

## **Design Guidelines for Gardner’s Downtown: Options for Implementation**

*Design Guidelines* can serve multiple purposes as a tool to enhance the quality and value of downtown Gardner. The following discussion describes several choices that the City may consider as it shapes its plans, policies and programs.

### **Informational Standards for Downtown Projects**

In some communities, design guidelines may be used as an informational resource available to owners, designers, contractors, and other stakeholders in the quality and character of a district – lists of design principles often appear in planning documents, for example. However, without a more specific method to apply the guidelines, they are likely to have little practical impact.

### **Approval Criteria for Façade and Signage Improvement Grants**

Design standards are typically used as criteria for receiving grants for façade or signage improvements in many communities. The *Design Guidelines* could be applied by the Department of Community Development and Planning in administering its façade and signage grant program. Prospective applicants to the program should be provided a copy of the *Design Guidelines* as they consider the scope and design of prospective improvements, and then shared with their design and construction team in the preparation of a proposed project. The *Design Guidelines* would then be used to review the proposed project and serve as criteria for granting an approval. The review could result in a direct approval, a requirement to redesign and resubmit the proposal, or approval with reasonable and specific conditions that may be required prior to the grant being forwarded to the applicant.

The *Design Guidelines* may be applied as an administrative matter through the individual assigned to manage the grant program. As a practical matter, it is often advisable to establish a small design review committee to administer the guidelines. The membership might be limited to three persons – perhaps a staff person from Community Development and Planning, a member of Gardner Square Two, and perhaps a local design professional or stakeholder in the downtown.

A committee structure limits any appearance of personal bias or preferences regarding design, and generally allows for a balanced discussion and judgments.

The process of review and approval should include a brief meeting with the proponent and the committee once the design application has been received. One meeting is often sufficient for small projects that are well designed. More complex projects typically result in the need to schedule a second meeting to review and discuss revisions that may have been requested.

If the *Design Guidelines* are used as a criteria for receiving grants, then this requirement should be clearly listed in any written information regarding the grant, and copies need to be reasonably available to proponents. In addition, any grant award should include a condition that the final project, as constructed, must be consistent with the approved design.

## **Mandatory Advisory Reviews for Qualifying Projects**

The Design Guidelines could be used as part of advisory reviews that can be required (mandated) as part of various types of review and approvals process. So, for example, an advisory review of a project's design could be required for projects needing a special permit, variance or zoning change within an historic district. Such reviews could require submittal of documents to a designated agency or committee, and allow for a consultation session and/or written recommendations. Such use of the *Design Guidelines* relies on good faith responses to the advice that is received, but they are not binding upon the applicant. For example, in Boston, we understand that Massport sometimes agrees to submit projects to the City's Design Review Commission for advisory reviews. Massport is not required to follow the advice, but the process tends to result in more responsive, appropriate designs.

The City might consider requiring mandatory review submittals and participation in a consultation process, using the *Design Guidelines* as a basis for discussion and review. This approach may be very appropriate, for example, for projects in buildings with historic status. The City could make issuance of a special permit, variance or other zoning relief contingent upon the proponent participating in a review process. Such a requirement should have clear directions regarding the number and content of submittal documents, and restrict the review to a designated time period; if the design review committee is unable to meet or reach a recommendation, it should not delay a project.

## **Mandatory Reviews and Approvals**

There are other methods for establishing design guidelines as mandatory requirements for certain public reviews and approvals where they can be legally and appropriately employed as conditional standards.

In general, they should not be mandated for "as-of-right" development or improvement projects. We have been informed by some attorneys that use of design guidelines in such cases may not be legally permissible within state law.

However, there are four circumstances that we suggest might be appropriate for establishing mandatory reviews and approvals for Gardner:

### Urban Renewal District

Design standards such as the Design Guidelines that we have prepared are often used as mandatory requirements for approval of projects within a designated urban renewal area by the Urban Renewal Authority established through the state's legal mechanisms. Established redevelopment authorities, agencies and commissions in other Massachusetts communities routinely require reviews and approvals using design standards – Boston and Somerville, for example. As long as the design guidelines are consistent with the approved Urban Renewal Plan and are within the district, the design review can occur as an administrative matter or employ a committee; final project approval normally rests with the appointed members of the Authority based on recommended actions.

As part of its urban renewal planning, Gardner may wish to anticipate the ability to adopt or tailor these design guidelines to its purposes.

### Historic District

Within a state-enable and locally approved historic district, Design Guidelines may be mandated as requirements for approval within the district. Normally, standards are created to distinguish the types of project subject to such reviews and approvals, to screen out small and insignificant projects. Design

Guidelines then are normally administered by the Historic District Commission, with staff administrative support through the City, through a redevelopment agency, or through its own means, including employing third-party peer review consultants. Gardner could adopt and apply the Design Guidelines through such a process if it is appropriate.

### Zoning Special Permit

Design guidelines may be administered as part of a special permit for qualifying projects, in conjunction with the City's zoning ordinance. The zoning would need to be modified to require design review of qualifying projects that would need special permits. For example, projects above an "as-of-right" scale or other attributes could be required to submit to design review and approval, as long as the design guidelines reasonably implement and are related to established public purposes. Then, the Design Guidelines can be adopted and amended as part of the Rules and Regulations that implement the zoning ordinance. As a practice, the Planning Board is normally used as the design review body, although another committee or Zoning Board of Appeal could probably be employed, if enabled by the zoning ordinance. It is also possible to make compliance with the *Design Guidelines* a condition on a special permit even if they have not been formally adopted, if the proponent agrees to this.

### Chapter 40R Smart Growth Zoning and Design Standards

Massachusetts has a new and unprecedented method for establishing and applying mandatory design guidelines. Termed "Design Standards", the 40R mechanism allows municipalities to apply mandatory design review and approval to special categories of overlay zoning that the 40R zoning incentives promote. This use of design guidelines is very powerful and may be appropriate for Gardner, if it pursues such an overlay zone, adopts this mechanism, and receives necessary state approvals. The legal and regulatory implications of the 40R design standard mechanism are fairly complex. For your information, we have included some information from a document that we had prepared with the Commonwealth for distribution to communities considering design guidelines for such zones:

MGL Chapter 40R enables municipalities to create special zoning overlay districts, called Smart Growth Zoning Districts, that allow for dense residential or mixed-use development. The zoning must require that at least 20% of the homes developed in the district be affordable to low-income households and may allow for projects that combine residential with commercial, civic, institutional or other complementary uses. There are three types of eligible locations: in areas of concentrated development such as town centers or downtowns, within ½ mile of transit stations including commuter rail and bus terminals, and in other "highly suitable" locations deemed appropriate for higher density housing. In return for adopting a Smart Growth Zoning District, cities and towns receive an incentive payment as well as a bonus payment for every new home built.

An important basis in the implementation of 40R Districts is an understanding of the definition of Smart Growth. According to the statute and regulation, Smart Growth is a principle of land development that creates a range of housing opportunities, emphasizes mixing land uses, concentrates development into distinctive communities, supports existing communities, provides for transportation choices, streamlines the permitting process, involves stakeholder collaboration, and supports the preservation of open spaces and other natural resource areas. To this end, the Commonwealth expects that municipalities will utilize Chapter 40R to foster high-quality, compact development on appropriate infrastructure. Developers have the option to follow the Smart Growth Zoning as a matter of right or use the original zoning, which remains valid. In cases where the municipality chooses Plan Review as the mechanism for approval of 40R Projects, the Projects are reviewed by an Approving Authority that is designated in the zoning.

Municipalities may choose to incorporate Design Standards into the Plan Review to ensure that the physical character of a Project is consistent with local plans, is complementary to adjacent buildings and structures, and is consistent with the character of other densely settled areas of the community. Design Standards, once adopted, become mandatory for 40R Projects that are subject to Plan Review.

It is important to understand that 40R Design Standards should be based on public interest purposes. Unlike other types of standards that may respond to particular or stylistic design preferences, 40R Standards must have a legitimate standing consistent with the purpose and intent of the proposed 40R Zoning. In order to successfully accomplish this, Design Standards need to establish a balance between public interests, local preferences and community needs.

A fundamental premise of Chapter 40R is that Design Standards should function within the framework of the public interest, which means they must not add unreasonable costs to residential or mixed-use developments or otherwise impair the economic feasibility of proposed projects. To this effect, municipalities must be able to demonstrate that the proposed Design Standards will not Unduly Restrict the development of Projects in the District as a requisite for obtaining Smart Growth Zoning approval.

Source: *Guidebook: Creating Design Standards for 40R Districts* (The Cecil Group and the Department of Housing and Community Development, Commonwealth of Massachusetts) 2007.