



Special Town Meeting Warrant

Middleborough Massachusetts

To Joseph Perkins, Police Chief or any of the
Police Officers of the Town of Middleborough

In the name of the Commonwealth of Massachusetts you are hereby required to notify and warn all the inhabitants of said Town, qualified to vote in Town affairs, to meet in the Auditorium of the Middleborough High School, on Monday, October 4th, 2021, at 7:00 P.M., to act on the following articles:

ARTICLE 1. To hear the report of any committee or officer of the Town, to appoint any committee, or act anything thereon.

ARTICLE 2. To see if the Town will vote to raise and appropriate and/or transfer a sum of money from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account, or other available source, to supplement and/or adjust departmental budgets for Fiscal Year 2022, or act anything thereon.

ARTICLE 3. To see if the Town will vote to raise and appropriate and/or transfer \$200,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to be placed into the Other Post-Employment Benefits Liability Trust Fund, or act anything thereon

Sponsored by the Board of Selectmen

ARTICLE 4. To see if the Town will vote to raise and appropriate and/or transfer \$13,155.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for the replacement of the air conditioning system in the Town's Veteran's office and all related expenses, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 5. To see if the Town will vote to raise and appropriate and/or transfer \$30,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for building improvements and all related expenses at the Animal Shelter, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 6. To see if the Town will vote to raise and appropriate and/or transfer \$34,500.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for code upgrades, improvements to the sprinkler system and controls and all related expenses at the Council on Aging Building and Town Hall, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 7. To see if the Town will vote to raise and appropriate \$208,058.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay

for Information Technology hardware upgrades for town departments and the digital imaging for the preservation of access records and all related expenses, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 8. To see if the Town will vote to raise and appropriate and/or transfer \$62,500.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for the replacement of the fire alarm panel, smoke detectors and all related expenses at the Public Library, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 9. To see if the Town will vote to appropriate \$650,000.00 for a Fire Engine/Pumper Truck, and to meet this appropriation to authorize the Treasurer, with the approval of the Board of Selectmen to borrow such amount under General Laws, Chapter 44, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 10. To see if the Town will vote to raise and appropriate and/or transfer \$37,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for the construction of a new basketball court at Peirce Playground and all related expenses, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 11. To see if the Town will vote to raise and appropriate and/or transfer \$55,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for the replacement of Bridge #4 and repairs to the standing wall and all related expenses at the Oliver Mill Park, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 12. To see if the Town will vote to raise and appropriate and/or transfer \$620,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for the replacement of the pool roof at the Burkland School and boilers at the Memorial Early Childhood Center and all related expenses, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 13. To see if the Town will vote to raise and appropriate and/or transfer \$192,500.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, to pay for the purchase of two trucks, a one ton with dump body and plow truck and a one ton service truck with utility body, crane, compressor and plow truck for the Highway Department, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 14. To see if the Town will vote to raise and appropriate and/or transfer \$319,000.00 from Wastewater Department Retained Earnings, to fund the purchase of a pump station generator and a sewer system evaluation survey, or act anything thereon.

Sponsored by the Capital Planning Committee

ARTICLE 15. To see if the Town will vote to raise and appropriate and/or transfer \$142,250.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, for the Department of Public Works for all relevant and necessary expenses associated with storm water activities required by the EPA/DEP, or act anything thereon.

Sponsored by Department of Public Works

ARTICLE 16. To see if the Town will vote to appropriate an additional \$1,935,000.00 for the Mizares Well Project for which \$1,750,000.00 was appropriated and authorized to be borrowed pursuant to the vote under Article 14 of the October 6, 2014 Special Town Meeting; and to meet this appropriation to authorize the Treasurer, with the approval of the Board of Selectmen, to borrow such additional \$1,935,000.00 under Chapter 44 of the General Laws, or act anything thereon.

Sponsored by the Water Department

ARTICLE 17. To see if the Town will vote to raise and appropriate and/or transfer \$5,500.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, for the Conservation Commission for Pare Corporation to prepare a conceptual design for the spillway replacement of the dam at Pratt Farm, known as Pratt farm Dam or small dam, or act anything thereon.

Sponsored by Conservation Commission

ARTICLE 18. To see if the Town will vote to raise and appropriate and/or transfer \$10,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source for the Conservation Commission for funding the Southeastern Regional Planning and Economic development District to assist the Town of Middleborough to develop an updated version of the Town's Open Space and Recreation Plan (OSRP) policy and planning document, or act anything thereon.

Sponsored by the Conservation Commission

ARTICLE 19. To see if the Town will vote to raise and appropriate and/or transfer \$1,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, for the Conservation Commission for funding a portion of the appraisal for property at 415 Plymouth Street, Assessor's Map 041, Lot 466, and Assessor's Map 031, Lots 6082, 5272, 4447, 3687, 4347 and 2622, or act anything thereon.

Sponsored by the Conversation Commission

ARTICLE 20. To see if the Town will vote to raise and appropriate and/or transfer \$10,130.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, for the Conservation Commission for funding the Stewardship Endowment costs for the Wildlands Trust to

hold a Conservation Restriction at the following properties at Woloski Park Assessor's Map 020, Lots 2487, 2444, 2339 and 2414, to satisfy requirements for using Community Preservation funding for the match to the FEMA Hazard Mitigation Grant, or act anything thereon.

Sponsored by the Conversation Commission

ARTICLE 21. To see if the Town will vote to raise and appropriate and/or transfer \$33,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, for the Building Department, for the purpose of a new vehicle for the Building Commissioner, or act anything thereon.

Sponsored by the Building Department

ARTICLE 22. To see if the Town will vote to raise and appropriate and/or transfer \$10,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, for the Elections & Registration Division, for the purpose of funding new voting booths and all related expenses, or act anything thereon.

Sponsored by the Town Clerk & Elections and Registrations Division

ARTICLE 23. To see if the Town will vote to raise and appropriate and/or transfer \$1,000,000.00 from taxation, free cash, another specific available fund, the Stabilization Fund, an existing appropriation or account or other available source, or to raise such sum by borrowing under the Community Preservation Act, for the acquisition of a portion of the farmland at 415 Plymouth Street, consisting of Map 41 Lot 466 and Map 31, Lots 6082, 4447, 5272, and 3687, containing 94 acres more or less; said funds to be expended under the direction of the Town Manager and the Community Preservation Committee; and to authorize the Board of Selectmen to grant or impose a preservation restriction with respect to the property, or act anything thereon.

Sponsored by the Community Preservation Committee

ARTICLE 24. To see if the Town will vote to raise and appropriate \$500,000.00 by borrowing under General Laws, Chapter 44, or by borrowing from the Massachusetts Clean Water Trust pursuant to General Laws Chapter 29C for the purpose of funding the Town's program to repair, replace or upgrade waste disposal systems, or act anything thereon.

Sponsored by the Health Department

ARTICLE 25. To see if the Town will vote to authorize the Board of Selectmen to accept a donation to the Town of land (trust property) known as 162 Wood Street, Map 059 – 6075 .15 acres of land (6,534 sq. ft. of land +/-), Lot off Wood Street, Middleborough, Massachusetts 02346 more particularly described as PARCEL 2 on a deed dated November 13, 1996 and recorded at the Plymouth County Registry of Deeds at Book 14783, Page 295, from Scott Valler, Trustee of the RGL & PAL Realty Trust., or anything thereon.

Sponsored by the Parks and Recreation Department

ARTICLE 26. To see if the Town will vote to dissolve the Police Station Building Study Committee established at the June 7, 2004 Special Town Meeting, Article 11, or act anything thereon.

Sponsored by the Board of Selectmen

ARTICLE 27. To see if the Town will vote to amend the Zoning Bylaws and Zoning Map:

TOWN OF MIDDLEBOROUGH ZONING BYLAWS AND ZONING MAP AND ADD GENERAL USE B (GUB) ZONING DISTRICT

The Town of Middleborough Planning Board herewith petitions the Honorable Board of Selectmen to place the following article to amend the Town of Middleboro Zoning Bylaws and Zoning Map as follows:

1. Amend Chapter 275, § 2.1 of the Town of Middleboro Zoning Bylaws, known as Zoning Bylaws, by adding the following district.

General Use B (GUB)

2. Amend Chapter 275, § 2.4 of the Zoning Map and amend the zoning district at the following properties from the General Use District to the General Use B District.

133 East Grove Street –	Map 065, Lot 4663;
116 Cherry Street –	Map 065, Lot 4669;
135 East Grove Street –	Map 065, Lot 4784;
126 Cherry Street –	Map 065, Lot 5461;
Cherry Street –	Map 065, Lot 5499;
137 East Grove Street –	Map 065, Lot 5537;
143 East Grove Street –	Map 065, Lot 5592;
132 Cherry Street –	Map 065, Lot 6231;
Cherry Street –	Map 065, Lot 6236;
140 Cherry Street	Map 065, Lot 6256;
Cherry Street –	Map 065, Lot 6262;
Cherry Street –	Map 065, Lot 6298;
147 East Grove Street –	Map 065, Lot 6398;
157 East Grove Street –	Map 065, Lot 6425;
155 East Grove Street –	Map 065, Lot 6427;
151 East Grove Street –	Map 065, Lot 6444;
161 East Grove Street –	Map 065, Lot 6495;
165 East Grove Street –	Map 066, Lot 5778;
East Grove Street (Off) –	Map 071, Lot 763;
163 East Grove Street –	Map 071, Lot 865;
East Grove Street (Off) –	Map 071, Lot 1631;
East Grove Street (Off) –	Map 071, Lot 2415;
East Grove Street (Off) –	Map 071, Lot 8456;

- 167 East Grove Street – Map 072, Lot 118;
- 169 East Grove Street – Map 072, Lot 144;
- East Grove Street – Map 072, Lot 152;
- 177 East Grove Street – Map 072, Lot 1099;
- 193 East Grove Street – Map 072, Lot 2073;
- 195 East Grove Street – Map 072, Lot 2085;
- Wareham Street - Map 072, Lot 2086;
- East Grove Street – Map 072, Lot 2616;
- East Grove Street – Map 072, Lot 2726;
- 187 East Grove Street – Map 072, Lot 2738;
- 324 Wareham Street - Map 072, Lot 2831;
- 326 Wareham Street - Map 072, Lot 2838;
- 330 Wareham Street - Map 072, Lot 2947;
- 334 Wareham Street - Map 072, Lot 2973;
- 336 Wareham Street - Map 072, Lot 3724;
- 340 Wareham Street - Map 072, Lot 3734;
- Wareham Street - Map 072, Lot 3765;
- Wareham Street (Off) - Map 072, Lot 3775;
- 348 Wareham Street - Map 072, Lot 4532;
- 350 Wareham Street - Map 072, Lot 4649;
- 352 Wareham Street - Map 072, Lot 4657; and
- Cherry Street (Off) – Map 072, Lot 6017.

3. Amend Chapter 275 § 3.1 of the Zoning Bylaws to add the GUB District as shown as follows:

TABLE OF USES	
PRINCIPAL USE	GUB
A. RESIDENTIAL USES	
1. Single-family dwelling	Y
2. Two-family dwelling	ZBA
3. Trailer or mobile home	N
4. Conversion of single family to up to three dwelling units	ZBA
5. Dwelling units above street level floor	N
6. Multifamily dwelling	ZBA
7. Adult mobile home park	PB
8. Open Space Residential Preservation Department	PB
9. Retreat lot	PB

TABLE OF USES	
PRINCIPAL USE	GUB
B. EXEMPT USES (PURSUANT TO MGL CH 40A SECTION 3)	
1. Agricultural Uses, Road Side Stands and Horse Stables	Y
2. Use of land or structures for religious	Y

purposes	
3. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or by a nonprofit educational corporation	Y
4. Child Care Center	Y
5. Municipal or governmental facilities	Y

TABLE OF USES	
PRINCIPAL USE	GUB
C. INSTITUTIONAL USES	
1. Philanthropic, fraternal, patriotic or charitable institution	ZBA
2. Library, museum, or park	ZBA
3. Essential Services	ZBA

TABLE OF USES	
PRINCIPAL USE	GUB
D. COMMERCIAL USES	
1. Nonexempt educational use	Y
2. Reserved	
3. Kennel, Commercial	ZBA
4. Veterinarian's office; Animal hospital	ZBA
5. Private club or lodge	Y
6. Nursing or convalescent home	ZBA
7. Funeral home	Y
8. Motel or Hotel	Y
9. Bed and Breakfast	Y
10. Retail stores and services not elsewhere set forth	Y
11. Motor vehicle sales and rental	Y
12. Motor vehicle general and body repair	Y
13. Motor vehicle light service	Y
14. Restaurant	Y
15. Restaurant, fast food	Y
16. Aviation Use	ZBA
17. Business or professional office, Including medical	Y
18. Medical clinic	Y
19. Bank, financial agency	Y
20. Indoor commercial recreation	Y
21. Outdoor commercial recreation	Y
22. Golf course	Y
23. Personal Service Establishment	Y
24. General Service Establishment	Y
25. Adult Use	N
26. Hospital	Y

27. Fitness Center	Y
28. Movie Theater	Y
29. Indoor Flea Market	Y
30. Food processing or packaging with onsite sales	Y
31. Adult Day Care	Y
32. Dry Cleaners, onsite cleaning	Y
33. Medical Marijuana Dispensary	ZBA
34. Marijuana Establishments*	
NOTES:	
*Marijuana Establishments are allowed in the Cannabis Business Overlay District (CBD) by Special Permit as set forth in Section 8.5.	

TABLE OF USES	
PRINCIPAL USE	GUB
E. INDUSTRIAL USES	
1. Earth removal on premises owned by Town	ZBA
2. Commercial earth removal	N
3. Light manufacturing	Y
4. Manufacturing	Y
5. Wholesale, warehouse, self-storage mini warehouse or distribution facility	Y
6. Junkyard or automobile graveyard	N
7. Contractor landscaper yard	Y
8. Transport terminal	Y
9. Operations involving radioactive materials	N
10. Large Scale Ground Mounted Solar Photovoltaic Installation	Y

TABLE OF USES	
PRINCIPAL USE	GUB
F. ACCESSORY USES	
1. Up to 2 boarders with owner resident on premises	Y
2. Customary home occupation; or, Home trade shop	Y
3. Intensive home occupation	ZBA
4. Accessory buildings or structures	Y
5. Family day care home, small	Y
6. Family day care home, large	ZBA
7. Adult day care facility	ZBA
8. Light manufacturing and assembly accessory to onsite retail	Y
9. Wholesale outlet accessory to retail operation	Y
10. Family accessory apartment	ZBA

11. Accessory use to a use allowed by special permit	ZBA
12. Kennel, Household or Private	Y
13. Kennel, Hobby	ZBA
14. Accessory scientific uses	ZBA
15. Accessory solar voltaic installation	Y

TABLE OF USES	
PRINCIPAL USE	GUB
G. OTHER USES	
1. Drive-through windows	Y

4. Amend Chapter 275 § 4.1.1 of the Zoning Bylaws to add the GUB District as shown as follows:

TABLE OF DIMENSIONAL REGULATIONS	
DIMENSION	GUB
Min. Lot Area (s.f.)	-
Min. Lot Frontage (ft.)	75
Min. Lot Width (ft.)	-
Upland Circle (s.f.) (See Section 4.2.4)	-
Min. Front Yard (ft.)	35
Min. Side Yard (ft.)	25
Min. Rear Yard (ft.)	25
Building Height (ft.)	42 ^{**}
Impervious Cover (%)	60%
Open Space (%)	40%

and as shown in underline as follows:

* GU, GUX, GUA, and GUB, Dimensions shown are for commercial, industrial and accessory uses. See Section 4.5.2 for single family residential uses and Section 7.1 for multi-family uses.

** In GUB District, any Lot with ten (10) acres or more in size, the Zoning Board of Appeals, upon a finding that additional height is reasonably necessary for use of a structure and will not be detrimental to the neighborhood in which the structure is located, may authorize by special permit a structure not to exceed sixty-five (65) feet in height.

5. Amend Chapter 275 § 4.5 of the Zoning Bylaws to add the GUB District as shown in underline as follows:

4.5 GU, GUX, GUA, AND GUB DISTRICT REQUIREMENTS

6. Amend Chapter 275 § 5.6 of the Zoning Bylaws to add the GUB District as shown in underline as follows:

5.6 LANDSCAPING AND SCREENING – GU, GUX, GUA, AND GUB DISTRICTS

7. Amend Chapter 275 § 7.1 of the Zoning Bylaws to add the GUB District as shown in underline as follows:

7.1 MULTIFAMILY DWELLINGS IN GU, GUX AND GUB DISTRICTS

8. Amend the fifth sentence in Chapter 275, § 7.5.7(3) of the Zoning Bylaws to add the GUB District as shown in underline as follows:

If, however, the perimeter of the site abuts a General Use (GU), General Use X (GUX), General Use B (GUB), Business (B) or Industrial (I) Zoning District, the Planning Board may require the buffer area abutting a GU, B or I District to be greater than one hundred (100') feet in order to ensure adequate separation and/or screening from the abutting commercial zoning districts, or act anything thereon.

Sponsored by the Planning Board

ARTICLE 28. To see if the Town will vote to amend the Middleborough Zoning Bylaw by adding **Section 2.2 – Overlay Districts – 40R Smart Growth Overlay District (SGO)**; amending **Section 2.4 – Zoning Map** and adding **Section 8.6 - 40R Smart Growth Overlay District (SGO) Bylaw**

8.6. Smart Growth Zoning Overlay District (SGO)

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 SGO (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 8.6 (B). A Use that is not prohibited under Section 8.6 (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. shall be applicable to all Development Projects within the SGO.

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 8.6 (5) and subject to all provisions of this Section 8.6.

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 8.6 (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 SGO and which is submitted to the Planning Board for its review and approval in accordance with the provisions of this Section 8.6.

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 8.6 to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions with the SGO.

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 8.6 (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 (SGO): 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 SGO 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 8.6 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.

(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 SGO 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 SGO. 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 SGO 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 8.6 (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 8.6 (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 8.6 (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 8.6 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 8.6 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 SGO.

- (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 SGO 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 SGO. 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 SGO Administrative Regulations.
 - (b) The proposed Development Project as described in the application meets all of the requirements and standards set forth in this Section 8.6, applicable Design Standards and the SGO 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 SGO Administrative Regulations; or
 - (b) The Project as described in the application does not meet all the requirements and standards

set forth in this Section 8.6, applicable Design Standards and the SGO 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 SGO, 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 8.6 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 Streetlevel.
- (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 SGO 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 SGO 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 8.6) prior to the receipt of final approval of this Bylaw (Section 8.6) 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 (MSGO)

(a) Establishment and Delineation of the MSGO - The Middleborough Smart Growth Zoning Overlay Sub-District (MSGO) 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 MSGO upon Plan Approval pursuant to the provisions of this Section 8.6:

- (a) Multi-family Residential
- (b) Only as part of a Mixed-Use Development Project (see Section 8.6 (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 MSGO subject to the requirements of this Section 8.6:

- (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 8.6 and the MSGO 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 MSGO 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 MSGO pursuant to the requirements of this Section 8.6: 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 MSGO, 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 8.6 and the Design Standards.

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

(a) Establishment and Delineation of the JGSGO- The John Glass Square Smart Growth Zoning Overlay Sub-District (JGSGO) 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 JGSGO upon Plan Approval pursuant to the provisions of this Section 8.6:

- (a) Two- and/or Three-Family Residential
- (b) Only as part of a Mixed-Use Development Project (see Section 8.6 (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 JGSGO subject to the requirements of this Section 8.6:

- (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 8.6 and the JGSGO, 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 JGSGO 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 JGSGO pursuant to the requirements of this Section 8.6: 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 JGSGO, 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 8.6 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.

And to Amend Section 2.2 Overlay Districts to include

40R Smart Growth Overlay District (SGO)

which thereby will amend **Section 2.4 – Zoning Map**, or anything thereon.

Sponsored by the Planning Board

ARTICLE 29. To see if the Town will vote to amend the Middleborough Zoning Bylaw by adding **Section 9.5 – Site Plan Review**

9.5 SITE PLAN REVIEW

9.5.1 Purpose

The provisions of this section are designed to assure that all development activities regulated by this section will be carried out so as to:

1. Ensure that proposed development projects are integrated into the existing terrain, compliment the character of the surrounding uses and neighborhoods, and protect the aesthetics and appearance of any surrounding historical properties;
2. Consider, itemize, and mitigate potential impacts on abutting properties, town facilities and services;
3. Ensure the proper design and construction of drainage facilities for stormwater management and areas for the storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishment(s) on the development site;
4. Provide adequate lighting, landscaping, screening, and signage on the development site;
5. Provide safe access and egress for all vehicular, pedestrian, bicycle, and emergency response traffic within the development site;
6. Create safe and convenient areas for off-street loading and unloading of vehicles of goods, products, materials, and equipment incidental to the normal operation of the establishment(s) on the development site;

9.5.2 Administration

The Planning Board shall be the Site Plan Approval Authority (SPAA). The Planning Board may adopt and may periodically amend rules and regulations relative to the issuance of a Site Plan Approval.

The SPAA shall establish and may periodically amend a schedule of fees for all applications for Site Plan Approval. No application shall be considered complete unless accompanied by the required fee(s).

9.5.3 Applicability

Uses which require the issuance of a Site Plan Approval endorsement are:

1. Construction of a new commercial or industrial structure;
2. Addition of upper floors to an existing structure;
3. Expansion or exterior renovation of an existing structure requiring a building permit, by an area greater than 20% of any exterior wall, other than the street side wall or greater than 10% of the area of the street side wall of the structure.

The Planning Board, in its sole discretion, may waive site plan review for external enlargements of less than 25% of the existing floor area.

The Planning Board may waive any information requirements it deems to be unnecessary to the review of a particular plan.

The following types of activities and uses require Site Plan Review by the Site Plan Approval Authority (SPAA):

- Construction, reconstruction, exterior alteration or expansion with a gross floor area greater than five thousand (5,000) square feet within a municipal, institutional, commercial, industrial, or multi-family residential building with three or more dwelling units.
- Change of use within a municipal, institutional, commercial or industrial building.
- Construction or expansion of a parking lot with ten (10) or more parking spaces for a municipal, institutional, commercial, or industrial building.

At its sole discretion, the Site Plan Approval Authority (SPAA) may waive, upon written request of the applicant, any of the requirements set forth herein and in the Site Plan Review Rules and Regulations deemed by the SPAA not necessary for its review of the application.

9.5.4 Submission Requirements

Applicants shall submit one copy of the Site Plan Approval application, two (2) copies of full size, 24 x 36, plan set, six (6) copies of 11 x 17 plan set, and the required filing fee to the Planning Department until such time applications are submitted electronically through Full Circle/PermitEyes. The full plan set shall include a plan prepared by a Registered Professional Engineer, Registered Profession Land Surveyor, Registered Landscape Architect, and/or Registered Architect, at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the SPAA. Plan shall include an endorsement block located on the right-hand side of each sheet. The plan shall include the following:

1. **Site Layout** – Shall depict boundaries of the lot, existing and proposed structure(s), setbacks from property lines, driveways, parking areas, fences, walls including stone walls, pedestrian walkways, lighting, and loading facilities. The plan shall show the relation to existing areas, buildings and roads for a distance of one hundred (100) feet from the project boundaries or such other distances as may be approved or required by the SPAA.
2. **Topography, Drainage and Utilities** – Shall depict the existing and proposed topography at one (1) foot contour intervals with spot grades provided where necessary, proposed drainage system including onsite structures and offsite discharge point(s), roof leaders, facilities for refuse disposal or storage of wastes, snow removal area, location of water and sewer mains, service connections and hydrants and wells and subsurface sewer disposal systems.
3. **Architecture** – Shall depict the building ground floor plan, dimensions including height, materials, and architectural elevations of all sides of the proposed building with full color rendering. Rooftop units and structures shall be shown to scale.
4. **Landscaping** – Shall depict the limits of proposed work, existing tree line, existing trees with a diameter greater than six (6) inches, all proposed landscape features and improvements, including screening and planting areas with spacing, size, and type of stock for each shrub or tree, and surface treatment for all planting beds. Every effort shall be made to retain existing stone walls.

The applicant may be required to provide narrative assessments, prepared by qualified experts, of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors.

Failure by the applicant to submit any of the required materials may constitute grounds for denial of the site plan review application.

The Planning Board may, where it determines that such action is in the public interest, or in order to avoid an unreasonable hardship, waive any requirement of submission requirements, provided that such waiver is not inconsistent with the intent or purpose of the zoning bylaw. The Board may not waive any of the affordable housing requirements, unless such waiver results in the creation of a number of affordable units in excess of the minimum number of required affordable units. Any such waiver may be granted by a majority vote of the Planning Board.

9.5.5 Design Objectives

The following objectives, in addition to any standards prescribed elsewhere in the Bylaw, should be utilized by the SPAA in considering all site plans. These objectives are intended to provide specific guidelines for the applicant in the development of site plans:

1. *Landscape* –Landscaping should be designed to enhance the aesthetic relationship between the building and the surrounding parking area, neighborhood and streetscape. The proposed development should maximize and retain open space; be integrated into the natural landscape; minimize adverse environmental impacts to such features as wetlands, floodplains, and water resource protection recharge areas; and minimize tree, vegetation, and soil removal, and grade change. Existing mature trees and vegetation should be integrated into the landscape plan where possible. A variety of plant materials should be used to create visual depth in plant massing by layering plants of various sizes. Trees and vegetation near buildings should be used to reduce the perceived scale of the building and to set them into the landscape. Trees native to eastern Massachusetts should be used where possible along the streetscape. Where commercial property abuts residential property, screening satisfactory to the Planning Board shall be provided.
2. *Traffic Circulation* –Site plans should provide clearly marked, safe and attractive circulation patterns for vehicles, bicyclists, and pedestrians. The proposed development shall be designed to minimize hazards to public health and safety as a result of traffic, provide safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles, reduce the traffic impacts of the proposed development on the area and the Town, and minimize the impact on natural resources. Parking areas shall be designed to prevent the necessity of any vehicles from backing into a public way. Special attention shall be given to location, width, and number of access points to public streets. Curb cuts should be twenty-four (24) feet wide for two-way traffic or sixteen (16) feet for one-way traffic and should be located on secondary roads where possible. Adequate sight distance shall be provided where driveways intersect streets that provide access and egress.
3. *Surface Water Drainage* – The removal of surface water shall not adversely affect adjoining properties, streets or storm drainage systems; nor, obstruct circulation of vehicles, bicyclists, or pedestrians. The proposed development shall include adequate provisions or measures to prevent pollution of surface or groundwater, minimize erosion and sedimentation, and prevent changes in groundwater levels and the potential for flooding. For parking areas and roof leaders serving new buildings or expansions to existing parking areas or buildings, the performance of surface drainage shall be based on standards for a 10-year storm event as set forth in the Subdivision Rules and Regulations. Low Impact Development (LID) and Green Infrastructure (GI) design standards should be implemented where practicable.
4. *Building Location* – Proposed buildings and structures should be integrated with existing building locations, setbacks from the street, landscaping, and terrain.
5. *Building Design* – The building or structure design shall complement the general setback, architectural style, proportion, and scale of existing buildings in the general vicinity and keeping in harmony with the town’s rural character. All rooftop equipment and structures should be screened from all directions by faux facades built to the height of the rooftop equipment or structure.
6. *Special Features* – Exposed machinery, utility structures and loading, storage and disposal facilities should be screened from adjoining properties and streets.
7. *Parking* – Any parking areas should be designed to minimize the visual impact from adjacent land uses and public ways, promote efficient flow within the lot so as not to create conflicting movements, and to provide for the safety of vehicles, bicyclists, and pedestrians. Parking areas should be located to the rear of buildings. Parking may be allowed on the side and front of buildings with SPAA approval. Any parking areas and walkways shall be adequately lighted, have appropriate signage, and, where possible, include shade trees throughout the area.

8. *Safety* – All buildings shall be designed to facilitate building evacuation and maximize accessibility by fire, police, and other emergency response personnel and equipment.
9. *Lighting* – The proposed development shall not produce lighting that unreasonably interferes with the use and enjoyment of the adjacent or nearby properties. Lighting practices and systems shall reduce light pollution, light trespass and glare, and decrease lighting cost without decreasing nighttime safety, security, and productivity. Drives and parking areas shall not be illuminated by lighting fixtures higher than twenty (20) feet and sidewalks shall not be illuminated by lighting fixtures higher than fifteen (15) feet. All lighting fixtures shall be downward facing except when specifically approved by the SPAA as accent lighting of landscaping or architectural features. Lights shall be shielded to have a total cutoff of all lights at less than ninety (90) degrees and building or wall packs shall have a total cutoff of forty-five (45) degrees. The total cutoff of all light shall occur within the property lines of the parcel to be developed. All lighting fixtures should be International Dark-Sky Association (IDA) approved.
10. *Signs* – Signs shall be in compliance with Section 5.7.2 of the Middleborough Zoning Bylaw.
11. *Noise* – The proposed project shall not produce noise so as to unreasonably interfere with the use and enjoyment of the adjacent or nearby properties. The proposed development shall be designed to limit the noise impact onto others due to the proposed use and activities anticipated to occur on the site.

9.5.6 Procedures

1. *Prefiling Review.* Prior to filing an application for Site Plan Approval, the applicant is encouraged to contact the Planning Board office to arrange a review of the proposed site plan and the review process. This pre-filing review will provide an opportunity for the applicant to receive feedback prior to submitting a Site Plan Application and thus avoiding unnecessary time and cost due to unforeseen problems and issues with a submitted site plan approval application.
2. *Minor Site Plan.* The SPAA may, upon written request of the owner, waive any of the submission requirements for Site Plan Review within this section where the development involves relatively simple plans or constitutes a minor site plan. A minor site plan is defined as exterior building renovations only that do not involve a change or expansion of use. Submission requirements for a minor site plan are outlined in the SPAA Rules and Regulations.
3. *Submittal Filing.* The Site Plan Approval application, required plans, and the required filing fee shall be filed with the Planning Department.
4. *Distribution.* One, 11”x17”, copy of the complete submission for Site Plan Approval shall be distributed by the applicant to all Departments listed on the Planning Department’s Form Q at the time of application to the SPAA. These recipients shall submit written copies of all recommendations or comments to the SPAA and to the applicant, provided however, that failure to make submit written comments within fourteen (14) days of receipt of the petition shall be deemed lack of opposition thereto.
5. *Legal Notice.* Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the Town of Middleborough once (1) not less than seven (7) days prior to the date of the meeting and by mailing a copy of such notice to the applicant and to all owners of land abutting the land and all owners of land within three hundred (300) feet of a property line of the land shown on the plan, as shown on the most recent tax list.
6. *Consultants.* When reviewing an application for approval, the Site Plan Approval Authority (SPAA) may determine that the assistance of an outside consultant(s) is warranted due to a project’s potential impacts. The fees of any professional consultants engaged by the SPAA to evaluate the project shall be borne by the applicant, pursuant to M.G.L. Chapter 44, Section 53G.
7. *Final Action.* The SPAA shall take final action on the request for Site Plan Approval within thirty (30) days of the Planning Department’s receipt of the application or such further time as may be agreed upon at the

written request of the owner. Copies of the Site Plan Approval Permit and endorsed site plan shall be submitted to the Building Inspector/Building Department. The decision of the SPAA shall require no greater than a simple majority vote of the Planning Board members present and shall be in writing. The written decision shall be filed with the Town Clerk's Office. If the SPAA does not act to approve, approve with conditions, or reject such plan within thirty (30) consecutive days after receipt of a completed application, it shall be deemed to be acceptable and the plan shall be signed "Approved by Default" by the Town Clerk, unless an extension of time to issue such Approval has been agreed upon prior to the thirty (30) day deadline.

8. Asbuilt Plan. An as-built plan, certified by a Registered Professional Engineer or Land Surveyor shall be submitted to the SPAA. The as-built plan shall indicate landscaping, buildings, drainage flow, number of parking spaces and limits of parking areas and drives where applicable.
9. Modification. No deviation from an approved site plan shall be permitted without modification thereof by the SPAA including any subsequent division of the land. Any changes in the approved site plan or in the activity to be conducted on the site that would cause a change to any of the previously approved plan shall be submitted to the Site Plan Approval Authority (SPAA) for review and approval. The applicant shall provide the SPAA with:
 1. A written statement, signed by the applicant and property owner, requesting such changes;
 2. Six (6) 11x17 prints of the original approved site plan with the changes drawn on said plan in red; and
 3. Other documentation deemed necessary by the Board for its review of the proposed modification.

The Site Plan Approval Authority (SPAA) will evaluate the proposed changes against its previous findings under this section to determine if a particular modification warrants an additional public hearing. Such a determination shall be made only after the applicant has submitted the required information to the SPAA. A determination that a modification will not require a public hearing shall be made by a majority vote of the Planning Board members present at regularly posted meeting within twenty one (21) days of receipt of the written request and plans, and only after the SPAA has found that the proposed modification is not significant and is consistent with the previously approved site plan. A copy of the determination and revised plan shall be filed with the Building Inspector. A copy of the written determination shall be filed with the Town Clerk. Failure by the SPAA to act on the request for determination of a modification within twenty-one (21) days shall be deemed as approved.

It shall be unlawful for any owner or person to alter or deviate from the conditions that are shown on an approved site plan without written approval from the SPAA in accordance with the requirements of this section.

10. If a Special Permit is required per the Middleborough Zoning Bylaw for the proposed work, a separate Site Plan Review before the Planning Board is not required.

9.5.7 Compliance

No building permit shall be issued by the Building Inspector for any development subject to this section and no construction for site preparation shall be started, until the SPAA has endorsed its approval on the site plan and a copy of the approved site plan has been submitted to the Building Inspector. An occupancy permit shall not be issued without certification signed by the Building Inspector stating the project is compliant with any conditions put forth as part of the approval by the Board.

A site plan, written determination or any extension, modification or renewal thereof shall not take effect until it is recorded in the Plymouth County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The applicant shall notify the SPAA in writing upon recordation, and present evidence thereof.

The Building Inspector, pursuant to M.G.L. Chapter 40A, Section 7, shall have the authority to enforce all elements of this Section 9.5.

9.5.8 Maintenance

All access ways, parking areas, fences, walls, landscaping, lighting, drainage, snow removal areas, and waste disposal areas shall be adequately maintained by the property owner or the lessee and repaired or replaced wherever and whenever necessary to ensure continued compliance with the approved site plan. Landscaped materials shall survive for a minimum of three (3) complete growing seasons following installation. In the event any plant material dies within such period it shall be replaced as soon as practicable.

9.5.9 Lapse

Site plan approval shall lapse after two (2) years from the final approval thereof if substantial use thereof has not commenced except for good cause. Such approval may, for good cause, be extended in writing by the SPAA upon the written request of the applicant no later than thirty (30) days prior to the expiration date.

In the case of plans which call for the phases of development to last more than two (2) years, a schedule shall be included in the application showing the proposed times within which each section of the development may be started. The proponents of a phased development shall include assurances that each phase can be brought to completion in a manner which would not result in an adverse effect upon the Town as a result of termination at that point.

9.5.10 Appeal

Any decision of the Site Plan Approval Authority (SPAA) pursuant to this Section shall be appealed in accordance with M.G.L. Chapter 40A, Section 17 to a court of competent jurisdiction.

9.5.11 Severability

The invalidity of any section, sentence, or provision of this bylaw shall not invalidate any other section, sentence, or provision herein, or act anything thereon.

Sponsored by the Planning Board

ARTICLE 30. To see if the Town will vote to accept Whitetail Lane as a Town way as laid out by the Board of Selectmen, to authorize the Board of Selectmen to acquire by eminent domain or gift the fee in said way as shown on the road layout plan on file with the Town Clerk entitled "Roadway Acceptance Plan Whitetail Lane at 'Whitetail Estates' in Middleborough, Massachusetts" dated January 6, 2021, revised through July 22, 2021 and prepared by Outback Engineering Incorporated, and any related easements as shown on the plan, or act anything thereon.

Sponsored by the Planning Board

ARTICLE 31. To see if the Town will vote to accept Thrush Hollow Lane as a Town way as laid out by the Board of Selectmen, to authorize the Board of Selectmen to acquire by eminent domain or gift the fee in said way as shown on the road layout plan on file with the Town Clerk entitled "Roadway Acceptance Plan Thrush Hollow Lane off Wood Street in Middleborough Massachusetts" dated January 15, 2021, revised through February 22, 2021 and prepared by Outback Engineering Incorporated, and any related easements as shown on the plan, or act anything thereon

Sponsored by the Planning Board

ARTICLE 32. To see if the town will vote to authorize the Board of Selectmen to amend the Intermunicipal Agreement with the Town of Lakeville, which permits Middleborough to provide water services to certain Lakeville customers, to add a new water service customer located at 33 Bridge Street, or act anything thereon.

Given, under our hands at Middleborough, this day of September 2021.

Leilani Dalpe, Chairman

Mark Germain, Vice Chairman

Neil Rosenthal

Arthur Battistini

Nathan Demers
BOARD OF SELECTMEN

Pursuant to the instructions contained in the above warrant, I have notified and warned all inhabitants of said Town of Middleborough, qualified to vote as expressed in said warrant, to meet at the time and place for the purpose specified by causing an attested copy of the same to be published in the Middleboro Gazette on the 16th day of September, 2021, that date being more than fourteen days before the time specified for said meeting.

JOSEPH PERKINS
Police Chief