

**TOWN OF HARVARD
PLANNING BOARD AGENDA
MONDAY JUNE 21, 2021 @ 7:00PM**

This meeting will be held virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, G.L.c.30A. S.20. Interested individuals can listen in and participate online and/or by phone by following the link and phone number below.

Hildreth Pro is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/87528762270?pwd=bFpDODh4UzZXRSttTjFQMVIwQUZOQT09>

Meeting ID: 875 2876 2270

Passcode: 473129

One tap mobile

+13017158592,,87528762270# US (Washington DC)

+13126266799,,87528762270# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 875 2876 2270

Find your local number: <https://us02web.zoom.us/j/87528762270?pwd=bFpDODh4UzZXRSttTjFQMVIwQUZOQT09>

Public Comment

New Business: a) Review 2021 Summer Meeting Calendar

b) Schedule Strategic Planning Session

Standard Business: a) Board Member Reports

- Representatives & Liaisons Update
- Community Matters

b) Director's Update

c) Approve Minutes

d) Approve Invoices:

- Harvard Press - \$168.00 (ATM Bylaw Amendments)
- Beals & Thomas - \$749.33 (175 Littleton County Road Pre-Construction Meeting)

Old Business: a) Fall Town Meeting, October 16, 2021, Bylaw Amendments

- Senior Residential Development
- Town Center Zoning District – Amend Chapter 125 Article IV
- Erosion Control – Add new section 125-58
- Scenic Roads – Amend Chapter 90
- Mapping the Multiple Residence District – Amend 125-42

b) Spring Town Meeting, 2022

- Open Space Residential Development – Amend Chapter 125-35 – New Bylaw Administrative Elements

**NEXT SCHEDULED MEETING:
TBD**

Meeting Date	Senior Residential Development	Erosion Control Bylaw	Chapter 90 Scenic Roads Bylaw	Chapter 125-24 & 42 Multiple Residential District & Uses	Chapter 125-35 Open Space Residential Development
June 21, 2021	Discuss potential amendments & develop plan for Special Town Meeting	Overview of Bylaw and failures at Town Meeting	Provide overview amendments		Current Bylaw and MRPC Work; New Bylaw - Administrative Elements
July 7 or 8, 2021*		Purpose, Applicability, Exemptions and Waivers	Review design guideline		All About Open Space
July 19, 2021		Minor & Major Permit Procedure, Review Standards	Review Enforcement amendments		Density of Development
7/26/2021**		Permits & Conditions, Monitoring & Inspections, Appeal of Permit, Enforcement & Definitions			
8/2/2021	Finalize language	Finalize language	Finalize language		Types of OSRD, Types of Units
8/16/2021	Open Public Hearing	Open Public Hearing	Open Public Hearing	Open Public Hearing	Uses in OSRD
8/30/2021**					
9/13/2021	Close Public Hearing	Close Public Hearing	Close Public Hearing	Close Public Hearing	Dimensionally and Design
9/20/2021					Subdivision or Single Site and Other Bylaws Needing Changes
9/27/2021**					

* July 5, 2021 4th of July Holiday Observed, recommending the Board meet on Wednesday or Thursday that week

**Extra Meeting

NOTE: For Public Hearings to begin on August 16th legal notices must be submitted by June 29, 2021 (Harvard Press on vacation for 5 weeks July/August)

**HARVARD PLANNING BOARD
MEETING MINUTES
MARCH 11, 2021**

Chair Justin Brown called the meeting to order at 7:01pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Justin Brown, Fran Nickerson, Stacia Donahue, Jane Biering, Gwen Leonard and Becca Kelley (Associate Member)

Others Present: Christopher Ryan (Director of Community and Economic Development), Liz Allard (Land Use Administrator), Matthew Flokos (Harvard Press) and Beth Williams (Council on Aging)

Board Member Reports

- Ayer Road Revitalization Summary Sheet
 - Important to get this out there to get the votes at Town meeting
 - Take out wording people won't understand
 - Take out depressing photos
 - Elevator pitch – it's this or raise taxes and continue building McMansions
- Climate Resiliency Working Group (CRWG)
 - So much to be done that nothing is getting done
 - Three sub-groups: Apple Country, Planning and Outreach
 - Asking to pause on the planning and out reach until the Apple Country is completed to not burnout the volunteers
 - CRWG would like to discuss with the Planning Board as to where to go from there – need to determine a date to do this

Approve Minutes

Donahue made a motion to approve the minutes of October 19, November 2 and November 16, 2020 as amended. Biering seconded the vote. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye.

Discuss Annual Town Meeting Bylaw Amendments

- **Section 125-18.1 - Accessory Apartments**
 - 125-18.1B(2)(a): Donahue made a motion to limit the maximum square footage to 1,500 or 50% of primary residence. Leonard seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye
 - 125-18.1C(1): Leonard made a motion to retain the owner occupied language. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye
 - 125-18.1B91): Biering made a motion to retain the one Accessory Dwelling Unit (ADU) per residential dwelling. Donahue seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye
 - Need assurance from the Building Commissioner he will be comfortable with regulating the age-appropriate design.
 - Ryan and Biering will be attending the April 14th meeting of the Zoning Board of Appeals to get their support
 - How will the ADU be restricted to senior? Not looking to regulate the units, but to remove roadblocks, to increase the stock of senior-type housing

- **Section 125-18.2 - Affordable Accessory Apartments** – will not be amending
- **New Section 125-57 - Senior Residential Development**
 - 125-57A(7): Donahue made a motion to remove. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye
 - 125-57E Age-Appropriate Design – should get some experts to hone this better; the term “visitable” has been seen in other provisions researched.
 - 125-57D(2) Pace of Development: Donahue made a motion to revise the language in this section by removing the second sentence, eliminate (a) and (b) and remove infill from (c). Biering seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye
 - 125-57D(1) Discuss the ability for the Planning Board to waive the maximum number of permitted housing units.
 - 125-57C(2): Local Preference: Leonard made a motion to remove local preference. Biering seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye

Adjournment

Donahue made a motion to adjourn the meeting at 10:20pm. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Leonard; aye.

Signed: _____ Liz Allard, Clerk

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda March 1, 2020
- DRAFT HARVARD PLANNING BOARD MEETING MINUTES OCTOBER 19, 2020, prepared by Liz Allard
- DRAFT HARVARD PLANNING BOARD MEETING MINUTES NOVEMBER 2, 2020, prepared by Liz Allard
- DRAFT HARVARD PLANNING BOARD MEETING MINUTES NOVEMBER 16, 2020, prepared by Liz Allard
- §125-18.1 Accessory dwelling units, undated
- §125-57, Senior Residential Development, undated

**HARVARD PLANNING BOARD
MEETING MINUTES
MARCH 15, 2021**

Chair Justin Brown called the meeting to order at 7:01pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

Members Present: Justin Brown, Fran Nickerson, Stacia Donahue, Jane Biering and Becca Kelley (Associate Member)

Others Present: Christopher Ryan (Director of Community and Economic Development), Matthew Flokos (Harvard Press), Eric Ward (Fin Com), Davida Bagatelle, Michael Lawton, Kristina Cottone (Smartlink Group on behalf of AT&T), Beth Williams (COA), Erin Sintros

Zoning Board of Appeals (ZBA) Request for Comments – 108 West Bare Hill Road

Ryan reviewed the 108 West Bare Hill Road application. Due to the existing non-conformity of the dwelling the applicant is required to obtain a Special Permit from the ZBA. The Board had no additional comments to those made by Ryan in his report. Ryan will report back to ZBA that the Board was comfortable with the application.

Board Member Reports

- **Representatives & Liaisons**
 - Biering stated the *Harvard/Devens Jurisdiction Committee* has invited local State representatives to the next meeting to get an update and feedback from them on where the region is leaning in regards to taking back the historic boundaries of the three communities (Harvard/Ayer/Shirley)
 - Brown met with Maiore about the *Ayer Road proposal*. Maiore is in agreement with the direction the Board is taking and will help pull a meeting together with all the concerned Boards. This will assist with broader support and understanding of the project for Town Meeting
- **Community Matters**
 - Donahue reviewed process for submitting articles to the Press from experience with Transportation Committee article. Donahue noted it takes a few months start to finish.

Director's Update

Ryan indicated there could be an application for the Ayer Road Village-Special Permit very soon; this would require the Design Review Board to be re-activated.

Approve Minutes

This item was passed over this evening.

Special Permit Hearing – Smartlink Group, on behalf of AT&T, 60 Old Shirley Road.

Opened at 7:32pm (see page 3 for complete details)

Discuss Annual Town Meeting Bylaw Amendments

- **Section 125-18.1 - Accessory Apartments** – nothing new
- **Section 125-18.2 - Affordable Accessory Apartments** – as discussed on March 11, 2021 the Board will not be submitting a warrant article for this provision of the Protective Bylaw
- **New Section 125-57 - Senior Residential Development**
 - Ryan has drafted an informational flyer for review and comment by the Board
 - Once a final version is available this flyer can be used to gain support of other boards and committees
 - Board and Town Council comments will be incorporated
- **General Bylaw Amendment Information**

- o The first public hearing notice on will be in the Harvard Press on March 19th, therefore the language of the proposed amendments should be complete by that time; Ryan and Biering feel comfortable that the language will be ready be in time for the 19th and posted on the website
- o Public hearing will open on April 5th
- o April 16th the Select Board votes on the warrant for Town Meeting
- o Biering and Ryan will be attending the Council on Aging board meeting tomorrow to get their feedback and initial comments
- o The webpage is out there and ready to read and it looks good; Kelley provided some suggestions to Ryan to streamline the webpage in order for the public to quickly find what the Board is working on; Kelley noted the Continuing Care Retirement Community link is broken
- o Biering sated a 'Consider This' piece she has written for the Press may or may not be a good option for a Planning Board corner; John Osborn, editor of the Harvard Press will review to determine where it should be located

Adjournment

Donahue made a motion to adjourn the meeting at 9:30pm. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; and Biering, aye.

Signed: _____ Liz Allard, Clerk

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda March 1, 2020
- Director of Community and Economic Development Update, March 15, 2021
- Safe Site Report: Smartlink on behalf of AT&T Mobility, LLC Site FA – 10004133
Site ID – MAL03179 USID – 61541 Site Name – HARVARD OLD SHIRLEY RD
(MRCTB046871-MRCTB046772- MRCTB046609) 60 Old Shirley Road Harvard, MA
01451, dated February 24, 2021

Harvard Planning Board

Continuation of a Special Permit Hearing Meeting Minutes

Smartlink Group, on behalf of AT&T, 60 Old Shirley Road

March 15, 2021

The public hearing was opened at 7:32pm by Chair Justin Brown under MGL Chapter 40A the Zoning Act and the Code of the Town of Harvard Chapter 125 the Protective Bylaw virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20.

Members Present: Justin Brown, Fran Nickerson, Stacia Donahue, Jane Biering and Rebecca Kelley (Associate Member)

Others Present: Christopher Ryan (Director of Community and Economic Development), Matt Flokos (Harvard Press), Eric Ward, Davida Bagatelle, Michael Lawton, Kristina Cottone (Smartlink Group on behalf of AT&T) and Erin Sintros

Brown noted that our associate member, Rebecca Kelley, would be stepping into fill the 5th member board position as Leonard is absent tonight for this hearing.

Kristina Cottone, from Smartlink Group, has submitted all the follow up documentation that was requested by the Board at the previous hearing. Cottone presented the 'Site Safe' emissions report and pointed to the Page 3 that gave the summary of less the 1% RFE level on the ground and that the proposed application will be in compliance with Federal Communications Commission's guidelines and regulations. Page 11 of the report showed simulated emissions output that shows radiation starting at 65' with higher levels at 85'. The emissions extend roughly a 280' diameter from the tower at the 65' foot height.

Cottone reviewed photos of the enclosure showing that it is in good condition, locked and signed appropriately with caution and no trespassing signs. Cottone also noted that enclosures and equipment inside the fence is also locked.

Cottone reviewed questions from previous meeting, including gates are locked and only authorized people would be allowed on site. Cottone noted that old obsolete equipment is going to be completely removed from the site and the new equipment that will be replacing the old equipment is actually smaller and lighter. Ryan asked if the generator would need to be exercised more frequently. Cottone noted that the generator does not run very often and only when they are testing it on site or in the event of power failure. Cottone noted the generator does not give off emissions; Donahue clarified that the generator will give off exhaust emissions when running, but not radiation emissions. Cottone agreed that this was correct.

Ryan noted that since this application is for renewal some of the details submitted are a bit less than we would expect with a new application. Ryan also noted that the 1999 decision allowed a maximum of 12 transmitters; AT&T has 9 total existing. Cottone confirmed they are removing 6 and replacing 6 to keep the AT&T total at 9. The co-locators appear to have 12 in one location and 6 at another location so the maximum of 12 from the original appears to be exceeded.

Erin Sintros, asked for clarification that AT&T would be removing and replacing 6 antennas; correct.

Donahue motion to close the hearing evidentiary portion of the hearing. Nickerson seconded. The vote was unanimously in favor of the motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Kelley; aye.

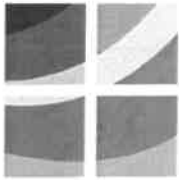
After a brief discussion, Donahue motion to approve special permit with the following conditions:

1. The camouflaging if removed shall be replaced before final walk thru and sign off by the building commissioner.
2. The generator shall be limited to being exercised between 8am and 6pm during week days, no more than once per week, for no more than 30 minutes.
3. No new lighting shall be added to the site.
4. This application would be consistent with existing special permit in place currently and for this co-locater and the tower as a whole.

Kelley seconded the motion. Biering made a friendly amendment to include the words “the application of Smartlink group on behalf of AT&T” after special permit, Donahue seconded the amendment to the motion. The vote was unanimously in favor by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Kelley; aye.

The vote was unanimously in favor of the amended motion by roll call, Brown, aye; Donahue, aye; Nickerson, aye; Biering, aye; and Kelley; aye.

Signed: _____ Liz Allard, Clerk



BEALS + THOMAS

BEALS AND THOMAS, INC.
144 Turnpike Road
Southborough, MA 01772-2104

T 508.366.0560
F 508.366.4391
www.bealsandthomas.com
Regional Office: Plymouth, MA

Town of Harvard Conservation Commission
13 Ayer Road
Harvard, MA 01451
Liz Allard

Invoice number 3241.00-3
Date 05/28/2021

Project **3241.00**
Notice of Intent & Driveway Site Plan
Approval
175 Littleton County Road
Harvard, MA

FOR PROFESSIONAL SERVICES RENDERED: this period through May 28, 2021

Services to assist the Town of Harvard Conservation Commission and Planning Board with construction observations relating to the driveway for the single family home being constructed at 175 Littleton County Road. During this period we prepared for and participated in the pre-construction meeting.

Professional Fees

	Hours	Amount
Senior Professional Staff III	0.25	43.75
Senior Professional Staff IV	4.00	660.00
Professional Fees Subtotal	4.25	703.75

Reimbursable Expenses

	Amount
Mileage	45.58

Invoice total **749.33**

By: Stacy H. Minihane
Stacy H. Minihane
Senior Associate

The Harvard Press
 PO Box 1
 Harvard, MA 01451
 +1 9784563700
 admin@harvardpress.net
 www.harvardpress.com

Invoice

BILL TO

Harvard Planning Board
 13 Ayer Road
 Harvard, MA 01451

SHIP TO

Harvard Planning Board
 13 Ayer Road
 Harvard, MA 01451

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
8511	06/04/2021	\$168.00	06/30/2021	Due on receipt	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
05/21/2021	1x7 I	LEGAL NOTICE Planning Board virtual public meeting 6/7/21; renewal of special permit and driveway site plan approval	1	84.00	84.00
05/28/2021	1x7 I	LEGAL NOTICE Planning Board virtual public meeting 6/7/21; renewal of special permit and driveway site plan approval	1	84.00	84.00

BALANCE DUE

\$168.00

ARTICLE XX: AMEND PROTECTIVE BYLAW

To see if the Town will vote to amend Chapter 125 of the Code of the Town of Harvard, Protective Bylaw, by adding thereto a new Section 125-58, entitled Erosion Control as follows, or pass any vote or votes in relation thereto:

§125-58 EROSION CONTROL

- A. Purpose.** The purpose of the Erosion Control Section is to protect, maintain, and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff, decreased groundwater recharge, and nonpoint source pollution associated with new development, redevelopment, and other land alterations.
- B. Applicability.** Any property owner or representative seeking to engage in land disturbance activities meeting or exceeding the thresholds in Section (3) below shall make a determination of whether this section is applicable to the anticipated land disturbance based on the criteria below.

(1) Consultation (Optional)

It is highly recommended that the property owner or representative request an optional consultation whereby the Planning Board's designee may consult with the property owner or their representative to discuss the proposed land disturbance and, if deemed necessary, conduct a site visit. The Planning Board's designee will provide a non-binding, no cost consultation and opinion to assess what steps may be necessary.

(2) Determination of Applicability

Property owner or representative shall make a determination of one of the following regarding proposed land disturbance activity:

- (a) Not Applicable;
- (b) Exempt (Section C below);
- (c) Eligible for Waiver from these requirements (Section D below);
- (d) Minor permit required (defined in Section L below); and
- (e) Major permit required (defined in Section L below).

Based on this determination, property owner or representative shall proceed in accordance with the appropriate sections below.

(3) Thresholds to Require Permit

No person or entity shall undertake land clearing/grading activities:

(a) Of an area with greater than a 25% slope of at least 5,000 contiguous square feet, and/or

(b) 43,560 square feet of total disturbance or more on a single or adjoining parcels

without first obtaining an Erosion Control Permit from the Planning Board, unless specifically exempted under Section C below or having been issued a Waiver under Section D below. Any owner, contractor, or persons considering land clearing and/or grading as defined above shall submit an application for review in accordance with this Section.

(4) Non-commercial agricultural operations shall comply with the provisions of this Section except that the application may follow the Minor Permit Submission Requirements of Section E below.

(5) To prevent duplicative permitting requirements, a person otherwise required to file a stormwater management and erosion control plan for a project or activity shall be exempt from this requirement if such a plan has been filed with, and approved by, the Planning Board, Conservation Commission, or the Zoning Board of Appeals.

C. Exemptions. The provisions of this Section shall not apply to the following activities which shall be classified as exempt:

(1) Construction of any State or Town agency project approved by the Select Board or Town Meeting, as applicable;

(2) Non-commercial timber cutting for fuel based on forestry Best Management Practices (fBMPs), as defined in Section L below, provided that clear-cutting does not occur;

(3) Commercial agricultural activities;

(4) Agricultural uses on parcels of land of more than five (5) acres or two (2) acres for small plot farms which are exempt from regulation by zoning under Massachusetts General Laws Chapter 40A, Section 3; and

(5) Properties under Forest Management Plans (defined in Massachusetts General Laws Chapter 132). For lands devoted to forest purposes, the following activities are exempt from this Section:

(a) Cutting by an owner or tenant of any forest product for their own non-commercial use;

(b) Cutting or the sale of such products by any owner to an amount not exceeding 25,000 board feet or fifty (50) cords on any parcel of land at any one time;

(c) Cutting for clearance or maintenance on-rights-of-way pertaining to public utilities and public highways;

- (d) Clearing land for building or for purposes of cultivation;
- (e) Maintenance cutting in pastures;
- (f) Routine maintenance of vegetation and removal of dead or diseased limbs and/or trees necessary to maintain the health of cultivated plants, and/or to contain noxious weeds and/or vines; and
- (g) Commercial timbering, with a valid commercial harvesting permit.

D. Waivers. A waiver from the requirements of this Section may be granted for any activity that meets or exceeds the thresholds provided in Section B(3) above. Petitioners seeking waiver(s) shall provide the Planning Board with appropriate documentation in support of said waiver(s) as listed below:

- (1) The removal of hazardous or invasive trees shall require a consultation with the Planning Board designee to ensure that removal is necessary, will not destabilize the soil, and will not impact wetlands or other sensitive environmental areas;
- (2) To remedy a potential fire hazard based on a consultation and written recommendation by the Town's Fire Chief;
- (3) The construction and maintenance of public and private streets and utilities within town-approved roadway layouts and easements, approved in accordance with the Planning Board's Subdivision Rules and Regulations, Chapter 130 of the Code of the Town of Harvard and other public roads and streets. Waiver shall be deemed automatically granted by the Planning Board based on an approved Definitive Plan or other Town approval necessary to construct streets and utilities, with standard condition that addresses erosion and sedimentation control;
- (4) Work conducted in accordance with a valid earth removal permit issued by the Town of Harvard (see Section 125-15);
- (5) Work conducted in accordance with an approved Natural Resource Conservation Service Agricultural Plan; and
- (6) Other waivers from strict compliance of any of these requirements may be granted if it is determined that such requirements are unnecessary due to the size or character of the development project or because of the natural conditions at the site and where such action is:
 - (a) Allowed by Federal, State, or local statutes and/or;
 - (b) In the public interest; and
 - (c) Not inconsistent with the purpose of this Section.

E. Minor Permit Procedure. Minor permits, as defined in Section L below, shall have a less detailed administrative application and filing process as follows:

- (1) The applicant shall arrange for a site walk with the Planning Board designee to view the project area and discuss protective measures;
- (2) Completed erosion control application form;
- (3) Fee of \$25.00;
- (4) Sketch plan showing limits and scope of work and proposed Best Management Practices (BMPs);
- (5) Project narrative that includes a description of the proposed project and a description of how and where stormwater will be controlled and erosion and sediment controls to be used;
- (6) Planning Board designee shall provide the applicant with a packet of materials including Best Management Practices (BMPs) and other guidance regarding erosion control. Applicant must sign a Receipt of Acceptance for these materials prior to receiving the permit; and
- (7) Permit issuance by the Planning Board or their designee is required prior to any site altering activity.

Minor permits shall, as applicable, based on project type and scale, and determined after consultation with the Planning Board designee, comply with the requirements of Sections H and I below.

F. Major Permit Procedure. Major permits, as defined in Section L below, shall be as follows:

- (1) Permit Required;
 - (a) Projects that exceed the threshold in Section B(3) above and are not exempt or issued a waiver shall require an Erosion Control Permit in accordance with this Section; and
 - (b) Permit issuance by the Planning Board is required prior to any site altering activity.
- (2) Fee
 - (a) At the time of an application, the applicant shall pay a filing fee of \$200 as specified on the Erosion Control Application; and
 - (b) The Planning Board may waive the filing fee, consultant fee, and costs and expenses for an application filed by a government agency, the Town, or a non-governmental organization working the interest of the Town.
- (3) Major Permit Application Filing;

Applications for erosion control permits shall include the materials as specified below. Applicants shall file one (1) original completed application packet and seven (7) copies. Application packets shall include:

(a) Written application for an Erosion Control Permit shall be filed with the Planning Board to perform activities affecting areas protected by this Section. The application shall include such information and plans as are deemed necessary by the Planning Board to describe proposed activities and their effects on the areas and at a minimum include:

[1] Completed erosion control application form;

[2] Filing fee of \$200.00;

[3] Project narrative that includes a description of the proposed project and a description of how and where stormwater will be controlled and erosion and sediment controls to be used, plus a description of any specimen trees within the project area; and

[4] Engineered plan set, signed and stamped by a professional engineer or a professional land surveyor registered in the Commonwealth of Massachusetts, and drawn at a legible scale and including:

[a] Existing conditions plan;

[b] Proposed conditions plan; and

[c] Erosion control plan.

(b) The existing and proposed conditions plans shall identify significant natural features and specimen trees within the project area.

(c) The Erosion and Sediment Control Plan shall include the following related specifically to the disturbance area:

[1] Location of all structural and non-structural erosion and sediment control measures and BMPs;

[2] Locations where stabilization practices are expected to occur;

[3] Locations for storage of materials, waste, vehicles, equipment, soil, snow, and other potential contaminants;

[4] Operations and Maintenance Plan for BMP's including inspections and maintenance activities as noted in Section I below;

[5] Areas where previous stabilization has been accomplished and no further construction-phase permit requirements apply; and

[6] Any other information deemed necessary by the Planning Board.

G. Review Standards. The applicant shall demonstrate that the following measures are employed in development of the site:

- (1) Clearing for utility trenching shall be limited to the minimum area necessary to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees;
- (2) Sites shall be designed in such a way as to avoid impacts to rare and endangered species and their habitat on a site, and to maintain contiguous forested areas to the extent practicable; and
- (3) In the design of a site, priority shall be given to retention of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees.

H. Permits and Conditions

- (1) Erosion Control Permit and approved plans shall be posted at the work site over the duration of site disturbance, construction, and post-construction cleanup;
- (2) No activities shall commence without receiving and complying with an Erosion Control Permit issued pursuant to this Section;
- (3) Understory vegetation beneath the drip line of preserved trees shall also be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained shall be surrounded by temporary protective fencing or other measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential root zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state;
- (4) Development envelopes for structures, driveways, wastewater disposal, lawn areas, and utility work shall be designated to limit clearing and grading;
- (5) Other efforts to minimize the clearing and grading on a site associated with construction activities shall be employed, such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, etc., in areas already planned for permanent structures. Topsoil, gravel, or other construction or landscaping materials shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers. All of these measures shall be depicted on the engineered site plans;

- (6) Finished grades should be limited to no greater than a 2:1 slope, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible;
- (7) The proper site management techniques that will be followed during construction:
 - (a) BMPs shall be employed to avoid detrimental impacts to existing vegetation, soil compaction, and damage to root systems; and
 - (b) The extent of a site exposed at any one time shall be limited through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas;
- (8) Protection of the site during construction through adequate erosion and sedimentation controls:
 - (a) Temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes or such other mechanical measures as are necessary may be required by the Planning Board to intercept and divert surface water runoff. Runoff flow shall not be routed through areas of protected vegetation or re-vegetated slopes and other areas. Temporary runoff from erosion and sedimentation controls shall be directed to BMP's such as vegetated swales. Retaining walls may be required where side slopes are steeper than a ratio of 2:1;
 - (b) Erosion and sedimentation controls shall be constructed in accordance with the Department of Environmental Protection Stormwater Guidance manual;
 - (c) Erosion control measures shall include the use of erosion control matting, silt fencing, silt sacks, mulches, and/or temporary or permanent cover crops as may be most appropriate for the area. Erosion control measures damaged from heavy rainfalls, severe storms, and construction activity shall be repaired immediately;
 - (d) Erosion control matting or mulch shall be anchored where:
 - [1] Plantings are on areas subject to mulch removal by wind or water flows,
 - [2] Where side slopes are steeper than 2:1 or exceed 10 feet in height.
 - [3] During the months of October through March when seeding and sodding may be impractical, anchored mulch may be applied at the Planning Board's discretion.
 - (e) Runoff from impervious surfaces shall be recharged on the site by stormwater infiltration basins, vegetated swales, constructed wetlands, rain gardens, or similar systems covered with natural vegetation. Runoff shall not be discharged directly to rivers, streams, or other surface water bodies. Dry wells shall be used only where

other methods are not feasible. All such basins and wells shall be preceded by oil, grease, and sediment traps. The mouths of all catch basins shall be fitted with filter fabric during the entire construction process to minimize siltation or such basins shall be designed as temporary siltation basins with provisions made for final cleaning. Such facilities shall be subject to post-construction monitoring as per Section I below and the Planning Board may request either a performance bond, additional funds for engineer inspections, or both; and

(9) Re-vegetate the site immediately after grading:

- (a) Proper re-vegetation techniques shall be employed using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Re-vegetation shall occur on cleared sites within seven (7) calendar days of final grading and shall occur during the planting season appropriate to the selected plant species;
- (b) A minimum of four (4) inches of topsoil shall be placed on all areas subject to land disturbance which are proposed to be planted; and
- (c) Finished grade shall be no higher than the trunk flare(s) of trees to be retained. If a grade change of six (6) inches or more at the base of the tree is proposed, a retaining wall or tree well may be required.

I. Monitoring and Inspections

- (1) After installation of barriers around preserved areas and construction of all structural erosion and sedimentation controls, an initial site inspection and approval, by the Planning Board's designee, of erosion and sedimentation controls and placement of tree protection measures shall occur. This inspection shall occur before any clearing or grading has begun;
- (2) Routine inspections during the period of construction and remediation, by the Planning Board's designee of preserved areas and erosion and sedimentation controls shall be made at varying intervals depending on the extent of site alteration and the frequency and intensity of rainfall;
- (3) Effective stabilization of re-vegetated areas must be approved by the Planning Board's designee before erosion and sedimentation controls are removed. The Planning Board's designee shall complete an inspection prior to removal of erosion and sedimentation controls; and
- (4) The applicant shall be required to conduct weekly inspections of all erosion and sedimentation control measures on the site during the period of construction and during remediation to ensure that they are properly functioning as well as to conduct inspections following any storm that totals one (1) inch of rain within a 24-hour period.

J. Appeal of Permit. Any person aggrieved by the decision of the Planning Board, whether or not previously a party to the preceding, may appeal the decision in accordance with Massachusetts General Laws Chapter 40A, Section 17.

K. Enforcement

- (1) This Section shall be administered by the Planning Board and enforced by the Town's Zoning Enforcement Officer who shall take appropriate action in the name of the Town of Harvard to prevent, correct, restrain, or abate violations of thereof. Each day that any violation continues is a separate offense. Violators shall be subject to a fine not exceeding \$300 for each offense; and
- (2) The Town's Zoning Enforcement Officer may post the site with a Stop Work Order directing that all site disturbances in violation of this Section cease immediately. The issuance of a Stop Work Order may include remediation or other requirements which must be met before construction activities may resume. No person shall continue working in an area covered by a Stop Work Order, except work required correcting an imminent safety hazard as directed by the Town.

L. Definitions

AGRICULTURE, COMMERCIAL- Land in commercial agriculture use shall be as defined in Massachusetts General Laws Chapter 128, Section 1A used as such for commercial purposes.

AGRICULTURE, NON-COMMERCIAL – Land in non-commercial agriculture refers to farms and other agricultural uses as defined in Massachusetts General Laws Chapter 128, Section 1A which are not intended for commercial sales to sustain the enterprise economically.

APPLICANT – A person submitting an application for development, a permit, or other required approval under the Protective Bylaw. "Applicant" includes the owner of the property subject to the application and any person designated in writing by the owner to represent the owner.

BEST MANAGEMENT PRACTICES (BMPs) - A structural, nonstructural, or managerial technique recognized to be the most effective and practical means to prevent and reduce nonpoint source pollutants. BMPs should be compatible with the productive use of the resource to which they are applied, and should be cost-effective:

BEST MANAGEMENT PRACTICES, FORESTRY (fBMPs) – Proactive practical methods or practices prescribed under Massachusetts General Laws Chapter 132 used during forest management to achieve goals related to water quality, silviculture, wildlife and biodiversity, aesthetics, and/or recreation.

CLEARING - Removal or causing to be removed, through either direct or indirect actions, trees, shrubs and/or topsoil from a site, or any material change in the use or appearance of the land. Actions considered to be clearing include, but are not limited to: causing irreversible damage to roots or trunks; destroying the structural integrity of vegetation; and/or any filling, excavation, grading, or trenching in the root area of a tree which has the potential to cause irreversible damage.

CLEARCUTTING – Clearfelling, or clearcut logging is a forestry/logging practice in which most or all trees in an area are uniformly cut down.

DRIP LINE - An area encircling the base of a tree which is delineated by a vertical line extending from the outer limit of a tree's branch tips down to the ground.

ESSENTIAL ROOT ZONE - An area located on the ground between the tree trunk and ten (10) feet beyond the drip line of a tree which is required for protection of a tree's root system.

EROSION- The process in which the ground surface is disturbed or worn by either natural forces such as wind, water, ice, gravity, or by mechanical means.

DIAMETER/DIAMETER-BREAST HEIGHT (dbh) - The diameter of any tree trunk, measured at 4.5 feet above existing grade.

FILLING - The act of transporting or placing (by any manner or mechanism) material from, to, or on any soil surface or natural vegetation.

GRADING – A term used in engineering which includes excavation, filling, clearing, the installation of swales or drains, the creation of impervious surface, or any combination thereof as part of site alteration or preparation, which modifies the existing surface of the land.

HAZARDOUS TREE - A tree with a structural defect or disease, or which impedes safe sight distance or traffic flow, or otherwise currently poses a threat to life or property.

INVASIVE SPECIES - an "invasive species" is defined as a species that is:

- (1) Non-native (or alien) to the ecosystem under consideration;
- (2) Whose introduction causes or is likely to cause economic or environmental harm or harm to human health; and
- (3) Which may be listed by the Massachusetts Invasive Plant Advisory Group (MIPAG) as an invasive plant.

LAND DISTURBANCE – Any activity which affects the ground surface and/or vegetation (i.e.: clearing, grubbing, cut/fill, grading, excavating for foundations, etc.).

PERMIT, MAJOR – A major erosion control permit is intended for those circumstances that meet or exceed the threshold in Section B(3) above and are not subject to a waiver or exemption.

PERMIT, MINOR – A minor erosion control permit is intended for those circumstances that exceed the threshold noted in Section B(3) above that are not expected to create significant erosion issues, for example, where no additional impervious surface is being created by accessory and/or non-principal uses.

PROTECTED TREE/VEGETATION - A tree or area of understory vegetation identified on an

approved landscape plan to be retained and protected during construction.

SPECIMEN TREE - A native, introduced or naturalized, tree which is important because of its impact on community character, its significance in the historic/cultural landscape or its value in enhancing the effects of wildlife habitat. Any tree with a dbh of six (6) inches or larger is eligible to be considered a specimen tree. Trees that have a small height at maturity or are slow growing, such as flowering dogwood or American holly, with a dbh of four (4) inches or larger, are eligible to be considered specimen trees.

SIGNIFICANT FOREST COMMUNITY - Unfragmented forests including forest types that provide habitat for rare species, unusual ecological processes, highly diverse forest communities, rare forest types, and those forest types which maintain connections between similar or different habitat patches.

SITE – Shall include the following meanings:

- a. Generally, a site is a contiguous area of land, including a lot or lots or a portion thereof, upon which a project is developed or proposed for development.
- b. For the purpose of erosion control, a site shall include the lot (locus) which includes clearings, structures and utilities, temporary earthen disturbances, excavations, and trenching locations, at a minimum.

SLOPE - For the purposes of the erosion control provision, slope shall be measured using the two-foot contours on the required erosion control plan. The slope percentage will be the change in elevation divided by the shortest distance between two contour lines. Slope percentages may be averaged across specified horizontal distances.

UNDERSTORY VEGETATION - Small trees, shrubs, and groundcover plants, growing beneath and shaded by the canopy of trees.

(Inserted by Planning Board)

Chapter 90

Scenic Roads

[HISTORY: Adopted by the Annual Town Meeting of the Town of Harvard 3-30-1974 by Art. 33; amended in its entirety 3-29-2008 Annual Town Meeting by Art. 27. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Historic districts — See Ch. 48.

Licenses and permits — See Ch. 62.

Streets and sidewalks — See Ch. 96.

Planning Board Procedural Rules and Regulations — See Ch. 133

§ 90-1 Purpose and designation.

In order to preserve the qualities and character of the Town ways, the roads, streets and ways set forth in § 90-3 below are designated as scenic roads under the provisions of Massachusetts General Laws Chapter 40, Section 15C.

- A. The Town of Harvard adopts the provisions of Massachusetts General Laws Chapter 40, Section 15C, as amended, which provides, in part, that any repair, maintenance, reconstruction or paving work done with respect to any road, as defined in § 90-2 of this chapter, designated as a scenic road in § 90-3 of this chapter, shall not involve or include the cutting or removal of trees, or the tearing down, destruction, or alteration of stone walls or portions of stone walls within the right-of-way of a designated scenic road, except with prior written consent of the Planning Board after a public hearing.
- B. A scenic road consent is not required for the temporary removal and replacement of a stone wall at the same location with the same materials, but only if the Harvard Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced.
- C. The Planning Board shall consider, among other things, the public safety, scenic views, preservation of historic and regional characteristics, and preservation and enhancement of natural and aesthetic qualities of the environment.
- D. After public notice and public hearing, the Planning Board may promulgate rules to accomplish the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Planning Board to promulgate such rules or a legal declaration of their invalidity by a court of law shall not operate to suspend or invalidate the effect of this bylaw.

§ 90-2 Definitions.

The following definitions shall apply in the interpretation of this bylaw.

CUTTING OR REMOVAL OF TREES

The removal of one or more trees, trimming of major branches, or cutting of roots sufficient in the Tree Warden's written opinion to cause eventual destruction of a tree. However, such cutting or removal shall not be construed to include clearing of nuisance growth, routine or emergency tree maintenance which

removes only permanently diseased or damaged limbs, trunks or roots and dead whole trees, or thinning out of overcrowded trees as determined by the Tree Warden, but shall include such cutting or removal done in contemplation of, or following the repair, maintenance, reconstruction or paving work for a road.

REPAIR, MAINTENANCE OR RECONSTRUCTION

Any such work done within the right-of-way by any person or agency, public or private, including, but not necessarily limited to, any work on any portion of any right-of-way which was not physically commenced at the time the road was designated as a scenic road; and the construction of any new driveway or private way or the alteration of any existing driveway or private way in so far as such alteration takes place within the right-of-way when such work involves the cutting down of trees or the destruction of stone walls.

RIGHT-OF-WAY

The area on and within the boundaries of the public way. If the boundaries are unknown, any affected trees or stone walls shall be presumed to be within the public right-of-way until shown to be otherwise.

ROAD

The entire right-of-way of a way used for vehicular travel and appurtenant structures and facilities including, but not limited to bridge structures, drainage systems, retaining walls, traffic control devices, sidewalks, pedestrian facilities, and the air space above them, but not intersecting streets or driveways.

TEARING DOWN OR DESTRUCTION OF STONE WALLS

The defacement, removal, physical covering (other than naturally occurring plant covering) or rearrangement of a stone wall as defined herein. Temporary removal and replacement at the same location with the same materials is permitted without Planning Board consent, but only if the Harvard Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced.

TEMPORARY REMOVAL OF STONE WALLS

The temporary removal and replacement at the same location with the same materials.

TREE

For the purposes of this Scenic Road Bylaw only, a living tree whose trunk has a diameter of ~~1.5~~ 4 inches or more as measured one foot from the ground. All trees so defined within the right-of-way of a designated scenic road or on the boundaries thereof shall be subject to this bylaw. If, for whatever reason, it is uncertain as to whether a tree is within the right-of-way of a designated scenic road, it shall be presumed to be subject to the provisions of this bylaw and the provisions of Massachusetts General Laws Chapter 40, Section 15C until the contrary is shown. Nothing in this definition shall be construed to permit a person, other than the Tree Warden or his deputy, to trim, cut down or remove a public shade tree.

§ 90-3 Designated scenic roads.

Armstrong Road

Bemis Road (Craggs Road)

Blanchard Road

Bolton Road

Brown Road
Cameron Road
Cleaves Hill Road
Cross Road
Cruft Lane
East Bare Hill Road
Eldridge Road
Elm Street
Fairbanks Street
Finn Road
Green Hill Road
Harvard Depot Road
Lancaster County Road
Littleton County Road
Littleton Road
Madigan Lane
Mill Road
Murray Lane
Oak Hill Road
Old Boston Road
Old Littleton Road
Old Mill Road
Old Post Road (Lovers Lane)
Old Schoolhouse Road
Old Shirley Road
Pattee Road
Pinnacle Road
Pond Road
Poor Farm Road
Prospect Hill Road
St. John Road
Scott Road
Shaker Road
Sherry Road
Slough Road
South Shaker Road
Still River Depot Road
Stow Road
Tahanto Trail
Under Pin Hill Road
Warren Avenue
West Bare Hill Road
Westcott Road
Whitney Lane

§ 90-4. Design Standards.

A scenic road application shall conform to the following design standards:

A. Driveways

- (1) Driveway standards shall be consistent with the Town of Harvard Regulations for Driveways.
- (2) Driveways should be located in a manner that minimizes the required cut and fill, so as to preserve the existing topography to the greatest extent possible.

B. Stone walls

- (1) Removed stone walls for the purpose of cuts for driveways shall be used to repair other sections of the wall along the road
- (2) No wall shall be cut without construction of an appropriate terminus. Appropriate end points consist of: stone wall with tapered ends turning back onto the lot along the driveway, but remaining in the right-of-way; stone piers; or granite posts.
- (3) Reconstructed portions of stone walls shall use materials that match the existing wall.

C. No tree with a trunk diameter exceeding four (4) inches or more, as measured one foot from the ground shall be cut for a driveway unless the curb cannot be safely located otherwise.

D. For each tree exceeding four (4) inches in diameter, one foot about ground level removed, a native, nursery-quality tree in a species and location with the advice of the Tree Warden and suitable to the Planning Board, shall be planted, or an equivalent payment into the town-wide Tree Replacement Fund shall be made. The cost of the tree(s), amended soil, if applicable, and the labor for planting the tree(s) is to be paid by the applicant.. Payment covering the cost of said tree(s), soil amending, if applicable, and planting labor shall be made to the Tree Reserve Fund for the period of two years. If the tree(s) survive two years the funds shall be returned to the applicant. This section shall not apply to projects undertaken by the Town of Harvard

E. The Planning Board may waive the design standards, as set forth under this Section 90-4, if it finds that sight lines create a public safety risk.

§ 90-54 Applications and fees.

- A. Written application shall be filed with the Planning Board to perform activities affecting areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Planning Board to describe proposed activities and their effects on the areas. No activities shall commence without receiving and complying with written consent issued pursuant to this bylaw.
- B. At the time of an application, the applicant shall pay a filing fee as specified on the Scenic Road Consent Application.
- C. The Planning Board may waive the filing fee and costs and expenses for an application filed by a government agency, the Town, or a nongovernmental organization working the interest of the Town.

~~§ 90-5 Appeals.~~

~~A decision of the Planning Board shall be reviewable in the Superior Court in accordance with Massachusetts General Laws Chapter 249, Section 4.~~

§ 90-6 Enforcement; violations and penalties.
[Amended 10-22-2018 STM by Art. 1]

~~This bylaw shall be administered and enforced by the Planning Board, the Building Commissioner, the Tree Warden, the Director of the Department of Public Works or others designated by the Town Administrator. Enforcing officials may issue a citation for the violation of this bylaw and shall take appropriate action in the name of the Town of Harvard to prevent, correct, restrain or abate such violations. Violators shall be subject to a fine of \$100 per violation for the first offense, \$200 per violation for the second offense and \$300 per violation for the third and all subsequent offenses.~~

- A. Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the right-of-way of the Scenic Road shall require an immediate filing as detailed above and shall be subject to restoration of the features. The restoration shall consist of replacing the stone wall as necessary and replacing the trees on a square-inch per square-inch basis at locations specified by the Tree Warden in consent with the Planning Board. A square-inch per square-inch replacement means that the combined area of the replacement trees measured 1 foot above ground level must equal the total area of the original tree trunk as measured at the stump.
- B. Failure to comply with the duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures the Planning Board deems necessary, including but not limited to, enforcement of the funding and restoration detailed above. Any decision not exercised within 2 years of issue shall be void and require a new filing.

- C. The Planning Board shall have the authority to enforce this bylaw, its regulations and permits issued thereunder by violation notices, noncriminal disposition under MGL Chapter 40, Section 21D, and civil and criminal court actions.
- D. Upon request of the Planning Board, the Town's Select Board and Town Counsel may take civil legal action to enforce said provisions. Upon request of the Planning Board, the Town's Chief of Police may criminally prosecute violations of said provisions.
- E. Town boards and officers, including any police officer of the Town or other officers having police powers shall have authority to assist the Planning Board in the enforcement of said provisions.
- F. Enforcing officials may issue a citation for the violation of this bylaw and shall take appropriate action in the name of the Town of Harvard to prevent, correct, restrain or abate such violations. Violators shall be subject to a fine of \$300 as set forth under the Scenic Road Act, MGL Ch.40, Sec. 15C. Each day that a violation continues shall constitute a separate offense, until an application is made to the Planning Board, with continued progression toward a good faith effort for restoration. In addition, the Planning Board and Building Inspector may withhold or revoke any current or pending permit on the property associated with said violation.
- G. As an alternative to criminal prosecution in a specific case, the Planning Board may issue citations under the noncriminal disposition procedure set forth in MGL Chapter 40 Section 21D.

§ 90-7 Invalidity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or decision, which previously has been issued.

§ 90-8 Appeals.

A decision of the Planning Board shall be reviewable in the Superior Court in accordance with Massachusetts General Laws Chapter 249, Section 4.