

**TOWN OF HARVARD
PLANNING BOARD AGENDA
MONDAY JULY 19, 2021 @ 7:00PM**

Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021, this meeting will be conducted via remote participation. Interested individuals can listen in and participate by phone and/or online by following the link and phone number below.

UpperTH ProWebinar is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/84465237827?pwd=UnRldjVSWW1uOHpmc1RRQjBibFRldz09>

Meeting ID: 844 6523 7827

Passcode: 164246

One tap mobile

+13126266799,,84465237827# US (Chicago)

+19294362866,,84465237827# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

Meeting ID: 844 6523 7827

Find your local number: <https://us02web.zoom.us/j/84465237827?pwd=UnRldjVSWW1uOHpmc1RRQjBibFRldz09>

Public Comment

New Business: a) None

Standard Business: a) Board Member Reports

- Representatives & Liaisons Update
- Community Matters

b) Approve Minutes

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

- Erosion Control – Add new section 125-58 – Review Minor & Major Permit Procedure, Review Standards
- Scenic Roads – Amend Chapter 90 – Review Enforcement amendments

b) Spring Town Meeting, 2022

- Open Space Residential Development – Amend Chapter 125-35 – All About Open Space

NEXT SCHEDULED MEETING: AUGUST 2, 2021

**HARVARD PLANNING BOARD
MEETING MINUTES
MAY 26, 2021**

Chair Justin Brown called the meeting to order at 7:05pm 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 Rebecca Kelley (Associate Member)

Others Present: Christopher Ryan (Director of Community and Economic Development), and Matt Flokos (Harvard Press)

Thank you to Fran Nickerson

Brown stated on behalf of the Board he would like to thank Fran, as well as her husband Bruce, for all of they have done for the Town over the years. Brown reflected on when he started on the Board and Nickerson took him under her wing.

Town Meeting Round-Up & Next Steps

o **Senior Residential Bylaw**

The Board reviewed the good, the bad and how they can improve for the next time. Leonard reviewed her positives in regards to the Senior Residential Development. Biering stated outreach assisted in bring to light questions that assisted in explaining the process better. Chris Tracey's letter to the editor did a lot for assisting in passing these bylaws. Questions at Town meeting were what the Planning Board had heard before, other than the question in regards to verification of age. Donahue thought a key component was having an advocate from another board, which helped show support of the bylaws. Brown thought Beth Williams from the Council on Aging did a great job.

Leonard reviewed what needs work and can be done better next time. The Board needs to be prepared for a question that may throw them off guard. Biering agreed that establishing a timetable is essential early on in the process. A pre-town-meeting huddle to address any unresolved issues is also essential. Members need to remain engaged until very end; if there is a conflict everyone should provide their feedback. Donahue feels she did not know the bylaw solid because it was being done by a subcommittee; for the future the Board should not do it this way again. The time involved by the subcommittee was remarkable, but not everyone can commit a large about of time to Planning Board; need to find a balance.

Leonard wanted Brown and Ryan to address the timetable issues that were presented during the process. Ryan felt this was one of the biggest projects he has ever worked on and the time consumed by the subcommittee started to become too much. Ryan detailed some of the obstacles he faced during the process. Leonard thought the discussion should focus on the process and not personalities; she took umbrage to what was been said by Ryan.

Brown stated a nice Frequently Asked Questions (FAQ) was prepared in March; he was disappointed to have another FAQ out there that had conflicting information. Biering stated her document was questions the Board might get at Town Meeting, as that was the role assigned to her, Leonard and Donahue. Brown would recommend not going forward with a subcommittee in the future. Leonard asked if an action plan can be created. Bylaws should be on the agenda as much as possible to allow for both the members and the public to be in the loop.

o **Ayer Road Visioning Plan**

- Ryan felt this material was solid
- Need to get supporters up to speak upfront
- A lot of wrong information at the microphone

- 56 ▪ More emphasis on how many Master Plans in the past have this vision
- 57 ▪ Select Board continues to be supportive and directed the Planning Board to keep going
- 58 ▪ Assess the outreach as it appears there were many who did not understand the plan
- 59 ▪ Need more discussion at meetings to allow for all the members to know the information well
- 60 ▪ Outreach to the businesses and residents of the district may assist in getting more support; which
- 61 was intended ad the first phase of the Vision Plan
- 62 ○ **Open Space Residential Development Bylaw**
- 63 ▪ Fully wrritten; newer members need to become familiar with it
- 64 ▪ Concerns with enough time for public relations; suggested to conduct in the Spring
- 65 ○ **Town Center** – No discussion on this topic
- 66 ○ **Scenic Road Bylaw, Chapter 90**
- 67 ▪ Discuss one section at each meeting as an education process and public relations
- 68 ▪ Filling in the gaps, design guidelines, what defines a Scenic Road (legal ease) and fines
- 69 associated with enforcement
- 70 ▪ Why change the process now? Gives additional guidance to the Board and assists in the
- 71 preservation of Harvard
- 72 ○ **Erosion Control Bylaw**
- 73 ▪ Fully written; newer members need to become familiar with it

74

75 Biering suggested a summary of the suggested bylaws and how much work is required to bring them to
 76 Fall town meeting. Ryan mentioned the requirement to have a multi-family housing, which may have to
 77 be included for Fall Town Meeting. Ryan asked members to please stop by the office to review the Town
 78 map to determine potential location for this district.

79

80 **Appoint Dan Daly to the Design Review Board**

81 Donahue made a motion to appoint Dan Daly to the Design Review Board. Nickerson seconded the
 82 motion. The vote was unanimously in favor of the motion by roll call vote, Donahue, aye; Nickerson, aye;
 83 Leonard, aye; Biering, aye; Brown, aye.

84

85 **Board Member Reports**

- 86 • Representatives & Liaisons Update
- 87 ▪ **Open Space Committee** may be able to help locate a multi-family district; Ryan can do the same
- 88 with existing GIS layers
- 89
- 90 • Community Matter - None

91

92 **Director's Update**

93 Covered under other items this evening

94

95 **Approve Minutes**

96 Donahue made a motion to approve the minutes of January 25, February 1, 18 and 22, 2021 as
 97 amended. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call
 98 vote, Donahue, aye; Nickerson, aye; Leonard, aye; Biering, aye; Brown, aye.

98

99

100 **Adjournment**

101 At 9:59pm Donahue made a motion to adjourn the meeting. Nickerson seconded the motion. The vote
 102 was unanimously in favor of the motion by roll call vote, Donahue, aye; Nickerson, aye; Leonard, aye;
 103 Biering, aye; Brown, aye.

103

104 Signed: _____
 105 Liz Allard, Clerk

106

107

108

109

110
111
112
113
114
115

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda May 26, 2021
- Director of Community & Economic Development Update, May 24, 2021
- Harvard Planning Board Spring Town Meeting 2021 Lessons Learned
- DRAFT Lessons Learned re Getting Questions Passed at Town Meeting, Jane Biering, May 20, 2021

DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

**HARVARD PLANNING BOARD
MEETING MINUTES
JUNE 7, 2021**

Chair Justin Brown called the meeting to order at 7:04pm 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, Stacia Donahue, Fran Nickerson and Becca Kelley (Associate Member)

Others Present: Christopher Ryan (Director of Community and Economic Development), Matthew Flokos (Harvard Press), Richard Cabelus, Nicole Schmidt, Beth Williams (Council on Aging). Paul Green, Mike Lawton, Gregory Boucher (Saul Ewing Arnstein & Lehr, LLP) and Michael Maglothin

Interview Interested Volunteers

- Richard Cabelus – Cabelus stated he has watched from a far all of the work the Planning Board does. He has familiarized himself with the Master Plan, the Zoning Act, Chapter 125 Protective Bylaw and Chapter 133 Regulations. As a highly regulated Board he hopes his skills as an attorney, although not land use, can bring the knowledge of law to the Planning Board. Cabelus would be happy to remain on Harvard Historical Commission as the Planning Board liaison. Cabelus supports the Ayer Road Project; is intrigued with form base code; and understands bringing the Town along in the process is a balancing act. Cabelus also supports senior housing, as the Town continues to age, by providing opportunities to down size in town, keeping in mind the integrity of the Town.

- Jefferson Burson – Burson stated he has been working with Ryan on the Community Resiliency Working Group; planned development from that perspective lead him to wanting to get involved with the Planning Board. Burson feels there needs to be crossing referencing between the two and he is happy to fill that role. In regards to the Ayer Road project, he is hoping to learn more about it through the process. When asked about senior housing his response was he would have to be a humble learner on that work.

Donahue made a motion to recommend to the Select Board both Richard Cabelus and Jefferson Burson for appointment to the Planning Board. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Nickerson, aye; Kelley, aye; and Brown; aye.

Approve Minutes

Donahue made a motion to approve the minutes of March 1, 2021 as drafted. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Nickerson, aye; Kelley, aye; and Brown; aye.

Renewal of a Special Permit and Driveway Site Plan Approval Hearing- SBA 2012 TC Assets, LLC, 60 Old Shirley Road. Opened at 7:30pm (see page 4 for complete details)

Board Member Reports

•Representatives & Liaisons

- Ryan is seeking an update from each of the members on their liaisons to the Master Plan – within the next week

•Community Matters - None

Director's Update

Covered under other items this evening

57 **Fall Town Meeting, October 16, 2021, Bylaw Amendments**

58 **•Ayer Road Visioning Plan Update**

- 59 ○ Grants recently submitted, including One Stop for Growth grant, looks at an entire project
- 60 from start to finish, whereas the grant from the Executive Office of Environmental Affairs is
- 61 for planning assistance targeted towards Phase 1; hopeful they can consider other parts of
- 62 the project as well.
- 63 ○ Continue working with the Select Board on moving this project forward.
- 64 ○ Speaking with consultants in determining ways to reduce the cost, such as having town
- 65 staff take on some of the tasks.
- 66 ○ Rand funds may be available for this project, but Select Board has asked the Planning
- 67 Board to attempt to reduce the overall cost.
- 68 ○ There is a constant flow of request for activity within the commercial district as of late.

69
70 **•Senior Residential Development – Amend Chapter 1§25-57**

- 71 ○ With short time frame between Spring and Fall town meeting Ryan is recommending
- 72 pushing Open Space Residential Development to Spring 2022. Therefore, Ryan is
- 73 suggesting for the Fall the Board review and amend as needed Assisted Living provision
- 74 under §125-52 Ayer Road Village – Special Permit by moving it to §125-57 Senior
- 75 Residential Development. An alternative to amending Assisted Living the Board would be
- 76 to allow for a Continuing Care Retirement Community (CCRC) within §125-57, which
- 77 would allow for Assisting Living type development. Nickerson stated CCRC's are the
- 78 direction in which seniors are going as they look to downsize; Assisted Living would only
- 79 serve a small group; going CCRC would be a broader group. Need to determine if a
- 80 CCRC is marketable at the limits set within §125-57. Amendments to §125-10 Conversion
- 81 of multiple residence would encourage senior friendly development as well.

82
83 **•Town Center Zoning District – Amend Chapter 125 Article IV**

- 84 ○ An action item with the Master Plan. This amendment would assist in protecting the
- 85 scale and layout of Town Center. The easiest way to accomplish this is to create an
- 86 overlay district. Overlay districts can be confusing as you have two districts in which a
- 87 property owner can chose which to comply with. Base zone is a more complete
- 88 conventional zoning solution. Form-based code is the ideal design to apply to existing
- 89 town centers or developed areas where community not only want to retain much if the
- 90 existing pattern of development, but also makes sure that any new buildings or building
- 91 additions met the desired pattern of that area. Ryan indicated he has an individual
- 92 interested in assisting pro-bono; is the Board interested? Kelley was interested in
- 93 understanding form-base code before answering this question. Allard asked if the Board
- 94 decides to go either the form based or base zoning they could not be heard at the fall
- 95 town meeting due to the heavy lift either would entail? Donahue suggested looking at
- 96 what Ayer has recently done for their center.

97
98 **•Erosion Control – Add new section §125-58**

- 99 ○ This bylaw has been before Town meeting twice and needs some minor tweaking to be
- 100 ready for another try this fall.

101
102 **•Scenic Roads – Amend Chapter 90**

- 103 ○ Also, an action item within the Mater Plan, these amendments are focused on
- 104 enforcement and design guidelines. Allard will take the lead on this amendment.

105
106 **•Mapping the Multiple Residence District – Amend §125-42**

- 107 ○ Ryan explained the MBTA community requirement. This amendment would require
- 108 mapping the area(s) and amending language in §125-10 to comply with the MBTA
- 109 requirements. Donahue will draft a survey to get a sense of where the public would want
- 110 to see this type of development.

111
112

113 The Board agreed to bring the following items to Fall town meeting:

- 114 • Erosion Control – Add new section §125-58;
- 115 • Scenic Roads – Amend Chapter 90; and
- 116 • Mapping the Multiple Residence District – Amend §125-42

117

118 In addition, the Board will consider bring Senior Residential Development – Amend Chapter 125-
119 57 to the Fall Town meeting as well. With the Harvard Press on vacation for parts of July and
120 August, Allard will create a schedule, including timing for legal notice, for the summer for review
121 at the next meeting.

122

123 **Spring Town Meeting, 2022**

124 • **Open Space Residential Development – Amend Chapter 125-35 – Introduction**

125 Ryan explained what an open space residential development is. Ryan reviewed the schedule
126 moving forward. Kelley has concern with the development of narrow roads in Harvard that do
127 not provide sidewalks or the ability for safe pedestrian use. Safety and a sense of community
128 in these developments by providing walking paths within the development is key.

129

130 **Adjournment**

131 Donahue made a motion to adjourn the meeting at 9:29pm. Nickerson seconded the motion. The
132 vote was unanimously in favor of the motion by roll call, Donahue, aye; Nickerson, aye; Kelley;
133 aye; and Brown; aye.

134

135 Signed: _____ Liz Allard, Clerk

136

137 **EXHIBITS & OTHER DOCUMENTS**

138

139 • Planning Board Agenda June 7, 2021

140 • Director of Community and Economic Development UPDATE, June 7, 2021

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169 **Harvard Planning Board**

170

171 **Renewal of a Special Permit and Driveway Site Plan Approval**

172 **Hearing Minutes**

173

174 **June 7, 2021**

175

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

180

181 **Members Present:** Justin Brown, Stacia Donahue, Fran Nickerson and Rebecca Kelley
182 (Associate Member)

183

184 **Others Present:** Christopher Ryan (Director of Community and Economic Development), Matt
185 Flokos (Harvard Press) and Gregory Boucher (Saul Ewing Arnstein & Lehr, LLP)

186

187 This hearing, a continuation from May 3, 2021, is for a Renewal of a Special Permit and Driveway
188 Site Plan Approval filed on behalf of CCATT LLC, to renew the existing Special Permit and
189 Driveway Site Plan Approval for a wireless communications tower 336 Old Littleton Road,
190 Harvard.

191

192 Justin Brown stated that Becca Kelley is assigned as a voting member this evening for this
193 application.

194

195 Gregory Boucher (Saul Ewing Arnstein & Lehr, LLP) gave a brief overview of the process to date.
196 Ryan followed up on the requested waives to some of the conditions as things have changed
197 over time in regards to Telecom Act.

198

199 Donahue made a motion to approve the renewal of the Special Permit and Driveway Site Plan as
200 presented with the standard conditions and special conditions as detailed in the Directors Report,
201 dated June 7, 2021. Nickerson seconded the motion. The vote was unanimously in favor of the
202 motion by roll call, Donahue, aye; Nickerson, aye; Kelley; aye; and Brown; aye.

203

204

205 Signed: _____ Liz Allard, Clerk

**HARVARD PLANNING BOARD
MEETING MINUTES
JUNE 21, 2021**

Chair Justin Brown called the meeting to order at 7:02pm virtually pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021, under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter 125

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

Others Present: Christopher Ryan (Director of Community and Economic Development), Richard Cabelus, Jefferson Burson, Tracy Kraus, Beth Williams (Council on Aging) and Nicky Schmidt

Public Comment

Brown noted that it is last meeting for both Nickerson and Kelley, thanking them both on behalf of the Board for their service to the Town.

Tracy Kraus, 31 Wittman Road, wanted to know if the Board knew of the Parks & Recreation (P&R) Commission's application for the mountain biking pump track. Brown noted that Board is aware of the project and Ryan is working with P&R on the application process with the Planning Board.

Review 2021 Summer Meeting Calendar

The Board agreed their next meeting would be Monday July 12th. The remaining summer schedule as requested at the previous meeting was amendable to current members and in coming members. The general consensus is to stay with the Zoom platform until the Town has worked out how to better accommodate the hybrid model. The Board will review going back to in person later this summer.

Schedule Strategic Planning Session

Strategic planning meeting would be on porch of Hildreth House from 9am to noon on July 10th.

Board Member Reports

•Representatives & Liaisons Update

- **Historic Commission** – In-coming Board member Cabelus reported they are having a special meeting this coming Wednesday on an application that needed action sooner than the normal monthly cycle
- **Transportation Advisory Committee** is meeting on June 30th; may need to increase the quarterly meetings; waiting for update from Montachusett Regional Planning Commission.

•Community Matters

- There has been an increase in people asking about in-home occupations/businesses in the AR district.
- Donahue and Ryan explained what a pump track actually is. For this use, it is a mountain biking area with tight turns and little climbing hills. Ryan noted that the Climate Resiliency Working Group (CRWG) sent a memo to the Parks & Recreation (P&R) Commission requesting that they fill out an environmental impact statement. In-coming Associate Member Burson noted that CRWG Chair is attending the P&R meeting to weigh in on the concerns CRWG have on the proposal. If it comes back to the Planning Board in the form of application, then CRWG would like to be part of that discussion.

Director's Update

Covered under other items this evening

Approve Minutes

Donahue made a motion to approve the minutes of March 11 and 15, 2021 as amended. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Nickerson, aye; and Brown; aye.

Approve Invoices

Donahue Made a motion to approve the invoices for the Harvard Press in the amount of \$168.00 and Beals & Thomas in the amount \$749.33. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Nickerson, aye; and Brown; aye.

Fall Town Meeting, October 16, 2021, Bylaw Amendments

• Senior Residential Development

- The Planning Board had intended a 3-step process for the Senior Residential Bylaws.
- Step 1 was completed at Spring 2020 meeting.
- **§125-2 Definitions** – add some senior residential development related definitions
- **§125-9 Multiple Residence Use** - The Board is waiting on the State to finalize some requirement that they will be imposing on all MBTA communities, which will force a by-right multi-family district, requiring 15 units/acre.
- **§125-18.2 Affordable Accessory Apartment** to be delete as it is not currently being used. Brown asked if it's important to keep it until we have something that replaces it. Nickerson noted that affordable housing does not apply to most Harvard residents as the value of their house makes them ineligible. Striking it cleans up the Bylaw.
- **§125-52 Ayer Road Village- Special Permit** – remove the assisted living section and move it to **§125-57 Senior Residential Development** where it belongs or delete assisting living altogether and replace it with Continuing Care Retirement Community (CCRC). The order of these amendments will be important; need to make sure CCRC passes before assisted living is deleted or else there will be no housing of this type available for development. Ryan was tasked with researching some existing CCRC's to see if there is something out there that is already built that seems like it would be something that would fit Harvard.

• Town Center Zoning District – Amend Chapter 125 Article IV

- This would be a 'from scratch' bylaw.
- Trying to preserve the town center 'as-is'.
- Ryan feels this is a good location for a form-based code to help cement the layout in Town Center.
- The Director of Community & Economic Development in Ayer, Alan Manion, is willing to meet with the Board to help us start the process; the Chair will review the schedule to determine when this can occur.
- An action item within the Master Plan.
- The goal is to freeze in place the Town Center as it is right now.

• Erosion Control – Add new section §125-58

- Ryan has created a flow chart to show who and how it applies.
- In 2016 the bylaw was criticized because it was brought before Town Meeting by Conservation Commission; in 2019 it was presented by the Planning Board and got hung up by the State's Stormwater regulations, also known as MS4.
- Need to determine sites in which problems have occurred in the absence of this bylaw.

• Scenic Roads – Amend Chapter 90

- Amending the enforcement section and adding design guideline

• Mapping the Multiple Residence District – Amend §125-42 Zoning Map

- May push this off until Spring as we await regulations from the State

Spring Town Meeting, 2022

• **Open Space Residential Development – Amend Chapter §125-35**

- Ryan reviewed our existing Open Space and Conservation – Planned Residential Development bylaw that was developed in 2003 and used one time.
- The new bylaw might be long, but it covers much of the things needed to ensure that it fits the Town.
- Title 5 and shared septic is going to be the hardest thing to overcome.
- The most recent version will be shared with members for review and ability to discuss with others in Town
- Kelley noted that one-bedroom homes are not viable, that wider roads are not horrible if they are not excessive, and that there are some developments in the area that the Board should review, such as Bolton Woods Way in Bolton. Need to balance road width and safety for pedestrians, delivery trucks, and possibly parking.

Adjournment

Donahue made a motion to adjourn the meeting at 9:14pm. Nickerson seconded the motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Nickerson, aye; Kelley; aye; and Brown; aye.

Signed: _____ Liz Allard, Clerk

EXHIBITS & OTHER DOCUMENTS

- Planning Board Agenda June 21, 2021
- Director of Community and Economic Development UPDATE, June 21, 2021

**HARVARD PLANNING BOARD
MEETING MINUTES
JULY 12, 2021**

1
2
3
4
5 Chair Justin Brown called the meeting to order at 7:04pm virtually pursuant to Chapter 20 of the Acts of
6 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency
7 and signed into law on June 16, 2021 under M.G.L. Chapter 40A and Code of the Town of Harvard Chapter
8 125
9

10 **Members Present:** Justin Brown, Stacia Donahue, Richard Cabelus and Jefferson Buron (Associate
11 Member) (departed at 9:13pm)
12

13 **Others Present:** Christopher Ryan (Director of Community and Economic Development), Liz Allard (Land
14 Use Administrator), Dan Wolfe (Ross Associates, Inc.), Doug Thornton, Brian Cook, Michael Kilian, and
15 Deborah O'Rourke
16

17 **Public Comment**

18 There was no public comment this evening
19

20 **Approval Not Required – 39 Glenview Drive**

21 Donahue made a motion as part of the current three-member board to endorse the Plan of Land in
22 Harvard, Massachusetts prepared for Daniel F. & Anne T. Ferguson, Job No.: 33067, Plan No.: L-14021-A,
23 prepared by David E. Ross Associates, Inc., dated June, 2021. Cabelus seconded the motion. The roll call
24 vote was 2-0 with Donahue and Brown, aye and Cabelus abstaining.
25

26 **Interview Interested Volunteers**

27 •**Brian Cook** - Moved here in December and with young children he intends to be here for the next 20
28 years at least, motivating Cook to be involved in the community. Cook's general thoughts on land
29 development in the Town is a double edge sword as he would want to maintain the rural feel, but at the
30 same time keeping things fresh. Cook has caught up pretty quickly on the Ayer Road Vision Plan, which
31 would open things up and let people flourish in a positive way. When asked how he would respond to
32 an application he did not agree with Cook stated no matter his feeling if an application conforms to the
33 Bylaw then he would approve it; if it is on the edge of conforming then he would look at the greater
34 good of the community before approving.
35

36 •**Doug Thornton** – Has been in Town since 1999 and has served on the Parks & Recreation Commission
37 for 6 years. Thornton is seeking to move into a long-term vision role. Thornton knows there has been a
38 lot of push back on Ayer Road. Thornton is hoping to be able to assist the Planning Board on preparing
39 for Town Meetings. Thornton also would like to keep the Town remote and maintain its character. On
40 the economic side, having commercial is essential; having a plan in place as we approach the next 20
41 years is essential too. Thornton supports the Erosion Control bylaw as it is a problem that needs to be
42 addressed.
43

44 •**Michael Kilian** – Has been in Town a little over 20 years. Kilian has watched and participated on the side
45 and now wants to be more involved. Kilian has affordable housing and open space experience and
46 believes in carefully planned development; he wants to help the Town navigate those waters. Kilian
47 believes the Planning Board needs to build convincing arguments and scenarios to be brought before
48 the general public in order to get this passed at Town Meeting. For the Ayer Road Transportation
49 Improvement Project, he suggests making it visual to assist the public in understanding what the end
50 product will be; explain why it is being done; with more buy in you will have better success. As for the
51 Ayer Road Corridor Plan, he is somewhat familiar; likes the clustering; thinks there are some things

52 that are limiting, such as septic, but with new technology and potential for sewage from Devens has
53 the Town planned appropriately?

54 •**Deborah O'Rourke** – Has lived in Town for 3 years; previously resided in Groton, which has similar
55 challenges to Harvard of wanting to keep things the same, but needed to move forward; familiar with
56 the balancing act. O'Rourke has introduced herself to the Master Plan, the website and has attended
57 Town Meetings. Thought Ayer Road was well managed and thought through, it could become a real
58 undesirable situation. O'Rourke love the protection in place for agriculture, open space development,
59 and is not opposed to development ad-hoc, but would want to control the types of businesses that
60 comes in to Harvard. In regards applications she may not be in agreement with, O'Rourke does not
61 think her personal opinion would matter; if all of the boxes are checked but was not desirable to her
62 she would not stand in the way.

63
64 After discussing amongst the members, the Board agreed to recommend to the Select Board that having
65 diversity with someone who has been in Town for a long time and someone new to town would be
66 suitable and provide an overall balance of the Board, along with the diversity what they bring in their
67 background and careers.

68
69 **Appoint Steve Nigus to the Design Review Board**
70 Donahue made a motion to appoint Steve Nigus to the Design Review Board. Cabelus seconded the
71 motion. The vote was unanimously in favor of the motion by roll call, Donahue, aye; Cabelus, aye; and
72 Brown; aye.

73
74 **Board Member Reports**

- 75 •**Representatives & Liaisons Update**
- 76 ○**Design Review Committee** – first meeting was held last week with newly appointed members. They
77 discussed how to apply the guidelines; documentation on the process has been completed and is
78 available on the website.
 - 79 ○**Pump Track Proposal** - A meeting is taking place currently; the Planning Board unable to attend but
80 sent message that until site plan review is submitted the Board will be not taking stand on the
81 matter; however, happy to weigh in a site plan at any time. It was noted the Climate Resiliency
82 Working Group is involved.
 - 83 ○**Transportation Advisory Committee** has decided to meet more regularly for now than quarterly.
84 Reviewed the Ayer Road Transportation Improvement Project this week, which is at the 25%
85 stage of the project; comments received from the State and working on feedback on those
86 comments. Land Line now Nashoba Regional Greenways and Bruce Leicher has been ground-
87 truthing trails.
 - 88 ○**Climate Resiliency Working Group (CRWG)** – The Apple Country grant has wrapped up and are
89 working with consultant to pull out the good stuff from Harvard; District Local Technical
90 Assistance grant is moving forward; CRWG is seeking a Town-wide resolution for Fall town
91 meeting on climate resilience commitment from the Town. Funding from the Harvard Energy
92 Advisory Committee has launching portal for tracking sustainable activities by residence and
93 developing a strategic plan
 - 94 ○**Historical Commission** has made some amendments to Rules & Regulations

95
96 •**Community Matters** – None

97
98 **Director's Update**
99 Covered under other items this evening

100
101
102
103

104 **Approve Minutes**
105 Donahue made a motion to approve the minutes of March 29, April 5 and 26 and May 3, 2021 as
106 amended. Cabelus seconded the motion. The roll call vote was 2-0 with Donahue and Brown, aye and
107 Cabelus abstaining.

108
109 **Approve Invoices**
110 There were no invoices for approval this evening.

111
112 **Fall Town Meeting, October 16, 2021, Bylaw Amendments**

113 • **Erosion Control – Add new section §125-58 - Purpose, Applicability, Exemptions and Waivers**
114 ○ Need to reinforce the addition of minor project and free consultation
115 ○ Definition section should come early on in the provision; allows for the reader become familiar with
116 terms as they continue through the provision; can place them within the Definition section, 125-2;
117 all agreed they should be within the provision.

118 • **Scenic Roads – Amend Chapter 90 – Review Design Guidelines**
119 ○ Edits to the previously distributed draft were detailed

120 • **Affordable accessory apartment -Delete Chapter §125-18.2**
121 ○ Has never been used
122 ○ Cleaning up to allow better ways to gain affordable units in Town of Harvard
123 ○ There are no implications if it fails to pass at Town Meeting

124 • **Permitted Uses in the AR District by Special Permit – Amend Chapter 125-21B(1)**
125 ○ Corrects the term “in-law” to “accessory dwelling unit”

126 • **Ayer Road Village Special Permit – Assisted Living Facility – Delete Chapter 125-52I**
127 ○ Is the only way currently to develop assisted living in Town
128 ○ Want to bring all of the senior housing development to one location within the bylaw, which also
129 allows to be developed on any buildable parcel.
130 ○ No language changed suggested, just moving it to §125-57 Senior Residential Development

131 • **Senior Residential Development – Amend Chapter 125-57 – Add Assisted Living Facility**

132 ○ Add 125-52I into this provision of the Bylaw as noted above
133 ○ Add Continuing Care Retirement Community
134 • Add a new section detailing these types of development
135 • Will these types of developments be affordable to residents?

136
137 **Spring Town Meeting, 2022**

138 • **Open Space Residential Development – Amend Chapter 125-35 – All about Open Space**
139 This item was passed over this evening.

140
141 **Adjournment**

142 Donahue made a motion to adjourn the meeting at 9:33pm. Cabelus seconded the motion. The vote was
143 unanimously in favor of the motion by roll call, Donahue, aye; Cabelus, aye; and Brown; aye.

144
145 Signed: _____ Liz Allard, Clerk

146
147 **EXHIBITS & OTHER DOCUMENTS**

148
149 • **Planning Board Agenda July 12, 2021**
150 • **Director of Community and Economic Development UPDATE, July 12, 2021**

ARTICLE XX: AMEND PROTECTIVE BYLAW CHAPTER 125

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)

ARTICLE XX: AMEND SCENIC ROADS BYLAW CHAPTER 90

To see if the Town will vote to amend the Scenic Roads Bylaw Chapter 90 by making the following revisions, thereto, or pass any votes or votes in relation thereto:

[Key to revisions: underlining = additions; ~~strike through~~ = deletions]

§ 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 1.54 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

Whitney Road
Woodchuck Hill Road

§ 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 Code of the Town of Harvard, Chapter 125-31 Driveways.

(2) Driveways shall be located in a manner that minimizes the required cut and fill, so as to preserve the existing topography to the greatest extent possible.

(3) 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 cut cannot be safely located otherwise.

B. Stone walls

(1) Removed portions of a stone wall for any purpose shall be used to repair other sections of the wall along the right -of-way.

(2) No stone 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 shall remain in the right-of-way: stone piers: or granite posts.

(3) Reconstructed portions of stone walls shall use materials that match the existing wall.

D. Tree Replacement

(1) For each tree to be removed that exceeds four (4) inches in diameter and one foot about ground level, a native, nursery-quality tree(s) shall be planted, or an equivalent payment into the town-wide Tree Replacement Fund shall be made. Species type and location, with the advice of the Tree Warden, shall be suitable to the Planning Board.

(2) 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.

(3) 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.

(4) 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.

§ 90-45 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.