

Lee Smart Growth Overlay Zoning Bylaw

SECTION XX:SMART GROWTH OVERLAY DISTRICT (SGOD)

XX.1 PURPOSE

- A) The purposes of this Section is to establish a Smart Growth Overlay District (SGOD) to encourage smart growth in accordance with the purposes of G. L. Chapter 40R. Other objectives of this section are to:
- 1) To encourage the revitalization of existing buildings to benefit the general health and welfare of our residents and the region;
 - 2) To promote the economic health and vitality of the Town by encouraging the preservation, reuse, renovation, and repurposing of underutilized historic structures where applicable;
 - 3) To maintain a consistently high level of design quality.
 - 4) To establish requirements, standards, and guidelines, and ensure predictable, fair and cost-effective development review and permitting;
 - 5) 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 G.L. Chapter 40S, arising from the development of housing in the SGOD District.

XX.2 DEFINITIONS

- A) 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, as applicable, as otherwise set forth in the Zoning Bylaw, or as set forth in the Plan Approval Authority (PAA) Regulations. To the extent that there is any conflict between the definitions set forth in this Section or the PAA Regulations and the Enabling Laws, the terms of the Enabling Laws shall govern.
- 1) **Administering Agent or Monitoring Agent** – the local housing authority or other qualified housing entity designated by the PAA to review and implement the Affordability requirements affecting Projects under Section.
 - 2) **Affordable Homeownership Unit** - an Affordable Housing unit required to be sold to an Eligible Household.
 - 3) **Affordable Housing** - housing that is affordable to and occupied by Eligible Households.
 - 4) **Affordable Housing Restriction** - a deed restriction of Affordable Housing meeting statutory requirements in G.L. Chapter 184, Section 31 and the requirements of Section XX.6.F of this Bylaw.
 - 5) **Affordable Rental Unit** - an Affordable Housing unit required to be rented to an Eligible Household.
 - 6) **Applicant** – the individual or entity that submits a Project for Plan Approval.
 - 7) **As-of-right** - a use allowed under Section XX.5 without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A

- Project that requires Plan Approval by the PAA pursuant to Sections XX.9 through XX.12 shall be considered an as-of-right Project.
- 8) **Accessory Sign** – any sign which is mounted on the same post or pylon as the freestanding sign but is accessory to the freestanding sign and which displays a message that is standard to the industries, such as (but not limited to) vacancy/no vacancy, open/closed, dinner being served, credit card, AAA, etc.
 - 9) **Department or DHCD** - the Massachusetts Department of Housing and Community Development, or any successor agency.
 - 10) **Design Standards** – means provisions of Section 13 made applicable to Projects within the SGOD that are subject to the Plan Approval process.
 - 11) **Developable Land**: an area of land that does not include wetlands or wetland buffer zone areas, rare and endangered species habitats as designated by the Massachusetts Natural Heritage and Endangered Species Program, or slopes over 15%.
 - 12) **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.
 - 13) **Enabling Laws** - G.L. Chapter 40R and 760 CMR 59.00.
 - 14) **Free Standing Sign** – a self-supporting sign not attached to any building, wall or fence but in a fixed location. This does not include portable or trailer-type signs.
 - 15) **Landmark Sign** – a sign of artistic or historic merit, uniqueness or extraordinary significance to the town as identified by the local Historic Commission, or the Board of Selectmen in its absence.
 - 16) **Live/Work Unit** - a living unit in which the resident(s) are engaged in creative production and services, and which may or may not include retail sales of items produced on-site, provided such sales do not occur more than 12 hours per week or between the hours of 8:00 PM to 8:00 AM.
 - 17) **Menu Board Sign** – a sign illustrating the menu or special for an eating establishment that is erasable or otherwise changeable to reflect different menus or specials.
 - 18) **Mixed-Use Development Project** – a Project containing a mix of residential uses and non-residential uses.
 - 19) **Multi-family residential use**: a residential building in which there are four (4) or more residential dwelling units.
 - 20) **PAA Regulations** – the rules and regulations of the PAA adopted pursuant to Section XX.9.C.
 - 21) **Plan Approval** - standards and procedures which Projects in the SGOD must meet pursuant to Sections XX.9 through XX.12 and the Enabling Laws.
 - 22) **Plan Approval Authority (PAA)** - the local approval authority authorized under Section XX.9.B to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.
 - 23) **Political Sign** – a political sign is a sign designed to influence the action of voters for the passage or defeat or the election of a candidate to a public

- office at a national, state or local election.
- 24) **Project** - a Residential or Mixed-use development undertaken within the SGOD in accordance with the requirements of this SGOD.
- 25) **Public Service Sign** – a public service sign is a sign located for the purpose of direction toward or indication of a public service use such as a restroom or telephone that is not readily visible from the street.
- 26) **Residential Project** - a Project that consists solely of residential, parking, and accessory uses.
- 27) **Sign** – any display of lettering, logos, colors, lights or illuminated neon tubes visible to the public from outside of a building, or from a traveled way, which either conveys a message to the public or intends to advertise, direct, invite, announce or draw attention to, directly or indirectly, a use conducted or goods, products, services or facilities available either on the lot or on any other premises, excluding window displays of merchandise.
- 28) **SGOD** – the Smart Growth Overlay District established in accordance with this Section.
- 29) **Temporary Sign** – any sign, including its support structure, intended to be maintained for a continuous period of not more than 30 days in any calendar year.
- 30) **Window Display Sign** – any sign which is mounted onto a window or which is hung directly inside the window of a business with the purpose or effect of identifying the business or any merchandise, product or service for sale within.
- 31) **Zoning Bylaw** - the Zoning Bylaw of the Town of Lee.

XX.3 OVERLAY DISTRICT

- A) **Establishment.** The Smart Growth Overlay District, hereinafter referred to as the “SGOD,” is an overlay district having a land area of approximately 9.9 acres in size that is superimposed over the underlying zoning district (s) and consists of land shown in the 2017 Town of Lee Assessor’s map 12A, Parcel 63, 64, 66, 67, 68, 69, 70, 71 and 72 and shown on the Zoning Map as set forth on the map entitled “Smart Growth Overlay District”, dated September 13, 2017, and on file in the Town Clerk;

XX.4 APPLICABILITY OF SGOD

- A) **Applicability of SGOD.** An applicant seeking to develop a Project located within the SGOD must submit an application for Plan Approval in accordance with the provisions of the Enabling Laws and the SGOD. Notwithstanding anything to the contrary in the Zoning Bylaw, such Project shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations.

- B) **Underlying Zoning.** The SGOD is an overlay district superimposed on all

underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section. Within the boundaries of the SGOD, a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s). Where Project proposed pursuant to the SGOD falls within a Floodplain Overlay District as set forth in Section 3.7 of the Zoning Bylaw, the Project shall comply with applicable provisions of that Section including any special permit(s) as may be required.

XX.5 PERMITTED USES

A) The following uses are permitted as-of-right for Projects within the SGOD.

1) **Mixed-use Development Projects.** A Mixed-use Development Project within the SGOD may include:

- a) Multi-family Residential Use(s), which may include live/work units;
- b) Any of the following Non-residential uses:
 - i) Offices, including medical offices
 - ii) Retail stores, including banks, and wholesale establishments, but excluding stores and establishments with drive-through windows
 - iii) Business service establishments and personal service establishments
 - iv) Bakeries and artisan food or beverage producers
 - v) Restaurants and cafes, indoor or outdoor
 - vi) Hotels
 - vii) Community, education, or recreational uses, including museums, parks, playgrounds, health clubs and gym/fitness centers
 - viii) Light industrial uses
- c) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- d) Accessory uses customarily incidental to any of the above permitted uses.

B) The total gross floor area devoted to Non-residential uses within a Mixed-use Development Project shall not exceed forty-nine percent [49%] of the total gross floor area of the Project.

XX.6 HOUSING AND HOUSING AFFORDABILITY

- 181 A) **Number of Affordable Housing Units.** For all Projects, not less than twenty
 182 percent (20%) of housing units constructed shall be Affordable Housing. Unless
 183 the PAA provides a waiver on the basis that the Project is not otherwise
 184 financially feasible, twenty-five percent (25%) of rental dwelling units
 185 constructed in a Project containing rental units must be Affordable Rental Units.
 186 For purposes of calculating the number of units of Affordable Housing required
 187 within a Project, any fractional unit shall be deemed to constitute a whole unit.
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- 189 B) **Monitoring Agent.** A Monitoring Agent, which may be the local housing
 190 authority or other qualified housing entity, shall be designated by the PAA in its
 191 plan approval. In a case where the Monitoring Agent cannot adequately carry out
 192 its administrative duties, upon certification of this fact by the PAA or by DHCD
 193 such duties shall devolve to and thereafter be administered by a qualified housing
 194 entity designated by the PAA. In any event, such Monitoring Agent shall ensure
 195 the following, both prior to issuance of a Building Permit for a Project within the
 196 SGOD, and on a continuing basis thereafter, as the case may be:
- 197 a) prices of Affordable Homeownership Units are properly computed;
 198 rental amounts of Affordable Rental Units are properly computed;
 - 199 b) income eligibility of households applying for Affordable Housing is
 200 properly and reliably determined;
 - 201 c) the housing marketing and resident selection plan conform to all
 202 requirements and are properly administered;
 - 203 d) sales and rentals are made to Eligible Households chosen in accordance
 204 with the housing marketing and resident selection plan with appropriate
 205 unit size for each household being properly determined and proper
 206 preference being given; and
 - 207 e) Affordable Housing Restrictions meeting the requirements of this section
 208 are recorded with the proper registry of deeds.
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- 210 C) **Submission Requirements.** As part of any application for Plan Approval for a
 211 Project within the SGOD, the Applicant must submit the following documents to
 212 the PAA and the Monitoring Agent:
- 213 1) evidence that the Project complies with the cost and eligibility requirements
 214 of Section XX.6.D
 - 215 2) project plans that demonstrate compliance with the requirements of Section
 216 XX.6.E; and
 - 217 3) a form of Affordable Housing Restriction that satisfies the requirements of
 218 Section XX.6.F.
 - 219 4) These documents in combination, to be submitted with an application for
 220 Plan Approval, shall include details about construction related to the
 221 provision, within the development, of units that are accessible to the disabled
 222 and appropriate for diverse populations, including, as applicable, households
 223 with children, other households, individuals, and the elderly.
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- 225 D) **Cost and Eligibility Requirements.** Affordable Housing shall comply with the

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following requirements:

- 1) Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
- 2) 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.
- 3) 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.
- 4) Prior to the granting of any Building Permit for a Project, the Applicant must demonstrate, to the satisfaction of the Monitoring Agent, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to Town of Lee.

E) **Design and Construction.** Units of Affordable Housing shall be finished housing units. Units of Affordable Housing shall be dispersed proportionately throughout the Project of which they are part, across all buildings, floors and unit types and be comparable in initial construction quality and exterior design to the other housing units in the Project. The bedroom-per-unit average for the Affordable Housing must be equal to or greater than the bedroom-per-unit average for the unrestricted/market-rate units.

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

- a) specification of the term of the affordable housing restriction which shall be no less than thirty years;
- b) the name and address of the Monitoring Agent with a designation of its power to monitor and enforce the affordable housing restriction;
- c) a description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity, initial unit designations, number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project with the initially designated Affordable Rental Units identified in, and able to float subject to approval by DHCD in accordance with,

- 269 the corresponding Affirmative Fair Housing Marketing Plan (AFHMP)
 270 and DHCD's AFHMP guidelines.
- 271 d) reference to a housing marketing and resident selection plan, to which
 272 the Affordable Housing is subject, and which includes an affirmative fair
 273 housing marketing program, including public notice and a fair resident
 274 selection process. If approved by DHCD, the housing marketing and
 275 selection plan may provide for preferences in resident; the plan shall
 276 designate the household size appropriate for a unit with respect to
 277 bedroom size and provide that the preference for such Unit shall be given
 278 to a household of the appropriate size;
- 279 e) a requirement that buyers or tenants will be selected at the initial sale or
 280 initial rental and upon all subsequent sales and rentals from a list of
 281 Eligible Households compiled in accordance with the housing marketing
 282 and selection plan;
- 283 f) reference to the formula pursuant to which rent of a rental unit or the
 284 maximum resale price of a homeownership will be set;
- 285 g) a requirement that only an Eligible Household may reside in Affordable
 286 Housing and that notice of any lease of any Affordable Rental Unit shall
 287 be given to the Monitoring Agent;
- 288 h) provision for effective monitoring and enforcement of the terms and
 289 provisions of the affordable housing restriction by the Monitoring Agent;
- 290 i) provision that the restriction on an Affordable Homeownership Unit shall
 291 run in favor of the Monitoring Agent and/or the municipality, in a form
 292 approved by municipal counsel, and shall limit initial sale and re-sale to
 293 and occupancy by an Eligible Household;
- 294 j) provision that the restriction on Affordable Rental Units in a rental
 295 Project or rental portion of a Project shall run with the rental Project or
 296 rental portion of a Project and shall run in favor of the Monitoring Agent
 297 and/or the municipality, in a form approved by municipal counsel, and
 298 shall limit rental and occupancy to an Eligible Household;
- 299 k) provision that the owner[s] or manager[s] of Affordable Rental Unit[s]
 300 shall file an annual report to the Monitoring Agent, in a form specified
 301 by that agent certifying compliance with the Affordability provisions of
 302 this Bylaw and containing such other information as may be reasonably
 303 requested in order to ensure affordability; and
- 304 l) a requirement that residents in Affordable Housing provide such
 305 information as the Monitoring Agent may reasonably request in order to
 306 ensure affordability.

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 308 **G) Costs of Housing Marketing and Selection Plan.** The housing marketing and
 309 selection plan may make provision for payment by the Project applicant of
 310 reasonable costs to the Monitoring Agent to develop, advertise, and maintain the

list of Eligible Households and to monitor and enforce compliance with affordability requirements.

H) **Age Restrictions.** Unless voluntarily proposed or agreed to by the Applicant, nothing in this Section shall permit the imposition of restrictions on age upon Projects anywhere within the SGOD. However, the PAA may, in its review of a submission under Section XX.6.C, allow a specific Project within the SGOD designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable units.

I) **Phasing.** For any Project that is approved and developed in phases in accordance with Section XX.9.D, the percentage of Affordable Housing Units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section XX.6.1. Where the percentage of Affordable Housing is not uniform across all phases, the unit dispersal and bedroom proportionality requirements under Section XX.6.5 shall be applied proportionate to the Affordable Housing provided for in each respective phase.

J) **No Waiver.** Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 6.0 shall not be waived unless expressly approved in writing by DHCD.

XX.7 DIMENSIONAL AND DENSITY REQUIREMENTS

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

1) **Residential Density.** Multifamily residential (four or more dwelling units) and mixed-use Projects in the SGOD may be developed as-of-right at a minimum density of 20 dwelling units per acre of Developable Land. The maximum number of residential units allowed within the SGOD is 122.

2) **Lot Area, Frontage, and Yard Setbacks**

a) Each Project shall have:

b) Minimum Project area: 10,000 square feet

c) Minimum length of frontage: 75 feet

d) Minimum front yard setback: 10 feet

e) Minimum side yard setback: no requirement between buildings within a Project; 10 feet between any Project building and the boundary of the SGOD

- f) Minimum rear yard setback no requirement between buildings within a Project; 10 feet between any Project building and the boundary of the SGOD
- g) For the purposes of this subsection, frontage and front yard setbacks shall be determined with respect to public and private streets, as well as to private ways providing similar access.
- h) Access: Individual buildings or parcels within a Project site shall have coordinated street access. There shall be not more than one driveway (curb cut) per 50 feet of frontage.
- 3) Building Height to the top of the structure, maximum:
 - a) 4 stories or 55 feet
- 4) Nonresidential Floor Area: per subsection 5.B of this SGOD, above

XX.8 PARKING REQUIREMENTS

- A) The parking requirements applicable for Projects within the SGOD are as follows.
 - 1) **Number of parking spaces.** Unless otherwise approved by the PAA, the following minimum numbers of off-street parking spaces shall be provided by use, either in surface parking, within garages or other structures:
 - a) Residential project: One parking space per residential unit
 - b) Mixed-use project: One parking space per residential unit plus the applicable quantity computed per the table below:

B) USE	C) MINIMUM PARKING REQUIRED
D) Office, retail, wholesale, general service, and personal service establishments	E) 1 space per 300 square feet of net useable floor area
F) Bakeries and artisan food or beverage producers	G) 1 space per employee
H) Restaurants and cafes	I) 1 space per three seats
J) Hotels or bed and breakfast establishments	K) 1 space per guest room
L) Community, education, or recreational uses	M) 1 space for each four seats or equivalent floor area
N) Light industrial uses	O) One parking space for each two employees, computed on the basis of the estimated

	maximum number of employees at any one time.
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P) **Loading spaces:** Unless otherwise approved by the PAA, one loading space shall be provided for every 20,000 gross square feet of floor area for non-residential use. Loading spaces must be demonstrated to be of sufficient area and height to serve the intended use.

Q) **Shared Parking.** Notwithstanding anything to the contrary herein, the use of shared parking to fulfill parking demands noted above that occur at different times of day is strongly encouraged. Minimum parking requirements above may be reduced by the PAA through the Plan Approval process, 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).

R) **Reduction in parking requirements.** Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced by the PAA through the Plan Approval process, if the applicant can demonstrate 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 stop or transit station;
- 2) the availability of public or commercial parking facilities in the vicinity of the use being served;
- 3) shared use of off street parking spaces serving other uses having peak user demands at different times;
- 4) age 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.

S) **Location of Parking.** Any surface parking lot shall, to the maximum extent feasible, be located at the rear or side of a building, relative to any principal street, public open space, or pedestrian way.

XX.9 PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS

A) **Plan Approval.** All Applicants for Projects proposed to be developed in accordance with this Section shall submit an application for Plan Approval to the PAA to be reviewed for

consistency with the purpose and intent of the SGOD. Such Plan Approval process shall be construed as an As-of-Right review and approval process as required by and in accordance with the Enabling Laws.

- B) Plan Approval Authority (PAA).** The Planning Board, consistent with G.L. Chapter 40R and 760 CMR 59.00, shall be the Plan Approval Authority (the “PAA”), and it is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.
- C) PAA Regulations.** The Plan Approval Authority may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations and any amendments thereof must be approved by the Department of Housing and Community Development
- D) Project Phasing.** An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases, provided that the submission shows the full buildout of the Project and all associated impacts as of the completion of the final phase, and subject to the approval of the PAA. Any phased project shall comply with the provisions of Section XX.6.I.

XX.10 PLAN APPROVAL PROCEDURES

- A) Preapplication.** Prior to the submittal of a Plan Approval submission, a “Concept Plan” may be submitted to help guide the development of the definitive submission for Project buildout and individual elements thereof. Such Concept Plan should reflect the following:
 - 1) Areas of developable and undevelopable land
 - 2) Overall building envelope areas;
 - 3) Open space and natural resource areas; and
 - 4) General site improvements, groupings of buildings, and proposed land uses.
 - 5) Conceptual designs of any new construction
 - 6) The Concept Plan is intended to be used as a tool for both the applicant and the PAA to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGOD.
- B) Required Submittals.** An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA and approved by DHCD, and accompanied by an application fee if required, which shall be as set forth in the PAA Regulations. The application shall be accompanied by such plans and documents as may be required and set forth in the PAA Regulations. For any Project that is subject to the Affordability requirements of Section XX.6, the application shall be accompanied by all materials required under Section XX.6.C.

All site plans shall be prepared by a certified architect and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of one-inch equals forty feet (1"=40') or larger, or at a scale as approved in advance by the PAA.

☞ **Filing.** An applicant for Plan Approval shall file the required number of copies of the application form and the other required submittals as set forth in the PAA Regulations with the Town Clerk and a copy of the application including the date of filing certified by the Town Clerk shall be filed forthwith with the PAA.

D) Circulation to Other Boards. Upon receipt of the Application, the PAA shall immediately provide a copy of the application materials to the Select Board, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, the Monitoring Agent and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.

E) 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 Plan Approval application.

F) Peer Review. The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Town in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

XX.11 PLAN APPROVAL DECISIONS

A) 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 in the PAA Regulations; and
- 2) the Project as described in the application meets all of the requirements and standards, including Affordability requirements and Design Standards, and

- 522 the PAA Regulations, or a waiver has been granted therefrom; and
- 523 3) any extraordinary adverse potential impacts of the Project on nearby
- 524 properties have been adequately mitigated.
- 525 4) For a Project subject to the Affordability requirements of Section XX.6,
- 526 compliance with condition (2) above shall include written confirmation by
- 527 the Monitoring Agent that all requirements of that Section have been
- 528 satisfied. The PAA may attach conditions to the Plan Approval decision that
- 529 are necessary to ensure substantial compliance with this Section, or to
- 530 mitigate any extraordinary adverse potential impacts of the Project on nearby
- 531 properties.
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- 533 B) **Plan Disapproval.** A Plan Approval application may be disapproved only where
- 534 the PAA finds that:
- 535 1) the Applicant has not submitted the required fees and information as set forth
- 536 in the Regulations; or
- 537 2) the Project as described in the application does not meet all of the
- 538 requirements and standards set forth in this Section and the PAA
- 539 Regulations, or that a requested waiver therefrom has not been granted; or
- 540 3) it is not possible to adequately mitigate significant adverse Project impacts
- 541 on nearby properties by means of suitable conditions.
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- 543 C) **Waivers.** Upon the request of the Applicant, the Plan Approval Authority may
- 544 waive dimensional and other requirements of Section XX.7, including the Design
- 545 Standards, in the interests of design flexibility and overall Project quality, and
- 546 upon a finding of consistency of such variation with the overall purpose and
- 547 objectives of the SGOD, or if it finds that such waiver will allow the Project to
- 548 achieve the density, affordability, mix of uses, and/or physical character
- 549 allowable under this Section.
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- 551 D) **Project Phasing.** The PAA, as a condition of any Plan Approval, may allow a
- 552 Project to be phased at the request of the Applicant, or it may require a Project to
- 553 be phased for the purpose of coordinating its development with the construction
- 554 of Planned Infrastructure Improvements (as that term is defined under 760 CMR
- 555 59.00), or to mitigate any extraordinary adverse Project impacts on nearby
- 556 properties. For Projects that are approved and developed in phases, unless
- 557 otherwise explicitly approved in writing by the Department in relation to the
- 558 specific Project, the proportion of Affordable units shall be at least equal to the
- 559 minimum percentage of Affordable Housing required under Section XX.6.1. A
- 560 schedule for the proposed phasing must be approved by the PAA.
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- 562 E) **Form of Decision.** The PAA shall issue to the Applicant a copy of its decision
- 563 containing the name and address of the owner, identifying the land affected, and
- 564 the plans that were the subject of the decision, and certifying that a copy of the

decision has been filed with the Town Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the Town Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the Applicant.

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

XX.12 **CHANGE IN PLANS AFTER APPROVAL BY PAA**

- A) **Minor Change.** After Plan Approval, an Applicant may apply to make minor changes in a Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope of the site, or provision of open space, number of housing units, or housing need or affordability features. Such minor changes must be submitted to the PAA on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the Town Clerk.
- B) **Major Change.** Those changes deemed by the PAA to constitute a major change in a Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to Sections XX.9 - through XX.12.

XX.13 **DESIGN STANDARDS**

- A) **Adoption of Design Standards.** The following Design Standards are adopted to ensure that development in the SGOD is of high quality and is compatible with the character and scale of Lee's building types and streetscapes. These Design Standards are not meant to limit creativity through innovative architectural design.

B) **Terms.** It should be noted that the Design Standards include a mixture of requirements, indicated generally by the use of the words “shall” and “must” with regard to a specific standard, and guidelines, which are more advisory in nature, and which are indicated generally by the use of the words “should” and “may”. Where appropriate the Design Standards may be supplemented with “Acceptable” and “Unacceptable” graphic examples within this section for illustrative purposes.

C) **General Design Principles Applicable to All Projects**

- 1) The Design Standards are adopted to ensure that the physical character of Projects within the SGOD:
 - a) Projects should further the purposes of the SGOD;
 - b) Buildings and materials should be consistent with or complementary to the character of the SGOD;
 - c) Development should be environmentally sustainable and should incorporate to the degree practical low-impact development techniques, energy efficiency, use of renewable energy and best practices for stormwater management;
 - d) Development should be designed to encourage pedestrian and bicycle travel to and within the site and provide a safe and aesthetically attractive pedestrian and bicycle environment;
 - e) Development should protect environmentally sensitive areas such as wetlands and the Housatonic River; and
 - f) Existing natural resources, native vegetation, and the natural topography of the site should be integrated into the site design to the greatest extent practical.

D) **Site Design Standards Applicable to All Projects.**

- 1) Existing Features and Systems: Sites and Buildings shall be designed and constructed in such a way as to respect and retain, to the extent practicable, the existing buildings, topography, natural features, and natural systems of the area. The construction, operation, and maintenance of buildings and sites in the SGOD shall be designed to:
 - a) minimize partial or wholesale demolition and removal of historic buildings and features;
 - b) minimize the volume of earth/soil cut and fill;
 - c) minimize the number of removed trees 6-inch caliper or larger;
 - d) minimize the length of removed stone walls;
 - e) minimize the extent of stormwater flow increase from the site, soil erosion, and threat of air, light, and water pollution.
- 2) Public Safety and Circulation: Sites and buildings shall be designed and constructed so that accessibility and pedestrian and vehicular safety, both on the site and accessing and exiting the site, are not compromised.
 - a) The locations, dimensions, directions of travel, and construction details for

- streets, alleys, driveways, sidewalks, curbs, gutters, catch basins, and other structures shall maximize accessibility and pedestrian and vehicular safety.
- b) Curb cuts, driveways, access ways and walkways between adjacent sites shall be shared to the maximum extent practicable.
 - c) Streets, alleys, driveways, emergency access ways, sidewalks, and bike ways shall be of adequate design with respect to width, lighting, visibility, and drainage in order to ensure safety to pedestrians, cyclists, and vehicular traffic.
- 3) Parking, Loading, and Service areas: The visibility of parking, storage, or other outdoor service areas as viewed from public ways or abutting premises shall be minimized to the extent practicable.
- a) Fences, landscaping, or other screening features should be employed to minimize visual intrusion from surrounding land uses.
 - b) Screening features should not block visibility in and out so that areas are unsafe.
 - c) The materials, color, and height above grade of screening features should be generally consistent with, or complementary to, the existing or desired building patterns in the surrounding area.
 - d) Parking lots shall incorporate shade trees to the extent practicable. Species shall be selected in accordance with the landscaping standards of this Section.
- 4) Landscaping: All Projects shall provide landscaping as required herein to the extent practicable.
- a) Site and building orientation and configuration shall use landscape features to shield negative views, define edges and frame streets and public spaces. No plantings shall obscure site entrances and exit drives, access ways, or road intersections or impair visibility of commercial storefronts. Landscaping shall be used to reinforce human-scaled elements of the building and site and to create outdoor spaces that are scaled comfortably for people.
 - b) Landscape strips with street trees, street trees in sidewalk tree wells or landscaped medians shall be used as is consistent with the existing landscape patterns of the location of proposed improvements. Landscaping shall be used to define the street edge if the existing pattern of building placement includes a front setback.
 - c) Landscape buffers shall be used to screen parking, loading and service areas that may be visible from public streets or open spaces. All views that could be associated with a negative impact should be screened with strategically selected and located landscape features. Screening may include architectural walls, fences or other visual barriers.
 - d) Sidewalks and crosswalks shall be a different material than the driveway and parking lots and similar in context to 3-76 Main Street.
- 5) Lighting and Glare: Glare from headlights and site lighting, including any lights on buildings and signs, into the night sky and into adjacent properties shall be minimized. Applications for Plan Approval shall include detailed photometric plans and specifications of all proposed exterior lights, including height and locations of fixtures, lumen ratings, color temperature, and light source (e.g. sodium vapor, metal halide, or LED).

- 6) Stormwater and groundwater: Projects shall incorporate appropriate provisions to contain, filter, clean and infiltrate stormwater and other runoff from the site.
- 7) Signage
 - a) General: Location and design of all signs must be included in the plans submitted to the PAA prior to the plan approval.
 - i) Exceptions: For the purposes of this section, the term "sign" shall not include:
 1. Signs erected, posted, and maintained for public safety and welfare or pursuant to any governmental function, law, bylaw or other regulation.
 2. A bulletin board or similar sign not exceeding 12 square feet in display area in connection with any house of worship, museum, library, or school, provided that the top of such sign shall not be more than eight feet above ground level and provided that it is no closer than 10 feet from the public right-of-way unless attached to a building.
 3. Signs relating to trespassing and hunting, not exceeding two square feet.
 4. Any historical marker erected by a bona fide historical association or a government agency.
 - ii) No Sign shall be erected, displayed, altered or enlarged until an application has been filed and a permit for such action has been issued.
 - b) Sign Permits:
 - i) Applications shall be on forms established by the Sign Enforcement Officer.
 1. At a minimum, all applications shall include
 - a. the applicant's name and signature
 - b. the name and signature of property owner
 - c. location on land or buildings
 - d. A scale drawing specifying dimensions, letter sizes, and all relevant measurements
 - e. proposed materials and support systems
 - f. proposed illumination, colors
 - ii) Permit applications for permanent signs shall be reviewed and acted upon with 30 days of filing a complete application and submission the fee. A permit may be issued only after the following:
 1. The PAA examines the request for a permanent sign permit and finds it in compliance with this chapter.
 2. The Sign Enforcement determines that the sign complies or will comply with the State Building Code pertaining to signs.
 3. A permanent sign permit shall be valid only when signed and dated by the PAA Chairman or delegate (a board cannot sign anything) and the Sign Enforcement Official.
 - c) Temporary Signs: The Board of Selectmen shall be the issuing authority for temporary sign permits.
 - i) A permit for a temporary sign shall be issued only after the Sign Enforcement Officer determines the sign complies or will comply with the State Building Code and sends the permit application on to the Selectmen.
 - d) Area of a sign.
 - i) The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background on which

- they are displayed, any frame around the sign and any cutouts or extensions, but shall not include any supporting structure or bracing.
- ii) The area of a sign consisting of individual letters, words or symbols attached to or painted on a building, wall or window shall be considered to be the area of the smallest quadrangle or triangle which encompasses all of the letters.
 - iii) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross section of that object.
 - iv) In computing the area of signs, one side of identical back-to-back (two-sided) signs and symbols shall be considered as the total area.
- e) Illumination standards.
- i) Internally illuminated signs are not allowed in the SGOD.
 - ii) Signs within the SGOD may be externally illuminated by shielded light of constant intensity of no more than a total of 1,500 Lumens
 - iii) Signs shall not be illuminated between the hours of 12:00 midnight and 6:00 a.m. unless the concern advertised is open for business.
 - iv) Strings of bulbs are not permitted, except temporarily, as part of a holiday celebration.
 - v) These do not require a temporary sign permit.
 - vi) Any illumination provided for signs shall be white light only.
 - vii) Sign illumination, decorative lighting or floodlighting shall be shielded at its source to prevent high-intensity light beams from shining onto any street, ~~or~~ adjoining property, or into the night sky.
 - viii) No sign shall be designed to attract attention by a change of intensity or illumination or by repeated motion.
- f) Electrical wiring: Any sign containing wiring that is attached or intended to be attached to an electrical energy source shall be inspected by the Town Electrical Inspector and shall meet state code.
- i) No signs shall have exposed electrical wires.
- g) Enforcement.
- i) The Board of Selectmen shall designate a Sign Enforcement Officer who is authorized to enforce this Section. The Select Board should notify the State Outdoor Advertising Board of his/her appointment.
 - ii) The Sign Enforcement Officer is authorized to order the repair or removal of any sign and supporting structure which is erected or maintained contrary to these regulations.
- h) Fees. A schedule of sign permit fees may be established and amended from time to time by the PAA.
- i) Maintenance and Removal. Every sign shall be maintained in good structural condition at all times.
- i) The Sign Enforcement Officer shall have the authority to inspect and to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.
 - ii) Any sign which has been ordered removed by the Sign Enforcement Officer or is abandoned or discontinued shall be removed by the person, firm or corporation responsible for his, her or its sign within 20 days of the written notice to remove.
 - iii) The Sign Enforcement Officer shall cause to be removed any sign that

- endangers the public safety, such as an abandoned, dangerous or materially, electrically or structurally defective sign, or a sign for which no permit has been issued.
- iv) The Sign Enforcement Officer shall prepare a notice which shall describe the sign and specify the violation involved and which shall state that if the sign is not removed or the violation is not corrected or appealed within 20 days, the sign shall be removed in accordance with the provisions of this section.
 - v) All notices mailed to sign owners or property owners by the Sign Enforcement Officer shall be sent by certified mail.
 - vi) Any time periods provided in this section shall be deemed to commence on the date of the receipt of the certified mail.
 - vii) Any person having an interest in the sign or the property may appeal the determination of the Sign Enforcement Officer ordering removal or compliance by filing a written notice of appeal with the Lee Zoning Board of Appeals within 30 (? Contradiction of (d) above) days. The Zoning Board of Appeals shall hold a hearing in order to determine if the Sign Enforcement Officer's order of removal or compliance should be enforced. (See Section 13.2) (Should these complaints/appeals be the jurisdiction of the state building code appeals board? They're not zoning issues.)
- j) Penalties.
- i) Whoever violates any of the provisions of this section shall pay a fine not to exceed \$300 for each offense.
 - ii) Each day that such violation continues shall constitute a
 - iii) The Sign Enforcement Officer acting as agent for the Board of Selectmen shall be empowered to enforce this section.
 - iv) This chapter may be enforced by non-criminal disposition as provided for by MGL c. 40, Section 21D.
- k) Signs Prohibited in the SGOD:
- i) Billboards.
 - ii) Freestanding signs, except Business Center signs and Directory signs,
 - iii) Roof signs or signs placed on the eaves of buildings.
 - iv) Any sign for which the highest point would be greater than 15 feet above the ground.
 - v) Off-premises signs, with the exception of Business Center signs and Directory signs.
 - vi) Flashing signs, signs containing moving parts, or noisemaking signs or devices.
 - vii) Signs containing reflective elements.
 - viii) Sandwich Board Signs
 - ix) Streamers, pennants, ribbons, banners, spinners, inflatable signs, or other similar devices.
 - 1. Exceptions include grand openings and special, charitable, or civic events for which a temporary permit has been granted by the Board of Selectmen. These temporary signs shall be permitted for a maximum of 10 days. Decorations for designated state and national holidays are exempt from requiring temporary sign permits as long as they are not deemed a public nuisance or hazard by the Sign Enforcement Officer

- x) Flags other than appropriately flown flags of the United States of America or Commonwealth of Massachusetts.
- xi) Signs, except for traffic, regulatory or informational signs, that use the words "stop", "caution", "yield", or "danger", incorporate red, amber or green lights resembling traffic signals, or resemble traffic signs in shape and/or color.
- xii) Signs obstructing traffic sight lines for drivers or pedestrians.
- xiii) Trailer style movable signs or vehicles used primarily or intentionally as signs.
- l) Signs Permitted by right in the SGOD: All signs described as by right in section 7.4 A) are allowed in the SGOD. In addition:
 - i) Awning Signs.
 - 1. Limited to lettering on the valence of a ground floor awning which names the business only.
 - 2. The letters shall not exceed eight inches in height
 - ii) Address Signs:
 - 1. Each business may have, on its building wall, a street number corresponding to its physical address. These are limited to 8" in maximum height.
 - 2. As an alternative to a building wall sign, the street number may be placed on an awning valence in addition to the business name.
 - iii) Window display signs.
 - 1. Window display signs of the exposed-gaseous-tube type shall not exceed 25% of the total glass area of the window in which they are displayed.
 - 2. Flashing signs or those giving the impression of motion are prohibited.
 - 3. Permanent display signs hung inside windows shall be made of clear materials, such as acrylic, with lettering painted or printed on them or applied to them
 - 4. Window display signs which are painted on, incorporated into, or affixed to the window, with the purpose or effect of identifying the business located within, are not to exceed 25% of the total glass area.
- m) Signs Allowed by Permit in the SGOD
 - i) Business Sign as part of a Business Center Sign. The developer or association of owners of the SGOD are allowed one freestanding sign at the entrance to the facility bearing the official name of the facility. At its discretion, the PAA may allow a second entrance sign bearing facility name and the names of the businesses within. The placement of these signs shall be approved by the PAA in consultation with the Lee Police Chief . These signs may be single or double sided.
 - 1. A sign indicating only the name of the SGOD Business Center may not exceed 20 square feet
 - 2. A sign including both the SGOD Business Center Name and the names of the individual businesses within shall not exceed 64 square feet in total area of which the portion identifying the common SGOD business center shall not exceed 16 square feet.
 - 3. Individual business signs mounted on the SGOD business center sign shall not exceed 8 square feet.

4. All signs included on a common SGOD business center sign shall be similar with regard to material, coloring, lighting, lettering, and other characteristics.
 5. Where an SGOD business center signs exist, no other freestanding sign is allowed along the road frontage of the SGOD
- ii) Directory Signs.
1. Directory sign boards and informational signs must be approved by the PAA
 2. Issues such as size, shape, color, placement and all other relevant issues will be reviewed with the Police and Fire Departments, and the Sign Officer.
 3. Directory sign boards may display on-site business names and residential addresses with directional arrows.
 4. Directory board signs shall not exceed 20 square feet.
- iii) Wall Signs.
1. On each building, a separate sign is allowed for each business within that building.
 2. Each sign shall not exceed two square feet for each linear foot of the face building but shall not exceed an overall size of 40 square feet.
 3. Rear Signs.
 - a. One sign, no greater than one foot by eight feet, will be allowed on the rear wall of each building identifying each business within the building
 4. Corner Lots.
 - a. Business buildings on corner lots may have two building signs, one sign on the building facing each way.
 - b. The square footage of each sign shall not exceed two square feet for each linear foot of the face of the building on which it is mounted.
 - c. The total square footage of the larger sign shall not exceed 40 square feet, and the second sign shall not exceed 20 square feet.
- iv) Projecting Signs. Signs identifying the name of the businesses, which are two-sided and installed at a right angle to the building façade may be substituted for a wall sign.
1. They shall not exceed six square feet
 2. They must be placed at least eight (8) feet above the pedestrian-way, and may not project more than three feet from the building facade.
 3. The signs shall be securely mounted to the building in a manner meeting build code and approved by the Sign Enforcement Officer
- v) Accessory signs
1. The accessory sign shall be mounted on the same wall as the primary business sign and display a message that is standard to the industry, such as (but not limited to) vacancy/no vacancy, open/closed, dinner being served, credit card, AAA.
 2. The total area of all accessory signs associated with any primary business sign shall not exceed six square feet.
 3. When application for an accessory sign is made in conjunction with a wall sign, no additional fees shall be charged for the accessory sign.
- vi) Menu Boards. An eating establishment may have a wall-mounted Menu

Board Sign in addition to a primary wall sign.

1. The sign shall have a total area not exceeding six square feet.
2. The sign must be mounted flat on a wall and not protrude into the pedestrian way.

E) Building Design Standards

1) Applicable to All Projects:

- a) Relationship to Historic Architecture and Context: Any existing buildings in the SGOD at the time of adoption of the SGOD shall be retained unless it is satisfactorily demonstrated to the PAA that renovation and reuse are infeasible, unless otherwise determined by the National Park Service or Massachusetts Historic Commission. The renovation of existing buildings should retain recognizable features that distinguish the architectural styles and character of the industrial heritage of the site, while providing compatible and contemporary improvements associated with the adaptive reuse of these structures.
- b) Scale and Proportions: New buildings shall be designed to be contextual with other buildings in the vicinity, as follows.
 - i) Height of new buildings shall be within one story of other buildings on the site and abutting properties, but shall not exceed the maximum heights allowed in the SGOD. The apparent height may be altered by the use of sloping roofs, gables, fenestration, and exterior architectural details.
 - ii) Unbroken facades of longer than 100 feet shall be avoided.
 - iii) The architecture facing a public street or publicly accessible space should exhibit a human scale of detail.
- c) Materials: Exterior materials of new and renovated buildings shall be contextual or complementary to existing historic buildings on site or to historic buildings between 3 & 76 Main Street. A combination of traditional and modern materials and variations of color and texture shall be used to reference both the historic and new building types.

XX.14 SEVERABILITY.

- A) If any provision of this Section is found to be invalid by a court of competent jurisdiction, the remainder of Section shall not be affected but shall remain in full force. The invalidity of any provision of this Section shall not affect the validity of the remainder of the Lee Zoning Bylaw.

XX.15 ADMINISTRATION, ENFORCEMENT, AND APPEALS. The provisions of this Section shall be administered by the Building Commissioner, except as otherwise provided herein. Any legal appeal arising out of a Plan Approval decision by the PAA under subsections XX.9 through XX.12 shall be governed by the applicable provisions of G. L. Chapter 40R. Any other request for enforcement or appeal arising under this Section shall be governed by the applicable provisions of G. L. Chapter 40A.