceed the following minimum requirements:

Table 4.15-4	
Use	Minimum Required Parking
Retail Business, Commercial or Personal Service Establishment	1 space per 250 square feet of gross leasable floor area
Office, Professional, Business or Public	1 space per 333 square feet of gross floor area
Medical or Dental Office or Clinic	4 spaces for each individual office or suite, plus 4 spaces for each additional doctor or dentist within a single office or suite
Restaurant or Place of Assembly	1 space for each 3 seats
Residential Use	1.5 spaces per Dwelling Unit with 2 bedrooms or less, and 2 spaces per Dwelling Unit with 3 bedrooms or more to be located within 300 feet of the Dwelling Unit

Parking shall be provided in either off-street parking facilities or in marked spaces along traveled ways as may be provided in the Design Standards.

4.15.8.2. The Planning Board may grant a Site Plan Approval making such modifications in the standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed use and will not result in or worsen parking or traffic problems in the district. The Board may impose conditions of use or occupancy appropriate to such modifications.

4.15.8.3. Use of Shared Parking Facilities. For purposes of determining parking compliance, parking located in Shared Parking Facilities may be counted as serving more than one use as long as the Approving Authority finds as part of Site Plan Review for a Mixed-Used Development Project that the uses will produce different parking demands that will be compatible with joint use of the parking facilities in question.

The Shared Parking Facilities shall receive a 25% credit from the required parking calculated as if the Development Project's parking was to be provided separately. Shared Parking spaces within the lots shall be within 400 feet of the principal buildings served.

4.15.9. Design standards. To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town of Kingston in adopting Smart Growth Zoning, the Planning Board shall adopt the Design Standards, approved by DHCD and dated March 19, 2007, relative to the issuance of Site Plan Approvals for Development Projects within the Smart Growth District and shall file a copy with the Town Clerk. In addition to the standards set forth in this By-Law, the physical character of Development Projects within the Smart Growth District shall comply with such Design Standards.

4.15.10. Building envelopes, lot designation and yard setbacks for single-family dwelling units.

4.15.10.1. Building Envelopes and Lot Dimensions. Each Site Plan for a Development Project shall identify one or more Development Lots, the Building Envelopes in which Single-Family Dwelling Units are anticipated to be located and, at the option of the applicant, a lot plan, which lays out the anticipated subdivision of each of the Development Lots into individual lots on which Single-Family Dwelling Units are to be constructed. The individual lots for the Single-Family Dwelling Units shall be no less than 150% of the Building Envelope in total area and shall be configured in accordance with the Design Standards. The dimensions shown for such individual lots, once the Approving Authority has granted its approval of the Site Plan, shall be treated as the dimensions of the lots as required in the Smart Growth Zoning District for purposes of the establishment of such lots under the Subdivision Control Law.

4.15.10.2. Yard Setbacks. Single-Family Dwelling Units located in a Development Project shall conform to the Yard Setbacks shown between the Building Envelopes on the Site Plan approved by the Approving Authority. In no event, however, shall the Yard Setbacks between the sides of buildings be less than 12 feet nor less than 20 feet in the case of rear yards of buildings, provided, however, that steps and chimneys may be constructed within the Yard Setbacks as well as garages and other accessory structures.

4.15.11. Open spaces and recreational areas.

4.15.11.1. Design and location. The overall site design shall include a common open space and facilities system as required by the Design Standards.

- 4.15.11.2. Ownership and maintenance. The plans and documentation submitted to the Planning Board shall include a description of proposed ownership and maintenance of all common open space or facilities.
- 4.15.11.3. Plans. The plans and any necessary supporting documents submitted with an application for Site Plan Approval within the Smart Growth District shall show the general location, size, character, and general area within which common open space or facilities will be located.

4.15.12. Affordable housing.

- 4.15.12.1. Number of affordable units. Twenty percent (20%) of all dwelling units constructed in a Development Project shall be Affordable Units. Twenty-five percent (25%) of all rental dwelling units in a Development Project shall be Affordable Units. Provided however, for Development Projects in which all of the dwelling units are limited to occupancy by elderly persons and/or by persons with disabilities, twenty-five percent (25%) of the dwelling units shall be Affordable Units, whether the dwelling units are rental or ownership units.
- 4.15.12.2. Fractional Units. When the application of the percentages specified above results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- 4.15.12.3. Affordable Units shall comply with the following requirements:
 - 4.15.12.3.a. The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed thirty percent (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;
 - 4.15.12.3.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 thirty percent (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; and

- 4.15.12.3.c. Affordable Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.

4.15.12.4. Design and construction.

- 4.15.12.4.a. Design. Affordable Units must be dispersed throughout a Development Project and be comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Units must have access to all on-site amenities. Affordable Units shall be finished housing units; and

- 4.15.12.4.b. Timing. All Affordable Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units and in Development Projects that are constructed in phases, Affordable Units must be constructed and occupied in proportion to the number of units in each phase of the Development Project.

4.15.12.5. Unit mix.

- 4.15.12.5.a. The total number of bedrooms in the Affordable Units shall, so far as practicable, be in the same proportion to the total number of bedrooms in the Unrestricted Units; and

- 4.15.12.5.b. If only one Affordable Unit is required and the other units in the Development Project have various numbers of bedrooms, the Approving Authority may select the number of bedrooms for that unit. If Affordable Units cannot mathematically be exactly proportioned in accordance with the Unrestricted Units, the unit mix shall be determined by the Approving Authority.

4.15.12.6. Affordable housing restriction. Each Affordable Unit shall be subject to an Affordable Housing Restriction which is recorded with the Plymouth County Registry of Deeds or Land Court Registry District of Plymouth County. The Affordable Housing Restriction shall provide for the implementation of the requirements of this Section 4.15. of the Zoning By-Laws. All Affordable Housing Restrictions must include, at minimum, the following:

- 4.15.12.6.a. Description of the Development Project, including whether the Affordable Unit will be rented or owner-occupied;
- 4.15.12.6.b. A description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project without specific unit identification.
- 4.15.12.6.c. The term of the Affordable Housing Restriction shall be the longest period customarily allowed by law but shall be no less than 30 years;
- 4.15.12.6.d. The name and address of an administering agency with a designation of its power to monitor and enforce the Affordable Housing Restriction;
- 4.15.12.6.e. Reference to a housing marketing and resident selection plan, to which the Affordable Unit 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 shall provide for local preferences in resident selection to the maximum extent permitted under applicable law. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size;

- 4.15.12.6.f. 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;
- 4.15.12.6.g. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set;
- 4.15.12.6.h. A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit to another Eligible Household shall be given to the administering agency;
- 4.15.12.6.i. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the administering agency;
- 4.15.12.6.j. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the administering agency and the Town of Kingston, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
- 4.15.12.6.k. Provisions 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/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household.
- 4.15.12.6.l. 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 provisions of this By-Law and containing such other information as may be reasonably requested in order to ensure affordability;
- 4.15.12.6.m. A requirement that residents in Affordable Units provide such information as the administering

agency may reasonably request in order to ensure affordability; and

- 4.15.12.6.n. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.
- 4.15.12.7. Administration. An administering agency for Affordable Units, which may be the Kingston Housing Authority or other qualified housing entity shall be designated by the Kingston Board of Selectmen and shall ensure the following:
 - 4.15.12.7.a. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
 - 4.15.12.7.b. Income eligibility of households applying for Affordable Units is properly and reliably determined;
 - 4.15.12.7.c. The housing marketing and resident selection plan conforms to all requirements and is properly administered;
 - 4.15.12.7.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
 - 4.15.12.7.e. Affordable Housing Restrictions meeting the requirements of this section are recorded with the Plymouth County Registry of Deeds or Land Court Registry District of Plymouth County.
- 4.15.2.8. The housing marketing and selection plan may make provision for payment by the owner 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 percent (1/2%) of the amount of rents of Affordable Rental Units (payable annually) or one percent (1%) of the sale or resale prices of Affordable Homeownership Units (payable upon each such sale or resale).

4.15.12.9. In the case where the administering agency cannot adequately carry out its administrative duties, upon certification of this fact by the Board of Selectmen or by the Department of Housing and Community Development, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Board of Selectmen or, in the absence of such designation, by an entity designated by the Department of Housing and Community Development.

4.15.13. Administration. The Planning Board shall be the Approving Authority for Site Plan Approvals in the Smart Growth District, and shall adopt and file with the Town Clerk administrative rules relative to the application requirements and contents for Site Plan Review. Such administrative rules and any amendment thereto must be approved by the Department of Housing and Community Development. The Site Plan Review process encompasses the following:

4.15.13.1. Pre-application review. The applicant is encouraged to participate in a pre-application review at a regular meeting of the Planning Board. The purpose of the pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to obtain the advice and direction of the Planning Board prior to filing the application. At the pre-application review the applicant shall outline the proposal and seek preliminary feedback from the Planning Board, other municipal review entities, and members of the public. The applicant is also encouraged to request a site visit by the Planning Board and/or its designee in order to facilitate pre-application review.

4.15.13.2. Application procedures.

4.15.13.2.a. The applicant shall file an original of the application with the Town Clerk for certification of the date and time of filing. Said filing shall include any required forms provided by the Planning Board. A copy of the application including the date and time of filing certified by the Town Clerk as well as the required number of copies of the application shall be filed forthwith by the applicant with the Planning Board and Building Inspector. As part of any application for Site Plan Approval for a Development Project within the Smart Growth District submitted under Section 4.15.13., the Applicant must submit the following documents to the Approving Authority and the Administering

Agency: 1) evidence that the Development Project plans that demonstrate compliance with the requirements of Section 4.15.12.4.; 2) a form of Affordable Housing Restriction that satisfies the requirements of Section 4.15.12.6.; and 3) evidence that the Development Project complies with the cost and eligibility requirements of Section 4.15.12.3.;

4.15.13.2.b. Review fees. The applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Planning Board. Such fees shall be held by the Town of Kingston in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Approving Authority in reviewing the Site Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith;

4.15.13.2.c. Upon receipt by the Planning Board, applications shall be distributed to the Fire Chief, the Police Chief, Board of Health, Conservation Commission, Open Space Committee, the Board of Selectmen and the Boards of Water Commissioners and Sewer Commissioners. Any reports from these parties shall be submitted to the Planning Board within sixty (60) days of filing of the application; and

4.15.13.2.d. Within thirty (30) days of filing of an application with the Planning Board, the Planning Board or its designee shall evaluate the proposal with regard to its completeness and shall submit an advisory report in writing to the applicant certifying the completeness of the application. The Board or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions or departments.

4.15.13.3. Public hearing. The Board shall hold a public hearing and review all applications according to the procedure specified in M.G.L. c.40R § 11 and 760 CMR 59.04(1)(f).

4.15.13.4. Site Plan Approval decision.

- 4.15.13.4.a. The Planning Board shall make a decision on the Site Plan application, and shall file said decision with the Town Clerk, within 120 days of the date the application was received by the Town Clerk. The time limit for public hearings and taking of action by the Planning Board may be extended by written agreement between the applicant and the Board. A copy of such agreement shall be filed with the Town Clerk;
- 4.15.13.4.b. Failure of the Planning Board to take action within 120 days or extended time, if applicable, shall be deemed to be an approval of the application;
- 4.15.13.4.c. An applicant who seeks approval because of the Planning Board's failure to act on an application within the 120 days or extended time, if applicable, must notify the Town Clerk in writing, within fourteen (14) days from the expiration of said time limit for a decision, of such approval and that a copy of that notice has been sent by the applicant to the parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to M.G.L. c.40R and shall be filed within twenty (20) days after the date the Town Clerk received such written notice from the applicant that the Planning Board failed to act within the time prescribed;
- 4.15.13.4.d. The Board's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the Site Plan Approval application. The written decision shall contain the name and address of the applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision. The written decision shall certify 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 Planning Board;
- 4.15.13.4.e. The decision of the Planning Board, together with the detailed reasons therefor, shall be filed with the

Town Clerk, the Board of Appeals and the Building Inspector. A certified copy of the decision shall be mailed to the owner and to the applicant if other than the owner. A notice of the decision shall be sent to the parties of interest and to persons who requested a notice at the public hearing; and

- 4.15.13.4.f. Effective date. 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 the application is approved by reason of the failure of the Planning Board to timely act, the Town Clerk shall make such certification on a copy of the notice of application. A copy of the decision or notice of application shall be recorded with the title of the land in question in the Plymouth County Registry of Deeds or the Plymouth Land Registry District, 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 responsibility and the cost of said recording and transmittal shall be borne by the owner of the land in question or the applicant.
- 4.15.13.5. Criteria for approval. The Planning Board shall approve the Development Project upon finding that it complies with the purposes and standards of the Smart Growth District and applicable Design Standards. Prior to the granting of Site Plan Approval for a Development Project, the Applicant must demonstrate, to the satisfaction of the Approving Agency that the method by which affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town of Kingston.
- 4.15.13.6. Criteria for conditional approval. The Planning Board may impose conditions on a Development Project as necessary to ensure compliance with requirements of this Section 4.15., the applicable Design Standards or to mitigate any extraordinary adverse impacts of the Development Project on nearby properties, insofar as such conditions are compliant with the provisions of M.G.L. c.40R and applicable regulations and do not Unduly Restrict opportunities for development. The Planning Board may

require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address any extraordinary adverse Development Project impacts on nearby properties and with the implementation of the infrastructure improvements by the party designated as responsible under the Infrastructure Letters.

- 4.15.13.7. Criteria for denial. The Planning Board may deny an application for Site Plan Approval pursuant to this Section 4.15. of the By-Law if the Board finds one or more of the following:
 - 4.15.13.7.a. The Development Project does not meet the conditions and requirements set forth in the Smart Growth Zoning or applicable Design Standards;
 - 4.15.13.7.b. The applicant failed to submit information and fees required by the Smart Growth Zoning and necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts; and
 - 4.15.13.7.c. It is not possible to adequately mitigate significant adverse Development Project impacts on nearby properties by means of suitable conditions.
- 4.15.13.8. Time limit. A project approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. Said time shall also be extended if the project proponent is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multi-phase Development Project.
- 4.15.13.9. Appeals. Pursuant to M.G.L. c.40R, § 11, provided a bond thereby is duly posted, any person aggrieved by a decision of the Board may appeal to the Superior Court, the Land Court, the Southeast Housing Court or the District Court within twenty (20) days after the Site Plan decision has been filed in the office of the Town Clerk.

4.15.14. Waivers. The Planning Board may authorize waivers with respect to the standards set forth in this Section 4.15. in the Site Plan Approval upon a finding that such waiver will allow the Development Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this By-Law. However, the Board may not waive any portion of the Affordable Housing requirements in Section 4.15.12. except insofar as such waiver results in the creation of a number of Affordable Units in excess of the minimum number of required Affordable Units, nor may the Board waive the limitations on the number of allowable dwelling units in the Smart Growth District.

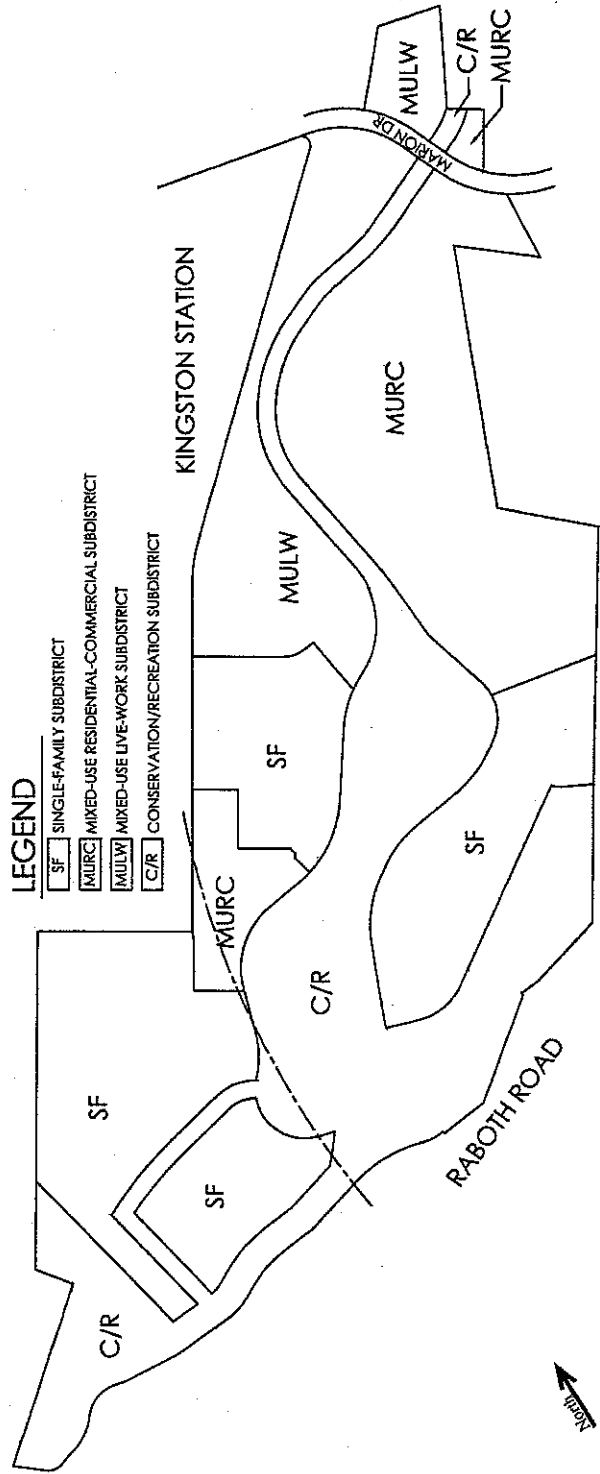
4.15.15. Fair Housing Requirement. All Development Projects within the Smart Growth District shall comply with applicable federal, state and local fair housing laws.

4.15.16. Annual update. On or before July 31 of each year, the Board of Selectmen shall cause to be filed an Annual Update with the Department of Housing and Community Development (DHCD) in a form to be prescribed by DHCD. The Annual Update shall contain all information required in 760 CMR 59.07, as may be amended from time to time, and additional information as may be required pursuant to M.G.L. c.40S and accompanying regulations. The Town Clerk of the Town of Kingston shall maintain a copy of all updates transmitted to DHCD pursuant to this By-Law, with said copies to be made available upon request for public review.

4.15.17. Notification of issuance of building permits. Upon issuance of a residential building permit within the Smart Growth District, the Building Inspector of the Town of Kingston shall cause to be filed an application to the Department of Housing and Community Development (DHCD), in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each residential building permit pursuant to M.G.L. c.40R. The application shall contain all information required in 760 CMR 59.06(2), as may be amended from time to time, and additional information as may be required pursuant to M.G.L. c.40S and accompanying regulations. The Town Clerk of the Town of Kingston shall maintain a copy of all such applications transmitted to DHCD pursuant to this By-Law, with said copies to be made available upon request for public review.

4.15.18. Date of effect. The effective date of this By-Law shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of M.G.L. c.40A § 5.

4.15.19. Severability. The provisions of this section are severable. If any provision of this section is held invalid, the other provisions shall not be affected but shall remain in full force.

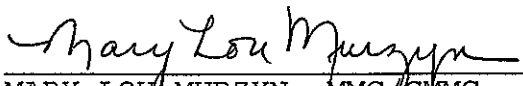


PLANNING BOARD RECOMMENDED FAVORABLE ACTION.
FINANCE COMMITTEE RECOMMENDED FAVORABLE ACTION.
40R DESIGN REVIEW DRAFTING COMMITTEE RECOMMENDED
FAVORABLE ACTION.

YES - 925; NO - 341

THE MOTION WAS CARRIED SINCE IT MET
THE 2/3 REQUIREMENT.

DATE: AUGUST 15, 2007



MARY LOU MURZYN, MMC/CMMC
TOWN CLERK