

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY  
ATTORNEY GENERAL

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August 8, 2007

Maureen A. Clark, Town Clerk  
30 Providence Road  
Grafton, MA 01519

**RE: Grafton Annual Town Meeting of May 14, 2007 — Case # 4371  
Warrant Articles # 31 and 52 (Zoning)**

Dear Ms. Clark:

**Articles 31 and 52** - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Grafton annual town meeting that convened on May 14, 2007, the map pertaining Article 31.

**Article 31** - The amendments adopted under Article 31 add to the town's zoning by-laws a new Section 10 "Fisherville Smart Growth Overlay District (FSGOD)." 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 approval of the amendments adopted under Article 31 is conditioned upon approval by DHCD. Thus, the amendments adopted under Article 31 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 specifically call the town's attention to Sections 10.3. and 10.6. Section 10.3 pertains to the creation and location of the FSGOD and provides as follows:

10.3.B Underlying Zoning. The FSGOD is an overlay district superimposed on all underlying zoning districts. Except as limited herein, the underlying zoning shall remain in full force and effect. Note: See next section.

Section 10.6 pertains to permitted and prohibited uses and provides in pertinent part as follows:

10.6.B Prohibited Uses. All principal uses not expressly allowed are prohibited.



In approving Sections 10.3.B. and 10.6.B, we remind of the town of the protections accorded to certain uses and structures under G.L. c. 40A, § 3. General Laws Chapter 40A, § 3, provides exemptions from local zoning for uses and structures including agricultural uses, religious uses, educational purposes, and certain day care centers.

Section 10.3.B provides that the underlying zoning shall remain in effect in the FSGOD, except as limited by the proposed by-law. Section 10.6.B provides that all uses not expressly allowed are prohibited. We point out that G.L. c. 40A, § 3, protected uses are not expressly allowed in the proposed by-law. The town cannot prohibit, require a special permit, or unreasonably regulate those uses that are accorded protections under G.L. c. 40A, § 3. Moreover, nothing in the text of the proposed by-law, including Sections 10.3.B and 10.6.B, can be construed or applied so as to prohibit, require a special permit, or unreasonably regulate those uses that are accorded protection under G.L. c. 40A, § 3. We caution the town to apply the proposed by-law in a manner consistent with G.L. c. 40A, § 3.

**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.

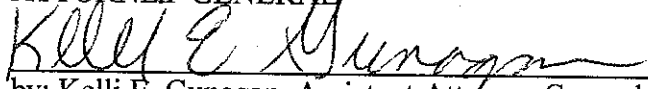
**Note:** Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing 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

  
by: Kelli E. Gunagan, Assistant Attorney General  
By-law Coordinator, Municipal Law Unit  
1350 Main Street, 4<sup>th</sup> Floor  
Springfield, MA 01103-1629  
(413) 784-1240, x 117

A true copy,  
Attest:   
Maureen A. Clark, Town Clerk of Grafton

enc.

pc:

Town Counsel

## **SECTION 10 – FISHERVILLE SMART GROWTH OVERLAY DISTRICT (FSGOD)**

### **10.1 Purpose**

It is the purpose of this Section to establish a Fisherville 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 transportation systems. Other objectives of this Section are to:

**10.1.A** Promote the public health, safety, and welfare by encouraging diversity of housing opportunities;

**10.1.B** 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;

**10.1.C** Increase the production of a range of housing units to meet existing and anticipated housing needs;

**10.1.D** Provide a mechanism by which residential development can contribute directly to increasing the supply and diversity of housing;

**10.1.E** Establish requirements, standards, and guidelines, and ensure predictable, fair and cost-effective development review and permitting;

**10.1.F** Establish development standards to allow context-sensitive design and creative site planning;

**10.1.G** Enable the Town to receive Zoning Incentive Payments and/or Density Bonus Payments in accordance with G. L. Chapter 40R, 760 CMR 59.06, and additional Chapter 70 aid in

accordance with G.L. Chapter 40S arising from the development of housing in the Fisherville Smart Growth Overlay District.

## **10.2 Definitions**

For purposes of this Section, the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Enabling Laws or this Section 10.2. To the extent that there is any conflict between the definitions set forth in this Section 10.2 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 10.5 of this Bylaw.

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

**As-of-right Project or Project** - means a Multifamily Use development or a Mixed Use development allowed under Section 10.6 without recourse to a special permit, variance, zoning amendment, or other form of zoning relief.

**Design Standards** - The document entitled FSGOD Design Standards, submitted to DHCD by the Town of Grafton, dated March 21, 2007, as may be amended in conformance with the provisions of Chapter 40R. Such Design Standards shall be applicable to all Projects within the FSGOD that are subject to Plan Approval by the Plan Approval Authority.

**DHCD** - The Department of Housing and Community Development of the Commonwealth of Massachusetts or any successor agency.

**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.

**Mixed Use** - Structure in which multifamily use is permitted as of right with allowed commercial uses.

**Multifamily Use** - Dwelling containing four or more dwelling units.

**Open Space** - the part or parts of land within a Project which are reserved or restricted for permanent open space. This space shall exclude parking areas and stormwater detention areas, but include required setbacks and walkways. The Open Space shall be open and unobstructed to the sky; however; trees, planting, arbors, flagpoles, sculptures, fountains, swimming pools, atriums, outdoor recreational facilities, such items as streetscape elements (lights, planters, benches, etc.), outdoor areas devoted to dining, cafe or similar uses, and decorative surface treatments for sidewalks and other hard surfaces (such as pavers, cobblestones or concrete surface treatments designed to resemble pavers or cobblestones). and similar objects shall not be considered obstructions. No more than 50% of the total amount of required Open Space shall be "wetland" as defined by the requirements of G.L. c. 131, Section 40, and the Town's Wetland By-law.

**Plan Approval**- standards and criteria which a Project in the FSGOD 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 FSGOD, the Plan Approval Authority (PAA), consistent with G.L. Chapter 40R and 760 CMR 59.00, shall be the Planning Board. The PAA 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.

**Zoning By-law** - the Zoning By-law of the Town.

### **10.3 Overlay District**

**10.3.A Establishment.** The Fisherville Smart Growth Overlay District, hereinafter referred to as the FSGOD, is an overlay district having a land area of approximately 13.74 acres, being portions of Assessor's Map 115, Lots 2, 121, 122, that is superimposed over the underlying zoning district, as shown on the Zoning Map as set forth on the map entitled "Fisherville Smart Growth Overlay District," dated October 16, 2006 and attached hereto as Exhibit A. This map is hereby made a part of the Zoning By-law and is on file in the Office of the Town Clerk.

**10.3.B Underlying Zoning.** The FSGOD is an overlay district superimposed on all underlying zoning districts. Except as limited herein, the underlying zoning shall remain in full force and effect. Note: See next section

### **10.4 Applicability of FSGOD**

In accordance with the provisions of G.L. Chapter 40R and 760 CMR 59.00, an Applicant for a Project located within the FSGOD may seek Plan Approval in accordance with the requirements of this Section 10. In such case, then notwithstanding anything to the contrary in this Zoning By-law, such Plan Approval shall not be subject to any other provisions of this Zoning By-law, 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, including but not limited to any rate of

development limitations provided in the Zoning By-law. When a building permit is issued for any Project approved in accordance with this Section 10, 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 10.7 for such Project.

### **10.5 Housing and Affordability**

**10.5.A Marketing Plan.** Prior to granting Plan Approval for housing within the FSGOD, 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 households with children, other households, individuals, households including individuals with disabilities, and the elderly. These documents in combination, to be submitted with an application for Plan Approval pursuant to Section 10.7, below, shall include details about construction related to the provision, within the Project, of units that are accessible to the disabled.

**10.5.B Number of Affordable Housing Units.** For all Projects where the Affordable Units proposed are Homeownership Units, not less than twenty percent (20%) of the total housing units constructed in a Project shall be Affordable Housing. For all Projects where the Affordable Units proposed are Rental Units not less than twenty five percent (25%) of total housing units in any building containing rental units shall be Affordable Housing; provided, however, that 20% of such units may be affordable where restricted to households earning less than 50% of area median income. For purposes of calculating the number of units of Affordable Housing required within a Project, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit.

**10.5.C 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 FSGOD shall not include the imposition of restrictions on age upon the entire District, but the development of specific Projects within the FSGOD 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 federal, state and local fair housing laws and regulations.

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

**10.5.E 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 the maximum period allowed by law but not less than ninety nine years;
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 or the rental portion of a 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 lender;
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 Town, in a form approved by municipal counsel, and shall limit initial sale and resale 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 Town, 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 Bylaw 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.

**10.5.F 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 FSGOD. 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 FSGOD, 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;

**10.5.G Housing Marketing and Selection Plan.** The housing marketing and selection plan shall 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, as set forth in 10.5.G.

**10.5.H Phasing.** For any Project that is approved and developed in phases, the proportion of Affordable Housing Units and the proportion of market rate units shall be consistent across all phases.

**10.5.I Computation.** Prior to the granting of any Plan Approval of a Project, the applicant 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 the Town.

**10.5.J No Waiver.** Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 10.5 shall not be waived.

## **10.6 Permitted and Prohibited Uses**

**10.6.A Permitted Uses.** The following uses are permitted as of right in the FSGOD:

**1. In all Subzones:**

- a. Parking, including surface, garage-under, and structured parking (e.g., parking garages);
- b. Open space and recreational uses;
- c. Accessory uses customarily incidental to any permitted uses;
- d. Municipal Uses.

**2. In Subzone A:**

- a. Multifamily Use or Mixed Use with a density of as set forth in Section 10.10.B;
- b. Restaurant, provided that such restaurant shall not be a fast-food or drive-through restaurant, and shall not exceed 15,000 square feet of gross floor area.
- c. retail establishment not to exceed 20,000 square feet of gross floor area;
- d. day care center;
- e. community or neighborhood center;
- f. personal or consumer service establishment;
- g. business, professional or general office;
- h. bank;
- i. health club.

### **3. In Subzone B:**

- a. Mixed Use with a density as set forth in Section 10.10.B, with residential units over available commercial uses. No commercial use shall be allowed except where developed as a Mixed Use with residential use located in the same building.
- b. Multifamily Use with a density as set forth in Section 10.10.B;
- c. retail establishment not to exceed 40,000 square feet of gross floor area;
- d. restaurant, provided that such restaurant shall not be a drive-through restaurant, and shall not exceed 10,000 square feet of gross floor area;
- e. day care center;
- f. community or neighborhood center;
- g. personal or consumer service establishment;
- h. business, professional or general office;
- i. bank;
- j. health club.
- k. Commercial use shall be required. No Certificate of Occupancy for any ten dwelling units shall be issued without the prior issuance of a Certificate of Occupancy for 10,000 gross square feet of nonresidential space.

**10.6.B Prohibited Uses.** All principal uses not expressly allowed are prohibited.

### **10.7 Application for Plan Approval**

**10.7.A Preapplication.** Prior to the submittal of a site plan, a "Concept Plan" may be submitted to help guide the development of the definitive site plan for Project buildout and individual elements thereof. Such Concept Plan should reflect the following:

1. Overall building envelope areas;
2. Open space and natural resource areas;
3. General site improvements, groupings of buildings, and proposed land uses.

The Concept Plan is intended to be used as a tool for both the applicant and the PAA to ensure that the proposed Project design will be consistent with the Design Standards and Guidelines and the other requirements of the FSGOD.

**10.7.B Application.** An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA. An application shall show the proposed buildout of the entire Project, whether the Project will be phased or not.

**10.7.C Required Submittals.** The application for Plan Approval shall be accompanied by the following plans and documents:

1. Properly executed application form, and (if applicable) all materials necessary for facilitating a public hearing on the application;
2. A filing fee of \$250.00 plus \$80.00 per dwelling unit to cover administrative costs.
3. List of any requested waivers from the requirements of this section 10.0, including a detailed explanation/justification of the reason for such request.
4. A Site Plan prepared by a professional architect or registered professional engineer, at a scale of one inch equals forty feet (1" = 40'), or at other scale as may be necessary to show all detail clearly and accurately. Sheet sizes shall not exceed twenty-four inches by thirty-six (24" x 36"), and shall not be less than eleven inches by seventeen inches (11" x 17"). If multiple sheets are used they shall be accompanied by an index sheet showing the entire parcel at an appropriate scale. If the plans submitted are 11" x 17" in size, a total of twenty-five (25) copies of the plans shall accompany the application. If the plans prepared exceed 11" x 17" in size, a total of five (5) copies of such plans and twenty (20) sets of reduced-size copies (11" x 17") shall be submitted. The Plan shall include the following information:
  - a. Name and address of the person or entity submitting the application;
  - b. Name and address of the owner of the subject property, if different;
  - c. Present use of the land and description and use of existing building thereon, if any;
  - d. Proposed use of the land;
  - e. Proposed use of existing buildings, if any;
  - f. Description and proposed use of the proposed building, if any;
  - g. Zoning District in which the parcel is located, including floodplain if applicable;
  - h. Locus Map (scale of 1"=1,000') and north arrow;
  - i. Title Block containing: name of the project; applicant; property owner; property address and Assessor's Map/Lot number; date (with revisions); name, address and phone number, and the signature and seal of the professional architect or engineer preparing the plan;

- j. Wetlands, Ponds, Streams, or other water bodies, including all applicable buffer zones;
- k. Ownership of all abutting land and approximate location of buildings, driveways, and parking areas thereon within a maximum distance of two hundred feet (200') of the property lines;
- l. Existing and proposed topography at two-foot (2') elevation intervals;
- m. All property lines of the subject property, and all setbacks of buildings and parking areas from said lines, and existing and proposed easements, if any;
- n. Extent and type of all existing and proposed surfaces (pervious and impervious) on the property, including specific materials;
- o. Lot coverage calculations showing percentage of buildings, percentage of pavement, and percentage of open space/landscaped areas;
- p. Parking calculations for proposed use, including all existing use that will continue to exist on the property, if applicable;
- q. Calculations of the volume of earth material to be removed or filled on the property, and delineation of the location of such activity;
- r. Driveways and driveway openings/entrances;
- s. Parking and loading spaces;
- t. Service areas and all facilities for screening;
- u. Landscaping;
- v. Lighting;
- w. Proposed signs (business, traffic, etc.);
- x. Sewage, refuse and other waste disposal;
- y. Stormwater management facilities (drainage);
- z. All structures and buildings associated with the proposed and existing use(s) on the property;
- aa. Exterior storage areas and fences;
- bb. Utilities and their exterior appurtenances (e.g., fire connections);
- cc. Provisions for dust and erosion control;
- dd. Any existing vegetation;

ee. Any other details or information deemed necessary by the Planning Board due to the unique nature of a proposed use or the subject property;

5. A stormwater management hydrological study prepared in accordance with the Design Standards referenced in Section 10.2.

6. A report, if applicable, showing calculations of the volume of earth material to be removed from or delivered to the site, including a description of such removal or fill activity. Depending upon the volume of material to be removed or filled, the Planning Board may require the Applicant to submit additional information (if not submitted in the report) regarding, but not limited to, the following: the hours of fill/removal activity; proposed route of transporting materials to and from site; measures for dust and erosion control (both on- and off-site) for the activity.

7. Draft Housing Marketing and Selection Plan as required by 10.5. A.

8. Evidence that the Project complies with the cost and eligibility requirements of Section 10.5.C.

9. Project plans that demonstrate compliance with the requirements of Section 10.5.E

10. A form of Affordable Housing Restriction that satisfies the requirements of Section 10.5.F

11. Scaled architectural drawings showing all proposed development, including site plans, elevation drawings, and floor plans. Drawings should clearly and comprehensively illustrate all aspects of the project and detail conformance with the Design Standards, as may be amended, including:

(i) Building plans, including elevation drawings, floor plans, and roof plans, showing design for all new or rehabilitated buildings, including overall dimensions, building materials, colors of permanent exterior finishes (excluding paint color), location and configuration of doors and windows, and details of roofing, siding, ornament and trim, signage, mechanical equipment, and accessory buildings. For developments of multiple buildings, drawings should also show the relationship of individual buildings to each other within the development, as well as to abutting structures. All drawings shall be labeled with the property address and date; elevation drawings should note the compass direction (e.g., "north elevation"); floor plans should indicate a north arrow. Colored renderings, Power Point presentations, and/or 3-D animated renderings may also be provided.

(ii) Materials palette, showing exterior material choices for walls, trim, and windows (glass and framing).

All plans and elevations presented with the application shall remain a part of the records of the PAA.

## **10.8 Procedures**

**10.8.A Filing.** An applicant for Plan Approval shall file the application and all required submittals with the Town Clerk and shall also file forthwith 20 copies of the application and the other required submittals with the PAA including notice of the date of filing with the Town Clerk.

**10.8.B Circulation to Other Boards.** Upon receipt of the Application, the PAA shall immediately provide a copy of the application materials to the Board of Selectmen, Zoning Board of Appeals, Board of Health, Housing Authority, Planning Board, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, Affordable Housing Trust, Sewer Department, South Grafton Water District, 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.

**10.8.C 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 Town Clerk, within 120 days of the receipt of the application by the Town Clerk. The required time limits for such action may be extended by written agreement between the applicant and the PAA, with a copy of such agreement being filed in the office of the Town Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the application and site plan.

**10.8.D Peer Review.** In addition to the application fee, 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. This technical review fee shall be paid at the time of the application. The initial deposit shall be \$10,000 and shall be subject to replenishment as needed. Such fees shall be held by the Town in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the applicant. See Section 10.5.I.

## **10.9 Reserved**

## **10.10 Dimensional and Density Requirements**

**10.10.A Dimensional Requirements.** Notwithstanding anything to the contrary in the Zoning By-law, the dimensional requirements applicable in the FSGOD are as follows. All dimensional requirements shall be computed based upon the Project rather than building by building basis:

Minimum Lot Area:	Not applicable
Minimum Lot Frontage:	100 feet
Maximum Building Height:	5 stories excluding parking facilities but not higher than 75 feet
Minimum Street and Lot Line Setback:	50 feet

Maximum Open Space:	10%
Total Project Coverage by Buildings:	50%
Minimum Setback between Buildings	15 feet

**10.10.B Subzone Density Requirements.** The following density shall be allowed as of right in the FSGOD:

Subzone A:	maximum of 25 dwelling units per developable acre
Subzone B:	maximum of 20 dwelling units per developable acre

### **10.11 Parking Requirements**

**10.11.A General.** Notwithstanding anything to the contrary in this Zoning By-law, the parking requirements applicable in the FSGOD are as follows:

Residential Use:	1.5 parking spaces per dwelling unit
Nonresidential Use:	1 parking space per 260 sq. ft. of retail space

**10.11.B Shared Parking.** The use of shared parking to fulfill parking demands noted above that occur at different times of day is strongly encouraged. Minimum parking requirements above may be reduced by the PAA 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).

**10.11.C Waiver of Parking Requirements.** Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced upon a demonstration to the reasonable satisfaction of the PAA that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

1. the availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus station or major transportation route;
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 or other occupancy restrictions which are likely to result in a lower level of auto usage;
5. impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction of existing dwelling units, or loss of pedestrian amenities along public ways; and

6. such other factors as may be considered by the PAA.

### **10.12 Stormwater Management Standards**

Stormwater management shall conform to the Department of Environmental Protection's Stormwater Management Policy.

### **10.13 Design Standards**

10.13.A General. In order to ensure quality development within the FSGOD and to ensure design that respects the built and natural character of the Town, the Design Standards, approved by DHCD on April 27, 2007, a copy of which shall be filed with the Town Clerk, shall be applicable to all Projects subject to Plan Approval within the FSGOD. In addition to the standards set forth in this Bylaw, the physical character of Projects within the FSGOD shall comply with such standards, as may be amended in conformance with the requirements of Chapter 40R.

### **10.14 Decision**

**10.14.A Waivers.** Except where expressly prohibited herein, upon the request of the Applicant the Plan Approval Authority may waive dimensional and other requirements of Section 10, including the Design Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the FSGOD, 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.

**10.14.B 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.

**10.14.C Plan Approval.** Plan Approval shall be granted where the PAA finds that:

1. the applicant has submitted the required fees and information as set forth herein; and
2. the Project and site plan meet the requirements and standards set forth this Section 10, or a waiver has been granted therefrom; and
3. extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated by means of suitable conditions.

**10.14.D 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 herein; or
2. the Project and site plan do not meet the requirements and standards set forth this Section 10 or the PAA Design Standards, 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.



**10.14.E Form of Decision.** All decisions of the PAA shall be by majority vote of the members present and voting. The PAA shall issue to the applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. A copy of the decision shall be provided to the Director of Inspectional Services. 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.

### **10.15 Change in Plans After Approval by PAA**

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

**10.15.B Major Change.** Those changes deemed by the PAA to constitute a major change because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to this Section.

### **10.16 Enforcement; Appeal**

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

### **10.17 Severability**

If any provision of this Section 10 is found to be invalid by a court of competent jurisdiction, the remainder of Section 10 shall remain in full force. The invalidity of any provision of this Section 10 shall not affect the validity of the remainder of the Town's Zoning By-Law.

A true copy,  
Attest:

  
Maureen A. Clark, Town Clerk of Grafton

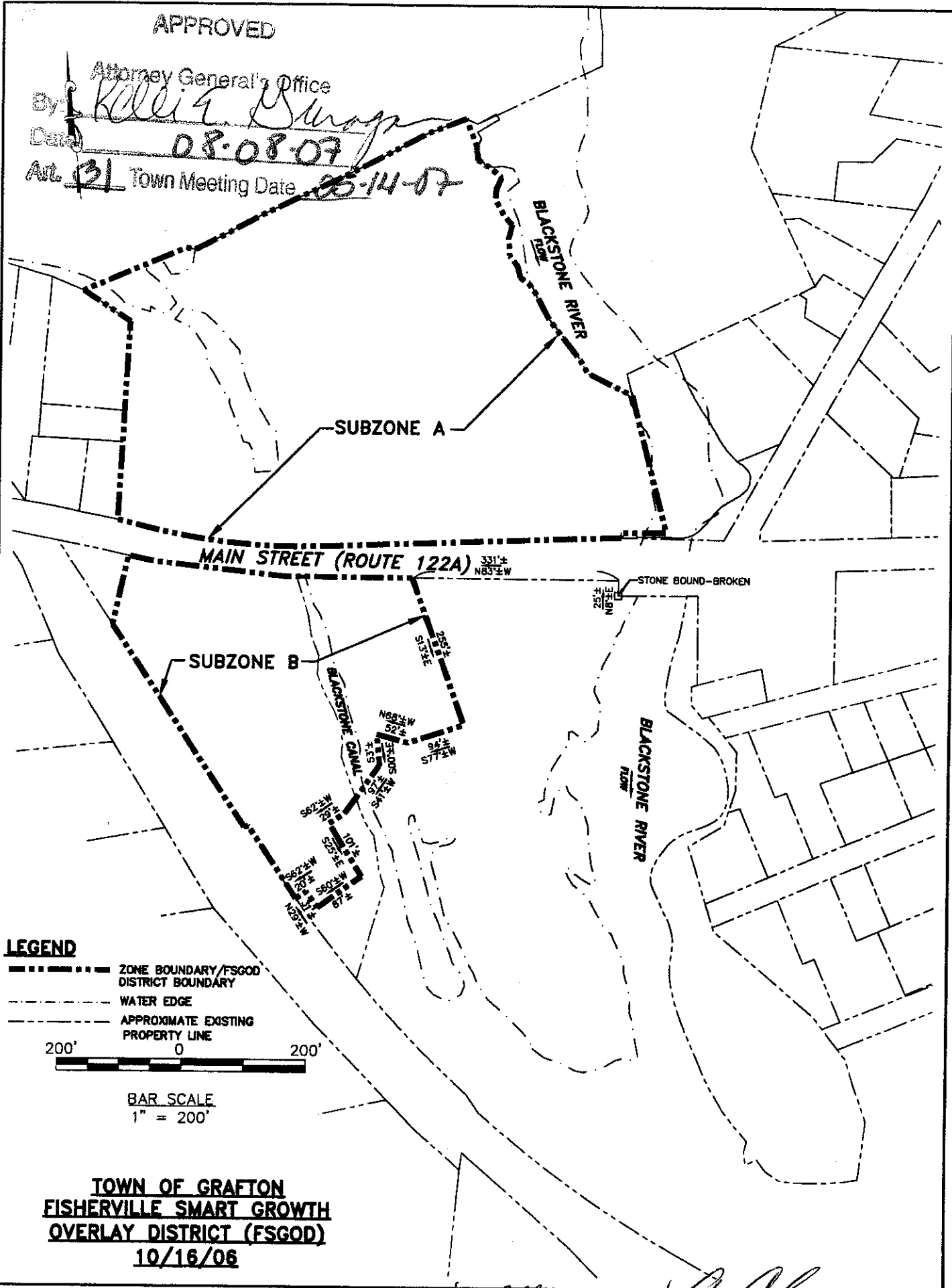
APPROVED

Attorney General's Office

By: *Kelli G. Stroup*

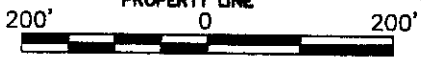
Date: 08-08-07

At: 31 Town Meeting Date: 08-14-07



**LEGEND**

- ZONE BOUNDARY/FSGOD DISTRICT BOUNDARY
- - -** WATER EDGE
- - -** APPROXIMATE EXISTING PROPERTY LINE



BAR SCALE  
1" = 200'

**TOWN OF GRAFTON**  
**FISHERVILLE SMART GROWTH**  
**OVERLAY DISTRICT (FSGOD)**  
**10/16/06**

A true copy,

Attest: *Maureen A. Clark*  
 Maureen A. Clark, Town Clerk of Grafton

# FSGOD DESIGN STANDARDS

March 21, 2007

## PART ONE: GENERAL DESIGN STANDARDS

These General Design Standards are set forth to promote preservation of open space and natural resources and to maintain the visual sense of neighborhood character. These Standards are applicable in all subzones. These Design Standards are intended to clarify the permitting review process, and to define expectations for the size, bulk, exterior sheathing, open space, and placement of structures. These Design Standards shall supercede all other standards set forth elsewhere in the Zoning By-laws, other than those set forth in the FSGOD.

### I. SITE PLANNING

#### A. Streetscape Compatibility.

1. Provide street trees with tree grates or in planter strips, to provide summer shade and winter light..
2. Orient structures to provide pedestrian entrances to the sidewalk.
3. Street design standards shall not be limited to defined rights of way but shall also apply to driveways and internal ways which function as streets.

#### B. Open Space.

1. Mature street trees have a high value to the Project; minimize development that would impair the health of mature trees.
2. Use landscape materials that require minimal irrigation or fertilizer.
3. Encourage porous paving materials to minimize stormwater run-off.

#### C. Parking and Vehicle Access

1. Unstructured surface parking areas facing the main street frontages are discouraged.
2. Parking areas shall be setback from structures, property lines and internal ways by a minimum of 10 feet.
3. Multi-purpose parking areas paved with unit pavers are encouraged (i.e., areas that serve both parking and public open space needs).

#### D. Corner Lots

Buildings on corner lots shall be oriented to the corner and public street fronts. Parking and automobile access shall be located away from the corners, where practical. Incorporate residential entries and landscaping into corner lots by setting the structure

back from the property lines.

## **II. HEIGHT, BULK AND SCALE COMPATIBILITY**

### **A. Compatible Design.**

1. Break up building mass by incorporating different façade treatments, where practical.
2. Consider color schemes that help reduce apparent size and bulk of buildings.

## **III. ARCHITECTURAL ELEMENTS AND MATERIALS**

### **A. Materials**

Brick is the construction material of choice. Where this standard is waived, wood structures may be substituted with clapboard or shingle siding, although other materials may be used in ways that are compatible with these more traditional materials.

### **B. New Buildings.**

New buildings shall generally include:

1. solid kick panels below windows;
2. storefront windows, where applicable;
3. a level of fine grained detailing and trim;
4. materials, such as wood, brick, and stone;
5. canopies, variable parapets, and cornices;
6. pitched roofs

### **C. Top Floors**

Distinguish tops of buildings from the façade walls by including detail such as steep gables with overhangs, parapets and cornices.

## **IV. ARCHITECTURAL CONCEPT AND CONSISTENCY**

### **A. Proportion.**

Roof line or top of the structure shall be distinguished from its façade walls.

1. Solid canopies or fabric awnings over the sidewalk may be used.
2. Avoid using vinyl awnings that also serve as big, illuminated signs.
3. Pitched roofs are required.

#### **B. Rooftops**

Rooftop building systems (i.e., mechanical and electrical equipment, antennas) shall be screened from all key observation points by integrating them into the building design with parapets, screens or other methods.

#### **C. Distinctive Features**

Illuminate entries, signage and canopies.

### **V. HUMAN SCALE**

#### **A. New Buildings**

1. Transom or clerestory windows above entrances, display windows and projected bay windows are encouraged.
2. Multiple paned windows that divide large areas of glass into smaller parts
3. Non-reflective storefront windows and transoms;

### **VI. EXTERIOR FINISH MATERIALS**

1. Materials that have texture or pattern are encouraged.
2. Provide operable windows, especially on storefronts.
3. Finish materials that are susceptible to staining, fading or other discoloration are strongly discouraged.
4. The use of applied foam ornamentation and EIFS (Exterior Insulation & Finish System) is discouraged, especially on ground level locations. Discourage aluminum siding, and siding with narrow trim.

## **VII. PROJECT ENVIRONMENT**

### **A. Pedestrian Open Spaces and Entrances**

1. Paths and entry areas shall be lighted and entry areas shall be protected from the weather.
2. Entries for residential uses on the street (rather than from the rear of the property)
3. Overhead weather protection shall be designed to minimize gaps in coverage, except to accommodate street trees.
4. Sidewalks shall be surfaced with concrete, brick, or stone; minimum width shall be five feet.
5. Benches for seating shall be provided near retail entrances and at bus stops. At bus stops, such benches shall offer protection from the weather.

### **B. Blank Walls**

Buildings shall avoid large blank walls.

1. Long, undifferentiated surfaces, facades or store frontages are strongly discouraged.
2. Large windows that open are encouraged.

### **C. Screening of Dumpsters, Utilities and Service Areas**

1. All utilities shall be underground, to the extent feasible.
2. All dumpsters, utility/service areas shall be screened.

### **D. Lighting**

1. Lighting in display windows to illuminate the sidewalk is recommended.
2. transparent windows allowing views into and out of the structure
3. Fixtures that produce glare or that spill light to adjoining sites are discouraged.
4. Installation of pedestrian light fixtures as part of a development's sidewalk improvements is strongly encouraged.

### **E. Noise**

At no time shall noise levels emanating from normal operations, except motor vehicles, exceed 10 d.b.a. above ambient at the Project lot line.

## **VIII. LANDSCAPING**

The landscape design shall strive to provide greenery, so that streets and access drives are lined with shade trees, large paved areas are visually divided and screened and buffers are provided within and around the development. Plantings shall provide seasonal foliage, bloom and fragrance. Landscaping shall:

1. Preserve existing significant trees where feasible.
2. Incorporate street trees in commercial and residential environments to create overhanging canopies of trees.
3. Provide hedges or continuous shrubs to screen pavements, especially parking areas from streets, where practical.
4. All buildings shall have foundation landscaping, where practical.
5. All islands and landscape areas shall be of a minimum width and size to support healthy plant growth.

## **IX. SIGNS**

Wood signs are recommended.

1. Avoid signage that covers or obscures significant architectural details of the building
2. In a new mixed use building, signage above the level of the storefront shall be considered if flat wall signs are employed.
3. Signs shall not have moving parts or flashing lights. Hanging signs are not considered moving parts.
4. Signs shall not be internally illuminated.
5. Signs on canopy fabrics advertising the name of the business or organization are encouraged.
6. Indirect lighting is encouraged for signage; internally lit signs (neon, etc.) and façade elements are prohibited.
7. Projecting signs shall be minimized, and where they are used, they shall have little or no lettering.
8. externally illuminated signs are allowed; internally illuminated, rectangular box signs

are prohibited.

9. Pole signs of any type are discouraged.

## **X. SURFACING, DRAINAGE, AND CURBING**

Parking areas shall be graded, surfaced with asphalt, concrete, or other suitable non-erosive material, and drained in a manner deemed adequate by the Town Department of Public Works to prevent standing water, erosion, or excessive water flow across abutting streets or ways, within the proposed parking area, to abutting properties, and to wetland resource areas; natural drainage courses shall be utilized insofar as possible.

1. Detention and filtration systems shall be located onsite and shall have curvilinear sides, so as to appear a natural part of the landscape. Manmade embankments shall have maximum side slopes of three (3) feet horizontal and one (1) foot vertical.
2. All detention and filtration systems shall be designed to conform with the stormwater Management Policy of the Massachusetts Department of Environmental Protection.
3. Curbing shall be either concrete or granite. Curbing will be required to limit off pavement vehicle access, unless other suitable materials are used.

## **XI. TRAFFIC AND PEDESTRIAN SAFETY**

The proposed development shall be designed with a forecast for the next five years from the time of application to minimize hazards to public health and safety as a result of traffic; provide safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles; provide off-site traffic mitigation, where required, to offset the impact of the development; reduce the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and minimize the impact on community character. The proposed development shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, or property.

1. The location of driveway openings in relation to traffic and to adjacent streets shall provide for the convenience and safety of vehicular and pedestrian movement within the site. The number of curb cuts on state and local roads shall be minimized.
2. The proposed development shall assure safe interior circulation within its site by separating pedestrian, bike ways, and vehicular traffic.
3. The proposed development shall be subject to Transportation Plan approval by the



PAA. The Transportation Plan shall consist of the following information:

A. A plan showing the proposed parking, loading, and traffic circulation within the site; access and egress points; and other features related to traffic generated by the proposed use.

B. A traffic study, prepared by a qualified traffic engineer, detailing the expected traffic impacts. The required traffic study shall substantially conform to the Institute of Transportation Engineers' "Traffic Access and Impact Studies for Site Development: A Recommended Practice," latest edition. The PAA shall approve the geographic scope and content of the study. In addition, the applicant shall submit a Transportation Demand Management (TDM) plan tailored to the specific uses and the geographic location of the site.

C. Proposed mitigation measures, if any, such as left-turn lanes, roadway widening, signage, signalization of intersections.

4. Sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the Development.

5. All development and redevelopment shall provide for pedestrian and bicyclist connections on the property, and allow for possible future connections with adjoining properties, where deemed appropriate by the PAA. Pedestrian access shall connect to building entrances with further connections to local pedestrian arteries. Sidewalks, crosswalks, walkways, bike racks or other pedestrian access shall be provided to allow access to adjacent properties and between individual businesses within a development.

## **PART TWO: SUBZONE DESIGN STANDARDS**

### ***Subzone A - Mixed Use.***

Location: As shown on the FSGOD Map.

Building Type: The dwelling units in Subzone A may be situated in a single structure or in multiple structures. Where multiple structures are proposed, all dwellings shall contain not less than thirty dwelling units.

Nonresidential Uses: Any restaurant in subzone A shall be oriented toward the existing dam on the Blackstone River and shall be centrally located on the ground floor of the building in which it is contained.

***Subzone B - Mixed Use:***

Location: As shown on the FSGOD Map.

Building If nonresidential space is developed in Subzone B the dwelling units in Subzone B shall be situated over the allowed nonresidential space. ,. No certificate of occupancy or use for nonresidential space shall be issued unless residential space has been developed and permitted for occupancy above.

Nonresidential Uses: The total gross floor area of all nonresidential uses in Subzone B shall not exceed 40,000 square feet.