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CHAPTER 133

PLANNING BOARD PROCEDURAL RULES AND REGULATIONS

ARTICLE I General Provisions

§133-1 Introduction

- A. Under Massachusetts General Law M.G.L. Chapter 41A, Sections 81A through 81GG and Chapter 40A, Section 5 the Planning Board is responsible for long range planning, zoning by-law proposals and subdivision administration for the purpose of:
- (1) Maintaining orderly growth, protection from unsuitable development and overcrowding
 - (2) Preservation of clean water and air
 - (3) Preserving and increasing the value of land and buildings
 - (4) Providing for the availability and affordability of housing
 - (5) Conserving natural conditions, open space and cultural resources
- B. To execute its responsibilities the Planning Board is responsible for the development and maintenance of a number of planning tools and activities, which include:
- (1) The Master Plan adopted pursuant to M.G.L. Chapter 41, Section 81D.
 - (2) Protective Bylaw Chapter 125 of the Code of the Town of Harvard (the "Code").
 - (3) Subdivision Regulations Chapter 130 of the Code.
 - (4) Scenic Road Consent Chapter 90 of the Code.
 - (5) Review and Recommendation of Local Initiative Program (LIP) Projects
- C. This Chapter sets forth the rules and regulations that govern the procedures and operations of the Planning Board and prescribes the procedures for submitting plans and applications to the Board. This chapter is intended to serve the general public and to educate new Board members by describing the Board's powers, duties and mode of operation.
- D. This Chapter also specifies the Board's organization and describes procedures for the most frequent functions performed by the Board:

- (1) Acting on “Approval Not Required” (ANR) Plans
- (2) Acting on subdivision applications
- (3) Acting on Special Permit applications
- (4) Reviewing and acting on Site Plan Review applications
- (5) Acting on Scenic Road Consent Applications
- (6) Proposing, hearing and making recommendation relative to Protective Bylaw amendments

E. Any person or entity applying for a Special Permit, Subdivision Plan Approval, “Approval Not Required” plan endorsement, Site Plan Review Approval, Scenic Road Consent or amendment thereto, under the Protective Bylaw, whether or not such person is governed by any other federal, state, or local permits, variances, approvals, or programs, shall comply with the provisions of this Chapter.

§133-2 Authority; intent

- A. This Chapter is adopted by the Harvard Planning Board as authorized by Massachusetts General Laws Chapter 40A, Section 9 and Chapter 41, Section 81Q and the Code of the Town of Harvard Protective Bylaw Chapter 125, as amended.
- B. This Chapter is intended to establish uniform procedures through which the Planning Board will conduct business under its jurisdiction by virtue of the applicable provisions of the Zoning Act and the Harvard Protective Bylaw. **This document is not intended to supersede any requirements set forth in the above laws.**
- C. The Planning Board was established pursuant to Massachusetts General Law Chapter 41, Section 81A, et seq.. Its powers and duties are set forth therein. Additional responsibilities are set forth in The Zoning Act, M.G.L. Chapter 40A, M.G.L. Chapter 40, Section 15C and in the Town of Harvard Protective By-law, Chapter 125.
- D. This Chapter may be amended by a majority vote of the Planning Board. Prior to taking a vote on an amendment, the Planning Board shall have a duly advertised public hearing on the proposed change(s), notice of which is posted for at least fourteen (14) days in a conspicuous place in Town Hall and published at least once, not less than fourteen (14) days prior to the time specified for the hearing, in a newspaper of general circulation within the Town. Any such amendments shall take effect upon the filing of notice thereof in the Office of the Town Clerk.

§133-3 Consult with the Board

- A. The Planning Board is available for consultation prior to the filing of an Application to help ensure that an Application will contain the information that the Planning Board requires in order to deliberate a decision on an Application. Any advice, opinion, or information given to the Applicant by a Planning Board member, or by any agency, official, or employee of the Town shall be considered advisory only and

not be binding as to any official Planning Board decision or action.

- B. The Planning Board will review preliminary materials in an attempt to avoid unnecessary technical deficiencies in the Application to be filed and to promote efficiency in the formal review and hearing process. The Board will not be responsible for assuring the accuracy, correctness or thoroughness of any Application submitted for review. It is the responsibility of the Applicant to ensure that any Application to the Planning Board is thorough, complete and accurate. Any incomplete Application may result in a denial of such Application on the grounds of being an incomplete Application.
- C. At least two (2) copies of all materials to be reviewed shall be provided to the Planning Board along with a letter requesting such a review and including the name, address, and phone number of a person who may be contacted concerning the review. All correspondence and communication must be sent through the office of the Planning Board at least fourteen days prior to the proposed meeting date for review.
- D. The first such preliminary Planning Board review described above shall be free of charge. Subsequent preliminary reviews shall each require payment of a \$100 fee by the Applicant at the time of submission. The fee shall be submitted in check form and made payable to "Town of Harvard".
- E. The Planning Board may require as part of the preliminary review process that the Applicant deposit fees for reviews by consultants pursuant to Massachusetts General Law, Chapter 44, Section 53G.

§133-4 Definitions

In this Chapter the following terms shall have the following meanings:

Applicant - Any person or such person's authorized representative who files an Application for a Special Permit, Site Plan Review, Subdivision Plan Approval, Scenic Road Consent or an Approval Not Required Plan under the Bylaw or Subdivision Control Law

Application -All Plans, Forms, Reports, Studies or other documents which are submitted to the Board for consideration under this Chapter by an Applicant

Board – Harvard Planning Board as designated by and indicated in the Protective Bylaw

Bylaw -The Protective Bylaw, Chapter 125 of the Town of Harvard, as amended

General Bylaw – Code of the Town of Harvard Part I General Bylaws

Map – Town of Harvard Zoning Map included in the Protective Bylaw Chapter 125

M.G.L. – Massachusetts General Laws

Parties of Interest - The Applicant; abutters; owners of land directly opposite on any private or public street or way; and abutters to the abutters within three hundred (300) feet of the property line of the Applicant as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town; the Harvard Planning Board; and the Planning Board of every abutting city or town

Permit - A Special Permit under the Protective Bylaw as amended

Rules – Chapter 133 Planning Board Rules and Regulations as presented herein and subsequently modified hereafter

Subdivision Control Law – Massachusetts General Law, Chapter 41, Sections 81K through 81GG

Subdivision Rules and Regulations - The Rules and Regulations Governing the Subdivision of Land in Harvard, Code of the Town of Harvard Chapter 130, as amended

The Zoning Act - Massachusetts General Laws Chapter 40A, as amended

Town - The Town of Harvard

§133-5 Organization

A. Members and Officers

The Board shall consist of five (5) elected members. The Board, when acting as the Special Permit Granting Authority may also have (1) Associate member who may have the authority of a full member in the case that he/she is needed to deliberate on a Special Permit Hearing, and in administrative matters. Upon the recommendation of the Board the Board of Selectmen and the Board may, in a joint meeting, appoint an Associate Member for a period of one (1) year. The members of the Board shall annually elect from themselves all officers of the Board to include a Chairman, Vice Chairman, and Clerk.

B. The Chairman

The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time. The chairman, with a simple majority approval of the Board, shall appoint such committees as may be found necessary or desirable. The Chairman may, subject to appropriation and a simple majority approval of the Board, employ experts and clerical and other assistants.

In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Protective Bylaw of the Town of Harvard, and subject to these rules and further instructions of the Board, the Chairman shall transact the official

business of the Board and supervise the work of the Board's Administrator
The Chairman may call upon an Associate Member to sit on the Board for the purpose of acting on a Special Permit Application in the case of absence, an inability to act, or conflict of interest on the part of any member of the Board or in the event of a vacancy on the Board. The Chairman shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

C. Vice Chairman

The Vice Chairman shall act as Chairman if the Chairman is absent, disabled or otherwise unable to perform his duties. If both the Chairman and the Vice Chairman are absent, the Clerk shall act as the Chairman and appoint an acting Clerk.

D. Clerk

The Clerk shall keep a record of all hearings and meetings of the Board. If the Clerk is not present at any such meeting or hearing, a temporary Clerk shall be appointed to perform the duties of the Clerk at such meeting or hearing. The Clerk or the Chairman may delegate to the Board's Administrator, the responsibility of keeping the records of the meetings. Additionally, the Board's Administrator may be appointed as Clerk but shall not have the right to vote on any matter..

E. Associate Member

The Associate Member of the Board may attend all Board meetings, participate in discussions, and, at the designation of the Chair, may act as a regular member of the Board on administrative matters, including but not limited to providing a quorum in discussion of agenda items, approving minutes, making motions and voting on other Administrative tasks. The Associate Member may not act in lieu of a regular elected or appointed Board members on any non-administrative issues, such as site plans and land division plans, which require a simple majority of the Board. The Chairman may designate the associate member to sit on the Board for the purpose of acting on a Special Permit application, which requires a super-majority, in the case of absence, inability to act, or conflict of interest on the part of any member of the Board or in the event of a vacancy on the Board.

F. Quorum

Three (3) members shall constitute a quorum for normal business.

G. Meetings

(1) Unless the Board votes to go into executive session, all meetings, both regular and special, shall be open to the public in accordance with M.G.L. Chapter 39, Sections 23A through 23D. Unless an emergency exists, a notice of each Board meeting shall be filed with the Town Clerk, and a notice or a copy thereof shall be publicly posted in the office of said Clerk or on the principal or official bulletin board in the

Town Hall at least forty-eight (48) hours, including Saturdays, but not Sundays and legal holidays, prior to such meetings.

- (2) All decisions and votes taken by the Board shall take place at meetings.
- (3) All meetings, although open to the public, are not all public hearings. The Board will seek information or testimony from the public as it deems necessary. The Chairman may rule unsolicited comments from the public out of order.
- (4) Where possible, a draft of the meeting's minutes shall be transmitted to members of the Board for their review within a reasonable amount of time after the meeting.

H. Regular Meetings

- (1) Regular meetings of the Board are normally held at 7:30 pm on the first and third Monday of each month at the Town Hall Meeting Room. If a regular meeting day falls on a holiday or any day of national, state, or municipal election or caucus or primary or is in conflict with session of town meeting, the regular meeting will be cancelled and instead a special meeting will be held at some proximate and advertised time and place.
- (2) The Chairman, or his/her designate shall draw up the agenda for regular meetings. The Board may entertain items not placed on the agenda under the category "other business".

I. Special Meetings

The Board Chairman, or at least two members may call special meetings. Notice, either written or verbal, thereof shall be given to each member at least forty-eight (48) hours before the time set, or notice at any meeting attended by all members shall suffice. A notice shall be filed with the Town Clerk, and a notice or a copy thereof shall be publicly posted in the office of said Clerk or on the principal or official bulletin board in the Town Hall at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to such meetings.

J. Executive Sessions

The Board may meet in executive session at the suggestion of the Chairman following a roll call vote affirming the suggestion by a simple majority in open session.

§133-6 Waiver of Rules

- A. Strict compliance with this Chapter may be waived when, in the opinion of the Board, such waiver is in the public interest and is consistent with State law and the intent and purpose of the Bylaw and this Chapter.

- B. If a waiver to a filing requirement is being requested, a written request for such waiver shall be made at the time of filing. If an oral request is made at a hearing or meeting, it shall be reduced to and submitted as a written request by the Applicant. Any request from an Applicant for a waiver from these Rules must be submitted, in writing, to the Board prior to the close of the public hearing. Any request for a waiver from the requirements of this Chapter must clearly identify the provision or provisions of this Chapter from which relief is sought and such request must be accompanied by a statement setting forth the reason or reasons why, in the Applicant's opinion, the granting of such a waiver would be in the public interest and consistent with State law and the intent and purpose of the Bylaw and this Chapter.
- C. If a requested waiver is not granted, the time for the submission of the required material or information shall be set by the Board and said material or information shall be received prior to the close of the public hearing. If an extension of the time for conducting the public hearing or rendering a decision is necessary for consideration of this additional material or information, and such extension is not granted by the Applicant upon request of the Board, such refusal may be grounds for denial of the Special Permit or Site Plan Approval.

§133-7 Availability of this Chapter

Copies of this Chapter shall be made available for purchase from the Harvard Land Use Boards, 13 Ayer Road, Harvard, MA 01451, for the price of \$7.00 in the form of cash or a check made out to the Town of Harvard.

ARTICLE II Approval Not Required Plans

§133-8 Governing Laws

- A. Approval Not Required (ANR) Plans are governed by the Subdivision Control Law, M.G.L. Chapter 41, Section 81P and the Code of the Town of Harvard, Subdivision Control Chapter 130. An ANR plan must be one of the four (4) types specified in the exceptions to the definition of "subdivision" in M.G.L. Chapter 41, Section 81L and as summarized in Harvard Subdivision Control, Chapter 130, §130-11, Paragraphs A through C.
- B. Such do not require approval under the Subdivision Control Law because they do not show a "subdivision", as defined in M.G.L. Chapter 41, Section 81L. Any person wishing to record such an "Approval Not Required" (ANR) plan must submit an application to the Board and, if the Board agrees that approval is not required, it must "forthwith, without a public hearing", endorse it, thus allowing it to be recorded at the Registry of Deeds. ANR Approval alone does not endorse a lot as a building lot.

§133-9 Submission and Processing

- A. Plans believed not to require approval (ANR) must be submitted in ten (10) copies to the Town Clerk, on the appropriate application form. This form is available at the Office of the Board or on the Town of Harvard website (www.harvard.ma.us).
- B. Plans submitted as an “ANR” shall meet the content requirement as identified in Harvard Subdivision Control, Chapter 130, §130-10, A through C and as indicated in the application form. The frontage of lots shown on an ANR plan must be one of the four types specified in MGL Chapter 41, Section 81L and meet the frontage requirements of Chapter 130, §130-11, A through C and Chapter 125 of the Code. For hammerhead and backland lots determination that approval is not required shall consider the guidelines provided in Chapter 130, §130-13.
- C. Plans submitted as an “ANR” shall clearly indicate that access is adequate, safe, convenient and readily useable access.
- D. Plans submitted as an ANR for which a Special Permit is required shall be processed in accordance with Chapter 130, §130-12. ANR plans showing a lot of a type that requires a special permit shall not be endorsed until the special permit becomes effective.
- E. The Board will review the plan at a regularly scheduled Board meeting to determine whether an ANR endorsement is warranted. The Board may reject an ANR plan if the Board feels that the application is incomplete or the plan is not entitled to endorsement.
- F. A quorum of three (3) members of the Board must be present. The signatures of three (3) members endorsing approval are necessary to endorse an ANR plan.

§133-10 Hearing

A public hearing is not required for endorsing ANR plans.

§133-11 Period for Action

From the day an Applicant submits an ANR plan to the Town Clerk, the Board has twenty-one (21) days to act. Failure to act means the plan is endorsed by default, a so-called “constructive” endorsement.

§133-12 Filing

- A. If the Board determines the plan does not require review under the Subdivision

Control Law, at least three (3) members (majority of the Board) shall sign and date the original. However, the Board may authorize one (1) member to endorse such plans in the name of the Board. The applicant retains the original and records it at the Registry of Deeds.

- B. The Board retains one (1) copy of the submitted plan for file and distributes copies to the Board of Assessors, the Town Clerk, Building Inspector and the Department of Public Works. The Board is not required to issue a notification of endorsement; the signed plan suffices.
- C. If the Board determines the plan does require review under the subdivision control law, the Clerk of the Board shall notify the Applicant and the Town Clerk in writing, citing the reason for the determination, and place a copy in the Board's files.

§133-13 Appeals

If the Board determines that an ANR endorsement is not warranted, the Applicant may amend the ANR plan and submit a new application or may appeal the Board's decision in accordance with the MGL Chapter 41, § 81BB within 20 days from the date the decision is recorded with the Town Clerk.

ARTICLE III Subdivision Plans

§133-14 Governing Laws

- A. Subdivision Plans are governed by the Subdivision Control Law, MGL Chapter 41, § 81 through 81GG and the Code of the Town of Harvard, Subdivision Control, Chapter 130. A Subdivision Plan must be acted upon by the Board in the manner provided in M.G.L. Chapter 41, § 81O, 81T, 81U and 81V.
- B. The division of land into certain alternative lot types requires a Special Permit under MGL Chapter 40A, Section 9 and Town Code, Chapter 130, §130-12 from the Board. These alternative lot types include Type 2 (hammerhead), Type 4 (backland) and Type 5 (lots in a mini-subdivision). Reference Article IV of this Chapter.

§133-15 Submission and Processing

- A. Plans must be submitted on the appropriate application form. This form is available at the Office of the Board or on the Town of Harvard website (www.harvard.ma.us). Seventeen (17) copies of the application shall be submitted to the Office of the Harvard Town Clerk during posted business hours. The Applicant may request and shall be entitled to a written receipt for the materials submitted. The date of filing shall be considered the date upon which the application has been delivered to or received by the Harvard Town Clerk as required in these Rules.

- B. The applicant will be required to pay a local newspaper of general circulation for the current cost of advertising the hearing. The applicant will be billed directly from the newspaper for the cost of the advertised hearing.

- C. Plans submitted shall meet the content requirement as identified in Harvard Subdivision Control, Chapter 130, §130-10, A through C and as indicated in the application form.

- D. A quorum of three (3) members of the Board must be present. An affirmative vote of three (3) members of the five (5) member Board is necessary to approve a subdivision plan.

§ 133-16 Hearing

Before the Board can decide on an Application for a Subdivision of Land, a public hearing must be held as described in Article VIII of this Chapter.

§ 133-17 Period for Action

The Board shall hold a public hearing within ninety (90) days from the time that an application is filed to render a decision on a residential subdivision plan preceded by a preliminary plan and one-hundred-thirty-five (135) days to render a decision on such a plan not preceded by a preliminary plan. The period within which final action shall be taken may be extended by written agreement between the Board and the Applicant and a copy is filed with the Town Clerk.

ARTICLE IV Special Permits

§133-18 Governing Laws

- A. Special Permits are governed by MGL Chapter 40A, Sections 9 and 11 and Bylaw §125-46

- B. Special Permits are required for the division of land using Type 2 (hammerhead), Type 4 (backland) and Type 5 (for use in mini-subdivisions) lots, driveways over 500 feet, major buildings (over 150 ft in length), wireless communications towers, golf courses, commercial development and development under the Open Space and Conservation – Planned Residential Development and Ayer Road Village District sections of the Bylaw.

- C. The purpose of the Open Space and Conservation provision is to permit high-quality residential development that preserves open space, water resources, wetlands,

habitat, prime agricultural land, scenic landscapes and natural features, reduces infrastructure and site development cost, and promotes diversity of housing opportunities with the Town, while respecting and enhancing neighborhoods, and promoting attractive standards of appearance and aesthetics consistent with Town character.

- D. The purpose of the Ayer Road Village Special Permit is to provide an opportunity to present viable alternatives to conventional commercial sprawl-type development and encourage the merging of smaller parcels into well-planned sites to meet the objectives described in Chapter 125 §125-52 of the Bylaw. In order to promote these objectives the Board may more flexibly apply dimensional regulations and site standards as set forth in Chapter 125 §125-52 B through H of the Bylaw.

§133-19 Submission and Processing

- A. A complete application for a Special Permit shall be submitted on the appropriate application form. This form is available at the office of the Board or on the Town of Harvard website (www.harvard.ma.us). In the case where the Applicant is a person other than the record owner of the property, the Applicant shall be required to submit as part of the application written certification executed by the record owner of the property that the application is submitted with the knowledge and consent of the record owner.
- B. All information required by the application form as part of an Application for a Special Permit shall be furnished by the Applicant in the manner prescribed in this Chapter and by such form unless a waiver is requested and granted by the Board. Any Petition for a Special Permit shall include a Site Plan prepared by a registered engineer and land surveyor drawn at a scale of 1" = 40' or such other as the Board may require to show details clearly and adequately. The Site Plan must be plainly marked a "Site Plan" and shall be clearly and legibly drawn in dark lines on a white background, or a similar medium acceptable for filing with the Registry of Deeds or Land Court to fully detail and explain the intentions of the Applicant. The details and contents of a plan where not otherwise specifically set forth herein may be provided in accordance with the requirements of the Subdivision Rules and Regulations.
- C. Application copies shall be of standard size, no larger than 30" X 42". Each copy of the Application shall be folded so that it will fit neatly into a letter-sized file folder.
- D. A list of abutters and abutters to abutters within 300 feet that are Parties in Interest as defined in these Rules, taken from the most recent tax list of the Town and certified by the Assessors' Office, shall be included in the submission of the application. The Applicant shall pay any charges required by the Assessors' Office for the list.
- E. Seventeen (17) copies of the application shall be submitted to the office of the Harvard Town Clerk during posted business hours. Submittals must be collated and assembled as seventeen (17) individual and complete "packages." The Applicant may request and shall be entitled to a written receipt for the materials submitted. The

date of filing shall be considered the date upon which the application has been delivered to or received by the Harvard Town Clerk as required in these Rules.

- F. Upon receipt of an Application, the Board shall transmit forthwith a copy of the application to the Building Inspector, Board of Selectmen, Fire Department, Board of Health, Police Department, Engineering Consultant, Highway Director, Conservation Commission and Historic Commission.
- G. An affirmative vote of four (4) members of the Board shall be necessary to grant a special permit. Only members who have attended the public hearing, including any continuations thereof, may vote. However, in accordance with MGL Chapter 39, Section 23D, a member of the Board, when holding an adjudicatory hearing, shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. This shall change, replace, negate or otherwise supersede applicable quorum requirements. A failure of the Board to achieve the required vote shall be deemed a denial of such Application.

A. Fees

1. Any Application for a Special Permit shall include a fee to cover the expenses incurred by the Town in reviewing the Application. The cost of reviews by a consulting engineer for the Town shall be paid separately. The fee is not refundable. The fee shall be submitted in check form and made payable to "Town of Harvard". The amounts of the fee are established on the application form.
2. The applicant will be required to pay a local newspaper of general circulation for the current cost of advertising the hearing. The applicant will be billed directly from the newspaper for the cost of the advertised hearing.
3. If a deficiency in the Application or a difficulty with a particular site requires, in the opinion of the Board, that the public hearing be continued to a date to be determined some time in the future, requiring the re-advertisement of the legal notice and pending the submission of additional information by the Applicant, then the Applicant may, at the discretion of the Planning Board, be required to pay an additional fee of not more than \$100.00 prior to the close of the public hearing for each such continuation. The fee shall be submitted in check form and made payable to "Town of Harvard".

B. Contents of Application

The Application shall contain a detailed description of the proposed use. In the case where the Applicant cannot commit to a particular use at the time that an Application for a Special Permit is made, the Applicant must provide the Board with a description of the possible uses to which the facility may be put as allowed by the Bylaw.

The Applicant shall list and provide copies of all variances, permits, and other special permits or site plan approvals previously issued by Town Boards or State and Federal agencies, and a list of any variances or permits required to complete the proposed work. This list should include but not be limited to any permits from the Board of Health, the Conservation Commission, the Board of Appeals, the Board of Selectmen, the Department of Public Works, the Army Corps of Engineers, Mass Highway and the Department of Environmental Protection; and certificates issued by the Secretary of Environmental Affairs under the Massachusetts Environmental Policy Act.

If any other permits are required, the Applicant is strongly advised to make the applications for such additional permits concurrent with this Application.

A copy of the most recently recorded plan/s for the lot(s) on which the work will take place bearing the book number(s), page number/s, and date/s of recording/s or registration(s) shall be submitted.

The Development Impact Statement shall be completed in its entirety and shall be submitted as part of the Application.

An Application for a Special Permit that lacks information or is incomplete in any manner may be denied or significantly delayed. It is the responsibility of the Applicant to assure the accuracy, thoroughness and completeness of all information submitted to the Board as part of an Application for a Special Permit.

The Applicant shall be responsible for factually supporting all points relied upon in the Application concerning the proposal, including without limitation references for methodologies used in design calculations.

The Board is empowered to require information in addition to that specifically required by the Bylaw or by this Chapter. The Board will require the Applicant to supply additional information if it finds that such information is necessary to properly and responsibly act upon the Application.

C. Consultants

So that the Board may make the findings required under the Bylaw and ensure that the public safety will be protected, the Board may hire outside traffic, engineering, legal or planning consultants to review an Application. To cover the cost of these reviews a review fee deposit may also be required of an applicant at the time of submission or at any appropriate time in the review process. As the scope of the study and review will vary according to the size or a particular project, the Applicant is hereby strongly advised to consult the Board concerning the scope and cost of any such studies during the preliminary review or prior to the submittal of an application. Failure to do so could result in serious delays in the processing of an Application.

Some projects may require additional fees to cover further study if significant impacts or problems are found in the initial review. Any amount of the deposits remaining after the issuance of building permits for the proposed construction plus any remaining accrued interest will be repaid to the Applicant or the Applicant's successor in interest.

The Applicant may appeal the selection of an outside review consultant to the Board of Selectmen. If no decision is made by the Board of Selectmen within thirty (30) days following the filing of an appeal, the selection of the Board stands. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications of an educational degree in or related to the field at issue or three (3) or more years of practice in the field at issue or a related field. The Applicant must specify the specific grounds that the Applicant claims constitute a conflict of interest or a failure to meet minimum professional requirements.

§133-20 Hearing

Before the Board can decide on an Application for a Special Permit, a public hearing must be held as described in Article VIII of this Chapter.

§133-21 Period for Action

The Board shall hold a public hearing within sixty-five (65) days of the application being filed with the Town Clerk, and shall render a decision within ninety (90) days following the close of the public hearing. The period within which final action shall be taken may be extended by written agreement between the Board and the Applicant and a copy is filed with the Town Clerk.

§133-22 Contents of Decision and Notice of Decision

- A. The Board shall send a full copy of its Decision to the property owner and the Applicant if other than the property owner, the Town Clerk, Building Inspector, Board of Selectmen, Fire Department, Board of Health, Police Department, Engineering Consultant, Highway Director, Conservation Commission, Assessor's and Historic Commission.
- B. The Board may require that security be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized by or required under an Application for a Special Permit.

§133-23 Filing

- A. Within fourteen (14) days of its vote, and prior to the end of the ninety (90) day period, the Board will file a copy of its decision, with the Town Clerk.

- B. The Board will forthwith mail a notice of its decision to the owner, to the Applicant if other than the owner, to the parties in interest, and to those persons present at the public hearing who asked the decision be sent to them.
- C. The Applicant will be responsible for recording the full copy of the Special Permit Decision in the Worcester District Registry of Deeds and for paying any required recording fees. A copy of the recorded Decision, certified by the Registry of Deeds, must be submitted to the Board and the Building Inspector at the time of applying for a building permit. No construction shall be allowed to begin at the site that was the subject of the Decision until evidence, satisfactory to the Building Inspector, has been presented to the Building Inspector that the Permit in question has been duly recorded as required herein.

§133-24 Appeals

- A. Any person aggrieved by the decision of the Board, whether or not previously a party to the preceding, may appeal in accordance with MGL and Bylaw §125-48.
- B. An appeal shall be made within twenty (20) days after the decision has been filed with the Town Clerk. Notice of the appeal and a copy of the complaint shall be filed with the Town Clerk so as to be received within the twenty (20) day appeal period.

§133-25 Effective Conditions

- A. Where a Special Permit is granted by the Board, all other permits for the execution of the work shall be obtained and substantial use thereof shall be commenced, except for good cause, or construction begun, except for good cause, within two (2) years from the date of filing of the Board's Decision with the Town Clerk, unless the Board otherwise provides for a different period of time in the Permit. Said time shall not exceed two (2) years.
- B. The Board may grant a reasonable extension of said time where good cause is shown after a public hearing has been conducted. Such extension or extensions shall not exceed two (2) years beyond the original expiration date of the Special Permit. Said extension shall be submitted in writing to the Board and filed with the Town Clerk sixty (60) days prior to the expiration of the Special Permit.

§133-26 Withdrawal

An Applicant may submit a request to withdraw an application without prejudice for consideration by the Board. Request must in writing, addressed to the Board's Chairman, and filed with the Town Clerk. The Board, at its discretion may grant or deny the request. No refund of fees will be provided if an Application is withdrawn.

§133-27 Repetitive Application

No Application which has been unfavorably and finally acted upon by the Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless

four (4) members of the Board vote to find that specific and material changes in the conditions upon which the previous unfavorable action was based have occurred and describe such changes in the records of the Board's proceedings, and at least all but one member of the Board consents to the consideration of the matter.

§133-28 Amendments

- A. A previously granted Special Permit may be amended upon filing of a new Application to the Board. The Board shall determine whether any request for further alterations to a site constitutes a minor modification and therefore does not require an amendment to the Special Permit.
- B. Unless the original Permit specifically allows certain modifications or alterations without the necessity of a new public hearing, all requests for amendments shall require a new public hearing to be advertised and conducted in accordance with this Chapter.
- C. All of the requirements applicable to a Special Permit shall be applicable to an amendment to a Special Permit. Because of the variety of amendments which are possible, Applicants are advised to inquire whether they will need to submit any plans, reports or other information in addition to those submitted at the time the original Special Permit was petitioned for. If any plans, reports or other information is required, then such plans, reports or other information will comply with the requirements set forth in this Chapter
- D. Amendments to an existing Special Permit may take many forms. Some amendments may be quite simple while others could be quite complex. In each case where an amendment to an existing Permit is sought, the Applicant may request that the Board reduce the application fee required by this Chapter. Failure to pay the required fee(s) in a timely manner may be considered due cause to deny the requested amendment.

ARTICLE V Site Plan Review/Approval

§133-29 Governing Laws

Site Plan review and approval is governed by the Protective Bylaw, Chapter 125, §125-38, Site Plans and is required for any commercial or business use and most institutional uses as described in Chapter 125 §125-12, -13 and -14, uses subject to a special permit, driveways more than 500 feet in centerline length as described in Chapter 125 §125-39B, other uses subject to Chapter 125 §125-39 Site Standards, or other use as provided for in the Bylaw.

§133-30 Submission and Processing

- A. A complete application for a Site Plan Review/Approval shall be submitted on the appropriate application form. This form is available at the office of the Board or on the Town of Harvard website (www.harvard.ma.us). In the case where the Applicant is a person other than the record owner of the property, the Applicant shall be required to submit as part of the application written certification executed by the record owner of the property that the application is submitted with the knowledge and consent of the record owner.
- B. Seventeen (17) copies of the application shall be submitted to the office of the Harvard Town Clerk during posted business hours. Submittals must be collated and assembled as seventeen (17) individual and complete “packages”. The Applicant may request and shall be entitled to a written receipt for the materials submitted. The date of filing shall be considered the date upon which the application has been delivered to or received by the Harvard Town Clerk as required in these Rules.
- C. Upon receipt of a site plan for review/approval , a copy shall be provided to other interested Town Boards, officials and departments for advice and recommendations.
- D. Site plans shall show information in sufficient detail to allow the Board to determine compliance with the Protective Bylaw as indicated in the Protective Bylaw, Chapter 125, §125-38, D, Content, related provisions of law, and any additional requirements included in this Chapter. A Landscape Plan shall be included with the Site Plan submission and meet the requirements of Chapter 125, §125-38 G.
- E. In accordance with Chapter 125 §125-31 any driveway more than 500 feet in centerline length shall be constructed in accordance with §125-39B, shall not be constructed without a site plan approval and appropriate inspections by the Board’s driveway inspector. Fees for such inspection, as described in the application form, shall be paid by the Applicant. An occupancy permit or use of the premises is permitted only upon receipt of a written statement from the Board or its agent that the driveway has been constructed in accordance with an approved site plan and that an “as built has been filed with and approved by the Board or its agent.
- F. Site plan applications for proposed development in a Commercial “C” District shall also include renderings in accordance with Protective Bylaw 125, §125-38 F.
- G. The Board may impose conditions on the approval of a site plan. Any conditions must be furnished the applicant in writing. Any associated building permit and a certificate of occupancy shall not be issued until such conditions have been met. Where a site plan as submitted requires revision, deficiencies shall be clearly indicated in writing to the Applicant. However, the site plan approval shall not be granted until all required changes have been incorporated on a resubmitted plan.
- H. A quorum of three (3) members of the Board must be present for a site plan review. A majority of the quorum is necessary to grant approval of a site plan.

§133-31 Hearing

A public hearing is not required for site plan review or approval, although the review must be included in the Board's agenda and in any particular instance the Board may choose to solicit public comment.

§133-32 Period for Action

- A. Final action on a site plan review shall occur within ninety (90) days of filing with the Town Clerk, unless such time period is extended by mutual written agreement of the Board and the Applicant. Review and approval of a site plan and special permit application relative to the same property may be conducted concurrently.
- B. Site plan approval shall expire if any work there under is not begun within two (2) years after approval and diligently carried through to completion.

§133-33 Appeals

- A. Any person aggrieved by the decision of the Board, whether or not previously a party to the preceding, may appeal in accordance with M.G.L.

§133-34 Enforcement

Where site plan approval is required, the Town Building Inspector shall issue a building permit only on receipt of an approved site plan, and any other related approvals from other Boards that might be tied to a site plan approval shall be conditional upon an approved site plan. A certificate of occupancy shall not be issued until all improvements required by an approved site plan have been provided.

**ARTICLE VI
Scenic Road Consent**

§ 133-35 Governing Laws

Scenic Road Consents are governed by M.G.L. Chapter 40, § 15C and General Bylaw, Chapter 90, Scenic Roads. It should be noted that most roads within the Town of Harvard have been designated as Scenic Roads. A complete list can be found in the General Bylaw, Chapter 90, Scenic Roads.

§ 133-36 Submission and Processing

- A. A Scenic Road Consent is required when any of the following work is to be performed on any Road, including the Right of Way, designated a Scenic Road:
 - (1) Any repair, maintenance, or re-construction work done on the Road or within the Right of Way that would involve or include the cutting or removal of trees or the

tearing down or destruction of stone walls, or portions of a stone wall within the Right of Way.

- (2) The addition, repair, maintenance or reconstruction of any driveway located on a Scenic Road that would involve or include the cutting or removal of trees or the tearing down or destruction of stone walls, or portions of a stone wall within the right of way.
- (3) If the boundaries of the Right of Way cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree(s) or stone wall(s) is within the right of way, it shall be taken to be within the right of way until the contrary is shown.

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 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. If, upon determination that Scenic Road Consent is required, any person, organization, State or municipal agency seeking the consent for the cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof, in connection with the repair, maintenance, reconstruction or paving work on Scenic Roads shall submit an application for Scenic Road Consent to the Board, on the appropriate application form together with the following in seventeen (17) copies and the application fee. The application form is available at the office of the Planning Board or on the Town of Harvard website (www.harvard.ma.us).

- (1) A written description and plans or drawings showing the location and the nature of the proposed disturbance area. The location description should enable readers to locate it with reasonable specificity on the ground without the need for additional plans or references.
- (2) A statement explaining the purpose and need for the cutting or removal of a tree(s) and the identification of said tree(s) or the tearing down or destruction of stone walls, or portions thereof, in the proposed disturbance area.
- (3) A statement outlining possible alternatives, proposed compensatory actions, and mitigation measures including restoration, to the proposed cutting or removal of a tree(s) or the tearing down or destruction of stone walls, or portions thereof.
- (4) A list, certified by the Assessor's office, of abutters.
- (5) Except in the case of town agencies, a Scenic Road Consent fee as specified on the Board's application form made payable to the Town of Harvard.
- (6) Photographs of all stone walls and trees within and adjacent to the proposed disturbance area prior to any work.
- (7) Any other explanatory material useful to adequately inform the Board and Tree Warden prior to the public hearing.

D. The applicant will be required to pay a local newspaper of general circulation for the current cost of advertising the hearing. The applicant will be billed directly from the newspaper for the cost of the advertised hearing.

- E. The Board may consider the following in determining whether to grant a Consent:
- (1) Public Safety, including accident history within five hundred (500) feet of trees and stone walls at issue.
 - (2) Scenic and aesthetic characteristics of the area, quality, extent of shade and tree canopy and compatibility with surrounding neighborhood.
 - (3) Preservation of natural, historical, cultural and environmental conditions.
 - (4) Comments contributed by the Tree Warden, other town boards, abutters and other interested parties.
 - (5) Other sound planning principals and considerations.

§ 133-37 Hearing

Before the Board can decide on an Application for a Scenic Road Consent, a public hearing must be held as described in Article VIII of this Chapter. The Board may hold a joint hearing with the Tree Warden. If a joint hearing is held, advertisement of the hearing shall indicate that a joint hearing of the Board and the Tree Warden is being held.

§ 133-38 Period for Action

- A. The Board shall hold a public hearing within forty-five (45) days from the date the Application is received by the Board unless a longer period of time is agreed to by the Applicant.
- B. The Board shall render a decision to issue or deny a Scenic Road Consent no later than forty-five (45) days after the close of the public hearing.

§ 133-39 Filing of Decision

Within fourteen (14) days of its vote, and prior to the end of the forty-five (45) day period, the Board shall file a copy of its decision with the Town Clerk.

§ 133-40 Appeals

A decision of the Board may be appealed in accordance with M.G.L. Chapter 249, Section 4.

§ 133-41 Enforcement

- A. The Board, Building Inspector, Tree Warden, Department of Public Works Director or others designated by the Town Administrator may issue a citation for the violation of the Rules set forth in this Article VI.
- B. Violation of these Rules may be fined through non-criminal disposition in accordance with MGL Chapter 40 Section 21D in accordance with the Code of the Town of Harvard, Chapter 90, §90-6.

ARTICLE VII

Protective Bylaw Amendments

The Bylaw and Zoning Map contain the regulations for determining what type of development is permitted throughout Town. The Board plays a pivotal role in amending them. This article outlines the steps that must be followed to make successful amendments. To avoid having an amendment disapproved due to a procedural mistake, strict adherence is required to the process established by State law for enacting zoning changes.

§ 133-42 General Information

Pursuant to M.G.L. c. 40A, Section 5, a zoning bylaw amendment may be proposed at any time and be placed on the warrant of a special or annual Town Meeting. Proposals that will have a significant impact on the Town should be presented well in advance of Town Meeting to allow for careful consideration by local officials and the general public.

§ 133-43 Origination

Amendments may be submitted by:

- (1) The Board of Selectmen
- (2) The Zoning Board of Appeals
- (3) An individual owning land affected by the proposal
- (4) Ten or more registered voters for consideration at an annual Town Meeting
- (5) One hundred (100) or more registered voters, or ten percent of the total number of registered voters, whichever is less, for consideration at a Special Town Meeting
- (6) The Planning Board
- (7) A Regional Planning Agency

§ 133-44 Steps Required to Ensure Legal Acceptance

A. Each of the following steps must be followed precisely. The Board should document each step as it happens because such documentation is required when the revised By-Law is submitted by the Town Clerk to the Attorney General for approval. The requisite documentation is described below.

- (1) An amendment is initiated by submitting the proposed Bylaw or Zoning Map change to the Board of Selectmen in the form of an article for Town Meeting. (Document

who initiated the amendment proposal and when it was submitted to the Board of Selectmen).

- (2) The Board of Selectmen has fourteen (14) days to submit the proposal to the Board for its review. (Retain a copy of the Selectmen's transmittal memo to the Board).
- (3) The Board must hold a public hearing within sixty-five (65) days of its receiving the proposal. Notification of the hearing must be advertised, posted and mailed to certain parties as described below. The hearing notice must contain the following information:
 - (a) The time, date and place of the public hearing
 - (b) The subject matter of the hearing "sufficient for identification". This must contain enough detail so the reader can make an informed decision on whether to attend the hearing or Town Meeting.
 - (c) The place where the texts and maps may be inspected. (Retain a copy of the hearing notice.)
- (4) The Board must advertise the hearing notice in a local paper in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing. Do not include the date of the publication when counting the fourteen (14) days. (Document the name of the paper and the dates of publication).
- (5) The Board must post the hearing notice in the Town Hall for a period of not less than fourteen (14) days before the date of the hearing. (Document when the notice was posted.)
- (6) No more than six (6) months can elapse between the hearing and the Town Meeting vote on the zoning change.
- (7) The town meeting warrant must be properly posted: seven (7) days before an annual town meeting, fourteen (14) days before a special Town Meeting.
- (8) The Public Hearing must be held at least twenty-one (21) days before the Town Meeting. If not, the Board must submit a report with recommendations or else the amendment cannot be acted upon. The report of the Board is advisory only, but usually carries considerable weight at Town Meeting since it is the Board's responsibility by law with thoroughly evaluating all aspects of the proposal and considering its overall impact on the Town. In its review, the Board may wish to revise the original proposal to take into account testimony received at the hearing or for a variety of other reasons. In its report to Town Meeting, the Board may recommend amendments to the original proposal without another public hearing if the fundamental character and identity of the proposal are not changed but are designed merely to

perfect the proposals.

- (9) A two-thirds (2/3's) vote at Town Meeting is required for adoption of a zoning bylaw amendment. Town Meeting may amend the original proposal without a new notice, public hearing, and Board report unless the Town Moderator rules that the amendment is outside the scope of the Article or the amendment:
 - (a) changes the identity or substantial character of the original proposal;
 - (b) fundamentally departs from the original proposal;
 - (c) radically differs from the original proposal
- (10) If the proposed amendment is not favorably acted upon by Town Meeting, it may not be brought back for a period of two (2) years, unless adoption is recommended in the final report of the Board.
- (11) Within thirty (30) days of adjournment of the Town Meeting in which an amendment was adopted, the Town Clerk must submit to the Attorney General a certified copy of the amendment, a statement explaining the Bylaw or Zoning Map change (may be prepared by the Board), and proof that all of the procedural requirements have been followed. The Attorney General has ninety (90) days after submission by the Town Clerk to act on the amendment; if ninety (90) days lapse without action by the Attorney General, the Bylaw is deemed approved, unless said 90-day period is extended in accordance with law.
- (12) After the proposal has received the approval of the Attorney General, it must be published in a town bulletin or pamphlet and be posted in at least five (5) public places in the Town, or the amendment can be published twice at least one week apart in a newspaper of general circulation in the Town. (M.G.L. Chapter 40, Section 32)

§ 133-45 Effective Date

A zoning bylaw amendment legally takes effect immediately upon adoption by Town Meeting. The Attorney General, after receiving notification of the amendment, has ninety (90) days to approve or disapprove the amendment, unless said 90-day period is extended in accordance with law. The Attorney General may invalidate the amendment in full or in part if it is inconsistent with the constitution of laws of the Commonwealth or if procedures required by law were not followed.

ARTICLE VIII Hearings

§ 133-46 Notice

A. Before any public hearing is held, parties in interest must be notified. The details of this notification vary depending on the hearing's purpose. Hearings are required for the following actions:

- (1) Special permits, reference § 133-20
- (2) Subdivisions, reference § 133-16
- (3) Bylaw Amendments, reference § 133-44
- (4) Scenic Road Consents, reference § 133-37
- (5) Site Plans, reference §133-31

B. Notice of the hearing shall be published by the Board in a newspaper of general circulation once in each of two (2) successive weeks. The first such publication shall appear not less than fourteen (14) days before the day of the hearing and a copy of the notice shall be posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the date of the hearing. The day of the hearing shall not be counted as one of the required fourteen days.

The applicant will be required to pay a local newspaper of general circulation for the current cost of advertising the hearing. The applicant will be billed directly from the newspaper for the cost of the advertised hearing.

C. In addition, the Board shall send copies of the notice to all Parties in Interest at least fourteen (14) days prior to the date of the public hearing.

§ 133-47 Hearing to be Public

All hearings shall be open to the public. No person shall be excluded unless he/she is considered by the Chairman to be a serious hindrance to the workings of the Board

§ 133-48 Representation and Absence

An Applicant may appear in his/her own behalf, or be represented by an agent or an attorney. In the absence of any appearance on behalf of an applicant, the Board shall decide on the matter using the information it has otherwise received.

§ 133-49 Order of Business

A. The objective of a public hearing is to provide parties in interest the opportunity to have their opinion heard by a public decision-making body. In order to encourage informed opinions, it is important that the petition in question be presented to the public in a thorough but concise manner, unduly lengthy presentations do not inform the public any better than short, concise, accurate presentations. Also, lengthy presentations often take up the time that could be better used by the public to provide its comment. Therefore, the following conduct of a hearing is intended to promote a well-prepared, brief, and accurate presentation of the petition, thereby providing the

public with maximum opportunity to speak on issues of concern. Any party whether entitled to notice thereof or not may appear in person, by agent or by attorney.

- B. The hearing shall start no earlier than the time specified in the printed notice.
- C. The Chairman will open each hearing by reading the notice as published and providing an explanation of procedures the hearing will follow.
- D. The Applicant will then present his/her petition. The Chairman shall not allow any person in attendance, including members of the Board, to interrupt the Applicant during the presentation.
- E. Upon conclusion of the presentation by Applicant the Chairman will allow members of the Board to ask questions of the spokesperson related to any points made during the presentation. In addition, members of the Board may direct appropriate questions at any point during the hearing.
- F. Upon completion of questions from the Board, the Chairman will allow all those present to speak on the matter under consideration. Upon recognition by the Chairman, individuals shall give their name and address before proceeding with their questions or comments. Questions or comments shall be directed to the Chairman and not directly to the Applicant, the Applicant's representative or any other persons with the express permission of the Chairman.
- G. No cross-examination will be allowed, although questions seeking information and deemed relevant by the Chairman may be allowed at the discretion of the Chairman.
- H. Rebuttals may only be allowed at the discretion of the Chairman.
- I. When all the facts have been presented and all persons wishing to speak on the application have been heard, the Board shall close the public hearing and inform the Applicant and others present that the Applicant will be notified, by certified mail, of the Board's decision.
- J. If new information is to be made available, the public hearing must be continued to another time with proper notice given to allow interested parties the opportunity to review and comment on such matters.

§ 133-50 Continuance of Public Hearing

The Board may continue a public hearing if the Board finds that the continuance is necessary or appropriate to allow the Applicant or others to provide additional information. In such a case, the Chairman shall announce to those present, prior to the adjournment of the hearing, the specific date, time, and place where the hearing will be continued, and the subject matter to be discussed at the continued hearing. The Board may require the Applicant to re-advertise where it deems such an action to be in the public interest.

§ 133-51 Clarifications and Additional Material

In no case shall the Board allow new evidence to be admitted after the close of the public hearing. However, written information may be submitted after the close of the public hearing provided the information does not contain new evidence and is intended to clarify existing factual evidence. In any case, the Board shall have the right to refuse admission or receipt of information that, in the Board's opinion, constitutes new evidence or which is otherwise deemed inappropriate.