

MIDDLEBOROUGH COMPREHENSIVE SGZOD BYLAW

CHAPTER 275 - ZONING

275-8.X Smart Growth Zoning Overlay District (SGZOD)

A. General Regulations that apply to the Smart Growth Zoning Overlay District

(1) Purposes – The purposes of the Smart Growth Zoning Overlay District are:

- (a) To provide an opportunity for residential development and to especially encourage mixed-use smart growth development, including both new construction and renovation of existing buildings, within a distinctive, attractive and livable environment that supports the commercial revitalization of Middleborough and is consistent with the purposes of the Governing Laws.
- (b) To promote continuing development and redevelopment in Middleborough that is pedestrian friendly and consistent with Middleborough's history and architecture.
- (c) To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of Middleborough and provides an environment with safety, convenience, and amenity.
- (d) To provide, in ways that meet the needs of the town's population, for a diversified housing stock at a variety of costs within walking distance of services and public transportation, including affordable housing and other housing types.
- (e) To the extent not in conflict with the purposes of M.G.L. c. 40S, the Governing Laws, and provisions for As-Of-Right Development herein, to generate positive tax revenue for the Town, and to benefit from the financial incentives provided by Massachusetts General Law Chapter 40R, while providing the opportunity for new business growth and additional local jobs.
- (f) To encourage preservation and rehabilitation of historic structures and buildings.
- (g) To promote efficient use of land and existing parking supply and limit the expansion of surface parking within the district by encouraging shared parking.
- (h) To encourage adoption of energy efficient building practices and sustainable construction methods.
- (i) To ensure compliance with the Massachusetts Department of Environmental Protection stormwater management policies and practices.

(2) Definitions – Terms and words not defined herein but defined in Section 10.0 of the Middleborough Zoning Bylaw shall have the meaning given therein. **For the purposes of 40R program eligibility**, to the extent there is any conflict between such terms, any of the terms defined herein, or their application herein and the Governing Laws, the requirements of the Governing Laws shall govern unless otherwise specifically approved by DHCD. Subject to the limitations of the preceding sentence, as used in this Section, the following terms shall have the meanings set forth below:

Accessory building or structure: A subordinate building or structure located on the same lot as the main or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

Accessory use: A use customarily incidental to that of the main or principal building or use of the land.

Administering/Monitoring Agent: An entity designated by the Middleborough Board of Selectmen, which may be the Middleborough Housing Authority or other qualified housing entity, with the power to monitor and to enforce compliance with the provisions of this section related to Affordable Units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Affordable Units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Affordable Unit in the SGZOD (See Section A (8)).

Administrative Regulations or PAA Regulations: Administrative rules and provisions relative to Plan Approval that are adopted by the Planning Board pursuant to 40R and in its capacity as the 40R Plan Approval Authority under Section A (9). Such rules and regulations, Project application form(s), any other application requirements and any subsequent amendments thereof must be approved by the Department of Housing and Community Development.

Affordable Homeownership Unit: A Dwelling Unit required to be sold to an Eligible Household per the requirements of this Section.

Affordable Housing: Housing that is affordable to and occupied by Eligible Households.

Affordable Housing Restriction: A deed restriction of an Affordable Unit meeting statutory requirements in Massachusetts General Law Chapter 184 Section 31 and the requirements of Section A (8) of this bylaw.

Affordable Rental Unit: A Dwelling Unit required to be rented to an Eligible Household per the requirements of Section A (8).

Affordable Unit: The collective reference to Affordable Homeownership Units and Affordable Rental Units.

Allowed Use: A Principal, Accessory or other permitted Use listed under Section 275-8.X (B). A Use that is not prohibited under Section 275-8.X (B).

Annual Update: A list of all approved and currently proposed Smart Growth Zoning Overlay Districts within the Town of Middleborough and other associated information, to be filed on or before July 31st of each year with the Massachusetts Department of Housing and

Community Development pursuant to Massachusetts General Law Chapter 40R and applicable regulations (760 CMR 59.07 (1)).

Applicant: A landowner or other petitioner who files a plan for a Development Project subject to the provisions of this Section.

Area-wide Median Income: The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

As-Of-Right Development: A use or Development Project allowable under this Section without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject to the Plan Review requirement of this Section shall be considered an As-Of-Right Development.

Building: A structure enclosed within exterior walls or firewalls, built, erected, and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property. For the purposes of this definition, "roof" shall include an awning or any similar covering, whether or not permanent in nature.

Building, principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Building height: As per the State Building Code, this term shall mean the distance between the average grade of the ground at the front of the building and the roof of the building; excluding roof structures (such as heating, ventilating and air conditioning equipment) normally located on or built above the roof and not devoted to human occupancy.

Business or professional office: A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage or processing of merchandise.

Condominium: A system of ownership of real estate, including commercial, industrial, and attached and detached residential dwelling units, established pursuant to the Condominium Act of the Commonwealth of Massachusetts, Chapter 183A of the Massachusetts General Laws, in which the apartments or dwelling units are individually owned and the land and common areas are owned in common. A condominium is not a use or a building type; rather it is a form of ownership that can apply to any use or building type.

Density: The number of dwelling units per acre of land.

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

Design Standards: Provisions adopted in accordance with Section B., that shall be applicable to all Development Projects within the SGZOD.

Development Project or Project: A residential or mixed-use development undertaken under this Section. A Development Project shall be identified as such on the Plan which is submitted to the Planning Board for Plan Review.

Dwelling unit: Habitable room or group of habitable rooms, containing cooking facilities, sanitary facilities, providing facilities for living, sleeping, and eating for one family.

Eligible Household: An individual or household whose annual income is less than or equal to eighty percent (80%) of the Area-wide Median Income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

Family or Household: One or more persons related by blood, marriage or adoption and sharing cooking, storage, bathroom, living and sleeping facilities in a dwelling as a single housekeeping unit. In addition, a family may include any of the following:

- a. Domestic partners.
- b. Foster children.
- c. Domestic employees.
- d. Not more than two boarders.
- e. Not more than four additional persons not related to the others by blood, marriage, or adoption.

Floor area (gross): The sum of the areas of the several floors of a building, measured from the exterior faces of the outside walls. It does not include cellars, unenclosed porches or attics not used for human occupancy or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of Section 5.3 of the Middleborough Zoning Bylaw or any such floor space intended and designed for accessory heating and ventilating equipment.

Governing Laws: M.G.L. Chapter 40R and 760 CMR 59.00

Institutional Use: A non-profit or quasi-public use or institution, such as a church, library, public or private school, municipally owned or operated Building, Structure or land, used for public purpose.

Loading Space: Off-street space logically and conveniently located for bulk pickups and deliveries by truck, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot: An area of land held in one ownership, with definite boundaries, used or available for use, as the site of one or more buildings under this Zoning Bylaw.

Lot frontage: The frontage of a lot on a public or private street.

Mixed-Use Development Project: A Development Project containing a mix of Residential Uses and Non-Residential Uses as specified in Section 275-8.X (5) and subject to all provisions of this Section 275-8.X.

Non-Residential Use: Office, Retail, Restaurant, Service or Institutional Use, inclusive, or some combination of the same.

Office: A workplace used for the transaction of business or non-profit functions, excluding as principal uses manufacturing, retail construction, and warehousing and including, but not limited to, professional offices and offices that support or manage on-site or off-site manufacturing, retailing, construction, and warehousing, as well as research laboratories and other facilities in which research activities are conducted. An office that is operated as part of another primary use on the use table shall be considered accessory to that primary use and not a separate use.

Open space: Land not covered by buildings, roads, driveways, sidewalks, parking areas, loading areas, service yards or other improvements. Open space shall include, without limitation, (a) the buffer zones provided herein, (b) any wetlands, marshes, meadows, swamps, creeks, streams and ponds as defined in Mass. General Laws, Chapter 131, Section 40 (provided that the applicant is not hereby prevented from doing any work in such areas as is permitted by the Middleborough Conservation Commission pursuant to said act) and (c) any other protected natural areas.

Parking (Off-Street): For purposes of this Section 275-8.X (6), an off-street parking space shall consist of an area for parking an automobile with room for opening the doors on both sides, together with properly related access to a street and sufficient maneuvering room, but shall be located totally outside of any street or alley right-of-way.

Parking stall or space: An area dedicated to the parking of a single vehicle within a parking area. Dimensional requirements are set forth in Section 5.3 of the Middleborough Zoning Bylaw.

Personal service establishment: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio and the like.

Plan: A plan depicting a proposed Development Project for all or a portion of the SGZOD and which is submitted to the Planning Board for its review and approval in accordance with the provisions of this Section 275-8.X.

Plan Approval: The Planning Board's authorization, acting as the Plan Approval Authority (PAA) per the Governing Laws for a proposed Development Project based on a finding of compliance with this Section and Design Standards after the conduct of a Plan Review.

Plan Approval Authority (PAA): The Middleborough Planning Board authorized under Section 275-8.X to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions with the SGZOD.

Plan Review: The review procedure established by this bylaw and administered by the Town of Middleborough Planning Board acting as PAA.

Principal Use: The primary use to which the premises are devoted, and the main purpose for which the premises exist.

Recreational Area: A parcel(s) of land or an area(s) of water, or a combination of land and water within the site which is designated, maintained and preserved for active or passive recreational uses (such as a park, tennis courts, ball fields, walking/biking trails, swimming pools, golf courses, etc.) or for buffer areas, and designed and intended for the use or enjoyment of occupants of the site and, in certain circumstances, the general public. Recreational Areas may contain such Structures and improvements as are appropriate under the provisions of this Section.

Residential Project: A Project that consists solely of residential, parking and accessory uses as defined in Section 275-8.X (B).

Residential Use: A Building or part of a Building containing Dwelling Units as defined herein above and parking that is Accessory to the Dwelling Units.

Restaurant: A building or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food restaurant."

Restaurant, Fast Food: An establishment whose primary business is the sale of food for consumption on or off the premises which is: primarily intended for immediate consumption rather than for use as an ingredient or component of meals; available upon a short waiting time; and packaged or presented in such manner that it can be readily eaten outside the premises where it is sold. Drive-in Food Service Establishment is a fast food restaurant which provides convenient vehicular access and may provide service to customers while in their vehicles.

Retail: A facility selling goods to the public in an enclosed building but not specifically listed in the Table of Use Regulations.

School: A Building devoted to the instruction or education in primary, secondary, high school, or post-high school grades.

Service: The performance of any act for the benefit of another with a view to profit or for a livelihood.

Smart Growth Zoning Overlay District (SGZOD): An Overlay Zoning District adopted pursuant to Massachusetts General Law Chapter 40R, in accordance with the procedures for zoning adoption and amendment as set forth in Massachusetts General Law Chapter 40A and approved by the Department of Housing and Community Development pursuant to Massachusetts General Law Chapter 40R and applicable regulations.

Street: (1) A public way (other than a non-access highway) or a way which the Town Clerk certifies is maintained and used as a public way; or, (2) A way shown on a plan approved and endorsed in accordance with the Subdivision Control Law (MGL Chapter 41 Section 81K et seq); or, (3) A way in existence when the Subdivision Control Law became effective in Middleborough, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of the municipal services to serve such land and the buildings erected or to be erected thereon.

Structure: A combination of materials assembled at a fixed location to give support or shelter, including but not limited to a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. Fences, signs and flagpoles shall be exempt from setback requirements for structures, but subject to other requirements set forth herein.

Underlying Zoning: The zoning requirements adopted pursuant to Massachusetts General Law Chapter 40A that are otherwise applicable to the geographic area in which the SGZOD is located, as said requirements may be amended from time to time.

Unrestricted Unit: A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.

Use: The purpose for which land or a Building or Structure is arranged, designed, intended or erected, or for which land or a Building or Structure is or may be occupied.

Yard: A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving and other customary yard accessories.

Yard, Front: The area of a lot lying between the right of way sideline of a public or private road on which the lot has frontage and the nearest building on the lot. In the case of corner lots or lots otherwise having frontage on more than one road, all fronting yards shall be considered front yards.

Yard, Rear: The area of a lot between the rear most building on the lot and the rear lot line. The rear yard shall extend across the full width of the lot.

Yard, Side: The area on a lot between the side lot line and the building or buildings on the lot, extending between the front yard and rear yard.

(3) Scope and Authority: The Smart Growth Zoning Overlay District is established pursuant to the Governing Laws and shall be deemed to overlay the parcels as shown on the Zoning Map of the Town of Middleborough, as amended herein. The Underlying Zoning shall remain in effect, and the Applicant shall have the option of applying for Plan Approval pursuant to the zoning controls set forth in this Section 275-8.X or complying with all applicable zoning controls set forth in the Zoning Bylaw of the Town of Middleborough for the underlying district(s) or for other overlay zoning that may be therein defined. Development Projects proceeding under this Section 275-8.X shall be governed solely by the provisions of this Section 275-8.X and shall be deemed exempt from the standards and/or procedures of the Underlying Zoning and other overlay provisions, 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.

(4) Performance Standards: All permitted Uses must comply with the following:

- (a) Does not regularly emit noxious odors, noises, or dust particles, or smoke, or pose danger, such as manufacture of acids, gases, fertilizers and glue, petroleum refining, reduction of animal matter, and manufacture of cement, gypsum, or explosives.
- (b) Does not present a danger to persons within or outside the SGZOD by reason of emission of odor, fumes, gases, particulate matter, smoke, noise, vibration, glare, radiation, electrical interference, threat of fire or explosion, or any other reason.

(5) Mixed-Use Development: Development Projects may include a portion not to exceed 50% of the total gross floor area to be used for Non-Residential Uses including Office, Retail, Restaurant, Service or Institutional Uses. Residential units generally must be located above the first-floor but may be permitted in first floor portions of the Building. Where a first-floor residential portion of the Building fronts on a public way, the Planning Board then must determine that the public way is principally a residential Street or that such first floor Residential Use would be in keeping with the character of the adjoining land Uses.

(6) Off-Street Parking and Loading

(a) Off-Street Parking: Retail Stores, Offices and Consumer Service establishments located within one hundred (100) feet of a public off-street parking facility shall be exempt from off-street parking requirements. In all other cases, off-street parking shall be provided to meet the following minimum and maximum requirements:

Use	Minimum & Maximum Number of Parking Spaces
Retail	1 per 300 sq. ft. of gross floor area
Restaurant	1 for each 3 seats
Office	3 per 1,000 square feet
Institutional	1 for each 3 seats
Residential	1.25 per unit
Other Non-Residential, more than 2,000 square feet	3 per 1,000 square feet

(b) Off-Street Loading & Delivery: All loading shall take place on-site in a specified area designed for this purpose. Loading shall not block streets, access ways, driveways, parking or pedestrian areas.

Off-street loading facilities shall be provided. The PAA shall determine the adequacy of loading facilities based on the nature of use. Off-street loading facilities shall be screened from public use areas.

(c) Location of Parking: Any surface parking lot shall, at the sole discretion of the Planning Board, be located at the side or rear of a Building, relative to any public right-of-way, public open space, or pedestrian way. In no case shall surface parking for new construction be permitted within any applicable restricted Front Setback area.

(d) Waiver of Parking and Loading Requirements: The Planning Board may grant a Plan Approval providing such relief from the standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed Use and will not result in or worsen parking or traffic problems in the SGZOD.

The Planning Board may impose conditions of Use or occupancy appropriate to such modifications, provided that the particular use and occupancy were voluntarily proposed by the applicant and any such conditions are expressly approved in writing by DHCD and would not impair the development of housing within the District which is appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

- (e) Shared Use of Required Parking: Shared use may be made of required parking spaces by intermittent Use establishments, for example, churches, assembly halls or theaters, whose peak parking demand is only at night or on specific days of the week may be shared with other Uses whose peak demand is only during the day, or in public parking lots, subject to the paragraph below. At the time of application, a formal agreement shall be made in recordable form and recorded at the Registry of Deeds by the owners of the Uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement.

The applicant shall demonstrate to the satisfaction of the Planning Board 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 industry established studies on shared parking).

- (f) Cooperative Establishment and Operation of Parking Areas: Required spaces for any number of Uses may be provided in a combined Lot or Lots (public or private), provided that the number of spaces in the combined facility shall not be less than the sum of those required of the individual Uses, with allowances made, upon formal designation, for night use or for separate and distinct working shifts, and provided also that such Lot or Lots shall be within 150 feet of the Principal Buildings served.
- (g) Parking Design: Parking shall be designed and constructed to comply with all applicable state and federal disability access requirements including but not limited to the Americans with Disabilities Act (ADA) and 521 CMR.

(7) Open Spaces and Recreational Areas: The site design for Development Projects shall include a minimum of 20% of total acreage in common open space and recreational areas. The Plans and any necessary supporting documents submitted with an application for Plan Approval within the SGZOD shall show the general location, size, character, and general area within which common open space or facilities will be located. The plans and documentation submitted to the Planning Board shall include a description of proposed ownership and maintenance provisions of all common open space and facilities and, if requested by the Planning Board, any necessary restrictions or easements designed to preserve the open space and recreational areas from future development. Upon consideration of the above information, the Planning Board may, in its sole discretion, approve a waiver as provided for in Section 275-8.X (10) for a Front Setback to allow for common open space and recreational areas.

(8) Affordable Housing

(a) Affordable Units shall comply with the following requirements:

(1) The monthly rent payment for an Affordable Rental Unit, including utilities and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the unit plus one, unless another methodology for determining the target household size has been approved by DHCD.

(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 thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming a household size equal to the number of bedrooms in the unit plus one.

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

(b) Number of Affordable Units: Not less than twenty percent (20%) of all Dwelling Units and not less than twenty-five percent (25%) of all rental Dwelling Units constructed in a Development Project shall be Affordable Units. Provided however, for Development Projects in which all of the Dwelling Units are limited to occupancy by elderly persons and/or by persons with disabilities, not less than twenty-five percent (25%) of the Dwelling Units shall be Affordable Units, whether the Dwelling Units are rental units or ownership units.

(c) Fractional Units: When the application of the percentages specified in Section A(8)(a) results in a number that includes a fraction, the fraction shall be rounded up to the next whole number.

- (d) Design and Construction: Affordable Units must be dispersed equitably and proportionately throughout a Development Project, including, where applicable, across all Buildings, floors and unit types in accordance with the affordable housing restriction and marketing and tenant selection plan approved by DHCD. Affordable Units must be comparable in initial construction quality and exterior design to the Unrestricted Units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a Dwelling Unit under applicable law. The Affordable Units must have access to all on-site amenities. Affordable Units shall be finished housing units. All Affordable Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units. In Development Projects that are constructed in phases, Affordable Units must be constructed and occupied in proportion to the number of units in each phase of the Development Project.
- (e) Unit Mix: The total number of bedrooms in the Affordable Units shall be at least proportionate to the total number of bedrooms in all units of the Project of which the Affordable Units are a part.
- (f) Affordable Housing Restriction: Each Affordable Unit shall be subject to an Affordable Housing Restriction approved by DHCD, pursuant to 40R, and recorded with the County Registry of Deeds or Land Court Registry District of the County. All Affordable Housing Restrictions must include, at minimum, the following:
- (1) 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 Development or portion of a Development which are rental. Such restrictions shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Development Project or the rental portion of a Development Project with the designated Affordable Rental Units initially identified in the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and able to float on a limited basis, as necessary, subject to specific approval by DHCD in accordance with the AFHMP and DHCDs AFHMP guidelines.
 - (2) The term of the Affordable Housing Restriction which shall be in perpetuity or for the longest period customarily allowed by law, as further specified in the PAA's Plan Approval decision, but shall be no less than thirty (30) years.
 - (3) The name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction.
 - (4) Reference to a housing marketing and resident selection plan, to which the Affordable Unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. If approved by DHCD, pursuant to 40R for the corresponding Project or phase(s) therein, the housing marketing and selection plan may provide for local preferences in resident selection. The plan shall designate the minimum household size appropriate for a unit with respect to bedroom size and provide

that preference for such unit shall be given to a household of the appropriate size based on need for the number of bedrooms in the unit.

- (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 unit will be set.
- (7) A requirement that only an Eligible Household may reside in an Affordable Unit and that notice of any lease or sublease of any Affordable Unit shall be given to the Monitoring Agent.
- (8) Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent.
- (9) Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and the Town of Middleborough, in a form approved by municipal counsel and DHCD pursuant to the Governing Laws and shall limit initial sale and re-sale to and occupancy by an Eligible Household.
- (10) Provision that the owner(s) or manager(s) of Affordable Rental Unit(s) shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the provisions of this Section 275-8.X (A(8)) and containing such other information as may be reasonably requested in order to ensure compliance with the Affordable Housing Restriction and AFHMP.
- (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 Monitoring Agent and the Town of Middleborough, in a form approved by municipal counsel and DHCD pursuant to the Governing Laws and shall limit rental and occupancy to an Eligible Household.
- (12) A requirement that residents in Affordable Units provide such information as the Monitoring Agent may reasonably request in order to ensure compliance with the Affordable Housing Restriction and AFHMP.
- (13) Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.

(g) Administration: The Monitoring Agent shall ensure the following (See Section 275-8.X

(A) (2) Definitions):

- (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 Units is properly and reliably determined.
- (3) The housing marketing and resident selection plan has been approved by DHCD pursuant to the Governing Laws, 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 Plymouth County Registry of Deeds or Land Court. In the case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the Planning Board or by the Department of Housing and Community Development, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Middleborough Board of Selectmen.

(h) Costs of Housing Marketing and Selection Plan: The housing marketing and selection plan shall make provision for payment by the owner of reasonable costs to the Monitoring Agent and the owner shall pay 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 under this Section 275-8.X and the Governing Laws.

In combination, the various documentation required under Section A (8), to be submitted with an application for Plan Approval, shall include details about construction related to the provision, within the Development Project, of units that are accessible to the disabled and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

(i) Age Restrictions: Nothing in this Section 275-8.X shall permit the imposition of restrictions on age upon Projects unless proposed or agreed to voluntarily by the Applicant.

(9) Plan Approval Procedures: The Planning Board shall adopt and file with the Town Clerk Administrative Regulations relative to the application requirements and contents for Plan Review, subject to approval by the Massachusetts Department of Housing and Community Development. Plan approval procedures shall be as follows:

- (a) Pre-Application Requirements: Prior to the submittal of a Plan for Plan Approval, a “Concept Plan” may be submitted to help guide the development of the definitive submission for project build out. Such Concept Plan shall reflect the following:
- (1) Overall building envelope areas
 - (2) Open space and natural resource areas
 - (3) General site improvements, drainage plans, groupings of Buildings and proposed land Uses
 - (4) Anticipated parking spaces and locations
 - (5) Site vehicular access

The Concept Plan is intended to be used as a tool for both the Applicant and the Planning Board to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGZOD.

- (b) Application Procedures: All Projects are subject to Plan Approval.
- (1) Submittal
 - (a) An application for Plan Approval shall be submitted in accordance with the requirements herein and further specified in the SGZOD Administrative Regulations, on the form provided by the PAA along with the application fees set forth in the Administrative Regulations. The application shall be accompanied by such plans and other documents as required by the Administrative Regulations required to verify compliance with any of the provisions of this Section in a manner that, as defined in 760 CMR 59.02, does not Unduly Restrict development within the SGZOD. In addition to the submission requirements of Administrative Regulations, an application for Plan Approval shall also include all of the following:
 - Development narrative including all Uses, breakdown of square footage for each Use, number of housing units and zoning summary.
 - Photos of adjacent properties and other properties impacted by the Development Project.
 - (b) All plans shall be prepared by certified architects or engineers as required by the Massachusetts Building Code and shall include all of the following:
 - Building plans – all levels including roof
 - Building elevations – all sides including courtyards and interior Lot elevations
 - Massing perspective sketches or renderings illustrating the key elements of the proposed Development Project within its context.

- Proposed exterior lighting plan with photometric information.
- The documents shall clearly differentiate between existing and proposed work by Use of screened lines of color. Changes and revisions to subsequent submittals shall be prominently noted.

(c) An application for Plan Approval shall be filed by the Applicant with the Town Clerk. A copy of the application, including the date of filing certified by the Town Clerk, as well as the required number of copies of the application, shall be filed forthwith by the Applicant with the Planning Board. Application submissions must include a hard copy as well as an electronic copy in PDF or CAD format. Said filing shall include any required forms provided by the Planning Board and approved by DHCD as part of the Administrative Regulations. As part of any application for Plan Approval for a Development Project, the Applicant must submit the following documents to the Planning Board and the Monitoring Agent:

- Evidence that the Development Project complies with the cost and eligibility requirements of Section A.(8);
- Development Project plans that demonstrate compliance with the design and construction standards of Section A.(8)(d); and
- A form of Affordable Housing Restriction that satisfies the requirements of Section A.(8)(f).
- Review Fees: The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Planning Board, pursuant to M.G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Town of Middleborough in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Planning Board in reviewing the Plan application. Any surplus funds remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

(2) Circulation to Other Boards: In accordance with the Administrative Regulations the Planning Board shall provide a copy of the application materials to all relevant municipal Boards, Departments, Commissions and Officials as determined by the Planning Board and to the Monitoring Agent. Subject to the requirements under 9(b)[4] below, these entities shall provide any written comments within 60 days of the filing of the Plan and application with the Town Clerk.

(3) Public Hearing and Time Limits: The Planning Board shall hold a public hearing and review all applications according to the procedure specified in Massachusetts General Law Chapter 40A Section 11.

- (4) The decision of the Planning Board shall require a majority vote of the board's members and be made, and written notice of the decision filed with the Town Clerk, within 120 days of receipt of the application by the Town Clerk. This time may be extended by mutual agreement between the Planning Board and the Applicant by written agreement filed with the Town Clerk. Failure of the Planning Board to take action within said 120 days or the extended time shall be deemed an approval of the Plan Approval application.
- (5) Criteria for Plan Approval: The Planning Board shall approve the Development Project upon all of the following findings:
- (a) The Applicant has submitted the required fees and information as set forth in the SGZOD Administrative Regulations.
 - (b) The proposed Development Project as described in the application meets all of the requirements and standards set forth in this Section 275-8.X, applicable Design Standards and the SGZOD Administrative Regulations, or a waiver has been granted there from, and shall also include written confirmation by the Monitoring Agent that all Affordable Housing requirements have been satisfied.
 - (c) Any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.
- (6) Criteria for Plan Denial: A Plan Approval application may be disapproved only where the Planning Board finds that:
- (a) The applicant has not submitted the required fees and information as set forth in the SGZOD Administrative Regulations; or
 - (b) The Project as described in the application does not meet all the requirements and standards set forth in this Section 275-8.X, applicable Design Standards and the SGZOD Administrative Regulations, or that a required waiver there from has not been granted; or
 - (c) It is not possible to adequately mitigate extraordinary Project impacts on nearby properties by means of suitable conditions.

(10) Waivers: Upon request of the Applicant, the Planning Board may waive dimensional and other requirements, including Design Standards, with conditions, 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 SGZOD, and if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses and/or physical character allowed under this Section. Notwithstanding anything to the contrary in this Section (275-8.X) or the Zoning Bylaw of Middleborough, the Affordable Housing provisions that comprise Section A (8) shall not be waived without the express written approval of DHCD. The Planning Board will take into consideration the following items when considering a waiver:

- (a) High performance energy efficient buildings and construction methods.
- (b) Projects with publicly accessible open space.
- (c) Projects that include retail and restaurants located on Street level.
- (d) A demonstrated shared parking initiative that makes efficient use of land and existing parking supply.
- (e) The preservation or rehabilitation of historic properties or other buildings considered significant to the Town.

(11) Plan Changes After Approval by Planning Board

(a) Minor Plan Changes: After Plan Approval, an Applicant may apply to make minor changes in a Development Project that do not affect the overall build out or Building envelope of the site, or provision of open space, number of housing units, or housing need or Affordable Housing features. Such minor changes must be submitted to the Planning Board on redlined prints of the approved Plan, reflecting the proposed change, and on application forms provided by the Planning Board. The Planning Board may, in its sole discretion, authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Planning Board 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 Plan Changes: Those changes deemed by the Planning Board to constitute a major change in a Development 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 Planning Board as a new application for Plan Approval pursuant to this Section.

(12) Fair Housing Requirement: All Development Projects within the SGZOD shall comply with applicable federal, state and local fair housing laws.

(13) Project Phasing: The Planning Board may allow a Project to be phased at the request of the Applicant or to mitigate any extraordinary adverse impacts on nearby properties and provided that the submission shows the full build-out of the Project and all associated impacts as of the completion of the final phase and subject to approval of the Planning Board. For Projects that are approved and developed in phases, the proportion of Affordable Units shall be no less than the minimum percentage required for the Project as a whole under Section A(8)(b).

(14) Decisions: The Planning Board 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. If 20 days have elapsed after the decision has been filed with the Town Clerk without an appeal having been filed, or if such appeal having been filed is dismissed or denied, or if a Plan is approved by reason of the failure of the Planning Board to timely act, the Town Clerk shall so certify on a copy of the decision. A copy of said decision shall be filed with the Registry of Deeds.

A Plan Approval shall remain valid and run with the land indefinitely, provided that substantial construction has commenced and continued within two years after the decision is issued, which time shall be extended by the time required to adjudicate an appeal and which time shall be extended if the Project proponent is actively pursuing other required permits or there is excusable neglect for failure to commence.

The Planning Board may require the posting of a performance bond to secure and/or screen a Development Project site in the event that demolition is undertaken but subsequent work lapses, for any reason within or outside the Applicant's control, for a period longer than one year.

(15) Date of Effect: The effective date of this SGZOD Bylaw shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of Section 5 of Chapter 40A of the General Laws and Chapter 40R of the General Laws; provided, however, that an Applicant may not proceed with construction pursuant to this Bylaw (Section 275-8.X) prior to the receipt of final approval of this Bylaw (Section 275-8.X) and accompanying Zoning Map by both the Department of Housing and Community Development and the Office of the Massachusetts Attorney General.

(16) Design Standards: The Planning Board may adopt and amend, by simple majority vote, Design Standards which shall be applicable to all Projects. Such Design Standards must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of Building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. DHCD may, at its discretion, require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.

Before adopting any Design Standards, the Planning Board shall submit the proposed Design Standards to DHCD for approval. Any amendment to the Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk.

An application for Plan Approval that has been submitted to the Town Clerk pursuant to this Section shall not be subject to any Design Standard that has not been approved by DHCD and filed with the Town Clerk.

(17) Severability: If any provision of this Bylaw is found to be invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected but remain in full force. The invalidity of any provision of this Section shall not affect the validity of the remainder of the Town's Zoning Bylaw.

B. Establishment and Delineation of the Smart Growth Zoning Overlay Sub-Districts

(1) Middleborough Smart Growth Zoning Overlay Sub-District

(a) Establishment and Delineation of the MSGZOS - The Middleborough Smart Growth Zoning Overlay Sub-District (MSGZOS) is an overlay district that is superimposed over the Underlying District. The boundaries are delineated as the “Middleborough Smart Growth Zoning Overlay Sub-District” on the Official Zoning Map of the Town of Middleborough on file in the office of the Town Clerk, said map hereby made a part of the Middleborough Zoning Bylaw.

(1) Allowed Uses

The following Uses shall be permitted As-of-Right in the MSGZOS upon Plan Approval pursuant to the provisions of this Section 275-8X:

- (a) Multi-family Residential
- (b) Only as part of a Mixed-Use Development Project (see Section 275-8.X (A) (5)):
 - i. Office
 - ii. Retail
 - iii. Restaurant (excludes drive-through windows)
 - iv. Institutional
 - v. Consumer Service

In addition to the Allowed Uses listed above, the following Uses are permitted As-of-Right for Development Projects within the MSGZOS subject to the requirements of this Section 275-8.X:

- (a) Parking accessory to any of the above Allowed Uses, including surface, garage-under, and structured parking
- (b) Accessory Uses customarily incidental to any of the above permitted Allowed Uses

(2) Prohibited Uses

Any use not listed herein as an Allowed Use is deemed prohibited.

(b) Dimensional and Other Requirements

Applications for Plan Approval shall be governed by this Section 275-8.X and the MSGZOS Design Standards.

Dimensional Requirements	
Maximum Floor Area Ratio (FAR) (Gross Floor Area/Lot Size)	4
Maximum Building Height	45 Feet
Minimum Lot Frontage	50 Feet
Maximum Lot Coverage	N/A***
Minimum Lot Area	N/A***
Number of Buildings per Lot	N/A***
Maximum Building Frontage	300 Feet
Minimum Front Setback*	0 Feet
Maximum Front Setback*	10 Feet
Minimum Side/Rear Setback** abutting a Residential Zone	15 Feet
Minimum Side/Rear Setback** in MSGZOS or abutting Business-B	0 Feet
Interior Setback (between Buildings on same Lot)	15 Feet
*Design Standards will include for front façade Setback requirements	
**Design Standards will include Building step-back requirements	
***No requirement or limitation applies	

(1) Residential Density Allowances

The following residential densities shall be allowed on all Lots and within all Buildings within the MSGZOS pursuant to the requirements of this Section 275-8.X: Multifamily Residential 20 Units per acre.

- (a) The Planning Board may provide a waiver as specified in Section A (10) to allow a density in excess of that stated above.
- (b) The Planning Board may provide a waiver as specified in Section A (10) to promote the renovation or adaptive reuse of existing buildings.

(2) Contiguous Lots

In the MSGZOS, where two or more Lots are contiguous or are separated by a right-of-way, such Lots may be considered as one Lot for the purpose of calculating maximum Lot coverage; parking requirements; minimum useable open space; and Dwelling Units per acre.

(3) Age-Restricted Housing Units

An Applicant may propose a Residential or Mixed-Use Development Project in which all Dwelling Units are designed for or are accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this Section 275-8.X and the Design Standards.

(2) John Glass Square Smart Growth Zoning Overlay Sub-District

(a) Establishment and Delineation of the JGSSGZOS - The John Glass Square Smart Growth Zoning Overlay Sub-District (JGSSGZOS) is an overlay district that is superimposed over the Underlying District. The boundaries are delineated as the "John Glass Square Smart Growth Zoning Overlay Sub-District" on the Official Zoning Map of the Town of Middleborough on file in the office of the Town Clerk, said map hereby made a part of the Middleborough Zoning Bylaw.

(1) Allowed Uses

The following Uses shall be permitted As-of-Right in the JGSSGZOS upon Plan Approval pursuant to the provisions of this Section 275-8X:

- (a) Two- and/or Three-Family Residential
- (b) Only as part of a Mixed-Use Development Project (see Section 275-8.X
 - (A) (5)):
 - i. Office
 - ii. Retail
 - iii. Restaurant (excludes drive-through windows)
 - iv. Institutional
 - v. Consumer Service

In addition to the Allowed Uses listed above, the following Uses are permitted As-of-Right for Development Projects within the JGSSGZOS subject to the requirements of this Section 275-8.X:

- (a) Parking accessory to any of the above Allowed Uses, including surface, garage-under, and structured parking
- (b) Accessory Uses customarily incidental to any of the above permitted Allowed Uses

(2) Prohibited Uses

Any use not listed herein as an Allowed Use is deemed prohibited.

(b) Dimensional and Other Requirements

Applications for Plan Approval shall be governed by this Section 275-8.X and the JGSSGZOS, Design Standards.

Dimensional Requirements	
Maximum Floor Area Ratio (FAR) (Gross Floor Area/Lot Size)	3
Maximum Building Height	35 Feet
Minimum Lot Frontage	50 Feet
Maximum Lot Coverage	N/A***
Minimum Lot Area	N/A***
Number of Buildings per Lot	N/A***
Maximum Building Frontage	300 Feet
Minimum Front Setback*	0 Feet
Maximum Front Setback*	10 Feet
Minimum Side/Rear Setback** abutting a Residential Zone	15 Feet
Minimum Side/Rear Setback** in JGSSGZOS or abutting Business-B	0 Feet
Interior Setback (between Buildings on same Lot)	15 Feet
*Design Standards will include for front façade Setback requirements	
**Design Standards will include Building step-back requirements	
***No requirement or limitation applies	

(1) Residential Density Allowances

The following residential densities shall be allowed on all Lots and within all Buildings within the JGSSGZOS pursuant to the requirements of this Section 275-8.X: Single-Family Residential 12 Units per acre.

- (a) The Planning Board may provide a waiver as specified in Section A (10) to allow a density in excess of that stated above.
- (b) The Planning Board may provide a waiver as specified in Section A (10) to promote the renovation or adaptive reuse of existing buildings.

(2) Contiguous Lots

In the JGSSGZOS, where two or more Lots are contiguous or are separated by a right-of-way, such Lots may be considered as one Lot for the purpose of calculating maximum Lot coverage; parking requirements; minimum useable open space; and Dwelling Units per acre.

(3) Age-Restricted Housing Units

An Applicant may propose a Residential or Mixed-Use Development Project in which all Dwelling Units are designed for or are accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this Section 275-8.X and the Design Standards.

**Middleborough Smart Growth Zoning Overlay Sub-District
&
John Glass Square Smart Growth Zoning Overlay Sub-District**



Note: Middleborough Smart Growth Zoning Overlay Sub-District is located adjacent to the I-495 interchange and the John Glass Square Smart Growth Zoning Overlay Sub-District is located adjacent to the intersection of Center Street and Station Street.