

Code of the Town of Harwich

COUNTY OF BARNSTABLE
COMMONWEALTH OF MASSACHUSETTS

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PREFACE

The Town of Harwich has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the Town, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more detailed legislation for the proper function and government of the Town. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the Town Meeting ordered the following codification of the Town's legislation.

Contents of Code

The various chapters of the Code contain the Town General Bylaws and Zoning Bylaw, as well as certain rules and regulations adopted by various boards, commissions, departments and/or agencies which were deemed to be general and permanent in nature and appropriate for inclusion in the volume.

Organization of the Publication

This publication is divided into two major divisions. The first division includes the Charter of the Town. The second division includes all legislation of a general and permanent nature as Parts I, II and III. Part I contains the General Bylaws of the Town; Part II contains the Zoning Bylaw; and Part III contains regulations adopted by Town boards and agencies, such as the Planning Board.

Histories

At the end of the Scheme (list of section titles) in each chapter is located the legislative history for that chapter. This History indicates the specific legislative source from which the chapter was derived, including the enactment number (e.g., ordinance number, local law number, bylaw number, resolution number, etc.), if pertinent, and the date of adoption. In the case of chapters containing parts or articles derived from more than one item of legislation, the source of each part or article is indicated in the text, under its title. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of General References is included to direct the reader's attention to such related chapters. Editor's Notes are

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used in the text to provide supplementary information and cross-references to related provisions in other chapters.

Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are germane to the conduct of municipal government. The Appendix of this publication is reserved for such legislation and for any other material that the community may wish to include.

Derivation Table

In order to assist Code users in the transition to the new Code's organization, the Derivation Table indicates where articles and sections of the 2004 General Bylaws have been included in the 2009 Code, or the reason for exclusion.

Disposition List

The Disposition List is a chronological listing of legislation, indicating its inclusion in the publication or the reason for its exclusion. The Disposition List will be updated with each supplement to the Code to include the legislation reviewed with said supplement.

Index

The Index is a guide to information. Since it is likely that this publication will be used by persons without formal legal training, the Index has been formulated to enable such persons to locate a particular section quickly. Each section of each chapter has been indexed. The Index will be supplemented and revised from time to time as new legislation is added.

Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or additions, should be adopted as amendments to the Code. In doing so, existing material that is not being substantively altered should not be renumbered.

Adding new sections. Where new sections are to be added to a chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g., a new section between §§ 65-5 and 65-6 should be designated § 65-5.1).

Adding new chapters. New chapters should be added in the proper alphabetical sequence in the appropriate division or part, utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the Table of Contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices,

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Coin-Operated" under "A" in the Table of Contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 166 and 167 should be designated Chapter 166A).

Adding new articles. New articles may be inserted between existing articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" articles (e.g., a new article to be included between Articles XVI and XVII should be designated Article XVIA). The section numbers would be as indicated above (e.g., if the new Article XVIA contains six sections and existing Article XVI ends with § 166-30 and Article XVII begins with § 166-31, Article XVIA should contain §§ 166-30.1 through 166-30.6).

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as possible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

Acknowledgment

The assistance of the Town officials is gratefully acknowledged by the editor. The codification of the legislation of the Town of Harwich reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code that this publication will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

TABLE OF CONTENTS

Tools for Finding Information – In addition to the municipality's legislation, this publication contains tools to help locate information: table of contents, index, chapter outlines (schemes), and a disposition list.

Chapters – Chapters are generally discrete pieces of legislation but can also be made up of several individual pieces on a related topic. In that case, the individual pieces are arranged into articles or parts within the chapter. If you are familiar with a former number or title, look for it chronologically in the disposition list.

Reserved Chapters – In the numbering of chapters, space has been provided for the convenient insertion, alphabetically, of later enactments. Help in selecting an appropriate number for a new chapter is available from the editor. See also the "Instructions for Amending the Code" in the Preface.

Section Numbering – A chapter-related section-numbering system is employed. Each section of every item of legislation is assigned a number, which indicates both the number of the chapter in which the item of legislation is located and the location of the section within that chapter. Thus, the fourth section of Chapter 6 is § 6-4.

Scheme – The scheme is the list of section titles that precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the scheme titles are repeated as section headings in the text.

Page Numbers – A unique page-numbering system has been used in which each chapter forms an autonomous unit. The first page of each chapter is the number of that chapter followed by a colon and the numeral "1." Thus, Chapter 6 begins on page 6:1. By the use of this system, it is possible to add or to change pages in any chapter, or add new chapters, without affecting the sequence of subsequent pages.

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CHAPTER 18 OF THE ACTS OF 2006

AN ACT RELATIVE TO THE CHARTER OF THE TOWN OF HARWICH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. The following shall be the charter of the town of Harwich:

TOWN OF HARWICH CHARTER

PREAMBLE

We, the people of the town of Harwich, Massachusetts, in order to reaffirm the customary and traditional liberties of the people with respect to the conduct of local government and to take the fullest advantages inherent in the home rule amendments to the constitution of the commonwealth, do hereby adopt the following charter for this town.

CHAPTER 1. TOWN INCORPORATION, FORM OF GOVERNMENT, AND POWERS

Section 1. Incorporation

1-1-1 The present town of Harwich, within its territorial limits as now or as may hereafter be established by law, is hereby continued as a body corporate and politic with perpetual succession under the name: Town of Harwich.

Section 2. Form of Government

1-2-1 This charter provides for an open town meeting-board of selectmen-town administrator form of town government, and it shall be known by the title: Harwich Charter.

Section 3. Scope and Construction of Town Powers

1-3-1 The town shall possess, exercise, and enjoy all powers possible under the constitution and statutes of the commonwealth as completely and fully as though they were expressly enumerated in this act.

Section 4. Construction of Charter

1-4-1 The powers of the town under this charter shall be construed liberally in favor of the town, and the specific mention of particular powers in the charter shall not be construed as limiting in any measure the general powers of the town as stated in this chapter.

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Section 5. Severability

1-5-1 If any provision of this charter is held invalid, the other provisions of the charter shall not be affected by that holding. If the application of this charter to any person or circumstance is held invalid, the application of this charter to other persons and circumstances shall not be affected by that holding.

Section 6. Intergovernmental Relations

1-6-1 Consistent with the provisions of law, the town may exercise any of its powers, perform any of its functions, or participate in the financing thereof, by contract or otherwise, jointly or in cooperation with any 1 or more municipalities, civil divisions, subdivisions, or agencies of the commonwealth, other states, or the United States government.

CHAPTER 2. TOWN MEETING

Section 1. Organization and Powers

2-1-1 The legislative powers of the town shall be exercised by a town meeting open to all registered voters of the town.

2-1-2 The town meeting shall consider and act upon all articles included in any town meeting warrant with or without amendments.

2-1-3 The town meeting shall possess and may exercise all powers granted under general law.

Section 2. Warrants

2-2-1 Warrants for all town meetings shall be issued by the board of selectmen and opened and closed in accordance with the by-laws, chapter 1, article 1, part 1-101.¹

2-2-2 The warrants for all town meetings shall be published in a newspaper of general circulation within the town at least 14 days before the meeting, and shall be posted in a public place in every precinct in the town at least 14 days before the meeting.

Section 3. Procedures

2-3-1 The annual election of town officers shall be called under clause 8-1-1 of chapter 8. The annual town meeting for transaction of other town business shall be held the first Monday in May.

¹Editor's Note: See now Ch. 271, Town Meeting, § 271-1.

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2-3-2 A special town meeting may be called by the board of selectmen and shall be called by that board upon the request, in writing, of at least 200 registered voters of the town.

2-3-3 The quorum for the conduct of business for any town meeting shall be as provided by by-law.

2-3-4 In all procedural matters, the town meeting shall be governed by general law, this charter, and by-law.

Section 4. Initiative

2-4-1 By written petition to the board of selectmen, any 10 voters of the town may secure the inclusion of a subject in a warrant for the annual town meeting, and at least 100 registered voters may secure the inclusion of an article for any duly scheduled special town meeting.

Section 5. Moderator

2-5-1 A moderator, elected under clause 6-3-1, shall preside at all sessions of the town meeting.

Section 6. Simplified Rules of Procedure

2-6-1 Rules of parliamentary procedure in simplified form shall be prepared by the moderator and shall be included in the town meeting warrants prepared for distribution to town voters.

Section 7. Ad Hoc Committees

2-7-1 All ad hoc committees established by the town meeting shall be appointed by the moderator, unless the motion establishing any ad hoc committee shall name the members, provide for their election, or provide for a different appointing authority.

Section 8. Articles Having Fiscal Implications

2-8-1 All proposed operating expenditures shall be included in a single article in the town meeting warrant.

2-8-2 All articles involving an expenditure of town funds shall be considered by the finance committee which shall issue a written recommendation on all such articles. The chairman of the committee, or a designated representative, shall be present at the town meeting to provide verbal explanations of the committee's recommendations.

2-8-3 Unless the article has been submitted by petition under clause 2-4-1, no article calling for the appropriation of funds shall be included in any special town meeting warrant unless the

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proposed expenditure has been recommended by the board of selectmen and the finance committee, acting separately at separate meetings.

Section 9. Compulsory Attendance

2-9-1 All town officers, the chairmen of town agencies, division directors, and department heads, or their duly designated representatives shall attend sessions of the town meeting when proposals affecting their particular office, agency, division, department, or function are included in the warrant. The absence of these persons shall not invalidate the actions of the town meeting.

CHAPTER 3. BOARD OF SELECTMEN

Section 1. The Board of Selectmen

3-1-1 A board of selectmen of 5 members shall be elected at-large for 3-year overlapping terms.

3-1-2 Vacancies in the office of selectmen shall be filled by special election in accordance with general law.

Section 2. Policy Leadership Responsibilities

3-2-1 Except as otherwise provided by this charter, all executive powers of the town shall be vested in the board of selectmen. The board of selectmen shall have all of the powers and duties given to boards of selectmen under the constitution and General Laws of the commonwealth, and any additional powers and duties that may be authorized by the charter, by by-law, or by any other town meeting vote.

3-2-2 The board of selectmen shall cause the laws and orders for the government of the town to be enforced and shall cause an up-to-date record of all its official acts to be kept.

3-2-3 The board of selectmen shall serve as the chief policy-making agency of the town and, as such, shall not normally administer the day-to-day affairs of the town, but shall instead regularly direct the town administrator to help it in carrying out its administrative duties and make recommendations to the town meeting relating to actions required to be taken by that body.

Section 3. General Powers, Duties and Responsibilities

3-3-1 The board of selectmen shall have the power to enact rules and regulations establishing town policies not otherwise governed by general law, this charter, or by-law, but whenever an appropriation shall be necessary to implement an action, the vote of the board shall be effective only if the appropriation has been authorized by town meeting.

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Section 4. Powers of Investigation

3-4-1 The board of selectmen may conduct investigations and may authorize the town administrator or other agent to investigate the affairs of the town and the conduct of any town department, office, or agency, including any doubtful claims against the town, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. The report of these investigations shall be placed on file in the office of the town clerk, and a report summarizing the investigation shall be printed in the next town report.

Section 5. Specific Powers, Duties, and Responsibilities

3-5-1 The board of selectmen shall be recognized as head of the government for all ceremonial purposes.

3-5-2 The board of selectmen shall act as the licensing authority of the town and shall have the power and responsibility to issue licenses, to make all necessary rules and regulations regarding the issuance of licenses, and to attach conditions and impose any restrictions that it considers to be in the public interest, and further, to enforce, or cause to be enforced, the laws, rules and regulations relating to all businesses for which it issues licenses.

3-5-3 The board of selectmen shall have the authority to designate from time to time 1 or more of its members to sign warrants for the payment of town funds in the absence of the town administrator as referenced in clause 4-6-1. This designation shall be by a majority of the board at a duly-called and held public meeting. The vote shall take effect as soon as a written copy of it signed by a majority of the board is filed in the offices of the town clerk, town accountant and town treasurer.

Section 6. Powers of Appointment

3-6-1 Except as may otherwise be provided by General Laws, this charter, or the personnel by-law, the board of selectmen shall have the power to appoint and remove: a) a town administrator as provided in chapter 4; b) a town counsel; c) a town accountant; d) a police chief; e) a fire chief; f) 3 assessors for overlapping 3-year terms; g) 3 members of a board of registrars of voters for overlapping 3-year terms; h) election officers; and i) 1 or more constables.

3-6-2 The board of selectmen shall also have the power to appoint members of policy-making town agencies enumerated in chapter 7 and other agencies that are in existence on the effective date of this charter and for whom no other method of appointment is provided in this charter. Unless otherwise provided, the board shall also appoint members of other agencies as may be hereafter established by general law, charter, by-law, vote of the town meeting or vote of the board of selectmen.

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Section 7. Prohibitions

3-7-1 Except for the purpose of investigation authorized by this charter, the board of selectmen or its members shall deal with town officers and employees who are subject to the direction and supervision of the town administrator solely through the town administrator, and neither the board nor its members shall give orders to these officers or employees, either publicly or privately.

3-7-2 Members of the board of selectmen shall be ineligible to serve as members of any appointive town agency.

3-7-3 Members of the board of selectmen shall be eligible to serve, to the extent permitted by law, as ex officio members of appointed and elected town agencies.

CHAPTER 4. THE TOWN ADMINISTRATOR

Section 1. Appointment

4-1-1 The board of selectmen, by an affirmative vote of at least 4 members, shall appoint a town administrator for an indefinite term to serve at its pleasure.

4-1-2 In selecting a town administrator, the board of selectmen shall search for candidates by placing an advertisement in the International City Management Association Newsletter or similar professional publication and in at least 2 newspapers having statewide or regional circulation.

Section 2. Qualifications

4-2-1 The town administrator shall be appointed on the basis of educational, executive and administrative qualifications and experience. The educational qualifications shall consist of at least a bachelor's degree, preferably in public administration, granted by an accredited degree-granting college or university. The professional experience shall include at least 5 years of prior full time, compensated executive service in public or business administration. Alternately, 2 years or more of professional experience and a master's degree in an appropriate discipline shall qualify any applicant.

Section 3. Duties

4-3-1 The town administrator shall be the chief administrative officer of the town and shall be responsible for administering and coordinating all employees, activities and departments placed by general law, this charter, or by-law under the control of the board of selectmen and of the town administrator.

4-3-2 The town administrator shall devote full working time to the duties of that office, shall not become a candidate for, or hold, any elective office during the term of appointment; and

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shall not engage in any business activity during the term, except with the written consent of the board of selectmen. The town administrator shall:

- (a) Attend all meetings of the board of selectmen, except when excused, and have the right to speak but not to vote.
- (b) Assemble, prepare, and present to the board of selectmen the annual operating budget of the town.
- (c) Develop and annually revise the capital outlay plan in consultation with the capital outlay committee.
- (d) Be responsible for seeing that the budget is administered and expended as adopted by the town meeting and in accordance with general law, this charter, and by-law.
- (e) Keep the board of selectmen informed regarding all departmental operations, fiscal affairs, general problems, and administrative actions, and to this end submit regular reports to the board.
- (f) Keep the board informed regarding the availability of state and federal funds and how such funds might relate to unmet short-range and long-range needs.
- (g) Have the authority to seek and apply for grants.
- (h) In the absence of a personnel director, be responsible for the day-to-day administration of the personnel system and by-law, and administer and enforce collective bargaining contracts, the personnel by-law, and rules and regulations adopted by the board of selectmen.
- (i) Be responsible for the purchasing of services, supplies, materials, and equipment for all town divisions, departments, and offices, excepting those for the school department, the water department and the Brooks Free Library.
- (j) Coordinate, with the approval of the board of selectmen, the administrative activities of all town agencies and officers concerned with the physical, economic, and environmental development of the town.
- (k) Develop, keep, and annually update a full and complete inventory of all property of the town, except school property, both real and personal.
- (l) Convene regular meetings of the management advisory team established by clause 5-3-3.
- (m) Negotiate collective bargaining contracts on behalf of the board of selectmen, unless the board shall have designated another negotiator.
- (n) Perform such other duties as may be required by this charter, by-law, or vote of the board of selectmen.

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Section 4. Responsibilities for Appointments

4-4-1 Except as may otherwise be provided by General Laws, this charter, or the personnel by-law, and subject to the approval of 3 or more affirmative votes of the board of selectmen, the town administrator shall have the power to appoint, on the basis of merit and fitness alone, and remove division directors, department heads, and an assistant town administrator.

4-4-2 Except as may otherwise be provided by General Laws, this charter, the personnel by-law, or collective bargaining, the town administrator shall have the authority to appoint, on the basis of merit and fitness alone, and remove: a) all full-time town employees; b) all part-time employees; c) all employees of appointed town agencies; d) 1 or more inspectors; and e) all other full-time, part-time or seasonal employees. Any such appointments or removals may be overturned only by the affirmative vote of at least 4 selectmen taken within 14 days of the town administrator's action in initiating such appointment or removal.

Section 5. Responsibilities for Administrative Reorganization

4-5-1 The town administrator may, with the approval of the affirmative vote of at least 3 members of the board of selectmen, establish, reorganize, consolidate or abolish any division, department or position placed by this charter under the town administrator's direction and supervision, except as otherwise provided by general law, this charter or vote of town meeting.

4-5-2 The creation of any new full-time, compensated position which requires the approval of the board of selectmen shall not become effective until the position has been funded by a vote of town meeting.

Section 6. Responsibilities for Disbursements

4-6-1 The town administrator shall have the authority to issue warrants for the payment of town funds, and the town administrator's signature on warrants will be sufficient authorization for payment of them by the town treasurer. In the absence of the town administrator or in the event of a vacancy in that office, warrants may be signed by the person or persons designated by the board of selectmen under clause 3-5-3.

Section 7. Evaluation

4-7-1 The board of selectmen shall annually evaluate the performance of the town administrator. The board shall adopt a written set of procedures and criteria which shall form the basis for the evaluation.

4-7-2 A copy of the evaluation shall be provided to the town administrator.

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Section 8. Removal

4-8-1 The board of selectmen, by the affirmative vote of at least 3 members, may initiate the removal of the town administrator by adopting a resolution to that effect, stating the reasons for the removal, but no such resolution shall be adopted within 90 days following any town election that has resulted in a change in the incumbents on the board. The vote initiating removal shall be taken at a regular scheduled public meeting of the board and in open session.

4-8-2 The adoption of this resolution shall serve to suspend the town administrator for a period of not more than 45 days during which the salary shall continue to be paid. A copy of this resolution shall be delivered immediately to the town administrator in person, or sent by registered mail to the town administrator's place of residence.

4-8-3 Within 5 days after the receipt of this resolution, the town administrator may file a written request for a public hearing. If a hearing is requested, the board shall schedule it within 2 weeks, and it shall be held in a public place. At least 7 days before the public hearing, the board shall advertise the hearing in a newspaper of local circulation and shall cause identical notices citing the purpose, location, time and date to be posted in the town hall and in 3 other places of public access within the town.

4-8-4 The moderator shall preside at this hearing.

4-8-5 At the hearing, the reasons for the removal shall first be read aloud. The town administrator shall then have the right to respond, either personally or through counsel. The board of selectmen and the town administrator shall have the right to call witnesses and to subpoena town records.

4-8-6 Final removal of any town administrator shall be effected by the affirmative vote of at least 3 members of the board of selectmen at a public meeting of the board held within 7 days of the public hearing, if requested. If no hearing has been requested, final removal may be effected by an affirmative vote of at least 3 members, at a public meeting of the board held not earlier than 14 days after the vote initiating the removal. The salary of the town administrator shall continue to be paid for a period of 60 days after the vote effecting removal from office.

4-8-7 The town administrator shall provide the board of selectmen with at least 30 days notice of an intended resignation, but the board may, at its discretion, shorten or waive this requirement.

Section 9. Filling Vacancy

4-9-1 When a vacancy arises in the office of the town administrator, the board of selectmen shall advertise the vacancy as soon as possible. The board shall fill the vacancy as soon as reasonably possible.

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Section 10. Assistant Town Administrator/Acting Town Administrator

4-10-1 The assistant town administrator shall perform the duties that are assigned by the town administrator and, from time to time as necessary, shall perform the duties of that office until the board of selectmen designate a temporary administrator under clause 4-10-2. The assistant town administrator shall be appointed under clause 4-4-1.

4-10-2 The board of selectmen shall designate, within 10 days after a vacancy occurs, a town employee, a member of the board of selectmen or other person to exercise the rights and perform the duties of the town administrator during any vacancy caused by temporary absence, suspension, removal, resignation or death of the town administrator. The appointment shall be for a period not to exceed 90 days, and it may be renewed, in the case of suspension, removal, resignation, or death only once for an additional period not to exceed 90 days. The appointee shall be eligible for appointment as town administrator.

CHAPTER 5. TOWN ADMINISTRATIVE ORGANIZATION

Section 1. General

5-1-1 The administrative functions of the town government shall be performed within the organizational framework of 2 or more divisions and several departments.

5-1-2 The divisions shall include: a division of finance, a division of highways and maintenance, and any other divisions established under clause 4-5-1.

5-1-3 The departments shall include: a police department, a fire department, a planning department, and any other departments established under clause 4-5-1.

5-1-4 Responsibility for the functions administered within the several divisions and departments shall be vested in the town administrator unless otherwise provided by the general laws, this charter, or the by-laws.

5-1-5 Except as otherwise provided in this chapter, the town administrator, with the approval of the board of selectmen, shall designate those divisions to be supervised by a division director and those, if any, to be supervised by the town administrator. If the town administrator is designated to act as director of 1 or more divisions, the town administrator shall serve in this additional capacity without additional compensation.

5-1-6 With the approval of the town administrator, a division director, other than the town administrator, may be designated as head of 1 or more departments within the division director's division, but if so designated the division director shall serve in this additional capacity without additional compensation.

5-1-7 Employees or officers of the town who are designated as directors of divisions shall be appointed under clause 4-4-1. These persons shall plan, organize, schedule, coordinate, and budget the activities of the several departments placed by this charter or by administrative reorganization within a particular division.

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Section 2. Division of Finance

5-2-1 The administrative functions of assessment, tax and fee collections, receipts and disbursements, purchasing, and others of a fiscal nature shall be carried out within a division of finance.

Section 3. Division of Highways and Maintenance

5-3-1 A division of highways and maintenance shall be established under the direction of an appointed officer, to be known as the director of highways and maintenance.

5-3-2 The division shall be responsible for: a) the construction, maintenance, repair, and cleaning of roads, highways, and streets; b) the collection, if any, and disposal of solid waste and the maintenance and operation of all facilities for the disposal of solid waste; c) the preservation, care, maintenance, and improvement of all town-owned cemeteries; d) the care and maintenance of public grounds, including parks; e) the planting, care and pruning of all shade trees growing on town-owned land; f) the servicing, maintenance and repair of all automotive vehicles and vehicular equipment owned by the town, except as otherwise determined by the board of selectmen or in cases of emergency; g) the repair and maintenance of town-owned buildings; h) the care, maintenance, and cleaning of parking lots, public beaches, and of the land-side and grounds of town harbors; and, i) other public works functions that may be assigned by this charter or by-law.

5-3-3 A management advisory team shall be established within the division. The team shall include the director of the division, department heads, the town engineer, the superintendent of the water department, and any other persons appointed to the team by the town administrator. The team shall provide advice to the director on all matters relating to the functions of the division. Regular meetings of the team shall be held under subsection (1) of clause 4-3-2 of this charter.

Section 4. Police Department

5-4-1 A police department shall be established under a chief of police. The board of selectmen shall appoint the chief of police and other officers that they consider necessary, as provided by section 97A of chapter 41 of the General Laws.

Section 5. Fire Department

5-5-1 A fire department shall be established under a fire chief, who shall be appointed by the board of selectmen.

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Section 6. Planning Department

5-6-1 A planning department shall be established under a town planner, who shall be appointed under clause 4-4-1.

5-6-2 The town planner shall be professionally qualified for the duties of that office by reason of education, training and experience, and shall provide services under the general policy direction of the planning board, subject to the day-to-day supervision of the town administrator.

CHAPTER 6. ELECTED TOWN OFFICERS AND TOWN AGENCIES

Section 1. General Provisions

6-1-1 The officers and town agencies to be elected by vote of the town shall be: a moderator, a town clerk, a board of selectmen as provided in chapter 3, a school committee, a water commission, a board of library trustees, and a housing authority.

6-1-2 Town agencies established or continued under this chapter shall perform their functions and duties in accordance with the constitution, general law, this charter, and by-laws.

6-1-3 No members of any elected town agency established or continued under this chapter shall be eligible to accept any appointed, paid position under that agency. This prohibition shall apply to the term for which an office holder has been elected, and for 1 year following the expiration of that term of office.

Section 2. Vacancies

6-2-1 Except as otherwise provided, vacancies in elected town agencies established or continued under this chapter shall be filled by the board of selectmen together with the remaining members of the respective board, under general law.

Section 3. Moderator

6-3-1 A moderator shall be elected for a 3-year term. The moderator shall: a) preside at all town meetings; b) appoint the members of the finance committee; c) appoint ad hoc committees of the town meeting under clause 2-7-1; d) preside at any hearing called to discuss the suspension or removal of the town administrator; and e) annually attend at least 3 meetings of the finance committee.

Section 4. Town Clerk

6-4-1 A town clerk shall be elected for a 3-year term.

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6-4-2 The town clerk shall carry out the duties that are, provided by general law, this charter, by-law or by vote of the town meeting.

Section 5. School Committee

6-5-1 A school committee of 5 members shall be elected at large for 3-year overlapping terms.

6-5-2 The school committee shall conduct a public hearing prior to submitting a budget to the town administrator. The committee shall have preliminary summaries of its recommendations available at this hearing which shall be distributed to those requesting them.

6-5-3 Except as otherwise voted by the town, the school committee shall be responsible for the maintenance and repair of all school buildings.

Section 6. Water Commission

6-6-1 A water commission of 3 members shall be elected for 3-year overlapping terms.

6-6-2 The water commission shall possess and exercise all powers given to this board under chapter 165 of the acts of 1935.

6-6-3 The commission shall appoint a water superintendent, and shall request this officer to cooperate with, and be responsive to, requests from the town administrator's office.

Section 7. Library Trustees

6-7-1 A board of library trustees of 7 members shall be elected for 3-year overlapping terms.

6-7-2 The board shall be responsible for the administration and operation of the Brooks Free Library, including appointment of professional library staff, acquisitions of books, journals, periodicals, and other materials relating to the library function, and the promulgation of library rules and regulations.

Section 8. Housing Authority

6-8-1 There shall be a housing authority of 5 members, 1 of whom shall be appointed under authority of the commonwealth and 4 of whom shall be elected. The elected members shall serve 5-year overlapping terms.

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CHAPTER 7. APPOINTED TOWN AGENCIES

Section 1. Advertising of Vacancies and Appointing Town Agencies

7-1-1 To ensure a diverse citizen representation on all appointed town agencies, the board of selectmen shall make a concerted effort to seek out qualified persons from the town when filling vacancies, and year-round Harwich residents shall be given preference for appointment to any town agency.

7-1-2 To further promote a maximum level of qualified, active, and interested citizen participation on appointed town agencies, the board of selectmen shall advertise all vacancies and impending appointments. This advertising shall enumerate the vacancies that are to be filled and shall solicit the submission of a citizen activity record form from persons willing and able to serve. The advertisements shall be published in a newspaper of general circulation in the town and shall be made once a week for a minimum of 2 weeks after the vacancy arises.

7-1-3 The board of selectmen shall give careful consideration to statutory, regulatory and by-law requirements for appointments to town agencies and shall consider any specific recommendations from the chairman of an agency when filling vacancies.

7-1-4 Before making appointments to the finance committee, the moderator shall also make an effort to seek out qualified persons to serve and shall cause a notice to be published enumerating the vacancies to be filled and setting forth the location, time and date when the moderator will be available to interview persons willing and able to serve. The advertising of vacancies on the finance committee shall also be published in a newspaper of general circulation in the town and shall be made once a week for a minimum of 2 weeks after a vacancy arises.

Section 2. General Provisions

7-2-1 Town agencies established by or continued under this chapter shall possess and exercise all powers given to them under the constitution and Laws of the commonwealth and shall have and exercise such additional powers and duties as may be authorized by this charter, by-law, or vote of the town meeting.

7-2-2 All town agencies of the town shall; a) organize annually; b) elect necessary officers; c) adopt rules of procedure and voting; d) maintain minutes and records of attendance, copies of which shall be a public record and regularly filed with the town clerk; and e) nominate prospective employees of their choice, who shall then be considered for appointment by the town administrator, as provided in clause 4-4-2.

7-2-3 All town agencies shall meet with the board of selectmen at least once in each year.

7-2-4 All town agencies shall conduct their meetings under the open meeting provisions of the Open Meeting Law.

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7-2-5 Members of town agencies established or continued under this chapter may receive such compensation for their services as may be authorized by the town meeting, unless prohibited by the General Laws of the commonwealth. During the term for which a member is appointed and for 1 year following expiration of that term, no member of any appointed town agencies shall be eligible to accept a paid position in that agency.

7-2-6 Any person duly appointed to a town agency shall take up the duties of that office immediately upon taking the oath of office.

7-2-7 The unexcused absence, without good cause, of a member from 4 or more consecutive meetings of a town agency shall serve to vacate the office. When a vacancy has been created, it shall be filled in accordance with general law and this charter. It is expected that committee members will attend at least 75 per cent of scheduled meetings.

7-2-8 Except as otherwise provided by the laws of the commonwealth of Massachusetts or elsewhere in this charter, a quorum of any town agency established or continued under this charter shall consist of a majority of the members required to be appointed to that town agency.

7-2-9 Actions of all appointed Boards, Committees and Commissions shall be governed by this charter and Massachusetts General Laws.

Section 3. Change in Composition of Appointed Town Agencies

7-3-1 The town meeting may, by by-law, enlarge or decrease the number of persons to serve as members of appointed town agencies established or continued under this charter but all town agencies shall consist of an odd number of voting members.

Section 4. Board of Health

7-4-1 A board of health of 5 members shall be appointed by the board of selectmen for 3-year overlapping terms. One member, at least, shall be a doctor of medicine, or a person with significant experience in public health.

7-4-2 A health director shall be appointed by the town administrator, as provided in clause 4-4-1. The health director shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the board of health.

Section 5. Planning Board

7-5-1 A planning board of 9 members and 2 alternate members shall be appointed by the board of selectmen for 3-year overlapping terms.

7-5-2 The planning board shall make recommendations to the town administrator and to the board of selectmen on all matters concerning the physical, economic, and environmental development of the town.

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7-5-3 The planning board shall be responsible for the development and periodic updating of a master plan or portions of it. A summary of the plan shall be submitted to the town meeting, which shall act on it, with or without amendments.

7-5-4 After the summary has been acted on by the town meeting, the planning board shall use the plan in making zoning and other recommendations to the town meeting. The board shall report annually on the status of the master plan.

7-5-5 Whenever the planning board recommends proposed amendments to the zoning by-law, it shall provide explanations of its recommendations to the town meeting.

Section 6. Board of Assessors

7-6-1 A board of assessors of 3 members shall be appointed by the board of selectmen for 3-year overlapping terms. One member, at least, shall be professionally qualified for the duties of the office.

7-6-2 The deputy assessor shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the board of assessors.

Section 7. Conservation Commission

7-7-1 A conservation commission of 7 members and 2 alternate members shall be appointed by the board of selectmen for 3-year overlapping terms.

7-7-2 The conservation administrator shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the conservation commission.

Section 8. Council on Aging

7-8-1 A council on aging of 9 members shall be appointed by the board of selectmen for 3-year overlapping terms.

7-8-2 The director of the council on aging shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the council on aging.

Section 9. Historical Commission

7-9-1 A historical commission of 7 members shall be appointed by the board of selectmen for 3-year overlapping terms.

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Section 10. Recreation and Youth Commission

7-10-1 A recreation and youth commission of 7 members shall be appointed by the board of selectmen for 3-year overlapping terms.

7-10-2 The commission shall develop and carry out programs designed to meet the opportunities, challenges and problems of youth in the town of Harwich. It shall be responsible for the development of comprehensive, year-round, indoor and outdoor recreation programs and policies including management of beach and pond activities and properties. These policies and programs shall be designed to meet the recreational needs of children, youth, adults and the elderly.

7-10-3 The policies adopted by the commission shall be administered by the director of youth and recreation who shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the commission.

Section 11. Cultural Council

7-11-1 A cultural council of 5 members shall be appointed by the board of selectmen for 3-year overlapping terms in accordance with the General Laws of the commonwealth. Members shall not be eligible to serve more than 2 consecutive terms.

Section 12. Zoning Board of Appeals

7-12-1 A zoning board of appeals of 5 members and 5 associate members shall be appointed by the board of selectmen for 3-year overlapping terms.

Section 13. Golf Committee

7-13-1 A golf committee of 7 members shall be appointed by the board of selectmen for 3-year overlapping terms.

7-13-2 The committee shall have full power and responsibility for the maintenance and operation of the municipal golf course.

7-13-3 The director of golf operations, or employee having the general powers of supervision of the golf course shall be under the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the golf committee.

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Section 14. Waterways Committee

7-14-1 A waterways committee of 7 members and 2 alternate members shall be appointed by the board of selectmen for 3-year overlapping terms and shall be advisory to that board.

7-14-2 The waterways committee shall be responsible for the development of regulations for all waterways including marine ramps, docks, piers, moorings, and aquaculture.

7-14-3 The harbormaster shall administer the policies adopted by the board of selectmen and shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the waterways committee.

Section 15. Cemetery Commission

7-15-1 A cemetery commission of 3 members shall be appointed by the board of selectmen for 3-year overlapping terms.

7-15-2 The commission shall be responsible for the administration of cemetery funds, and shall develop policies for the management of town-owned cemetery properties.

7-15-3 The policies adopted by the commission shall be administered by the cemetery administrator who shall be subject to the day-to-day supervision of the town administrator within the scope of the general policy and direction established by the commission.

Section 16. By-law/Charter Review Committee

7-16-1 A by-law/charter review committee of 5 members shall be appointed by the board of selectmen for 3-year overlapping terms. The committee shall regularly review the by-laws of the town and submit proposed revisions to the town meeting at least once every 5 years. In addition, the committee shall regularly review the charter and submit proposed amendments to it to the board of selectmen under section 2 of chapter 10 of this charter.

7-16-2 The by-law/charter review committee shall also be responsible for reviewing all articles proposing to change the by-laws or charter, and all such articles shall be submitted by the board of selectmen to the by-law/charter review committee not later than 14 days after the deadline for submission of articles.

Section 17. Historic District Commission

7-17-1 A historic district commission shall be appointed by the board of selectmen in accordance with the General Laws as outlined in Article V of the by-laws.²

²Editor's Note: See now Ch. 131, Historic Preservation.

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CHAPTER 8. ELECTION AND RECALL

Section 1. Town Elections

8-1-1 The regular election for all town officers who are chosen by ballot shall be held the third Tuesday in May. The warrant calling this election may include other ballot questions as determined by the selectmen.

8-1-2 All general law provisions with regard to town elections shall apply, except as otherwise provided by this charter.

Section 2. Town Elections to be nonpartisan

8-2-1 All town elections shall be nonpartisan, and election ballots shall be printed without any party mark or designation whatsoever.

Section 3. Eligibility of Town Voters

8-3-1 Any registered voter of the town shall be eligible for election to any elective office or board of the town.

Section 4. Time of Taking Office

8-4-1 Any person duly elected to any office or board shall take up the duties of that office immediately following that person's certification.

Section 5. Recall of Elective Officers

8-5-1 Any elected officer of the town may be recalled and removed from office by the voters as provided in this section. Any voter may file with the town clerk an affidavit signed and sworn to under the penalty of perjury containing the name and title of the elected officer whose removal is sought and a statement of grounds for recall. The town clerk shall then deliver to the voter a sufficient number of copies of petition blanks demanding the recall. The blanks shall be issued by the town clerk and shall contain the town clerk's official seal and signature. The petitions shall be dated and addressed to the board of selectmen, and shall contain the name of the person to whom they are issued, the name of the person whose recall is sought, the grounds for recall as stated in the affidavit, and a demand for the election of a successor to the office.

For all elected officers, the petition must be signed by at least 20 per cent of the qualified voters of the town registered at the last regular town election. The recall petition must be filed within 14 days after its initial date of issuance.

8-5-2 The town clerk and board of registrars shall, within 7 days after receipt of the petition, certify the names on the petition. If the petition shall be found and certified by the town clerk to

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be sufficient, the town clerk shall without delay submit it with a certificate to the board of selectmen. The board of selectmen shall immediately schedule a recall election to be held not earlier than 64 days after the date the election is called, and not later than 90 days after the date the election is called, but if the regular town election or another special election shall be held within 100 days after the date of the certificate that a sufficient petition has been filed and if that election is at least 64 days after the date the election is called, the board of selectmen shall postpone the holding of the recall election to the date of this other election and shall order the recall election to be held at the same time. All procedures for voting upon the recall question and filling any vacancy caused by the recall of an officer shall be in the manner provided by general law for the conduct of elections.

8-5-3 Any officer whose removal is sought may be a candidate to succeed to the same office and, unless the officer requests otherwise in writing, the town clerk shall place the name of the officer on the ballot without nomination. The nomination of other candidates, the publication of the warrant for the removal election, and the conduct of that election, shall all be in accordance with the law relating to elections. The form of the question to be voted upon shall be substantially as follows:

"Shall (here insert the name and title of the elective officer whose recall is sought) be recalled?
Yes _____ No _____"

Under the ballot question shall appear the word "Candidates" and the directions for voters as required by law, and below that shall be the names of candidates nominated.

8-5-4 If a majority of the votes cast upon the question of recall is in the affirmative, the candidate receiving the highest number of votes shall be declared elected if at least 25 per cent of those qualified to vote in the election shall have voted on the question of recall. If a majority of votes on the question of recall is in the negative, or if less than 25 per cent of those qualified to vote have voted on the question of recall, the ballots for the candidates shall not be counted.

CHAPTER 9. FINANCIAL PROVISIONS AND PROCEDURES

Section 1. Finance Committee

9-1-1 A finance committee of 9 members shall be appointed by the moderator for 3-year overlapping terms. No member shall serve more than 3 consecutive terms. Any member who has been appointed for a period of at least 2 years to complete an unexpired term shall be deemed to have served a full 3-year term, and any member who has been appointed for a period of less than 2 years to complete an unexpired term shall be eligible to serve 3 consecutive 3-year terms in addition to the period of the unexpired term.

9-1-2 Any person duly appointed to the finance committee shall take up the duties of the office on July 15 of each year.

9-1-3 Vacancies in the finance committee shall be filled by the moderator within 30 days after the moderator has been notified, in writing, of the vacancy on the committee. Any person

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appointed to fill out an unexpired term shall take up the duties immediately upon taking the oath of office.

9-1-4 No member of the finance committee shall hold any other elected or appointed town office, except for membership in the capital outlay committee.

Section 2. Submission of Budget and Budget Message

9-2-1 On or before the first day of October of each year, the town administrator shall present the board of selectmen with the current financial assessment of the town including the latest estimated revenues for the ensuing fiscal year and any specific related fiscal data.

9-2-2 On or before the first Tuesday of October of each year, the board of selectmen, after consulting with the town administrator, shall issue a general policy statement to guide the town administrator in developing the budget requests for the ensuing year.

9-2-3 All division directors, department heads and town agencies shall submit their budget requests to the town administrator on or before the first Friday in November of each year.

9-2-4 On or before the second Tuesday in January, the town administrator shall submit to the board of selectmen a comprehensive budget for all town functions for the ensuing fiscal year and shall submit to the selectmen a budget message.

9-2-5 The budget message shall explain the budget both in fiscal terms and in terms of what specific projects are contemplated in the year ahead. It shall: a) outline the proposed financial policies of the town for the ensuing fiscal year; b) describe the important features of the budget; c) indicate any major changes from the current year in financial policies, expenditures, and revenues, together with the reasons for such changes; d) summarize the town's debt position; and e) include other material that the town administrator may consider appropriate.

9-2-6 The budget shall provide a complete financial plan for all town funds and activities and shall be in the format that the finance committee may suggest, if the format suggested is compatible with commonly-accepted standards of municipal budgeting. The budget shall indicate proposed expenditures for both current operations and capital projects during the ensuing fiscal year, detailed by divisions, departments, offices, and town agencies.

Section 3. Action on the Proposed Budget

9-3-1 The board of selectmen and the finance committee shall meet jointly or severally in budget hearings that are considered necessary to adequately review the proposed budget of the town administrator.

9-3-2 On or before the first Tuesday in March of each year, the board of selectmen shall submit to the finance committee a budget which has been approved with or without amendments to the town administrator's proposed budget.

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9-3-3 The finance committee shall conduct 1 or more public hearings on the proposed budget after it has been submitted to it by the selectmen and by March 31 of each year shall submit its written recommendations on the budget and on all articles to appear in the warrant. These written recommendations shall be made available for distribution to the public at least 10 days before the scheduled date of town meeting. To assist in its preparation of recommendations, the committee may require the town administrator, the head of any division or department or any other town officer or member of a town agency to furnish it with appropriate data.

9-3-4 The board of selectmen shall present the budget to town meeting.

Section 4. Budget Adoption

9-4-1 The town meeting shall adopt the budget, with or without amendments, before the beginning of the fiscal year.

Section 5. Capital Outlay Committee

9-5-1 A capital outlay committee of 7 members shall be appointed for 3-year overlapping terms. Two members shall be appointed by the finance committee, 2 members shall be appointed by the board of selectmen, 1 member shall be appointed by the planning board, and 2 members shall be appointed by the town administrator.

9-5-2 The capital outlay committee shall assist the town administrator in the development of the capital outlay plan.

Section 6. Capital Outlay Plan

9-6-1 The purpose of the 7-year capital outlay plan is to provide the town with a long-range forecast of the town's capital improvement needs and to attempt to keep debt borrowing levels as even as possible from year to year.

9-6-2 A capital outlay shall be defined as the acquisition, construction, or renovation of buildings, equipment or land having a total cost of at least \$100,000 during any budget year or planning funds for any capital outlays, except that the acquisition of land for conservation, open space, or watershed purposes is excluded from this definition.

9-6-3 The town administrator shall submit a 7-year capital outlay plan which shall consist of the 6 remaining years of the previously voted plan plus 1 additional year as the seventh year of the plan, to a joint meeting of the board of selectmen and the finance committee, during the month of December of each year.

9-6-4 The board of selectmen shall hold a joint public meeting on the submitted capital outlay plan with the finance committee and the capital outlay committee on or before the second Friday in January.

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9-6-5 The board of selectmen shall prepare articles to be included in the May annual town meeting warrant, seeking adoption of the 7-year capital outlay plan, and funding of the current year of that plan.

9-6-6 A simple majority vote of the town meeting shall be required to adopt the 7-year capital outlay plan as submitted.

9-6-7 Additions, revisions or amendments to the first 6 years, as outlined in clause 9-6-3 above, of the submitted 7-year capital outlay plan shall be done as amendments to the main motion adopting the plan, and shall require a two-thirds majority vote.

9-6-8 If any part of the current year of the plan fails to receive funding at the annual town meeting, the unfunded portion shall be dropped from the plan and may only be reinstated under clause 9-6-3 or clause 9-6-7, above.

9-6-9 If any part of the current year of the plan receives funding support at the annual town meeting but fails at any necessary debt exclusion, capital exclusion or Proposition 2 1/2 override ballot votes, the unsupported portion shall be returned to the 7-year capital plan in year 1 of the next 7-year plan, and will be subject to clause 9-6-7, above.

9-6-10 Any article included in an annual or special town meeting warrant, which requests a capital outlay as defined in clause 9-6-2, above, shall be considered an amendment to the capital outlay plan and shall require a two-thirds majority vote.

Section 7. Notice of Public Hearing on Capital Outlay Plan

9-7-1 The finance committee shall publish, in 1 or more newspapers of general circulation in the town, the general summary of the capital outlay plan and a notice stating: a) the times and places where copies of the capital outlay plan are available for inspection; and b) the date, time, and place, not less than 7 days after the publication, when the committee shall conduct a public hearing on the plan.

Section 8. Annual Audit

9-8-1 Before the end of each fiscal year, the board of selectmen shall retain a certified public accountant or a certified accounting firm to make an audit of all town accounts, books, records, and transactions of every division, department, office and town agency.

9-8-2 A copy of every auditor's report shall be filed with the town clerk, shall be a public record, and the entire report and a summary of it shall be available for inspection at the office of the town clerk.

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CHAPTER 10. ADDITIONAL PROVISIONS

Section 1. Continuation of Existing Laws

10-1-1 Except as otherwise specifically provided in this charter, all special laws, town by-laws, votes, rules and regulations of or pertaining to the town which are in force when this charter takes effect and which are not inconsistent with this charter shall continue in full force and effect until amended or rescinded by law or until they expire by their own limitation.

Section 2. Charter Amendment

10-2-1 This charter may be replaced, revised, or amended in accordance with the procedures made available by article 89 of the amendments to the constitution of the commonwealth, commonly known as the Home Rule Amendments, and chapter 43B of the General Laws, commonly known as the Home Rule Procedures Act.

Section 3. Definitions

10-3-1 Unless another meaning is clearly apparent from the manner in which the word is used, the following words as used in this charter shall have the following meanings:

- (a) Ad Hoc Committee. The words "ad hoc committee" shall mean a committee appointed to carry out a specific task, at the completion of which it automatically ceases to exist.
- (b) By-laws. The word "by-laws" shall mean the general by-laws of the town and shall not include the zoning by-laws of the town.
- (c) Certification. The word "certification" shall mean that person has been declared elected.
- (d) Charter. The word "charter" shall mean this Harwich charter and any amendments to it made through any of the methods provided under article 89 of the amendments to the constitution of the commonwealth.
- (e) Commission. The word "commission" shall mean any town agency which has been charged with performing a specified function on behalf of the town and which has such powers and performs such duties as are provided in the General Laws. The term shall include boards, councils and any other town agencies authorized to act under the General Laws.
- (f) Committee. The word "committee" shall mean any town agency which has been charged with performing a specified function on behalf of the town but without statutory authority, except for the school committee, finance committee and capital outlay committee, which function under statutory authority.

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- (g) Ex Officio. The words "ex officio" shall mean a member of a town agency who may enter into discussions but who has no right to make motions or vote and is not counted in determining a quorum.
- (h) General Laws. The words "General Laws" shall mean the General Laws of the commonwealth of Massachusetts.
- (i) He/His. The words "he," or "his" or any other use of a masculine noun or pronoun in this charter shall include the feminine.
- (j) Majority Vote. The words "majority vote" shall mean a majority of those present and voting provided that a quorum of the body is present.
- (k) Officer. The word "officer" shall mean any individual elected or appointed to office.
- (l) Town. The word "town" shall mean the town of Harwich.
- (m) Town agency. The words "Town agency" shall mean any commission or committee of the town government consisting of 2 or more persons, whether appointed or elected.
- (n) Voters. The word "voters" shall mean the registered voters of the town of Harwich.

Section 2. Notwithstanding the provisions of chapter 43B of the General Laws or any other general or special law to the contrary, actions taken by the town under the town charter as it existed prior to this act are hereby validated, ratified and confirmed.

Section 3. Section 1 of this act shall be submitted for acceptance to the voters of the town of Harwich at an annual or special town election in the form of the following question which shall be placed on the official ballot:

"Shall an act passed by the general court in the year 2005, entitled 'An Act relative to the Charter of the Town of Harwich' be accepted?"

The town counsel shall prepare a fair, concise summary of said question as set forth in section 58A of chapter 54 of the General Laws.

If a majority of the votes cast in answer to the question is in the affirmative, section 1 of this act shall take effect, but not otherwise.

Section 4. Sections 2 and 3 of this act shall take effect upon its passage.

Approved February 3, 2006.

REPLACEMENT PAGE

THE CODE

PART I

GENERAL BYLAWS

Chapter 1

GENERAL PROVISIONS

ARTICLE I **Violations and Penalties**

§ 1-2. Noncriminal disposition of violations.

§ 1-1. General penalty.

ARTICLE II **Adoption of Code**

[HISTORY: Adopted by the Town Meeting of the Town of Harwich as indicated in article histories. Amendments noted where applicable.]

ARTICLE I **Violations and Penalties**

[Adopted at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 1-1. General penalty.

Whoever shall breach or violate any provision of the General Bylaws, the Zoning Bylaw, the Building Code, the Electrical Code and/or any of the rules and regulations duly adopted by any board, committee or commission of the Town of Harwich, as the same may have been amended from time to time, shall be punished by a fine of not exceeding \$300 for each offense or for each day of a continued offense, in the absence of an express provision of another penalty.

§ 1-2. Noncriminal disposition of violations.

- A. Whoever violates any provision of these bylaws, the violation of which is subject to a specific penalty, may, in the discretion of the enforcing person, be penalized in a noncriminal proceeding as provided by MGL c. 40, § 21D. The noncriminal method of disposition may also be used by the enforcing person for violations of any rule or regulation adopted by any municipal officer, board, department or commissioner which violation is subject to a specific penalty.
- B. Any enforcing person taking cognizance of a violation of a specific ordinance, bylaw, rule or regulation which he or she is empowered to enforce, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof, at any time during office hours, not later than 21 days after the date of such notice. Said notice shall comply with and be processed in accordance with the provisions of MGL c. 40, § 21D.
- C. For the purpose of this section, the term "enforcing person" shall include officers of the Town of Harwich having police powers and any other officer, board or commission who or which under applicable provisions of law or regulations is given powers of enforcement over such bylaws, rules and regulations as come within his or its jurisdiction.

ARTICLE II
Adoption of Code

[The General Bylaws and Zoning Bylaw as set forth in Parts I and II of this Code will be submitted to Town Meeting for adoption. Upon adoption by Town Meeting and approval by the Attorney General, the warrant articles and adoption and approval dates will be included in this article.]

Chapter 7

ADMINISTRATION

ARTICLE I Selectmen

- § 7-1. Authority to settle claims or suits against Town.**
- § 7-2. Report of financial condition; warrant.**
- § 7-3. Representation of Town in certain cases.**
- § 7-4. Disposition of tax title land.**
- § 7-5. Disposal of surplus Town property.**

ARTICLE II Officers and Employees

- § 7-6. Town Clerk.**
- § 7-7. Town Treasurer.**

§ 7-8. Town Counsel.

ARTICLE III Boards and Committees

- § 7-9. Building Code Board of Appeals.**
- § 7-10. Planning Board.**
- § 7-11. Community Preservation Committee.**

ARTICLE IV Reports and Fees

- § 7-12. Reports of officers and committees.**
- § 7-13. Payment of fees.**
- § 7-14. Town Clerk fees.**

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

GENERAL REFERENCES

Historic District Commission — See Ch. 131.

Town Meeting — See Ch. 271.

ARTICLE I Selectmen

§ 7-1. Authority to settle claims or suits against Town.

The Selectmen shall have full authority as agents of the Town, acting upon the advice and consent of Town Counsel, to settle any claims or suits against the Town which, in their judgment, cannot be successfully defended. Unless otherwise provided by law, such settlement shall require Town Meeting approval unless the amount thereof is \$10,000 or less or unless insurance coverage is available in an amount sufficient to reduce the Town's monetary contribution to the settlement to \$10,000 or less.

§ 7-2. Report of financial condition; warrant.

The Selectmen shall report to the Annual Town Meeting the financial condition of the Town at the close of the fiscal year preceding such meeting. Said report shall state what expenditures have been made and what balance of appropriations, if any, remains unexpended and shall contain the warrant for the next Annual Town Meeting.

§ 7-3. Representation of Town in certain cases.

The Selectmen may appear in the interest of the Town, either personally or by Town Counsel, before any court, committee of the legislature, or any state or county board or commission. They shall have full authority as agents of the Town, acting upon the advice of the Town Counsel, to institute and prosecute any or all necessary suits and proceedings in favor of the Town and to appear and defend any and all suits and legal proceedings against or involving the Town's interest.

§ 7-4. Disposition of tax title land.

Property the Town may acquire or has acquired by tax taking or through tax title may be disposed of at auction by the Board of Selectmen as follows: said auction must be advertised in a newspaper published in Barnstable County and circulated in the Town of Harwich three consecutive days at least 14 days before said sale setting forth the date, place, time and terms of the sale.

§ 7-5. Disposal of surplus Town property.

The Board of Selectmen is authorized to dispose of any and all tangible personal property of the Town of Harwich which has been determined by the department having jurisdiction thereof to be surplus or no longer serviceable for the intended purpose. The Selectmen shall have authority to determine the best method of disposing thereof.

ARTICLE II Officers and Employees

§ 7-6. Town Clerk. ¹

- A. The Town Clerk shall promptly notify in writing all individuals appointed to Town office of their appointment.
- B. After every Town Meeting at which any money is voted to be raised, the Clerk shall make a list of the sums voted and the purposes thereof and deliver said list promptly to the Town Administrator.
- C. The Town Clerk shall make an annual report which shall include a record of the doings of all Town Meetings which occurred during the year for which the report is made.

1. Editor's Note: For the fees charged by the Town Clerk's office see § 7-14 of this chapter.

- D. The Town Clerk shall keep and cause to be permanently bound one or more copies of the Town reports.

§ 7-7. Town Treasurer.

- A. Custody of Town documents. The Treasurer shall be the custodian of all deeds, bonds and insurance policies belonging to the Town, except that the bond of the Treasurer shall be in the custody of the Selectmen.
- B. Annual report. The Treasurer shall make an annual report which shall contain a statement of the amount of money received and paid out by him during the year.

§ 7-8. Town Counsel.

- A. Appointment. The Selectmen shall annually appoint a Town Counsel, who shall be an attorney and counselor at law and who shall hold office for the term of one year from the first day of July until his successor is appointed and qualified. He shall receive such compensation as the Selectmen may determine, subject to the appropriation of the Town therefor.
- B. Employment and compensation of other attorneys. The Selectmen may engage the service of attorneys other than the appointed Town Counsel to act as counsel for the Town or any of its departments in any particular matter as the Selectmen may deem advisable, and they shall receive such compensation as the Selectmen may determine, subject to the appropriation of the Town therefor.
- C. Duties. The Town Counsel shall act as legal advisor and counselor to the Town and all its departments.

**ARTICLE III
Boards and Committees**

§ 7-9. Building Code Board of Appeals.

There is hereby established a Building Code Board of Appeals for the purpose of hearing and deciding appeals pertaining to the Building Official's actions in administering the provisions contained in the State Building Code, Section 126.8 and other pertinent provisions, which code became effective January 1, 1975, said Board to consist of five members, one member to be appointed for five years, one member for four years, one member for three years, one member for two years, and one member to serve for one year, and thereafter each new member is to serve for five years or until his successor has been appointed and qualified.

§ 7-10. Planning Board.

In accordance with Section 7-3-1 of the Town Charter, the Planning Board membership is hereby reduced from nine members to seven members. The first two vacancies that exist on or occur after the effective date of this bylaw² shall not be filled.

§ 7-11. Community Preservation Committee.**A. Establishment.**

- (1) There is hereby established a Community Preservation Committee, consisting of nine voting members pursuant to MGL c. 44B. The composition of the Committee, the designating authority and the term of office for the Committee members shall be as follows:
 - (a) One member of the Conservation Commission as designated by the Commission for a term of three years.
 - (b) One member of the Historical Commission as designated by the Commission for a term of three years.
 - (c) One member of the Planning Board as designated by the Board for a term of three years.
 - (d) One member of the Recreation and Youth Commission as designated by the Commission for an initial term of one year and thereafter for a term of three years.
 - (e) One member of the Housing Authority as designated by the Authority for an initial term of two years and thereafter for a term of three years.
 - (f) One member of the Real Estate and Open Space Committee as designated by the Committee for an initial term of one year and thereafter for a term of three years.
 - (g) One member of the Housing Committee as designated by the Committee for an initial term of two years and thereafter for a term of three years.
 - (h) Two members to be appointed by the Board of Selectmen, one member to be appointed for a term of one year and thereafter for a term of three years, and one member to be appointed for a term of two years and thereafter for a term of three years.
- (2) After the above-named commissions, boards and committees have designated their members, the Board of Selectmen shall confirm their appointment as members of the Community Preservation Committee. Membership on the Community Preservation Committee of those members designated by any of the above-named Town agencies is contingent on the member's continued service on the designating body.

2. Editor's Note: This section was originally enacted by Art. 6 of the May 2008 Special Town Meeting.

- (3) Should any of the commissions, boards or committees who have designating authority under this section be no longer in existence for whatever reason, the designating authority for that commission, board or committee shall become the responsibility of the Board of Selectmen.

B. Duties.

- (1) The Community Preservation Committee shall study the needs, possibilities, and resources of the Town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Recreation and Youth Commission, the Real Estate and Open Space Committee, and the Housing Authority, or the persons acting in those capacities or performing like duties, in conducting such studies. As part of its studies, the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.
- (2) The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation and preservation of land for recreational use; for the creation, preservation and support of community housing; and for the rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.
- (3) The Community Preservation Committee may include, in its recommendation to the Town Meeting, a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending for general purposes that are consistent with community preservation. The Community Preservation Committee may recommend the issuance of general obligation bonds or notes in anticipation of revenues to be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. The Town shall make every effort to limit the administrative costs of issuing such bonds by cooperating with other cities and towns using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this section, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of MGL c. 44B. The maturities of each issue of bonds or notes issued under this section may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the

opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

- (4) As provided in the Massachusetts Community Preservation Act,³ no expenditures shall be made from the Community Preservation Fund without the approval of Town Meeting.
 - (5) The Community Preservation Committee may submit an annual administrative and operating budget for the Community Preservation Committee, which cannot exceed 5% of the annual revenues in the Community Preservation Fund, to Town Meeting for approval.
- C. Requirement for a quorum and cost estimates. The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Community Preservation Committee shall constitute a quorum. The Community Preservation Committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include their anticipated costs.
 - D. Amendments. This section may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not cause a conflict to occur with MGL c. 44B.
 - E. Severability. In case any section, paragraph or part of this bylaw is for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.
 - F. Effective date. This bylaw shall take effect upon approval by the Attorney General of the commonwealth, after all requirements of MGL c. 40, § 32 have been met, and after the modified Community Preservation Act has been approved at a regular Town election. Each designating authority shall have 30 days after approval of the modified Community Preservation Act to make its initial designations.

ARTICLE IV Reports and Fees

§ 7-12. Reports of officers and committees.

All elective and appointive officers and committees shall make a written report to the Town and such report shall be embodied in the Annual Town Report. Such a report shall be itemized to the extent of showing at least the amount of money, goods, refunds, credits or real estate abatements received by such persons from the Town, excepting such amounts as are prohibited by law to be published.

§ 7-13. Payment of fees.

All elective and appointed officers shall surrender and pay to the Town treasury all fees received by them by virtue of their office.

3. Editor's Note: See MGL c. 44B.

§ 7-14. Town Clerk fees.

A. The following fees may be charged by the Town Clerk, effective July 1, 2006:

- (1) For filing and indexing assignment for the benefit of creditors: \$10.
- (2) For entering amendments of a record of the birth of a child born out of wedlock, subsequently legitimized: \$10.
- (3) For correcting errors in a record of birth: \$10.
- (4) For furnishing certificate of birth: \$10.
- (5) For furnishing an abstract copy of a record of birth: \$5.
- (6) For entering delayed record of birth: \$10.
- (7) For filing certificate of a person conducting business under any title other than his real name: \$40.
- (8) For filing by a person conducting business under any title other than his real name of a statement of change of his residence or of his discontinuance, retirement or withdrawal from or change of location of such business: \$10.
- (9) For furnishing certified copy of certificate of person conducting business under any title other than his real name or a statement by such person of his discontinuance, retirement or withdrawal from such business: \$5.
- (10) For recording the name and address, the date and number of the certificate issued to a person registered from the practice of podiatry in the commonwealth: \$20.
- (11) For correcting errors in a record of death: \$10.
- (12) For furnishing a certificate of death: \$10.
- (13) For furnishing an abstract copy of a record of death: \$5.
- (14) For entering notice of intention of marriage and issuing certificate thereof: \$30.
- (15) For entering certificate of marriage filed by persons married out of the Commonwealth of Massachusetts: \$5.
- (16) For issuing a certificate of marriage: \$10.
- (17) For furnishing an abstract copy of a record of marriage: \$5.
- (18) For correcting errors in a record of marriage: \$10.
- (19) For recording power of attorney: \$10.
- (20) For recording certificate of registration granted to a person engaged in the practice of optometry or issuing a certified copy thereof: \$20.
- (21) For recording order granting locations of poles, piers, abutments, or conduits, alterations or transfers thereof, an increase in number of wires and cable or

attachments under the provisions of MGL c. 166, § 22: flat rate of \$40; \$10 for additional streets.

- (22) For examining records or papers relating to birth, marriage or death upon the application of any person: the actual expense thereof, but not less than \$10.
- (23) For copying any manuscript or record pertaining to a birth, marriage or death: \$5 per page.
- (24) For receiving and filing a complete inventory of all items to be included in a closing-out sale, etc.: \$10 for first page, \$2 per additional page.
- (25) For filing a copy of written instrument or declaration of trust by trustees of an association or trust, or any amendment thereof as provided by MGL c. 182, § 2: \$20.

B. Other fees to be charged by the Town Clerk shall be established by law.

Chapter 14

ALARMS

§ 14-1. Definitions.

§ 14-2. Mechanical protection devices.

§ 14-3. Permit and key box required.

§ 14-4. Persons authorized to respond to alarms.

§ 14-5. Duration of audible alarms.

§ 14-6. False alarms.

§ 14-7. False fire or medical emergency alarms.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 14-1. Definitions.

For the purpose of this chapter the following terms shall have the following meanings:

ALARM SYSTEM — An assembly of equipment and devices or a single device, such as a solid-state unit which plugs directly into a one-hundred-ten-volt AC line, arranged to signal the presence of a hazard or emergency requiring urgent attention and to which police, emergency medical personnel or firefighters are expected to respond. Fire alarm systems and alarm systems which monitor temperature, smoke, humidity or any other conditions not directly related to the detection of an unauthorized intrusion into a premises or an attempted break-in at a premises are included.

FALSE ALARM —

- A. The activation of an alarm system by an agency for other than a bona fide hazard or emergency of a type which the system is designed to warn against. For purpose of this definition, activation of alarm systems by acts of vandals, by acts of God, including but not limited to hurricanes, tornadoes, earthquakes and similar weather or atmospheric disturbances, or by power failure shall not be deemed to be a false alarm.
- B. Any signal or oral communication transmitted to the Police or Fire Department requesting, requiring or resulting in a response on the part of the Police or Fire Department in the absence of any bona fide hazard or emergency.

MECHANICAL PROTECTION DEVICE — An electrically operated instrument composed of sensory apparatus and related hardware which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice alarm upon receipt of a stimulus from the sensory apparatus that has detected a condition inherently characteristic of a fire.

USER — The owner and occupant, and their agents, of the premises containing the alarm system, whether residential, commercial or otherwise.

§ 14-2. Mechanical protection devices.

It shall be unlawful to install a mechanical protection device that is automatically keyed to and/or activates the telephone (numbers) lines controlled by and/or listed to the Harwich Fire Department. All such devices installed before the enactment of this bylaw shall be removed within 60 days thereafter.

§ 14-3. Permit and key box required.

- A. The owner of any building which has a fire alarm system or other fire protection system or medical alarm which transmits an alarm off the premises shall be required to:
 - (1) Have a permit to install or alter the system.
 - (2) Provide a secure key box installed in a location accessible to the Fire Department in case of emergency. The key box shall contain keys to the door(s) and fire alarm control panel and any other keys necessary to operate or service fire protection or medical systems. The key box shall be a type approved by the Chief of the Harwich Fire Department and shall be located and installed as approved by the Chief.
- B. Any building owner violating this bylaw after receiving due notice by the Fire Department shall be subject to a fine of \$100. Owners of existing systems will have six months after adoption of this bylaw to bring their premises up to code.

§ 14-4. Persons authorized to respond to alarms.

Every user shall submit to the Police and/or Fire Chief the names and telephone numbers of at least two other persons who are authorized to respond to an emergency signal transmitted by an alarm system and who can open the premises wherein the alarm system is installed.

§ 14-5. Duration of audible alarms.

- A. All alarm systems except fire alarm systems installed after the effective date of this bylaw which use an audible horn or bell shall be equipped with a device that will shut off such horn or bell within 10 minutes after activation of the system.
- B. Any alarm system emitting a continuous and uninterrupted signal for more than 15 minutes between 10:00 p.m. and 6:00 a.m. which cannot be shut off or otherwise curtailed due to the absence or unavailability of the alarm user or those persons designated by him under § 14-4 of this chapter and which disturbs the peace, comfort or repose of a community, a neighborhood or a considerable number of inhabitants of the area where the alarm system is located shall constitute a public nuisance and be subject to the penalties described in § 14-6 below. Upon receiving complaints regarding such a continuous and uninterrupted signal, the Police or Fire Chief shall endeavor to contact the alarm user or members of the alarm user's family or those persons designated by the alarm user under § 14-4 of this chapter in an effort to abate the nuisance. The Police

and/or Fire Chief shall cause to be recorded the names and addresses of all complainants and the time each complaint was made.

§ 14-6. False alarms.

- A. Upon receipt of three or more false alarms from the same system within a calendar year, the Police or Fire Chief may, in writing, order:
 - (1) The user to discontinue the use of the alarm.
 - (2) That any direct connections to the Police or Fire Department be discontinued.
 - (3) That any further connection to the communications console in the police or fire station be contingent upon the user equipping any alarm system with a device that will shut off any audible horn or bell within 10 minutes after activation of the system.
- B. The user shall be assessed a fee as established annually by the Board of Selectmen, the Police Chief and the Fire Chief as a false alarm service fee for each false alarm in excess of three occurring within a calendar year. All fees assessed and collected hereunder shall be paid to the Town Treasurer for deposit in the general fund.
- C. Whoever violates a written order of the Police or Fire Chief as set forth in Subsection A shall be punished by a fine of \$50 for each offense, and each day a violation continues shall be considered a separate offense.

§ 14-7. False fire or medical emergency alarms.

- A. It shall be unlawful for any person to intentionally call in or cause to be called in or in any way reported a false fire or medical emergency alarm knowing the same to be false, and it shall be unlawful for any person to intentionally tamper with any device designed to give or transmit a fire or medical emergency alarm with the intention of disabling said device or causing said device to transmit a false alarm.
- B. Any parent or legal guardian having by law responsibility for the care and supervision of a minor child under the age of 18 years shall be liable for violation of Subsection A committed by such minor child, provided that such violation is the second or subsequent offense committed by said child and provided further that said person has received written notice of the previous violation from the Fire Department or other responsible public officer or official; provided, however, that such parental liability shall be enforced only through the noncriminal enforcement procedures established under this bylaw.
- C. Whoever violates any provision of Subsection A or B shall be punished by a fine of \$200 for each offense. Said provisions of this bylaw may be enforced by the Fire Chief or his duly authorized designee as well as all officers of the Town of Harwich having police powers.

Chapter 18

ALCOHOLIC BEVERAGES

ARTICLE I **Public Consumption**

§ 18-2. Violations and penalties.

§ 18-1. Public highways and parking places.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich as indicated in article histories. Amendments noted where applicable.]

ARTICLE I **Public Consumption** **[Adopted at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

§ 18-1. Public highways and parking places.

It shall be unlawful for any person to consume alcoholic beverages on public highways or in public parking places, including vehicles thereon, within the Town of Harwich.

§ 18-2. Violations and penalties.

Whoever violates the provisions of this bylaw shall be fined \$50 for each offense.

Chapter 26

ANIMALS

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| § 26-1. Definitions. | § 26-7. Dogs and horses in cemeteries. |
| § 26-2. Dog licenses. | § 26-8. Emergency treatment or disposal. |
| § 26-3. Vaccination of dogs and cats against rabies. | § 26-9. Exposure to rabies. |
| § 26-4. Impounded dogs. | § 26-10. Cruelty to animals. |
| § 26-5. Barking dogs. | § 26-11. Damage to livestock or fowl. |
| § 26-6. Kennel licenses. | § 26-12. Dogs to be restrained. |

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 26-1. Definitions.

The following words and phrases shall have the following meanings:

ADOPTION — The delivery of a cat or dog to any person 18 years of age or older for the purpose of harboring as a pet.

COMMERCIAL KENNEL — A kennel maintained as a business established for or to include the boarding or grooming of dogs.

DANGEROUS DOG —

- A. Any dog which, according to the records of the Animal Control Officer or other appropriate authority, has inflicted severe injury on a human being without provocation on public or private property; or
- B. Any dog which, according to the records of the Animal Control Officer or other appropriate authority, has killed a domestic animal without provocation while off the owner's or keeper's property.

DOG FUND — The fees, fines, and reimbursements collected in connection with the licensing of dogs and the enforcement of these rules and regulations.

DOG OFFICER or ANIMAL CONTROL OFFICER — Any officer appointed by the Board of Selectmen to enforce the laws relating to dogs.

KEEPER — Any person, corporation or society, other than the owner, harboring or having in his possession any dog.

LICENSE PERIOD — The time between January 1 and December 31, both dates inclusive.

LIVESTOCK or FOWLS — Animals or fowls kept or propagated by the owner for food or as a means of livelihood; also deer, elk, cottontail rabbits and northern hares, pheasants, quail,

partridge, and those birds and quadrupeds determined by the Department of Fisheries and Wildlife and environmental law enforcement to be wild and kept by or under a permit from said Department in proper houses or suitably enclosed yards. Such term shall not include dogs, cats and other pets.

MULTIPLE PET HOUSEHOLD — More than three dogs over the age of six months of age at a single private residence.

RESEARCH INSTITUTION — Any institution operated by the United States or by the commonwealth or a political subdivision thereof or any school or college of medicine, public health, dentistry, pharmacy, veterinary medicine or agriculture, medical diagnostic laboratory or biological laboratory, hospital or other educational or scientific establishment within the commonwealth above the rank of secondary school which, in connection with any of its activities, investigates or gives instructions concerning the structure or functions of living organisms or the causes, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

SHELTER — An animal control facility or any other facility which is operated by any organization or individual for the purpose of protecting animals from cruelty, neglect, or abuse.

§ 26-2. Dog licenses.

- A. Licenses and tags. A person residing in the Town of Harwich who, at the beginning of a license period, is or who, during a license period, becomes the owner or keeper of a dog six months old or older shall cause the dog to be licensed within 30 days. The Clerk of the Town shall issue dog licenses and tags on a form prescribed and furnished by the Town. Subject to the approval of the Board of Selectmen, the Town may permit licensing to be conducted through the mail.
- (1) On the license form the Clerk shall record the name, address, and phone number of the owner or keeper of the dog, as well as the name and description of the dog and the license number. Each tag shall include the license number, the name of the Town and the year of issue.
 - (2) The owner or keeper of the dog shall cause the dog to wear around its neck or body a collar or harness to which the license tag shall be securely attached. In the event that any tag becomes lost, defaced, or destroyed, substitute tags shall be obtained by the owner or keeper from the Town Clerk at the cost of \$5.
 - (3) The Town Clerk shall not issue a license for any dog unless the owner or keeper provides the Clerk with a veterinarian's certificate verifying that the dog is currently vaccinated against rabies.
 - (4) The fee for each dog license shall be determined annually by a committee of the Town Administrator, the Town Clerk, and the Animal Control Officer and approved by the Board of Selectmen. No fee shall be charged for a dog specially trained to lead the blind or serve a blind or deaf person upon presentation to the Town Clerk of a certificate of such training.

- (5) The Clerk may collect a late fee of \$25 for every dog license issued after the thirty-day period.
- (6) License fees shall not be refunded because of the subsequent death, loss, transfer of ownership, spaying or neutering, or removal from Town of the dog.
- B. Violations and penalties. Whoever, as owner or keeper of a dog, fails to license such dog within 30 days after a license period begins shall be subject to a fine of \$25.

§ 26-3. Vaccination of dogs and cats against rabies.

- A. The owner or keeper of a dog or cat which has reached the age of six months shall cause such dog or cat to be kept currently vaccinated against rabies. Such vaccinations can only be given by a licensed veterinarian. Upon vaccination, the veterinarian shall provide a tag which the owner or keeper shall secure to the collar or harness of the dog or cat. The tag shall show the year the vaccination was given, a rabies tag number, and the name of the veterinary clinic or hospital. The veterinarian shall prepare three copies of a rabies certificate, which shall specify the name and address of the owner or keeper of the dog or cat, the name and description of the dog or cat, the rabies tag number, and the expiration date of the vaccine. The veterinarian shall present one copy of the certificate to the owner or keeper of the dog or cat and one copy to the Town Clerk and shall keep one copy for his/her files.
- B. Unvaccinated dogs or cats acquired or brought into the Town of Harwich shall be vaccinated within 30 days or upon reaching the age of six months, whichever comes first.
- C. Whoever as owner or keeper fails to vaccinate a dog or cat six months old or older shall be subject to a fine of \$50.

§ 26-4. Impounded dogs.

- A. It shall be the duty of the Animal Control Officer or any police officer to apprehend any dog found running at large and to impound such dog in a holding facility designated by the Town of Harwich for holding such dogs. The Animal Control Officer shall keep a record of each dog impounded which shall contain the breed, description and sex of the dog, where the dog was apprehended and whether the dog was wearing a collar and whether or not the dog was licensed. If licensed, the license number and the name and address of the owner or keeper are to be included.
- B. The owner or keeper shall claim the impounded dog if:
 - (1) The owner or keeper presents a valid dog license;
 - (2) The owner or keeper pays all impoundment fees; and
 - (3) The owner or keeper provides his/her name and address.

§ 26-5. Barking dogs.

- A. No person owning or keeping a dog shall allow or permit said dog to annoy another person's reasonable right to peace and/or privacy by making loud and/or continuous noise where such noise is plainly audible at 150 feet from the building, structure, vehicle or premises in which or from which such noise is produced and/or such noise is continuous in excess of 10 minutes regardless of the time of day or night. The fact that such noise is plainly audible at said distance and/or continuous in excess of 10 minutes shall constitute prima facie evidence of a violation of this bylaw.
- B. Whoever as owner or keeper of a dog violates the provisions of this section shall be subject to a fine of \$50.

§ 26-6. Kennel licenses.

- A. The owner of a kennel maintained as a business for the boarding and/or grooming of dogs shall obtain a commercial kennel license. The fee for each commercial kennel license shall be determined annually by a committee of the Town Administrator, the Town Clerk, and the Animal Control Officer and approved by the Board of Selectmen. Each kennel shall be available for inspection during normal business hours by the Animal Control Officer, a police officer, or the Board of Health.
- B. Any owner or keeper of more than three dogs but fewer than seven dogs shall obtain a kennel license for a multiple pet household. The owner or keeper shall present to the Town Clerk verification that all dogs six months or older have been immunized against rabies. The fee for each kennel license shall be determined annually by a committee of the Town Administrator, the Town Clerk, and the Animal Control Officer and approved by the Board of Selectmen.
- C. The Clerk shall issue without a charge a kennel license to any domestic charitable corporation incorporated exclusively for the purpose of protecting animals from cruelty, neglect, or abuse.
- D. Whoever as the owner or keeper fails to obtain an appropriate kennel license shall be subject to a fine of \$100.

§ 26-7. Dogs and horses in cemeteries.

- A. No dog or horse shall be allowed in any cemetery within the Town of Harwich, whether it is accompanied by the owner or keeper, on or off leash, or while running at large.
- B. Whoever as the owner or keeper of a dog or horse knowingly or unknowingly allows a dog or horse to be in a cemetery shall be subject to a fine of \$50.

§ 26-8. Emergency treatment or disposal.

Any veterinarian who renders emergency care or treatment to or disposes of a dog or a cat that has been injured on any way within the Town of Harwich shall receive payment from the owner or keeper of such dog or cat, if known, or if not known from the Town of Harwich in

the amount of \$20 for such care, treatment or disposal. Treatment shall be for the purpose of maintaining life, stabilizing, or alleviating suffering until the owner or keeper of such dog or cat is identified or for any period of 24 hours, whichever is sooner. Any veterinarian who renders such emergency care or treatment to or disposes of such dog or cat shall notify the Animal Control Officer, and upon notification the Animal Control Officer shall assume control of such dog or cat.

§ 26-9. Exposure to rabies.

The Board of Health of the Town of Harwich shall furnish free of charge upon application of any resident thereof who has been or may have been exposed to rabies anti-rabid vaccine and treatment in accordance with the rules and regulations of the Department of Public Health and accepted medical practice. Such person shall have the right to select his/her own physician who shall be paid by the Town of Harwich at a rate established by the Board of Health.

§ 26-10. Cruelty to animals.

- A. Any person or persons found guilty of a violation of any provisions of MGL c. 272, § 77, 80A, 94 or 95 shall forfeit the right to own or keep any animal within the Town of Harwich and must immediately, upon conviction, surrender all animals in his/her possession.
- B. Whoever upon conviction of violating MGL c. 272, § 77, 80A, 94 or 95 fails to surrender his/her animals shall be subject to a fine of \$100. Each day shall constitute a separate violation.

§ 26-11. Damage to livestock or fowl.

- A. Whoever suffers loss by the worrying, killing or maiming of livestock or fowl by dogs shall inform the Animal Control Officer, who shall forthwith proceed to the scene to view the damage and determine if the damage was done, in fact, by dogs and, if so, appraise the amount of the damage if it does not exceed \$50. If in the opinion of the Animal Control Officer the damage exceeds \$50, the damage shall be appraised on oath by three persons, one of whom shall be the Animal Control Officer, one of whom shall be appointed by the person alleged to have suffered the damage, and the third to be appointed by the other two.
- B. Said appraisers shall consider and include in such damages the number and kind of animals damaged, the extent of the damage and the appropriate weight of the damaged animals. The appraisers will also note in their report whether or not any animals were sent for veterinary treatment in an effort to save them and the number and kind of such animals. Such report will be filed in the office of the Town Clerk within 10 days of said appraisal. The Clerk shall submit said appraisal reports to the Board of Selectmen for payment. The Board of Selectmen may require the appraisers to provide additional information that it may deem appropriate in accordance with the reports of the appraisers.
- C. No owner of livestock or fowl shall be reimbursed for damages inflicted by his/her own dog or dogs, nor shall he/she be reimbursed if the owner or keeper of the dog inflicting

the damage is known to him/her or to the Animal Control Officer. No reimbursement shall be made in the case of damage to deer, elk, cottontail rabbits, northern hares, pheasants, quail, partridge and other livestock or fowl determined by the Department of Fisheries and Wildlife to be wild. No reimbursement shall be made for damages unless the livestock or fowl are kept in proper housing or enclosed areas. No reimbursement shall be made for damage done by a dog to dogs, cats and other pets. Awards for damages in no case shall exceed the fair cash market value of such livestock or fowl.

D. Liability of owner.

- (1) The owner or keeper of a dog which has done damage to livestock or fowl shall be liable for such damage, and the Selectmen may order the owner or keeper of said dog to pay such damages after an investigation by the Animal Control Officer of the facts of the matter and an appraisal by the Animal Control Officer, one person chosen by the person sustaining the damage, and a third person chosen by the other two. The appraisers will submit a report to the Selectmen stating the type of damage, the number and kind of animals damaged and whether any animals required medical treatment by a veterinarian to save them.
- (2) In the event that the owner or keeper of such dog known to have done damage to livestock or fowl refuses to pay upon the order of the Selectmen, the Selectmen shall enter or cause to be entered a complaint in the District Court for the enforcement of the order.

§ 26-12. Dogs to be restrained.

- A. All dogs owned or kept within the Town of Harwich shall at all times be kept securely restrained by means of a suitable leash, rope or chain which effectively confines the dog to the property owned, occupied or controlled by the dog's owner or keeper; provided, however, that a dog in the presence of its owner or keeper or responsible person having charge thereof and under the control of said person need not be restrained by means of a rope, leash or chain or confined to the property of such person so long as such control is effective in preventing the dog from damaging property or harassing persons.
- B. Whoever as owner or keeper fails to restrain his/her dog shall be subject to a fine of \$50.

Chapter 40

BEACHES

§ 40-1. Beach parking.

§ 40-2. Violation of beach regulations.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 40-1. Beach parking.

- A. Beach parking fees for year-round and seasonal residents shall be established through beach regulations proposed by the Recreation and Youth Commission and adopted by the Board of Selectmen.
- B. Daily, weekly, full season or other less than full season beach parking fees shall be established for residents and temporary residents at such beaches to be determined by the Recreation and Youth Commission and at rates established through beach regulations proposed by the Recreation and Youth Commission and adopted by the Board of Selectmen.
- C. Notwithstanding the above language, the Board of Selectmen shall be authorized to permit residents or property owners of another town to park at designated Town-owned beaches, provided that the other town provides reciprocal beach parking privileges to residents and property owners of the Town of Harwich and provided further that such beach parking shall be subject to the rules and regulations of the Board of Selectmen, including the payment of fees to be determined by the Board of Selectmen.

§ 40-2. Violation of beach regulations.

Whoever violates any beach regulations duly adopted by the Board of Selectmen shall be punished by a fine of \$50.

Chapter 47

BOATING AND WATERWAYS

ARTICLE I **Use of Town Ponds**

- § 47-1. Definitions.**
- § 47-2. Buck's Pond and John Joseph's Pond.**
- § 47-3. Sand Pond, Andrew's Pond, Skinequit Pond and Long Pond.**
- § 47-4. Hinckley's Pond, Seymour's Pond and Walker's Pond.**
- § 47-5. Use of soap or detergent.**

ARTICLE II **Launching, Operation and Beaching of Boats**

- § 47-6. Definitions.**
- § 47-7. Launching and beaching of boats.**
- § 47-8. Restrictions on anchoring in certain areas.**
- § 47-9. Restrictions on operating in certain areas.**
- § 47-10. Personal watercraft.**
- § 47-11. Violations and penalties.**

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

ARTICLE I **Use of Town Ponds**

§ 47-1. Definitions.

For the purpose of this bylaw, the following words shall have the meanings indicated:

HORSEPOWER — The aggregate rated horsepower of all propellant machinery at maximum operating revolutions per minute.

MOTORBOAT — Any vessel propelled by machinery whether or not such machinery is the principal source of propulsion.

§ 47-2. Buck's Pond and John Joseph's Pond.

- A.** In either Buck's Pond or in John Joseph's Pond, no motorboat shall operate at a speed in excess of six miles per hour.
- B.** No person shall engage in waterskiing in either Buck's Pond or in John Joseph's Pond.
- C.** All violations of Subsections A and B shall be subject to the provisions of MGL c. 90B, § 14 (Chapter 275 of the Acts of 1960).

§ 47-3. Sand Pond, Andrew's Pond, Skinequit Pond and Long Pond.

- A. The use of all boats propelled by motor, either inboard or outboard, shall be prohibited on Sand Pond, North Harwich, and Andrew's Pond (also known as "Katie's Pond"), Harwich Center.
- B. The use of all boats propelled by motor, whether inboard or outboard, and waterskiing shall be prohibited on Skinequit Pond, South Harwich.
- C. No motorboat of more than 10 horsepower or used for waterskiing may be launched or operated from the boat ramp at Cahoon Road Landing at the east end of Long Pond.
- D. Any violations of Subsections A, B and C shall be punishable by a fine of \$20.

§ 47-4. Hinckley's Pond, Seymour's Pond and Walker's Pond.

- A. No motorboat of more than six horsepower shall be operated on Hinckley's Pond. No motorboat of more than three horsepower shall be operated on Seymour's Pond.
- B. No motorboats shall exceed the speed limit as defined in this section on various ponds in Harwich. All ponds shall be posted as follows:
 - (1) Hinckley's Pond: five statute miles per hour.
 - (2) Seymour's Pond: five statute miles per hour.
- C. No motorboats shall be operated on Walker's Pond; provided, however, that a small electric motor of the type used for fishing may be used as propulsion therefor.
- D. Any violations of Subsections A, B and C of this bylaw shall be punishable by a fine of \$50.

§ 47-5. Use of soap or detergent.

The use of soap or detergent of any type is prohibited in the waters of any of the great ponds located in whole or in part within the Town of Harwich. Any violation of this bylaw shall be subject to a fine of \$50.

ARTICLE II**Launching, Operation and Beaching of Boats****§ 47-6. Definitions.**

For the purpose of this article, the following words shall have the meanings indicated:

BOAT — The same meaning as the term "vessel" as defined in MGL c. 90B, § 1.

§ 47-7. Launching and beaching of boats.

It shall be unlawful to launch or beach boats at any Town-owned or Town-operated location except in areas designated and posted therefor by the Board of Selectmen.

§ 47-8. Restrictions on anchoring in certain areas.

It shall be unlawful to anchor any boat closer than 75 feet to the mean low-water mark at any Town-owned or Town-operated bathing beach.

§ 47-9. Restrictions on operating in certain areas.

It shall be unlawful to operate any boat shoreward of any markers or floats stationed by the Harbormaster off a public bathing beach for the purpose of designating the swimming area thereat; provided, however, that in any area where such markers or floats are placed at a distance greater than 75 feet seaward of mean low water, a boat may enter the swimming area to within 75 feet of mean low water at a speed no greater than five miles per hour for the purpose of coming to anchor.

§ 47-10. Personal watercraft.

A. For the purpose of this section, the following words shall have the meanings indicated:

PERSONAL WATERCRAFT — A vessel, usually less than 16 feet in length (measured from end to end over the deck excluding shear), which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel rather than within the confines of the hull. Personal watercraft are high performance vessels designed for speed and maneuverability and are often used to perform stunt-like maneuvers. "Personal watercraft" includes vessels commonly referred to as jet ski, waverunner, wavejammer, wetjet, sea-doo, wet bike, and surf jet.

WATER BODY — The tidal waters of Pleasant Bay, including but not limited to Round Cove, Muddy Creek (Monomoy River), and any adjoining river, inlet, cove, embayment, pond or harbor.

- B. Personal motorized watercraft, such as jet skis, shall be prohibited from operating on Herring River and shall be prohibited from launching from any Town-owned property abutting freshwater ponds. Personal watercraft, such as jet skis, shall be prohibited from operating and/or launching at Round Cove.
- C. No person shall operate any personal watercraft within any coastal waters or inland waters of the Town which waters are within the boundaries of the Cape Cod National Seashore or are waters which form a portion of a water body which is located in part within the boundaries of the Cape Cod National Seashore. The boundaries of the Cape Cod National Seashore referred to in this section shall be the boundaries as set forth in Public Law 87-126 which created the Cape Cod National Seashore in 1961.

- D. Specifically excluded from the provisions of Subsection B are all waters of Nantucket Sound located in the Town of Harwich, which waters are outside the boundaries of the Cape Cod National Seashore.
- E. The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.

§ 47-11. Violations and penalties.

Any person violating any provisions of this article shall be subject to arrest. The fine for such violation shall be a fine of \$200.

Chapter 53

BUILDINGS, NUMBERING OF

§ 53-1. Posting of street number.

§ 53-3. Notice of assignment.

§ 53-2. Violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 53-1. Posting of street number.

- A. Every dwelling house, dwelling unit, and building housing a business or businesses located in whole or in part in the Town of Harwich shall have affixed thereto or otherwise posted on the premises in a location approved by the Selectmen the street number which has been assigned to said building by the Selectmen. Said number may be in numerical or word form.
- B. Said number shall be four inches minimum height, of high contrast and affixed in a location to be readily readable from the private or public way on which such dwelling or building is located. If the street number cannot be read as so located, in addition, such number shall be affixed to a sign (less than one square foot) at the intersection of the private or public way on which such dwelling or building is located (same size and contrast as number affixed to dwelling or building). Four-inch numbers attached to both sides of a mailbox shall be considered an acceptable alternative to a sign, when said mailbox is located on the same side of the private or public way as the dwelling or building.

§ 53-2. Violations and penalties.

An owner or occupant who fails to post on his premises the street number assigned thereto within six months after being given notice as hereinafter provided of the number which has been assigned or receiving actual notice thereof, whichever occurs earlier, or any owner or occupant who fails to keep said number posted and maintained in a legible condition or any person who unlawfully removes, defaces or conceals said number shall be subject to a fine of \$50 for each offense. In case of a failure to post, keep posted or maintain said number in a legible condition, each day such number is not so posted, kept posted or maintained in a legible condition shall constitute a separate offense.

§ 53-3. Notice of assignment.

Street numbers shall be assigned from time to time by the Selectmen who shall, as soon after the assignment as practical, cause notice of the number assigned to be mailed to the party or any one of the parties listed as an owner of the premises on the tax records of the Town as of January 1 of the year in which the number was assigned or notice mailed, whichever occurs

later. Such notice may, at the option of the Selectmen, be sent with an annual tax bill covering the premises.

Chapter 89

FARMING

ARTICLE I Right to Farm

§ 89-1. Purpose and applicability.

§ 89-2. Definitions.

§ 89-3. Right to farm declaration.

§ 89-4. Disclosure notification.

§ 89-5. Resolution of disputes.

§ 89-6. Severability.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Right to Farm

[Adopted at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 89-1. Purpose and applicability.

- A. The purpose and intent of this bylaw are to state with emphasis the right to farm accorded to all citizens of the Commonwealth of Massachusetts under Article 97 of the Constitution and all state statutes and regulations thereunder, including but not limited to MGL c. 40A, § 3, Paragraph 1, MGL c. 90, § 9, MGL c. 111, § 125A and MGL c. 128, § 1A. We, the citizens of Harwich, restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").
- B. This general bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities and protects farmlands within the Town of Harwich by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This bylaw shall apply to all jurisdictional areas within the Town.

§ 89-2. Definitions.

- A. The word "farm" shall include any parcel or contiguous parcels of land or water bodies used for the primary purpose of commercial agriculture or accessory thereto.
- B. The words "farming" and "agriculture" or their derivatives shall include but not be limited to the following:
 - (1) Farming in all its branches and the cultivation and tillage of the soil;
 - (2) Dairying;
 - (3) Production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural, viticultural or horticultural commodities;

- (4) Growing and harvesting of forest products upon forest land and any other forestry or lumbering operations;
- (5) Keeping and raising of livestock, including horses;
- (6) Keeping of horses as a commercial enterprise; and
- (7) Keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels) and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

C. "Farming" shall encompass activities including but not limited to the following:

- (1) Operation and transportation of slow-moving farm equipment over roads within the Town;
- (2) Control of pests, including but not limited to insects, weeds, predators and disease organisms of plants and animals;
- (3) Application of manure, fertilizers and pesticides;
- (4) Conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- (5) Processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand, including signage therefor;
- (6) Maintenance, repair or storage of seasonal equipment or apparatus owned or leased by the farm owner or manager expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- (7) On-farm relocation of earth and the clearing of trees, brush and ground for farming operations.

§ 89-3. Right to farm declaration.

The right to farm is hereby recognized to exist within the Town of Harwich. The above-described agricultural activities may occur on holidays, weekdays and weekends by night or day and shall include the attendant incidental noise, odors, dust and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community and society in general. The benefits and protections of this bylaw are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this right to farm bylaw shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation or local zoning law.

§ 89-4. Disclosure notification.

Within 30 days after this bylaw becomes effective, the Board of Selectmen of the Town of Harwich shall prominently post in the Town Hall and make available for distribution the following disclosure: "It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food and other agricultural products and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors."

§ 89-5. Resolution of disputes.

- A. Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file grievance with the Board of Selectmen, the Building Official or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Building Official or the Board of Selectmen shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance involving all concerned parties and report its recommendations to the referring Town authority within an agreed upon time frame.
- B. The Board of Health, except in cases of imminent danger or public health risk, shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance involving all concerned parties and report its recommendations to the Board of Health within an agreed upon time frame.

§ 89-6. Severability.

If any part of this bylaw is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this bylaw. The Town of Harwich hereby declares the provisions of this bylaw to be severable.

Chapter 100

FIRE PREVENTION

§ 100-1. Adoption of state regulations.

§ 100-3. Abatement of fire hazards.

**§ 100-2. Violations and penalties;
enforcement.**

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

GENERAL REFERENCES

Alarms — See Ch. 14.

Hazardous materials — See Ch. 122.

Gas piping and appliances — See Ch. 110.

§ 100-1. Adoption of state regulations.

In order to protect and enhance public safety by reducing the risk of fire hazard, the provisions of the Code of Massachusetts Regulations, 527 CMR 1.00 to 50.00, as from time to time amended, are hereby incorporated in and made a part of this bylaw, and any violation of any provision thereof shall constitute a violation of this section.

§ 100-2. Violations and penalties; enforcement.

Whoever violates any provision of § 100-1 shall be punished by a fine of \$50 for each offense. In the case of any continuing violation, each day said violation continues shall constitute a separate offense. Said section shall be enforceable by the head of the Fire Department or his authorized designee as well as by Town officers having police powers.

§ 100-3. Abatement of fire hazards.

- A. The Fire Chief or his authorized designee, upon complaint of a person having an interest in any building or premises or property adjacent thereto, shall at any reasonable hour enter into said building and upon said premises, or adjacent property, within the jurisdiction of said Town and make an investigation as to the existence of conditions likely to cause fire. He shall in writing order such conditions to be remedied, and whenever such officers or persons find in any building or upon any premises any accumulation of combustible rubbish, including but not limited to wastepaper, rags, cardboard, string, packing material, sawdust, shavings, sticks, waste leather or rubber products, broken boxes or barrels or any refuse or unusable material that is or may become dangerous as a fire hazard or as an obstacle to easy ingress into or egress from such buildings or premises, they shall, in writing, order the same to be removed or such conditions to be remedied. Notice of such order shall be served upon the owner, occupant, or his authorized agent by a member of the Fire or Police Department.

- B. If said order is not complied with within 24 hours or such additional time as the enforcing person determines reasonable as stated in said notice, the person making such order, or any person designated so to do, may enter into such building or upon such premises and remove such refuse or any unusable materials or abate such conditions, and the owner or occupant of said premises shall be liable for reasonable expenses incurred in doing so. Any expense so incurred shall be a lien upon such building or premises, effective upon the filing in the appropriate Registry of Deeds of a statement of claim therefor signed by the enforcing person and setting forth the amount of said lien. The lien shall be enforced within the time and in the manner provided for the collection of taxes upon real estate.
- C. Any such owner or occupant who fails or refuses to comply with said order shall be punished by a fine of \$75. Each day noncompliance continues shall constitute a separate offense.

Chapter 110

GAS PIPING AND APPLIANCES

§ 110-1. Permit required for gas appliances.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 110-1. Permit required for gas appliances.

Whoever desires to install or alter gas appliances shall first make application to the Gas Inspector and obtain a permit therefor. Each application shall be made in the name of the owner or occupant of the building or structure by the person or persons who propose to make the installation of such equipment. The Gas Inspector shall grant a permit authorizing such installation or alteration provided that such proposed installation or alteration complies with the laws of the commonwealth and the rules and regulations adopted by the Board of State Examiners of Plumbers and Gas Fitters. Such fee as the Selectmen shall, from time to time, determine shall be charged for each permit.

Chapter 122

HAZARDOUS MATERIALS

ARTICLE I

Materials Containing Perchlorate

§ 122-1. Findings and purpose.

§ 122-2. Prohibited acts.

§ 122-3. Administration.

§ 122-4. Enforcement.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention — See Ch. 100.

Solid waste — See Ch. 247.

ARTICLE I

Materials Containing Perchlorate

[Adopted at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 122-1. Findings and purpose.

- A. Perchlorate is an inorganic chemical commonly used in the manufacturing of rockets, missiles, fireworks and explosives. It may be found in surface water and groundwater around military operations, defense contracting, manufacturing facilities, and areas where blasting agents have been used.
- B. Perchlorate is highly mobile in water and can persist for many years in groundwater and surface water. It can cause adverse health effects at even low concentrations, and the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection (DEP) have made it a priority to implement regulations to protect drinking water supplies and public health from perchlorate impacts. Accordingly, the DEP is promulgating a drinking water standard of two parts per billion (ppb) that comes into effect during 2007.
- C. Given the potential for adverse effects on groundwater resources from perchlorate, the purpose of this bylaw is to protect the Town's drinking water supplies from contamination.

§ 122-2. Prohibited acts.

The storage, use, handling, igniting, or disposal of any materials, including without limitation explosives or fireworks, containing perchlorate within 1,500 feet of the boundary of the Zone II protective area around any public water supply as approved by the Massachusetts Department of Environmental Protection, including drinking water wells owned and operated by the Town, is hereby prohibited. The limit of the protective radius of 1,500 feet for each

Town-owned well field is shown on the map included as Appendix A to this bylaw.¹ In the event that the delineation of a Zone II changes, the Board of Water Commissioners ("Board") shall revise Appendix A and shall keep a copy of the revised map on file with the Town Clerk and the Water Department.

§ 122-3. Administration.

- A. The Board shall administer, implement, and enforce this bylaw. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to its employees or agents.
- B. The Board may adopt, and periodically amend, rules and regulations relating to the administration of this bylaw. Failure by the Board to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this bylaw.

§ 122-4. Enforcement.

- A. The Board or an authorized agent may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include requirements to cease and desist from any specified activity until there is compliance with this bylaw.
- B. Any person who violates any provision of this bylaw, or regulation, order or permit issued thereunder, shall be punished by a fine of \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

1. Editor's Note: Appendix A is on file with the Town Clerk and the Water Department.

Chapter 131

HISTORIC PRESERVATION

ARTICLE I Historic District

- § 131-1. Historic District Commission.
- § 131-2. Establishment of historic district.
- § 131-3. Powers and duties of Commission.
- § 131-4. Certificate of appropriateness.
- § 131-5. Severability.

ARTICLE II Historically Significant Buildings

- § 131-6. Purpose.
- § 131-7. Determination of historical significance.

- § 131-8. Notice of intent to demolish.
- § 131-9. Public hearing.
- § 131-10. Determination of nonsignificance.
- § 131-11. Determination of significance; demolition delay.
- § 131-12. Alternatives to demolition.
- § 131-13. Right to demolish.
- § 131-14. Violations and penalties.
- § 131-15. Enforcing authority.
- § 131-16. Exception for demolition of unsafe buildings.
- § 131-17. Severability.
- § 131-18. Conflicts with other laws.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

ARTICLE I Historic District

§ 131-1. Historic District Commission.

There is hereby established an Historic District Commission under the provisions of the Historic Districts Act, MGL c. 40C, consisting of seven members and five alternate members, appointed by the Selectmen, including one member, where possible, from two nominees submitted by the Harwich Historical Commission, one member, where possible, from two nominees, one of whom shall be submitted by the Massachusetts state chapter of the American Institute of Architects and one member, where possible, from two nominees of the Board of Realtors covering the Town of Harwich. One or more of the foregoing shall be a resident of an historic district established in Harwich pursuant to the Historic Districts Act. When the Commission is first established, three members shall be appointed for a term of one year, two shall be appointed for a term of two years, and two shall be appointed in like manner for three years, and their successors shall be appointed in like manner for terms of three years. When the Commission is first established, one alternate member shall be appointed for a term of one year, two alternate members shall be appointed for a term of two years, and two alternate members shall be appointed for a term of three years, and their successors shall be appointed in like manner for terms of three years.

§ 131-2. Establishment of historic district.

There is hereby established an Historic District under the provisions of the Historic Districts Act, MGL c. 40C, which district is shown on a plan titled "Town of Harwich Existing and Proposed Addition to the Historic District," dated November 1972, scale one inch equals 100 feet, Martin E. Moran, Town Engineer, a copy of which is on file at the Town Clerk's office.

§ 131-3. Powers and duties of Commission.

The Historic District Commission shall have all the powers and duties of historic district commissions as provided by the Historic Districts Act, MGL c. 40C, and subsequent amendments thereto.

§ 131-4. Certificate of appropriateness.

When taking action under the provisions of the second paragraph of Section 7 of the Historic Districts Act, MGL c. 40C, the Historic District Commission shall make a determination within 30 days after the filing of the application for a certificate of appropriateness, or such further time as the applicant may, in writing, allow.

§ 131-5. Severability.

In case any section, paragraph or part of this bylaw is, for any reason, declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

ARTICLE II

Historically Significant Buildings

§ 131-6. Purpose.

It is the purpose of this bylaw to promote protection of the historical, cultural and architectural heritage of the Town by preserving from demolition whenever possible historically significant buildings by affording the Historical Commission established by the Charter, Chapter 7, Section 9, and other interested parties an opportunity to explore and develop with the owners of such buildings acceptable alternatives to demolition.

§ 131-7. Determination of historical significance.

For the purpose of this bylaw, historically significant buildings are buildings constructed prior to 100 years before the present calendar year which:

- A. Are listed either on the National Registry of Historic Places or the Massachusetts Register of Historic Places;
- B. Are directly associated with one or more historically noteworthy persons or events or with the political, cultural, economic or social history of the Town;

- C. Possess particular architectural value or significance as representative of a recognized architectural style or period or due to the method of construction or materials used or by virtue of association with an historically noteworthy architect; or
- D. Are listed on a register of historically significant buildings developed in accordance with these standards and maintained by the Historical Commission.

§ 131-8. Notice of intent to demolish.

- A. Before any building constructed prior to 100 years before the present calendar year is demolished in whole or in part, a notice of intent to do so will be filed with the Commission.
- B. The notice of intent will be in the form provided by the Commission and shall be deemed filed when the completed form with the required number of copies and filing fee established by the Commission has been deposited both in the office of the Town Clerk and in the office of the Building Official.

§ 131-9. Public hearing.

- A. Within 45 days of said filing, the Commission shall hold a public hearing to determine the degree of historical significance, if any, of the subject building and, if deemed to be historically significant, explore alternatives to demolition.
- B. Notice of the time, place and subject matter of hearings hereunder shall be given by publication in a newspaper of general circulation in the Town once each week for two successive weeks, the first notice to appear 14 days at least before the day of the hearing (including the day of publication and excluding the day of the hearing), and by mailing a notice of hearing to the owner or applicant, all abutters to the subject property, the Planning Board of the Town, the Historic District Commission, the Harwich Historical Society, the Conservation Commission and the Selectmen and such other persons as the Commission may determine.

§ 131-10. Determination of nonsignificance.

If after hearing the Commission determines the building in question is not historically significant, or if the Commission determines in a case where less than complete demolition is proposed that the proposed work will not destroy or substantially diminish the historical significance of the structure, it shall within seven days of said hearing so notify the owner or applicant and the Building Official and shall also file a record of its findings with the Town Clerk in a form suitable for recording at the Registry of Deeds. Thereafter, necessary permits to authorize work may be applied for. A finding of nonsignificance hereunder shall be conclusive on all parties.

§ 131-11. Determination of significance; demolition delay.

If after hearing the Commission determines that the building in question is historically significant and the proposed work would destroy or substantially diminish its historic value, it is empowered to impose a demolition delay of up to 180 days from the date of said determination and may schedule additional hearings during any such delay period to allow an opportunity to develop alternatives to demolition.

§ 131-12. Alternatives to demolition.

If as a result of the Commission's review acceptable alternatives to demolition are developed, the Commission is empowered to enter into an agreement with the owner of the building in question which reflects the alternatives which have been agreed to and where appropriate establishes a time period for implementation of said alternatives. A copy of said agreement shall be filed with the Town Clerk and Building Official. Thereafter, no work in connection with the building shall be done except in accordance with the terms of said agreement unless and until a new notice of intent is filed and processed hereunder.

§ 131-13. Right to demolish.

If at the end of a Commission-mandated delay no alternatives have been agreed to by the applicant, the Commission shall within seven days so notify the Town Clerk and the Building Official and the applicant shall be entitled to apply for all necessary permits to allow the work as described in the notice of intent.

§ 131-14. Violations and penalties.

Any person legal or natural who demolishes in whole or in part any building constructed prior to 100 years before the present calendar year without first complying with the terms and provisions of this bylaw shall be subject to a fine of \$300. Each day any work continues in violation hereof shall constitute a separate offense. In addition to said penalty, the enforcing official shall be entitled to pursue appropriate action seeking injunctive relief to enjoin and restrain violation hereof.

§ 131-15. Enforcing authority.

The Building Official shall be authorized to enforce the provisions of this bylaw.

§ 131-16. Exception for demolition of unsafe buildings.

The provisions of this bylaw shall not apply to the Building Official if pursuant to other applicable provisions of law said Inspector orders the demolition of an unsafe building to abate a threat to the public safety, nor shall it apply to persons acting pursuant to such an order.

§ 131-17. Severability.

If any provision of this bylaw is determined to be invalid or unconstitutional by any court of competent jurisdiction, said determination shall not affect the validity of any other section hereof.

§ 131-18. Conflicts with other laws.

If any provision hereof conflicts with any provision of the General Laws of the commonwealth, the provisions of the General Laws shall prevail.

Chapter 164

LICENSES, PERMITS AND FEES

§ 164-1. Junk dealers and collectors.

§ 164-2. Garbage collectors.

§ 164-3. Amusements.

**§ 164-4. License fee for camps, cabins,
motels or mobile home parks.**

§ 164-5. Violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 164-1. Junk dealers and collectors.

No person shall engage in the collection of junk or secondhand commodities within the Town or engage in the business of junk dealer or secondhand commodity dealer without first obtaining a license from the Board of Selectmen, and the Board of Selectmen shall make such rules and regulations governing the collection of such junk and secondhand commodities and junk dealers and secondhand commodity dealers as may be reasonable and proper, and any licensee so licensed by the Board of Selectmen under this section who shall violate any of the rules or regulations made by the Board of Selectmen pursuant to this section shall be subject to such penalties as are hereinafter provided. Also the Selectmen may revoke such license for any violation at their pleasure.

§ 164-2. Garbage collectors.¹

No person shall engage in the collection of garbage, rubbish or offal without first obtaining a license from the Board of Health of the Town, and all such licenses shall comply with all the rules and regulations of the Board of Health, and any violation thereof shall be punished as hereinafter provided or as may be provided by regulations of the Board of Health for any violation of its regulations.

§ 164-3. Amusements.

Upon application for a license or permit to build, maintain and/or operate an amusement, the Selectmen shall hold a public hearing upon such application and publish notice in a newspaper having circulation in the Town of Harwich at least seven days prior to the date of the hearing.

§ 164-4. License fee for camps, cabins, motels or mobile home parks.

The fee for original or renewed licenses for recreational camps, overnight camps or cabins, motels or mobile home parks located within the Town of Harwich shall be as established by the Board of Selectmen from time to time.

1. Editor's Note: See also Ch. 247, Solid Waste.

§ 164-5. Violations and penalties.

Whoever violates §§ 164-1 and 164-2 of this bylaw shall, except where a different provision is made by the laws of the commonwealth, be subject to a fine in the sum of \$50. Such fine shall not act as a bar to any civil enforcement actions.

Chapter 176

MINORS

ARTICLE I Smoking in Schools

§ 176-1. Smoking prohibited; violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Smoking in Schools [Adopted at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 176-1. Smoking prohibited; violations and penalties.

No student registered in the Harwich public schools shall smoke in school, on school grounds, on school buses, or at school activities. Any student violating this bylaw shall be subject to fines of \$50 for the first offense, \$100 for the second offense and \$200 for the third and each subsequent offense. In the case of a Harwich student offender, these fines shall continue and be cumulative over the student's years of education in the Harwich schools. These fines will be in addition to penalties the school may apply to violators.

Chapter 189

NOISE

§ 189-1. Residential premises and boats, autos or other conveyances.

§ 189-2. Premises licensed to provide alcoholic beverages or entertainment.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 189-1. Residential premises and boats, autos or other conveyances.

It shall be unlawful for any person or persons occupying or having charge of any building or premises or any part thereof used or occupied in whole or in part for residential dwelling purposes or any boat, auto or other conveyance to cause or suffer or allow any loud, excessive or unusual noises in the operation of any radio, phonograph or other mechanical sound-making or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or groups of persons or in the use of any device to amplify the aforesaid noise, where the noise is plainly audible at a distance of 150 feet from the building or premises in which or from which it is produced. The fact that the noise is plainly audible at a distance of 150 feet from the building or premises from which it originates shall constitute prima facie evidence of a violation of this bylaw. Any person violating this bylaw shall be punished by a fine of \$50 for each offense.

§ 189-2. Premises licensed to provide alcoholic beverages or entertainment.

It shall be unlawful for any person or persons occupying or having charge of any building or premises licensed pursuant to the provisions of MGL c. 138 or licensed to provide entertainment to violate any provision or restriction of the license designed and intended to regulate, restrict or limit noise generated in connection with the licensed activity. Any person violating this section shall be punished by a fine of \$200.

Chapter 208

PARKING

ARTICLE I

Parking for People with Disabilities

§ 208-1. Unauthorized parking.

§ 208-2. Required parking spaces.

§ 208-3. Accommodation plans.

§ 208-4. Sign requirements; location and size of parking spaces.

§ 208-5. Universal accessible space.

§ 208-6. Applicability.

§ 208-7. Violations and penalties; enforcement.

§ 208-8. Effective date.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Beach parking — See Ch. 40.

ARTICLE I

Parking for People with Disabilities

[Adopted at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

§ 208-1. Unauthorized parking.

No person shall park a motor vehicle, motorcycle, or like means of transportation in a designated parking space or crosshatch area next to this parking space that is reserved for vehicles owned and operated by disabled veterans or by handicapped persons unless said vehicle bears the distinctive license plates, placards, or for vehicles transporting a handicapped person, displaying the special identification plate authorized by MGL c. 90, § 2, or for any vehicle bearing the official identification of a handicapped person issued by any other state or other legitimate governmental entity.

§ 208-2. Required parking spaces.

Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for businesses, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, multifamily residential dwellings, or for any other place where the public has a right of access as invitees or licensees shall be required to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinctive license plates, placards, or for vehicles transporting a handicapped person, displaying the special identification plate authorized by MGL c. 90, § 2, or for any vehicle bearing the official identification of a handicapped person issued by any other state or other legitimate governmental entity, according to the following formula:

Total Parking Spaces	Minimum Required Accessible Spaces (see Note 1)
1 to 25	1 space (see Note 2)
26 to 50	2 spaces
51 to 75	3 spaces
76 to 100	4 spaces
101 to 150	5 spaces
151 to 200	6 spaces
201 to 300	7 spaces
301 to 400	8 spaces
401 to 500	9 spaces
501 to 1,000	2% of total
1,001 and over	20 spaces plus 1 space for each 100 over 1,000 spaces

Note 1: One or more adjacent establishments may use the combined parking areas of each establishment to provide the required number of universal accessible spaces (11 feet wide with adjacent five-foot-wide crosshatch) for all participating establishments, provided that no such spaces shall be farther than 100 feet from any of the accessible entrances of the participating establishments, and further provided that a safe and accessible path to each participating establishment is provided and maintained, except as provided under an approved accommodation plan under § 208-3.

Note 2: For parking areas, new or existing, containing from one to 15 spaces and not subject to other provisions of this bylaw relative to a renovation or expansion project, compliance with this table may be satisfied pursuant to the requirements of § 208-3 below.

Note 3: Parking spaces shall be level with surface. Any slopes shall not exceed a ratio of 1:50 in all directions.

§ 208-3. Accommodation plans.

- A. Parking areas, new or existing, which contain fewer than 16 parking spaces and are subject to the provisions of this bylaw may provide for alternate ways of accommodating parking access by individuals with disabilities by implementing an accommodation plan approved by the Board of Selectmen or its designee which incorporates one or more of the following measures:
- (1) A plan for accommodation which provides for reasonable and safe means for unloading, loading, and parking a wheelchair-lift-equipped passenger van. In addition to other approaches, such plan may provide for a system in which employees of a subject establishment are trained, able, and reasonably available to assist disabled people in accessing the establishment and returning to their vehicles. This may include designating a marked and signed area on the site or an adjacent property in which a lift-equipped van may temporarily be unloaded and

loaded and parked in a standard parking space and retrieved by an employee of the establishment.

- (2) A plan for accommodation that provides for a system in which disabled individuals may be served in their vehicles and/or homes by a representative of a subject establishment. This option shall not be available to restaurants.
- B. Approval of accommodation plans will be subject to such procedures, rules and/or regulations as may from time to time be adopted by the Board of Selectmen, subject to public hearing in accordance with established policy.

§ 208-4. Sign requirements; location and size of parking spaces.

- A. Each parking space designated as reserved under the provisions of § 208-2 of this article or each pair of such spaces shall be identified by a permanently installed above-grade sign located at a height of not less than five feet and not more than eight feet to the top of the sign with white lettering against a blue background and which shall bear the words "Parking for People with Disabilities, Special Plate Required, Unauthorized Parking Subject to Fine and Towing at Owner's Expense" and must also contain the international symbol of accessibility which is a person in a wheelchair.
- B. Such parking spaces shall be as near as possible to a building entrance or walkway and adjacent to curb ramps or other unobstructed methods which permit sidewalk access to a person with a disability, shall be 11 feet wide or have two eight-foot-wide areas with five feet of crosshatch between them and contain the international symbol of accessibility on their surface. However, on unpaved lots, parking spaces shall be designated only by the sign as defined in this section. Where the designated parking space cannot be located within 200 feet of an entrance accessible to the physically handicapped, a dropoff area, accessible to the physically handicapped, shall be provided within 100 feet of such entrance.

§ 208-5. Universal accessible space.

One in eight accessible spaces (minimum of one) shall be a universal accessible space, 11 feet wide with an adjacent five-foot-wide access aisle, which shall be painted with a crosshatch pattern on the parking area surface. Except as otherwise required by law relative to an expansion or renovation project, any owner of a parking area who seeks to construct a conforming universal accessible space may do so when, in the opinion of the Building Official, such construction conforms to the requirements of the Harwich Zoning Bylaw and does not render the parking area unsafe due to obstruction of traffic flow or emergency access.

§ 208-6. Applicability.

This bylaw shall apply to any existing or future parking area to which the public has a right to access as invitees or licensees.

§ 208-7. Violations and penalties; enforcement.

- A. The penalty for parking in violation of § 208-1 shall be \$200, and any vehicle parked in violation thereof may be towed according to the provisions of MGL c. 40, § 22D. The Police Department shall enforce the provisions of the bylaw.
- B. The penalty for failure to establish and/or maintain the parking spaces and signs required by §§ 208-2 and 208-4 of this bylaw shall be a fine of \$200 for each day failure continues. The Building Official shall enforce the provisions of the bylaw.

§ 208-8. Effective date.

Establishment of parking spaces for people with disabilities and universal accessible spaces and appropriate signage shall be completed not later than May 1, 1999.

Chapter 214

PEACE AND GOOD ORDER

§ 214-1. Disorderly conduct and loitering.

§ 214-2. Peeping toms.

§ 214-3. Overnight camping.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

GENERAL REFERENCES

Alarms — See Ch. 14.

Alcoholic beverages — See Ch. 18.

Animals — See Ch. 26.

Noise — See Ch. 189.

§ 214-1. Disorderly conduct and loitering.

No person shall behave in a rude, indecent or disorderly manner, or use profane, indecent or insulting language, or shout, scream and/or utter loud outcries without reasonable cause in any public place in the Town to the annoyance or disturbance of any person there being or passing, or loiter on any sidewalk or street or about doorways or places of business to the annoyance or disturbance of any person. Any person violating any of the provisions of this bylaw shall be fined \$50 for each offense.

§ 214-2. Peeping toms.

No person, except any officer of the law in performance of his duties, shall enter upon or remain upon the premises of another with the intention of peeking, spying or looking into the window, door or other aperture of a house or other structure in any manner or upon any person or persons therein. Any person convicted of this offense shall be punished by a fine of \$50.

§ 214-3. Overnight camping.

No person shall, between the hours of 8:00 p.m. and 8:00 a.m., set up on any property, public or private, without permission of the owner thereof, a camp, tent, trailer or vehicle adapted to habitation, self-propelled or capable of being towed by any other motor vehicle, or sleep in the open on any property, public or private, without permission of the owner thereof within the territorial limits of the Town of Harwich. Any person violating this bylaw shall be punished by a fine of \$50 for each offense.

Chapter 230

RENTAL DWELLINGS

§ 230-1. Registration required.

§ 230-3. Certificate of registration.

§ 230-2. Violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 230-1. Registration required.

Any owner or agent who shall offer for rent or lease any building or portion thereof to be used for habitation, other than duly authorized or licensed premises, for a period of 90 days or less shall first register with the Building Official, who shall determine the number of persons said building or portion thereof can legally accommodate.

§ 230-2. Violations and penalties.

Upon the arrest and conviction for violation of any statute of the commonwealth reported to have taken place on any such rented or leased premises as described in § 230-1, the tenant, holder of a lease, and anyone found to be in violation of the preceding section shall be punished by a fine of \$20, if at the time of said violation it was found that the number of occupants on or about any such premises exceeded 200% of the registered occupancy as required by the provisions of § 230-1 of this bylaw or the amount so to be determined by the Health Inspector if no such registration shall be in effect.

§ 230-3. Certificate of registration.

Any building or portion thereof registered as required by this bylaw shall have conspicuously posted therein a certificate of registration together with a copy of this bylaw.

Chapter 247

SOLID WASTE

- | | |
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| § 247-1. Dumping of rubbish and refuse. | § 247-3. Dumping of rubbish from outside Town. |
| § 247-2. Hazardous waste. | § 247-4. Violations and penalties. |

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention — See Ch. 100.
Hazardous materials — See Ch. 122.

Licensing of garbage collectors — See Ch. 164.

§ 247-1. Dumping of rubbish and refuse.

No person shall dump any rubbish, refuse or material of any kind on any land within the Town unless said land is a duly designated and licensed disposal area where the type of material being disposed of may lawfully be discarded, nor shall such materials be discarded along any highway, street or road within said Town. In any case where by law a particular type of material may be disposed of at sites other than licensed disposal areas, no such material will be disposed of without prior approval from the owner of said land and without first giving notice to the Fire Department, Board of Health and Building Department of said Town.

§ 247-2. Hazardous waste.

It shall be unlawful for any person to dump or cause to be dumped any material classified as hazardous waste under applicable state or federal regulations on any land within the Town of Harwich unless said land has been duly designated and licensed as a disposal facility for such material. Violations of this section shall be punished by a fine of \$300 and may be enforced by the Fire Department acting through the Fire Chief or his authorized designees, by the duly authorized health agent of said Town of Harwich and by the Building Official in addition to any Town officers having police powers. Restitution for the cost of mitigation and cleanup incurred by the Town of Harwich may be assessed in addition to any fine. Prosecution hereunder shall not bar any other action, civil or criminal, which by law may be taken in such a case.

§ 247-3. Dumping of rubbish from outside Town.

No person shall dump or cause to be dumped in any dumping ground maintained by the Town any rubbish or other material brought from without the limits of the Town of Harwich.

§ 247-4. Violations and penalties.

Violations of §§ 247-1 and 247-3 of this bylaw shall be punished by a fine of \$100 for the first violation, \$200 for the second violation, and \$300 for the third and subsequent violations which may be enforced by the Fire Department acting through the Fire Chief or his/her authorized designees, the duly authorized health agent, Building Official, and any officers having police powers of said Town of Harwich. Second, third, and subsequent violations are determined through official records indicating that the violator has paid a fine, had a judgment, or been found guilty for a similar offense. Restitution for the cost of mitigation and cleanup incurred by the Town of Harwich may be assessed in addition to any fine. Prosecution hereunder shall not bar any other action, civil or criminal, which by law may be taken in such a case.

Chapter 255

STREETS AND SIDEWALKS

§ 255-1. Obstructions and excavations.

§ 255-3. Construction of Town ways.

§ 255-2. Width of Town ways.

§ 255-4. Improvements to private ways.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

GENERAL REFERENCES

Visibility at intersections — See Ch. 95.

Parking — See Ch. 208.

§ 255-1. Obstructions and excavations.

No person shall obstruct or excavate any public or private way (excepting private driveways) without first obtaining a license therefor. The Director of Highways and Maintenance or other official having charge of the streets and highways of the Town may, upon written application therefor, grant licenses in writing for the obstruction or excavation of any street or highway or for such excavation as may be required for the purpose of erecting, repairing, altering or removing any building or structure, for the laying of drains, gas pipes, or electric conduits or for any purpose which to him seems reasonable and proper, and such official in charge of the streets and highways shall require any person, firm or corporation acting under such license to make repair of any damage that may be done to any part of the highway resulting therefrom, and such repair shall be at the expense of the licensee, except that the Water Department of the Town of Harwich shall not be required to obtain such license or make such repair in connection with the installation of water services from its mains or in connection with emergency repairs. The official having charge of the streets and highways shall require every licensee under this section to execute such indemnity bond and with sureties and in such sum which to him may seem reasonable and proper, and all such bonds shall be approved as to form by Town Counsel prior to execution.

§ 255-2. Width of Town ways.

No road of less than forty-foot width shall be accepted by the Town as a Town way unless a road of lesser width is recommended by a majority vote of the Planning Board in writing to the Board of Selectmen.

§ 255-3. Construction of Town ways.

No road shall be accepted by the Town as a Town way until it has been cleared to a width of at least 20 feet, leveled and hardened with a suitable material to a depth of six inches, all to the satisfaction of both the Director of Highways and Maintenance and the Board of Selectmen.

§ 255-4. Improvements to private ways.

- A. In the event that a group of property owners who own property on a private road which has been open for public use for at least five years wish the Town of Harwich to finance the repair of their private way, they shall engage an engineer experienced in road construction and repair who shall survey the road in question to develop a plan for the repair of that private road which shall take into consideration the need for additional drainage, new berms, driveway aprons to protect the edges of the repaired road, the filling of existing cracks and the application of one or more layers of bituminous concrete. The repair shall be designed to bring the road up to Town standards or as close as possible within the physical constraints of the right-of-way.
- B. The plan shall specify the projected useful life of the repaired private way, and in no event shall the projected useful life be less than 15 years. All costs of preparing the plan, obtaining cost estimates and preparing the petition described below shall be the exclusive responsibility of the petitioners.
- C. The property owners shall prepare a petition to the Board of Selectmen for the Town of Harwich to finance the work in an amount certain, including a ten-percent contingency amount. The petition shall list the parcels by lot number and map number together with the owners' names of record with a space for each owner to place his or her signature. The petition must state that each signature represents an irrevocable agreement by each signatory to repay to the Town of Harwich, through the mechanism of a betterment added to each owner's real estate tax bill, his or her pro rata share of the total amount to be financed plus interest and administrative costs, which Town administrative costs shall not exceed 10% of the project. The petition shall not be presented to the Selectmen unless 50% of all the abutters to the road plus one more abutter shall have agreed to the project and its financial commitment by having signed it. Once approved by the Board, all abutters shall be assessed for a pro rata share of the cost of the betterment.
- D. The petition, accompanied by the engineer's plan, a map of the private way to be repaired and backup for the cost estimates, shall be submitted to the Selectmen's office on or before August 31. The Selectmen shall refer every such petition to the Assessor's office for verification of signatures and confirmation that more than 50% of the abutters have signed. The Selectmen shall consider all submitted petitions that pass the Assessor's examination prior to September 30. If the Selectmen determine that the proposed repairs are in the public interest and if the Selectmen determine that these repairs are within the financial capabilities of the Town, the Board of Selectmen shall refer each petition so determined to the Planning Board which shall conduct a public hearing on each petition on or before November 15 to evaluate the plan, examine the cost estimates and hear from both the abutters and the general public. The Planning Board shall either endorse the plan by a simple majority vote and return it to the Selectmen, recommend changes in costs or scope of the plan or disapprove the plan by a simple majority vote.
- E. If the Planning Board approves any such plan, the Board of Selectmen may place the plan on the warrant for the next Annual Town Meeting. If the Planning Board suggests modifications or changes in scope of costs, the Board of Selectmen may, as its option, send out proxies to the abutters noting scope and cost changes or it may return the project to the petitioners. If proxies are sent out, they must be returned by December 31;

the Selectmen may place the project on the Annual Town Meeting warrant, provided that more than 50% of the abutters approve the revisions.

- F. If the Annual Town Meeting votes to endorse and finance the project, the engineer who did the original plan shall be named "Project Manager." He shall prepare a new set of bid specifications with the bids to be directed to the Town Administrator. The Project Manager and the Town Administrator shall select the best bid to do the work. The Project Manager shall advise the Director of the Division of Highways and Maintenance 48 hours in advance of each phase of the project and certify, in writing, to the Director of the Division of Highways and Maintenance that each phase of the project has been completed to the Project Manager's satisfaction. The Director of the Division of Highways and Maintenance shall inspect the completed work and certify to the Town Accountant that the work is completed so that payment may be made.
- G. For a group of private roads within a subdivision in which membership in a neighborhood property owners' association is automatic or mandatory, the same procedure shall be used:
 - (1) So long as a majority of the owners of the lots abutting the group of private ways to be repaired signs the petition required by Subsection C above; and
 - (2) So long as the group of private ways to be repaired is owned or controlled, directly or indirectly, by the neighborhood association or its members.
- H. The Town of Harwich shall incur no liability for any damages of any nature whatsoever arising from the project by virtue of the Town's agreeing to finance any repair of a private subdivision way. The abutters who accept Town financing shall be deemed to have indemnified and held the Town harmless against any and all such claims.
- I. Any private way improved under the provisions of this bylaw need not be brought up to full Town road standards. Any private way improved under the provisions of this bylaw shall continue to remain a private way.

Chapter 271

TOWN MEETING

ARTICLE I **Date and Time**

- § 271-1. Submission of articles.
§ 271-2. Quorum.

ARTICLE II **Procedure**

- § 271-3. Admittance to Town Meeting floor.
§ 271-4. Motions and amendments.
§ 271-5. Interruptions.
§ 271-6. Withdrawal of motions.
§ 271-7. Time limitation on speakers.

- § 271-8. Method of confirming doubted votes.
§ 271-9. Reconsideration of motions.
§ 271-10. Order of action on articles.
§ 271-11. Motion chart.
§ 271-12. Questioning presence of quorum.
§ 271-13. Rules of order.
§ 271-14. Finance Committee recommendations.
§ 271-15. Votes requiring two-thirds majority.
§ 271-16. Recommendations regarding articles.

Motion Chart

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

ARTICLE I **Date and Time**

§ 271-1. Submission of articles.

- A. All articles to be inserted in the May Town Meeting shall be submitted, in final form, in writing to the Selectmen no later than 4:00 p.m. on the second Friday in January previous to the meeting. All articles for a Special Town Meeting shall be presented as aforesaid at least 40 days before the Special Town Meeting.
- B. A copy of all articles to be inserted in the warrant for any Town Meeting shall be submitted by the Board of Selectmen to the Finance Committee not later than 14 days after the deadline for the submission of articles set forth in Subsection A above.

§ 271-2. Quorum.

A quorum for an Annual or Special Town Meeting shall be not fewer than 150 registered voters.

ARTICLE II
Procedure

§ 271-3. Admittance to Town Meeting floor.

During the legislative session of Town Meeting the floor shall be occupied solely by registered voters, and it shall be the duty of the Moderator to clear the floor of all nonvoters. Nonvoters shall not address the Meeting without majority consent thereof; provided, however, that the Moderator may allow a nonresident department head to speak on any article the subject matter of which might affect that department or in response to questions from the floor.

§ 271-4. Motions and amendments.

All motions and amendments shall be in writing when required by the Moderator.

§ 271-5. Interruptions.

No one but the Moderator shall interrupt another while speaking, except to call him to order.

§ 271-6. Withdrawal of motions.

No motion moved, seconded and stated can be withdrawn except by the maker of the motion.

§ 271-7. Time limitation on speakers.

No one shall speak on the same question more than twice, not longer than 10 minutes, without leave of the Meeting.

§ 271-8. Method of confirming doubted votes.

When a vote decided by the Moderator is questioned by seven or more voters, it shall be made certain by the voters of either side rising and standing to be counted by the Moderator or tellers appointed by him.

§ 271-9. Reconsideration of motions.

The vote on a motion to reconsider a previous vote shall be made before the next adjournment of the Meeting.

§ 271-10. Order of action on articles.

Articles in the warrant shall be acted upon in their order, unless otherwise ordered by a three-fourths vote of the Meeting.

§ 271-11. Motion chart.

The motions contained in this section and no others shall be acceptable by the Moderator at Town Meetings (see Motion Chart).¹

§ 271-12. Questioning presence of quorum.

The quorum at any Special or Annual Town Meeting shall not be questioned after a motion duly made, seconded and accepted by the Moderator has been placed on the floor for debate until such motion has been put to a vote and the vote thereon decided by the Moderator.

§ 271-13. Rules of order.

Rules of procedure not specifically provided by law or by these bylaws shall be determined by Town Meeting Time: Handbook of Parliamentary Law.

§ 271-14. Finance Committee recommendations.

When the Finance Committee recommends passage of an article in the warrant for a Town Meeting, the Chairman or other member of the Finance Committee shall move for adoption of the article. When the Finance Committee's recommendation is that the article not be adopted, a proponent of the article shall move for adoption of the article. In the event that a motion for adoption of the article is not made, the Chairman of the Finance Committee shall move for indefinite postponement.

§ 271-15. Votes requiring two-thirds majority.

The Moderator may conduct all votes requiring a two-thirds majority by statute in the same manner in which the Moderator conducts the vote when a majority vote is required.

§ 271-16. Recommendations regarding articles.

Votes of the Board of Selectmen and Finance Committee establishing recommendations regarding Town Meeting articles shall be made available upon the request of any registered voter at a Regular or Special Town Meeting.

1. Editor's Note: The Motion Chart is included at the end of this chapter.

TOWN MEETING

271 Attachment 1

Town of Harwich

Motion Chart
§ 271-11

(Application of rules is indicated by an X)

Motions	Debatable	Non Debatable	Amendable	Non Amendable	Second Request	Second Not Required	Majority Vote	2/3 Vote	3/4 Vote	May Reconsider	Cannot Reconsider
Adjourn		X		X	X		X				X
Adjourn (in a time certain)	X		X		X		X			X	
Amendment	X		X		X		X			X	
Adopt a resolution	X		X		X		X				X
Accept and adopt	X		X		X		X ¹			X	
Postpone indefinitely	X			X	X		X			X	
Previous question; terminate debate		X		X	X				X		X
Reconsider ²	X			X	X				X		X
Consider articles out of order	X		X		X				X		X
Point of order		X				X					

NOTES:

1. Unless a greater than simple majority is required by General Laws or Town of Harwich Bylaws.
2. See § 271-9.

Chapter 293

VEHICLES, UNREGISTERED

§ 293-1. Outdoor storage.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 293-1. Outdoor storage.

No person shall have more than one unregistered motor vehicle or trailer that can be seen on his premises from a public or private way or from abutting property in any district of the Town at any time. This bylaw shall not apply to a licensed new or used car dealer or licensed gasoline service station at such regularly authorized and established place of business. Whoever violates this section shall be punished by a fine of \$50.

Chapter 300

WATER

ARTICLE I Water Supply Emergency

- § 300-1. Authority.**
- § 300-2. Purpose.**
- § 300-3. Definitions.**
- § 300-4. Requirements.**
- § 300-5. Violations and penalties.**
- § 300-6. Right of entry.**
- § 300-7. Severability.**

ARTICLE II Water Use Restriction

- § 300-8. Authority.**

- § 300-9. Purpose.**
- § 300-10. Definitions.**
- § 300-11. Declaration of state of water supply conservation.**
- § 300-12. Restricted water uses.**
- § 300-13. Notice.**
- § 300-14. Termination of state of water supply conservation.**
- § 300-15. Water supply emergencies.**
- § 300-16. Violations and penalties.**
- § 300-17. Severability.**

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

ARTICLE I Water Supply Emergency

§ 300-1. Authority.

This bylaw is adopted pursuant to the police and home rule powers of the Town and also pursuant to the authority conferred by MGL c. 40, § 21.

§ 300-2. Purpose.

The purpose of this bylaw is to maintain the public health, safety and welfare by protecting the Town's water supply whenever there is in force a state of water supply emergency by providing for enforcement of any restrictions, requirements, provisions or conditions duly imposed by the Town of Harwich with the approval of the Department of Environmental Protection (DEP).

§ 300-3. Definitions.

For the purpose of this bylaw the following terms shall have the meanings indicated:

ENFORCEMENT AUTHORITY — The Town of Harwich's Board of Water Commissioners or its designee or other department or board having responsibility for the operation and maintenance of the water supply, the health agent, the Town police, and the Fire Chief or his authorized designee.

STATE OF WATER SUPPLY EMERGENCY — A state of water supply emergency declared on petition of the Town by the Department of Environmental Protection pursuant to MGL c. 21G, §§ 15 through 17 or MGL c. 111, § 160 or by the Governor.

§ 300-4. Requirements.

The following shall apply to all users of water supplied by the Town of Harwich: following notification by the Town of Harwich of the existence of a state of water supply emergency, no person shall violate any provision, condition, requirement or restriction included in a plan approved by the Department of Environmental Protection which has as its purpose the abatement of a water supply emergency. Notification of any provision, restriction, requirement, or condition with which users of water supplied by the Town of Harwich are required to comply to abate a situation of water emergency shall be sufficient for the purposes of this bylaw if it is published in a newspaper of general circulation within the Town of Harwich or by such other notice as is reasonably calculated to reach and inform all users of Town of Harwich water.

§ 300-5. Violations and penalties.

Any person or entity that violates this bylaw shall be liable to the Town of Harwich in the amount of \$50 for the first violation and \$100 for each subsequent violation. Fines shall be recovered by indictment or on complaint before the District Court or by noncriminal disposition in accordance with MGL c. 40, § 21D. Each separate instance of noncompliance following issuance of any warning or citation pursuant to this section or each day of a continuing violation shall constitute a separate offense.

§ 300-6. Right of entry.

Agents of the enforcement authority may enter by owner permission or by warrant only any property for the purpose of inspecting or investigating any violation of this bylaw or for the purpose of enforcing the same.

§ 300-7. Severability.

The invalidity of any portion or provisions of this bylaw shall not invalidate any other portion, provision or section hereof.

ARTICLE II
Water Use Restriction

§ 300-8. Authority.

This bylaw is adopted by the Town under its police powers to protect public health and welfare and its powers under MGL c. 40, § 21 et seq. and implements the Town's authority to regulate water use pursuant to MGL c. 41, § 69B. This bylaw also implements the Town's authority under MGL c. 40, § 41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection.

§ 300-9. Purpose.

The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a state of water supply conservation or state of water supply emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the Department of Environmental Protection.

§ 300-10. Definitions.

For the purpose of this bylaw the following terms shall have the meanings indicated:

ENFORCING PERSON — The Board of Water Commissioners, the Board of Health and health agent, police officers of the Town and any other persons designated by the Board of Water Commissioners to enforce this bylaw.

PERSON — Any individual, corporation, trust, partnership or association, or other entity.

STATE OF WATER SUPPLY CONSERVATION — A state of water supply conservation declared by the Town pursuant to § 300-11 of this bylaw.

STATE OF WATER SUPPLY EMERGENCY — A state of water supply emergency declared by the Department of Environmental Protection under MGL c. 21G, §§ 15 to 17.

WATER USERS or WATER CONSUMERS — All public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

§ 300-11. Declaration of state of water supply conservation.

The Town, through its Board of Water Commissioners, may declare a state of water supply conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a state of water supply conservation shall be given under § 300-13 of this bylaw before it may be enforced.

§ 300-12. Restricted water uses.

A declaration of a state of water supply conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions, or requirements shall be included in the public notice required under § 300-13.

- A. Odd/even day outdoor watering. Outdoor watering by water users with odd-numbered addresses is restricted to odd-numbered days. Outdoor watering by water users with even-numbered addresses is restricted to even-numbered days.
- B. Outdoor watering ban. Outdoor watering is prohibited.
- C. Outdoor watering hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a state of water supply conservation and public notice thereof.
- D. Filling swimming pools. Filling of swimming pools is prohibited.
- E. Automatic sprinkler use. The use of automatic sprinkler systems is prohibited.

§ 300-13. Notice.

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a state of water supply conservation shall be published in a newspaper of general circulation within the Town, or by such other means reasonably calculated to reach and inform all users of water of the state of water supply conservation. Any restriction imposed under § 300-12 shall not be effective until such notification is provided. Notification of the state of water supply conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

§ 300-14. Termination of state of water supply conservation.

A state of water supply conservation may be terminated by a majority vote of the Board of Water Commissioners upon a determination that the water supply shortage no longer exists. Public notification of the termination of a state of water supply conservation shall be given in the same manner required by § 300-13.

§ 300-15. Water supply emergencies.

Upon notification to the public that a declaration of a state of water supply emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, or condition of any order approved or issued by the Department intended to bring about an end to the state of emergency.

§ 300-16. Violations and penalties.

Any person violating this bylaw shall be liable to the Town in the amount of \$50 for the first violation and \$100 for each subsequent violation, which shall inure to the Town. Fines shall be recovered by indictment, or on complaint before the District Court, or by noncriminal disposition in accordance with MGL c. 40, § 21D. Each day of violation shall constitute a separate offense.

§ 300-17. Severability.

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision thereof.

Chapter 304

WATER-DEPENDENT STRUCTURES

§ 304-1. Purpose.

§ 304-2. Definitions.

§ 304-3. Permits required.

§ 304-4. Restricted areas.

§ 304-5. Application for permit.

§ 304-6. Review of application.

§ 304-7. Hearing and determination.

§ 304-8. Standards to be met.

§ 304-9. Denial of permit.

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

GENERAL REFERENCES

Wetlands protection — See Ch. 310.

§ 304-1. Purpose.

Any water-dependent structure, such as a wharf, float, pier, dock, or similar structure, as hereinafter defined, constructed seaward of mean high water in any tidal waters of the Town after the effective date of this bylaw shall be subject to the provisions hereof and be in conformity herewith. Any water-dependent structure constructed within areas of Pleasant Bay where structures are allowed shall also be subject to the provisions of the Pleasant Bay Management Plan's Guidelines and Performance Standards for Docks and Piers.

§ 304-2. Definitions.

For the purpose of this bylaw the following words shall have the following meanings:

DECK — The surface of a water-dependent structure designed as the walkway for persons using the same.

DEEP WATER CHANNEL — The area of a water body wherein the depth of water is three feet or more at mean low water.

FLOAT — A floating structure anchored in position by pilings, chain or otherwise which is designed to rise and fall with the tide and used in conjunction with a wharf, pier or dock to moor and give access to a vessel.

GANGWAY — A ramp or platform used to provide access between a float or vessel and a pier, dock or wharf.

MEAN HIGH WATER — The elevation in feet above National Geodetic Vertical Datum (NGVD) established by the present arithmetic mean of the water heights observed at high tide over a specific nineteen-year Metonic cycle (the National Tidal Datum Epoch) as shown on the New England Coastline Tidal Flood Survey - Tidal Flood Profile No. 9 Barnstable to

Chatham, MA by the New England Division, Corps of Engineers. Where salt marsh occurs, the mean high tide will be that point where spartina alterniflora gives way to spartina patens. Walkways over salt marshes that extend beyond this intersection will be regulated under the provisions of this bylaw.

PILING — A column constructed from any material used to support the deck or other structural member of a wharf, pier or dock or to serve as a mooring spar or dolphin for vessels or floats.

WATER-DEPENDENT STRUCTURE — Any structure or combination of structures built adjacent to or at an angle from the shore and extending seaward beyond the mean high-water mark so that vessels may lie alongside to receive and discharge passengers or cargo or for use as a promenade and shall include structures commonly referred to as floats, docks, piers, or wharves.

§ 304-3. Permits required.

No water-dependent structure shall hereafter be constructed without a permit to do so issued by the Harwich Conservation Commission (hereinafter "the Commission") and a permit approving structural components from the Building Department.

§ 304-4. Restricted areas.

No permit shall be issued for construction of a new, private, water-dependent structure in the area of Round Cove of Pleasant Bay. This area includes all contiguous parcels beginning with the northerly boundary of the property (Map and Parcel Number 115-S1-3) and extending southerly along the shore to the southerly boundary of the property (Map and Parcel Number 109-B1-5), and all shore front parcels between these two properties, including Round Cove. This prohibition does not apply to existing, licensed structures or to the maintenance of existing, licensed structures.

§ 304-5. Application for permit.

- A. No permit shall be issued to construct a water-dependent structure until a completed permit application has been received and approved.
- B. An application for a permit to construct a water-dependent structure shall be submitted to the Conservation Commission and shall include the following:
 - (1) Fourteen copies of plans of the proposed work, which shall include all information required by the Conservation Commission under the regulations applicable to plans to be filed with a notice of intent under MGL c. 131, § 40, as amended and 310 CMR 9.0 (Chapter 91, Licensing).
 - (2) Two copies of the notice of intent filed for the project with the Conservation Commission under MGL c. 131, § 40, as amended.
 - (3) An application fee as set from time to time by the Board of Selectmen payable to the Town of Harwich in addition to filing fees required under MGL c. 131, § 40.

§ 304-6. Review of application.

Upon receipt of the application, the Conservation Commission shall date stamp the application and plans and shall forward copies of the plans to the Waterways Commission, the Harbormaster, the Shellfish Warden and the Building Official who shall review the same and within 28 days of receipt thereof advise the Conservation Commission of any areas of noncompliance with this bylaw, standards for structural integrity, and other comments relative to its or his review. Such comments shall be included in the review of the application by the Commission.

§ 304-7. Hearing and determination.

The Conservation Commission shall hold a hearing within 21 days of receipt of the application; however, the Commission may request a continuation if it has not received comments by other reviewing entities. The provisions for a continuation under Chapter 310, Wetlands Protection, § 310-5F shall also apply. Upon review of all information the Commission shall then determine whether it can issue a permit authorizing the work in compliance with the conditions stated herein or issue a written denial stating in detail the reasons therefor.

§ 304-8. Standards to be met.

No permit to construct a water-dependent structure shall be issued unless the following standards are complied with:

- A. No structure or its related appurtenances, including floats, shall extend more than 80 feet seaward of the mean high-water mark nor farther than 50 feet into the deep water channel nor be allowed to encroach upon the deep water channel so as to reduce the usable width thereof to less than 50 feet, and no vessel shall be moored thereto so as to encroach upon the fifty-foot minimum, nor shall it extend so as to interfere with any designated vessel mooring areas or established shellfish beds. In areas of Pleasant Bay where structures are allowed, all water-dependent structures shall meet the recommended fifty-foot setback from navigational channels and mooring areas.
- B. No new structure, or any vessel moored thereto, shall be allowed closer than 65 feet to an adjacent structure. In areas of Pleasant Bay where structures are allowed, the separation between structures shall be no less than 250 feet. Additionally, shared use proposals (i.e., a single structure to be jointly owned and used by two or more shore front property owners) are encouraged to preserve access by shore front property owners while reducing the number of structures that might otherwise be permitted.
- C. Structures shall be constructed as closely as possible to the perpendicular from the shoreline, excepting shared docks located on a property line. In areas of Pleasant Bay where structures are allowed, all water-dependent structures shall be a minimum of 50 feet from property lines and associated riparian lines unless the structure will be owned and used by two or more contiguous shore front property owners. In such cases, the fifty-foot setback requirement shall apply to the outermost boundaries of the two or more contiguous properties so that the structure may be placed on a shared property line.

- D. No structure (except floats) shall exceed four feet of walkway width.
- E. No float or combinations thereof shall exceed 200 square feet of surface area nor shall any float be allowed landward of mean low water. Preferred float configuration shall be "T" shaped in order to encourage use of the float at its deepest end. No permanent "T" or "L" shaped docks or piers are allowed.
- F. In order to protect the foreshore, all structures (except floats) shall be supported by pilings. Decks shall have a minimum 1/2 inch spacing between deck planks and shall be at an elevation equal to the width of the deck above mean high water or, in areas of marsh, above the marsh vegetation, whichever is higher. Notwithstanding the foregoing, in all areas where the foreshore is passable on foot, a flight of stairs on either side of the deck shall be provided to allow persons to lawfully use the foreshore. A directional sign in compliance with the Zoning Bylaw, Chapter 325, Article VII, shall be placed indicating permission to cross the structure.
- G. Any structure proposed for siting in a salt marsh, or in a body of water adjacent to a salt marsh, shall not destroy any portion of the salt marsh or its substratum, nor have any adverse impact on the productivity of the salt marsh. Additionally, the structure should be oriented to minimize the effect of vessels using the structure on the adjacent salt marsh and in its substratum.
- H. No structure shall be located within 50 feet of an existing eelgrass bed or within a shellfish area defined by the Town bylaws or Town Shellfish Warden. The presence or absence of shellfish at a proposed site must be determined by a shellfish survey submitted by the applicant. The survey shall include existing populations of all sizes of commercially important species of shellfish (clams, quahogs, scallops, and mussels) and shall also include other species of mollusks which may indicate the capacity of the area to support commercially important species. The survey shall also include a description of shell fragments, if feasible, and references, if available, to historical information regarding the presence or absence of shellfish species. Within the Pleasant Bay ACEC, relocation of shellfish encountered during construction of a project is not acceptable mitigation (except when the project is part of a Town- or state-sponsored shellfish relay program, and then only if it can be clearly shown that the productivity of that shellfish bed would not be diminished by its relocation).
- I. Any structure proposed for siting within a fish run or within 100 feet of a fish run shall not have any adverse impact on the fish run by impeding or obstructing the migration of fish or by impairing the capacity of spawning or nursery habitats necessary to sustain the life stages of the fish. Construction or maintenance of structures shall not occur between March 15 and June 15 without specific written permission from the Division of Marine Fisheries.
- J. In order to provide the underlying seabed full exposure to sunlight during six months of the year, all proposed structures shall be seasonal, with seven months' maximum use. Off-season storage plans shall be submitted for review and approval by the Conservation Commission.

§ 304-9. Denial of permit.

The Commission shall deny a permit in any case where a proposed structure or combination of structures, otherwise complying herewith, would not extend to a point where at mean low water a water depth of at least 2 1/2 feet is maintained; no vessel shall be aground at mean low water.

Chapter 310

WETLANDS PROTECTION

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| <p>§ 310-1. Purpose.</p> <p>§ 310-2. Jurisdiction.</p> <p>§ 310-3. Conditional exceptions.</p> <p>§ 310-4. Application for permit and request for determination.</p> <p>§ 310-5. Notice and hearings.</p> <p>§ 310-6. Coordination with other communities and boards.</p> <p>§ 310-7. Permits and conditions.</p> | <p>§ 310-8. Rules and regulations.</p> <p>§ 310-9. Definitions.</p> <p>§ 310-10. Security.</p> <p>§ 310-11. Enforcement.</p> <p>§ 310-12. Burden of proof.</p> <p>§ 310-13. Appeals.</p> <p>§ 310-14. Relation to Wetlands Protection Act.</p> |
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[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 310-1. Purpose.

- A. The purpose of this bylaw is to protect the wetlands, water resources and adjoining land areas in the Town of Harwich by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative adverse effect on the values of resource areas, as hereafter defined, including but not limited to the following:
- (1) Protection of public or private water supply.
 - (2) Protection of groundwater.
 - (3) Flood control.
 - (4) Storm damage prevention (including coastal storm flowage).
 - (5) Prevention of pollution.
 - (6) Protection of land containing shellfish.
 - (7) Protection of fisheries.
 - (8) Protection of wildlife habitat.
 - (9) Protection of rare species habitat including rare plant species.
 - (10) Protection of water quality.
 - (11) Erosion and sedimentation control.
 - (12) Agriculture.
 - (13) Aquaculture.

(14) Recreation.

- B. These values are deemed important to the community (collectively the "resource area values protected by this bylaw"). This bylaw is intended to utilize the home rule authority of this municipality to protect additional resource areas for their additional values, with additional standards and procedures stricter than those of the Wetland Protection Act (MGL c. 131, § 40) and regulations thereunder (310 CMR 10.00).

§ 310-2. Jurisdiction.

Except as permitted by the Conservation Commission or as provided for in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter any freshwater or coastal wetland resource areas, including:

- A. Freshwater wetland resource areas. Marshes; wet meadows; bogs; swamps; vernal pools and vernal pool habitat; lands subject to flooding, both bordering and isolated; isolated wetlands greater than 5,000 square feet; banks; reservoirs; lakes; ponds greater than 5,000 square feet; rivers, including the riverfront area; streams and creeks, including intermittent streams; and the lands underneath lakes, ponds, streams and creeks.
- B. Coastal wetland resource areas. Land under the ocean; designated port areas; coastal beaches; coastal dunes; barrier beaches; coastal banks; rocky intertidal shores; salt marshes; land under salt ponds; land containing shellfish and fish runs; lands subject to tidal action, coastal storm flowage or flooding; and lands within 100 feet of any of the aforesaid resource areas, as set out in this section, except for the riverfront area and vernal pool habitat.

§ 310-3. Conditional exceptions.

- A. The application and permit required by this bylaw shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services.
- B. The provisions of this bylaw shall not apply to any mosquito control work done under the provisions of MGL c. 252 or any special act, to maintenance of drainage and flooding systems of cranberry bogs and to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use, or to any project authorized by special act prior to January 1, 1973.
- C. The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency;

and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

§ 310-4. Application for permit and request for determination.

- A. Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The application shall include such information and plans that are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.
- B. If appropriate, the Commission may accept as the application and plans under this bylaw the notice of intent and plans filed under the Wetlands Protection Act and regulations.
- C. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a request for determination shall include information and plans as are deemed necessary by the Commission.

§ 310-5. Notice and hearings.

- A. Any person filing a permit application or a request for determination with the Commission shall at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable Assessor's tax list. Abutters include those immediately adjacent, across a road or water body, and in another municipality if within 100 feet of the boundary of the property where work is proposed. The notice to abutters shall state where copies of the permit application and plans may be obtained or examined by abutters. An affidavit of the person giving such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When the person requesting a determination is other than the owner, a copy of the request for determination shall be sent by the applicant to the owner, and the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.
- B. The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, which notice shall be published in a newspaper of general circulation in the Town of Harwich at least five business days prior to the hearing.
- C. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or request for determination unless an extension is authorized in writing by the applicant.

- D. The Commission shall issue its determination or permit in writing within 21 days of the close of the public hearing or receipt of the file number issued by the Massachusetts Department of Environmental Protection, whichever is later, unless an extension is authorized in writing by the applicant.
- E. If appropriate, the Commission may combine its hearing under this bylaw with the hearing required under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).
- F. Continuance of public hearing.
 - (1) Public hearings may be continued as follows:
 - (a) Without the consent of the applicant, to a date, announced at the hearing, which continued date shall be within 21 days of receipt of the notice of intent;
 - (b) With the consent of the applicant, to an agreed upon date, which shall be announced at the hearing; or
 - (c) With the consent of the applicant, for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action.
 - (2) The date, time and place of said continued hearing shall be publicized in accordance with MGL c. 131, § 40, and notice shall be sent to any person at the hearing who so requests in writing.

§ 310-6. Coordination with other communities and boards.

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time, by certified mail, to the Conservation Commission of the adjoining municipality, if the application or request for determination pertains to property within 100 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The applicant, as well as the Commission, shall have the right to request any comments and recommendations from other Town boards and departments, and to respond to them at a hearing of the Commission, prior to final action.

§ 310-7. Permits and conditions.

- A. If the Commission, after a public hearing, determines that the activities which are subject to the application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative adverse effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing or receipt of the file number issued by the Massachusetts Department of Environmental Protection, whichever is later, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems

necessary or desirable to protect the resource area values, and all activities shall be done in accordance with those conditions.

- B. The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- C. Lands within 200 feet of rivers as defined by MGL c. 131, § 40, and lands within 100 feet of other resource areas are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood to adversely impact the wetland or other resource areas, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, degradation of water quality, and loss of wildlife habitat. The Commission therefore may, where practicable, require the applicant to maintain a strip of continuous, undisturbed vegetative cover within the two-hundred-foot riverfront area or one-hundred-foot buffer zone of not less than 50 feet adjacent to any freshwater or coastal wetland, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the resource area values protected under this bylaw.
- D. To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.
- E. Except as provided in MGL c. 131, § 40 for maintenance dredging, a permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit for up to five years from the date of issuance where special circumstances warrant and where those special circumstances are set forth in the permit. A permit may be extended for one or more periods of up to three years, provided that a request for renewal is received in writing by the Commission 30 days prior to the expiration of the permit. The Commission may deny the request for an extension and require the filing of a new notice of intent for the remaining work in the following circumstances:
 - (1) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits.
 - (2) Where new information, not available at the time the order was issued, has become available and indicates that the order is not adequate to protect the interests identified in MGL c. 131, § 40;

- (3) Where work has been done in violation of the order or 310 CMR 10.00.
- F. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place and shall apply to all owners of the land, now and in the future. For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the determination or permit, notice to the public and abutters, and a public hearing.
- G. The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the order of conditions or determination of applicability issued under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).
- H. No activity proposed in any permit application shall be undertaken until an appeal period of 10 business days under the Wetlands Protection Act has elapsed and the permit issued by the Commission with respect to such activity has been recorded in the Barnstable County Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for Barnstable County, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

§ 310-8. Rules and regulations.

- A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw effective when voted and filed with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effects of this bylaw.
- B. At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw and the procedures governing the amount and filing of fees.

§ 310-9. Definitions.

- A. The following definitions shall apply in the interpretation and implementation of this bylaw:

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (1) Removal, excavation, or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- (3) Drainage, or other disturbance of water level or water table.

- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill, or removal of material, which would alter elevation.
- (6) Driving of piles, construction, or repair of buildings or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting of trees.
- (9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

INLAND BANK — Includes the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is lower.

PERSON — Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, state, the commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

RARE SPECIES HABITAT — Includes, without limitation, habitats for all vertebrate and invertebrate animal species and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

VERNAL POOL — Refers to a seasonal freshwater body contained in a confined basin depression that holds water for a minimum of two consecutive months in most years, is free of adult fish populations, and provides breeding habitat for amphibians and invertebrates. The boundary of vernal pool habitat shall extend outward 100 feet from the mean annual high-water mark of such a depression. Vernal pools include those areas mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification by a professional wildlife biologist or other expert.

- B. Except as otherwise provided for in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).

§ 310-10. Security.

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility which is sufficient in the opinion of the Commission to secure the obligations of the applicant to undertake the activities so authorized pursuant to the conditions contained in the permit. Said security shall be released in whole or in part upon issuance of a certificate of compliance upon completion of the work performed pursuant to a permit.
- B. By accepting a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

§ 310-11. Enforcement.

- A. No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.
- B. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the commonwealth.
- C. Upon request of the Commission, the Selectmen and the Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
- D. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement of this bylaw.
- E. Any person who violates any provision of these bylaws or any regulations promulgated hereunder, or permits or administrative orders issued thereunder, may be punished by a fine of \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alterations remain in place, shall constitute a separate offense, and each provision of the regulations, permits or administrative orders violated shall constitute a separate offense.

- F. In enforcing this section, the Commission may issue citations under the noncriminal disposition procedure set forth in MGL c. 40, § 21D, which has been adopted by the Town.¹ Members of the Commission, its agent or any police officer are authorized to issue noncriminal disposition citations.

§ 310-12. Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

§ 310-13. Appeals.

A decision of the Commission under this bylaw shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

§ 310-14. Relation to Wetlands Protection Act.

This bylaw is adopted under the home rule amendment of the Massachusetts Constitution and the home rule statutes, independent of the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00) thereunder.

1. Editor's Note: See Ch. 1, General Provisions, § 1-2.

PART II

ZONING BYLAW

Chapter 325

ZONING

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Six Ponds District**Harwich Center Historic
District and Commercial
Village Zoning District**

[HISTORY: Adopted by the Town Meeting of the Town of Harwich at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

**ARTICLE I
General Provisions****§ 325-1. Title and authority.**

This bylaw shall be known and may be cited as the "Harwich Zoning Bylaw" which herein is called "this bylaw" and is adopted by virtue of and pursuant to the authority granted the Town by MGL c. 40A as now existing or hereafter amended (herein called the "Zoning Act").

**ARTICLE II
Definitions****§ 325-2. Word usage and definitions.**

For the purpose of this bylaw certain terms and words shall have the meaning given herein. Words used in the present tense include the future; the singular number includes the plural, and the plural includes the singular; the word "building," "structure," "lot," "land" or "premises" shall be construed as though followed by the words "or any portion thereof"; and the word "shall" is always mandatory and not merely directory. The word "person" includes a firm, association, organization, partnership, trust, or company as well as an individual. The word "used" or "occupied" includes the words "intended or designed or arranged to be used." The word "lot" includes the word "plot" or "parcel."

ACCESS — The point from which one enters a property.

ACCESSORY APARTMENT — See "dwelling, single-family, with accessory apartment."

ACCESSORY BUILDING — A detached building the use of which is customarily incidental and subordinate to that of the principal building and which is located on the same lot as that occupied by the principal building.

ACCESSORY BUILDING, RESIDENTIAL — A detached structure located on the same lot with the principal structure to which it is accessory. Such structures include, but are not limited to, a toolshed, boathouse, playhouse, shelter for domestic pets, private swimming pool and one private garage for not more than three automobiles. A residential accessory building may contain bedrooms.

ACCESSORY USE — A use incidental and subordinate to the principal use of a structure or lot.

ADDITION/EXTENSION — Any construction, reconstruction, or other action resulting in a change in the structural parts or height, number of stories, size, use or location of a structure.

ADULT ENTERTAINMENT — Refer to Article XIII.

AGRICULTURE USE — The commercial raising of agricultural crops and/or livestock and horticultural and floricultural products on the same lot or abutting lots in the same ownership. Necessary structures and storage of equipment used on the premises are included.

ALTERATIONS — Changes in the interior or exterior of a building but without changing the exterior dimensions.

ANIMAL HOSPITAL — A place where animals or pets are given medical or surgical treatment by or under the supervision of a veterinarian and boarding is short-term care incidental to hospital use and care.

ANIMAL KENNEL, COMMERCIAL — A commercial establishment for the raising, boarding, breeding and/or training of small domestic animals (dogs, cats, etc.).

ANIMAL KENNEL, RESIDENTIAL — The keeping of more than four small domestic animals as pets and not for commercial purposes.

AQUACULTURE USE — The science, art, and business of cultivating marine or freshwater food fish or shellfish, such as oysters, clams, salmon, and trout, under controlled conditions.

ASSISTED LIVING FACILITY — A residential facility for the elderly or disabled that provides rooms or individual apartments, meals, personal care, and supervision of self-administered medication. It may also have communal dining facilities and services such as housekeeping, organized social and recreational activities, transportation service, and other support services appropriate for the residents.

AUTOMOTIVE SERVICE AND REPAIR FACILITY — Any premises upon which the business of maintenance, serving, repair, or painting of vehicles is conducted or rendered, without the dispensing or sale of vehicular fuels.

BED-AND-BREAKFAST — A residence where an owner/occupant in his home provides lodging and a morning meal to no more than five transients for compensation. A bed-and-breakfast shall not be considered a home occupation.

BEDROOM — Any room used or intended to be used for sleeping purposes. For the purpose of determining the number of bedrooms in a proposed multifamily dwelling unit, all rooms which meet the minimum size requirements for habitable rooms under this bylaw other than a kitchen, bathroom and living/dining room shall be considered as bedrooms.

BOARD — Where appropriate to the context, the term "Board" shall include the Board of Appeals or Planning Board of the Town of Harwich.

BOAT STORAGE — The commercial storage of boats and watercraft. This excludes repair and maintenance, sales and service. See "marine use."

BUILDING — A combination of any materials, whether portable or fixed, having a roof or similar covering, to form a structure for the shelter of persons, animals or property.

CHURCH OR OTHER RELIGIOUS USE — Any structure or use entitled to the religious exemption set forth in MGL c. 40A, § 3.

CLUSTER DEVELOPMENT — Open space residential development as defined herein.

COMMON OPEN SPACE — Open space created within an open space residential development which is designated to be held and maintained by a homeowners' association, conveyed to the Town, or conveyed to a private land conservation organization. "Common open space" shall not include open space which may be established on individual building lots.

CONSTRUCTION INDUSTRY — A premises, other than a construction site on which a building permit is issued, which is used by a building contractor or any other tradesman or landscaper for the fabrication of subassemblies or the storage of supplies or equipment.

DEMOLITION — The act or process of wrecking, destroying or removing, temporarily or permanently, 50% or more of an existing structure. Demolition of a structure requires a demolition permit from the Building Department. Should the Building Official approve less than 50% of a structure for removal, and should the remainder of the structure, following an inspection by the Building Official, be found to not be structurally sound, the Building Official may authorize the removal of the remainder of the structure without issuance of a demolition permit. In no case, however, should the rebuilt portion be built outside the footprint of the remainder of the structure.

DORMITORY — A building or space in a building where group sleeping accommodations are provided for persons not members of the same family group in one room or in a series of closely associated rooms under joint occupancy and single management, as in college dormitories, fraternity houses, military barracks and ski lodges, with or without meals, but without individual cooking facilities.

DRIVE-UP OR DRIVE-THROUGH WINDOW — Any use which provides goods or services to customers at exterior stations, fixed or transient, roofed or unroofed, that are accessible by motorized vehicles. This definition shall not apply to food sales, which are defined separately.

DWELLING, MULTIFAMILY — A detached building containing three or more dwelling units, including an apartment house, garden apartment house, townhouse or row house.

DWELLING, SINGLE-FAMILY — A single, separate dwelling unit designed for occupancy by one family only.

DWELLING, SINGLE-FAMILY, WITH ACCESSORY APARTMENT — An owner-occupied building containing two dwelling units, one of which has a net floor area not exceeding 1/3 of the net floor area of the building, but in no event more than 600 square feet, and includes not more than one bedroom, a kitchen, living room and bath which are separate from and not used in common with the principal dwelling, and at least one wall (at least eight linear feet in length) of living space for both the principal dwelling and the apartment is common to both dwelling units. For the purpose of this definition, such dwelling shall be deemed to be owner-occupied if either dwelling unit is occupied by the property owner of record on a year-round basis, except for bona fide temporary absence during which the owner's unit is not rented.

DWELLING, TWO-FAMILY — A building containing two dwelling units, whether side by side, over each other or in any other combination, provided that there is a common roof or a series of roofs connecting the dwelling units.

DWELLING UNIT — A building or portion thereof consisting of one or more rooms containing cooking and sanitary facilities and designed for human habitation by one family independent of other facilities.

EDUCATIONAL USE, FOR-PROFIT — Any building or part thereof which is designed, constructed or used for education or instruction in any branch of knowledge.

EDUCATIONAL USE, NONPROFIT — Any structure or use entitled to the education exemption set forth in MGL c. 40A, § 3.

ESSENTIAL SERVICES — Services and appurtenant structures, facilities, uses or equipment provided by governmental agencies, including the Town of Harwich, or provided by public utility or public service companies, including but not limited to water distribution systems, Town-owned marinas, docking areas, fish piers, off-loading facilities, retaining walls, jetties and similar structures, gas and electric distribution, systems for telecommunications and sewerage systems.

FAMILY — One or more persons living as a single, nonprofit housekeeping unit.

FILLING STATION — Any building, land area, or other premises, or portion thereof, used for the retail dispensing or sales of vehicular fuels and oil.

FISH PROCESSING FACILITIES — Establishments engaged in the business of cleaning, cutting, cooking, shucking, block freezing or packing sea foods for sale primarily at wholesale, but not excluding retail, but not including packing of fish in connection with off-loading of fishing vessels.

FLOOR AREA, NET — The sum of the areas of the several floors of a building, measured from the exterior faces of the walls, but not including cellars, unenclosed porches, attics not used for human occupancy, or any floor space in accessory buildings or in the principal building designed for the parking of motor vehicles in order to meet the parking requirements of this bylaw.

FOOD SALES WITH DRIVE-UP OR DRIVE-THROUGH FACILITIES — Any use which provides food products to customers at exterior stations, fixed or transient, roofed or unroofed, that are accessible by motorized vehicles. This term shall not include food service establishments where customers park their vehicles in designated parking spaces and access exterior food service tables, stations, windows, or counters without their vehicles.

FRONTAGE — The boundary of a lot coinciding with a road, street or way as defined in this bylaw.

GUESTHOUSE — A building in which living space, with or without common cooking facilities, is let for compensation to four or fewer persons, but not including a hotel or motel.

HEIGHT — The height of a building or structure above ground level, computed by averaging the distance between the lowest grade point at the base of the structure and the top of said

structure and the distance between the highest grade point at the base of the structure and the top of said structure.

HOME OCCUPATION — A business, trade or profession, exclusive of real estate offices, firms or establishments, conducted in the proprietor's legal residence or within an accessory building.

HOSPICE — A facility designed to provide a caring environment for supplying the physical and emotional needs of the terminally ill.

HOSPITAL — A building providing inpatient services used for diagnosis, treatment or other care of human ailments, including a sanitarium, sanatorium, rest home, nursing home and convalescent home. Not to be interpreted to include a doctor's office (see "medical clinic").

HOTEL — A building or complex of buildings containing 13 or more units providing transient lodging, food and other related services within which access to the individual units is provided by common interior corridors. The individual units do not have cooking facilities.

HOTEL OR MOTEL, INCIDENTAL USES TO — Uses, including but not limited to stores selling dry goods, apparel and accessories, gifts, notions, photo supplies, and personal and health care supplies, personal services, travel agency, car rental office, tennis courts, swimming pools, restaurant, private pool or beach club, which are incidental to a hotel or motel use.

INN — A building or complex of buildings containing at least five but no more than 12 units providing transient lodging accommodations, and may include food service. Rooms are primarily accessed from within a central structure. The individual units do not have cooking facilities.

INSTITUTIONAL USE, OTHER — A public service use operated by a nonprofit corporation or organization which is not entitled to exemption from zoning requirements as set forth in MGL c. 40A, § 3.

LODGING HOUSE — A building in which five to 10 units, with or without cooking facilities, are let for compensation on a long-term transient basis, but not including a hotel, inn or motel.

LOT — A parcel of land described in a deed or shown on a plan of land. For the purpose of this bylaw, any lot hereafter laid out to be buildable must contain contiguous upland area totaling at least 100% of the minimum lot area requirement for the zoning district in which the land is situated as established by this bylaw. The term "upland" shall mean any land area not subject to the provisions of the Wetlands Protection Act, MGL c. 131, § 40, as amended.

LOT, CORNER — A lot at the intersection of two or more intersecting roads, streets or ways, or abutting a curve in a road, street or way, provided that the angle of the intersection is less than 135° or, in the case of a lot abutting a curve in the road, street, or way, the radius of said curve is less than 150 feet.

LOT DEPTH — The mean horizontal distance between the front lot line and the rear lot line.

MANUFACTURING — A use involving the processing, assembling, or packaging of previously prepared or refined materials.

MARINE USE — A commercial or industrial activity serving or deriving its nature from watercraft, including but not limited to boat repair or maintenance, sales and service of watercraft, motors, electronics, and other goods or services associated exclusively with watercraft. This may include dispensing of marine fuels. See "boat storage."

MEDICAL CLINIC — A facility for providing medical treatment on an outpatient basis.

MEMBERSHIP CLUB — A building used to house a nonprofit social, sports or fraternal association or organization, not connected or associated with any business, which is used exclusively by members and their guests and usually contains bar facilities.

MIXED-USE DEVELOPMENT — See § 325-51M.

MOTEL — A building or complex of buildings providing transient lodging accommodations with separate outside entrances for each unit. The individual units do not have cooking facilities.

MUNICIPAL USE — A use, whether in a structure and/or on a parcel of land, owned and/or operated by the Town of Harwich.

NONSANITARY WASTEWATER TREATMENT FACILITY —

- A. Any wastewater treatment or disposal works subject to 314 CMR 5.00 for wastewater other than sanitary sewage, except the following:
 - (1) The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s).
 - (2) Treatment works approved by the Massachusetts Department of Environmental Protection and the Harwich Board of Health designed for the treatment of contaminated groundwater or surface water.
 - (3) Publicly owned treatment works.
- B. Note: Readers are encouraged to contact the Harwich Water or Health Department for the most current version of the above Code of Massachusetts Regulations (CMR) section as such regulations are subject to frequent amendment.

NURSING HOME — A privately or publicly operated establishment providing maintenance and personal or nursing care for persons (as the aged or the ill) who are unable to care for themselves.

OPEN SPACE — The area within an open space residential (or cluster) development which shall not be developed for any purpose other than recreational or agricultural use pursuant to other requirements of this bylaw, provided that the natural or installed vegetation may be maintained through mowing, trimming, and removal of dead or diseased specimens. Open space may be designated on portions of building lots within an open space residential development to achieve some of the design objectives of this bylaw but shall be distinct from common open space.

OPEN SPACE RESIDENTIAL DEVELOPMENT — An optional form of development of single-family dwelling subdivisions that permits lots with lesser area and frontage than conventional development, provided that there is no increase in the number of lots that would be permitted under a conventional development, as provided in § 325-51E(2), and the balance of the land not included in single-family building lots is set aside as permanent open space. Open space residential development is synonymous with the concept of cluster development set forth in MGL c. 40A, § 9. Open space residential development shall require both a special permit and definitive subdivision approval from the Planning Board.

OUTSIDE DISPLAY FOR RETAIL SALES — The outdoor display of goods sold on the premises for retail sale, provided that the goods are not located within required setbacks for the zoning district or in the public right-of-way.

OUTSIDE STORAGE — The open storage of construction, manufacturing, service wholesale equipment, materials, junk or heavy motorized equipment of any type or open storage of unregistered motor vehicles, automobiles or other vehicles.

OVERLAY DISTRICT — A specifically delineated area that overlays an existing zoning district and provides for specific regulations and requirements. Overlay districts in Harwich include:

- A. Drinking Water Resource Protection District. See § 325-41C.
- B. Elderly Affordable Housing. See Article XII.
- C. Harwich Center Overlay District. See § 325-51O.
- D. Personal Wireless Service Overlay District. See Article XI.
- E. Six Ponds Special District. See Article XVI.
- F. Village Commercial Overlay District. See § 325-51L.

PARKING LOT/GARAGE, COMMERCIAL — A structure or designated area used for the parking and storage of motor vehicles that is operated as a business and open to the public for a fee.

PARKING SPACE — An off-street space, whether inside or outside a structure, for exclusive use as a parking stall for one motor vehicle.

PERMIT GRANTING AUTHORITY — The Board of Appeals established hereunder shall be the permit granting authority.

PERSONAL SERVICE ESTABLISHMENT — An establishment primarily engaged in providing services involving the care of a person or his or her apparel. These uses include, but are not limited to, beauty shops, barbershops, shoe repair, etc.

PERSONAL WIRELESS SERVICE FACILITY — Facility for the provision of personal wireless services, including antennas, telecommunication equipment, communications towers, monopoles and/or other support structures, including existing and proposed structures having personal wireless services devices attached thereto as accessory uses, installed and operated for the purpose of providing personal wireless services. Note: Please refer to Article XI,

Personal Wireless Service Facilities, of this bylaw for additional definitions that are specific to personal wireless service facilities.

PROFESSIONAL OR BUSINESS OFFICE — An office or place of business where professional or business services are offered and do not involve the sale of goods or the keeping of a stock-in-trade.

RECREATION AND AMUSEMENT SERVICES — Establishments engaged in providing amusement, entertainment, sports or leisure time activities or facilities for a fee or admission charge.

REPAIR SERVICE, MISCELLANEOUS — Any premises upon which the business of maintenance, serving, repair, or painting of equipment or goods, other than motorized vehicles, is conducted or rendered.

RESTAURANT, FAST-FOOD/TAKEOUT — An establishment offering prepared food service in paper, plastic or other containers which can be removed from the premises, whether or not seating is available to patrons. This definition does not apply if such food is offered as wholly incidental to a conventional restaurant operation or retail food service. All such uses that preexist this bylaw will be required to file for a special use permit and a site plan special permit or waiver within 12 months of the effective date of this bylaw.

RESTAURANT or LOUNGE — An establishment where food and drink are prepared, served and consumed primarily on the premises.

RETAIL SALES — The selling of goods or merchandise to the general public and providing services incidental to the sale of such goods.

ROAD, STREET or WAY —

A. For the purpose of subdivision control, a road, street or way is defined as follows:

- (1) A public way or a way which the Clerk of the Town certifies is maintained and used as a public way;
- (2) A way shown on a plan heretofore approved and endorsed in accordance with the Subdivision Control Law;¹ or
- (3) A way in existence when the Subdivision Control Law became effective in the Town (June 6, 1951) having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services thereon.

B. For the purposes of determining any building or other setback requirements of this bylaw, "road," "street" or "way" is defined as follows:

1. Editor's Note: See MGL c. 41, §§ 81K to 81GG.

- (1) As described (defined) in Subsection A above.
- (2) Any alley, right-of-way, lane, court, square, place or like area of passage which is a matter of public record.

SCIENTIFIC RESEARCH OR DEVELOPMENT — An activity or accessory activities that are necessary in connection with scientific research or scientific development or related production.

SEASONAL USE — A temporary use or occupancy on an intermittent or short-term basis, primarily during the summer months and/or weekends, the total time of which use shall constitute less than six months during any one calendar year.

SELF-STORAGE FACILITY — A building or buildings made up of smaller individual storage units for the keeping of goods and property for lease or rent and does not include outside storage on the premises.

SHARED HOUSING FOR THE ELDERLY — A dwelling unit which contains not more than six bedrooms and not more than six occupants who shall and must be 65 years of age or older and may have separate sanitary facilities but share common living space and kitchen facilities.

SIGN — Refer to Article VII.

SIGN, SURFACE AREA OF — Refer to Section VII.

SITE COVERAGE — The aggregate coverage of an individual site by buildings, parking areas and driveways (regardless of surface material), pools, decks and other permanent structures and all impervious surfaces. For the purpose of this definition, the site shall be considered the portion of the subject parcel which lies within the zoning district wherein the proposed use is allowed.

SPECIAL PERMIT GRANTING AUTHORITY — The Planning Board established pursuant to MGL c. 41, § 81A shall be the special permit granting authority in any case where this bylaw requires such permit for erection of multifamily dwellings, cluster developments, hotels and motels, structures (except those dedicated to single-family, religious, or educational uses) having a gross floor area of more than 7,500 square feet or requiring 20 or more new parking spaces, site plan special permits, all uses requiring special permits in the Drinking Water Resource Protection District, retail sales of gasoline, adult entertainment, or personal wireless service facilities. The Board of Appeals established hereunder shall be the special permit granting authority for all other such permits, including special permits to change, alter, or extend a nonconforming use.

STABLE OR RIDING RING, COMMERCIAL — The commercial housing of four or more horses by means of rental of stalls and/or stables and/or the use of property for the purposes of horseback riding lessons, horse training and similar uses. It does not include the breeding of horses, which is considered an agricultural use.

STORAGE TRAILER/CONTAINER — A structure standing, which may be on wheels, that is towed or hauled by another vehicle and used for the storage of goods and/or equipment.

STRUCTURE — A combination of materials assembled at a fixed location to give support or shelter, such as a building, bridge, trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, pool, reviewing stand, platform, bin or the like.

TOXIC OR HAZARDOUS MATERIALS — Include residual oil, hydrocarbon products, including but not limited to gasoline, fuel and diesel oil, and any other substances classified or controlled as toxic, caustic, corrosive, radioactive or infectious pursuant to the provisions of MGL c. 21C.

TRAILER — Any vehicle which was originally or is still immediately portable or mobile and is arranged, intended, designed, or used for sleeping, eating, or business, or is a place in which persons may congregate, including a mobile home, house trailer, or camper. Such vehicle which is no longer immediately portable by virtue of having its wheels removed or skirts attached still shall be considered a trailer for the purpose of this bylaw.

UNIVERSAL ACCESSIBLE PARKING SPACE — A parking space 21 feet in length and 11 feet wide, with an adjacent access aisle five feet in width, which is dedicated to parking for appropriately identified vehicles owned or operated by disabled people and so indicated by appropriate signage and pavement markings.

USE, PRINCIPAL — The main or primary purpose for which a structure or lot is designed, arranged or intended or for which it may be used, occupied or maintained under this bylaw.

WAREHOUSING — The storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or group of establishments in a particular industrial or economic field, which shall not include the bulk storage of nuclear or radioactive products and/or toxic waste chemicals. Such use may include the transportation of such goods or materials by motor freight.

WHOLESALE TRADE — A business or establishment primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional business users, or to other wholesalers, or buying merchandise for, or selling merchandise to, such individuals or companies.

YARD, FRONT — Any yard abutting a road, street or way.

YARD, REAR — The yard abutting adjoining property opposite or approximately opposite the front yard or yards.

YARDS — Those portions of a lot abutting adjoining lots, roads, streets or ways which may not be built or encroached upon except as hereinafter provided.

YARD SALE — A means of disposing of used personal property by a householder or several householders who originally acquired the property for personal household use and not for the purpose of sale or resale at a profit.

YARD, SIDE — A yard other than a front or rear yard.

YEAR ROUND — For permanent use or occupancy, the total time of which shall constitute more than six months during any one calendar year.

ARTICLE III
Establishment of Zoning Districts

§ 325-3. Division of Town into districts.

The Town of Harwich, Massachusetts, is hereby divided into zoning districts, designated as follows:

Residential - Rural Estate	RR
Residential - Low Density	RL
Residential - Medium Density	RM
Residential - High Density 1	RH-1
Residential - High Density 2	RH-2
Residential - High Density 3	RH-3
Commercial - Highway 1	CH-1
Commercial - Highway 2	CH-2
Commercial - Village	CV
Industrial - Limited	IL
Multifamily Residential - Low Density	MRL
Multifamily Residential - Low Density 1	MRL-1
Elderly Affordable Housing	EAH
Drinking Water Resource Protection District	WR
Six Ponds Special District	
Personal Wireless Service Overlay District	PWS
Village Commercial Overlay District	
Harwich Center Overlay District	

§ 325-4. Maps.

- A. The location and boundaries of the zoning districts are hereby established as shown on a map titled "Zoning Map of the Town of Harwich, Massachusetts," dated August 1972, which accompanies and is hereby declared to be a part of this bylaw. The authenticity of the Zoning Map shall be certified by the signature of the Town Clerk and imprinted Town Seal, together with the words: "This is to certify that this is the Zoning Map referred to in Article III of the Zoning Bylaw of the Town of Harwich, Massachusetts," together with the effective date of this bylaw.
- B. The Drinking Water Resource Protection Districts established hereunder are shown on a map titled "Drinking Water Resource Protection District and Approved Zone II Delineations, Harwich, Massachusetts," dated December 1997, scale: 1:12,000, which map is on file in the office of the Town Clerk, the authenticity of said map to be established in the same manner as provided above for establishing the authenticity of the Zoning Map.

- C. The Personal Wireless Service Overlay Districts established hereunder are shown on a map titled "Town of Harwich Personal Wireless Service Facilities Overlay District Map," dated January 13, 1998, scale: 1:12,000, which map is on file in the office of the Town Clerk, the authenticity of said map to be established in the same manner as provided above for establishing the authenticity of the Zoning Map.
- D. The Zoning Map of the Town of Harwich is hereby amended to include the EAH District as shown on a sketch plan, a copy of which is on file in the office of the Town Clerk, dated February 25, 1999.

§ 325-5. Determining district boundaries.

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules apply:

- A. Where a boundary is indicated as a road, street, alley, railroad, watercourse or other body of water, it shall be construed to be the side line thereof, or where such boundary approximates a Town boundary, then to the limits of the Town boundary.
- B. Where a boundary is indicated as following approximately or parallel to a street, alley, railroad, watercourse, or other body of water, it shall be construed to be parallel thereto and at such distance from the side line, or mean high-water line, thereof as shown on the Zoning Map.
- C. Where any uncertainty exists concerning the location of the boundary of the Drinking Water Resource Protection District, the precise location of the boundary line on the ground shall be determined by on-site inspection and testing by the Town or, at the option of the Town, by a professional geologist or hydrologist approved by the Town. The purpose of this testing will be to determine location and extent of an aquifer or recharge area and to establish the boundary line of the district accordingly. Any costs of inspecting, testing and surveying to determine the boundary location shall be borne by the property owner, who shall have the burden of establishing to the satisfaction of the Town the precise district boundary location.

ARTICLE IV Interpretation and Application

§ 325-6. Interpretation.

The provisions of this bylaw shall be interpreted to be the minimum requirements adopted for the promotion of the health, safety, morals and the general welfare of the Town of Harwich, Massachusetts, and, except for the Zoning Bylaw approved by the Attorney General on June 6, 1951, and all subsequent amendments thereto, the provisions of this bylaw are not intended to repeal, amend, abrogate, annul, or in any way impair or interfere with any lawfully adopted bylaw, covenants, regulations or rules. Whenever the regulations made under the authority hereof differ from those prescribed by statute, bylaw or other regulation, that provision which imposes the greater restrictions or the higher standard shall govern.

§ 325-7. Application.

Except as herein provided or as specifically exempted by the Zoning Act, the provisions of this bylaw shall apply to the erection, construction, reconstruction, alteration or use of buildings and structures and to the use and creation of lots. As provided herein and in the Zoning Act, existing uses and structures lawfully established or constructed which do not comply with the provisions of this bylaw may continue as nonconforming.

A. Existing lots lawfully laid out by plan or deed which complied at the time of layout with applicable provisions of zoning bylaws, if any, may be built upon for single-family residential purposes, provided that:

- (1) Said lots have 75 feet of frontage and 10,000 square feet of area;
- (2) The buildings to be located thereon are set back at least 10 feet from side and rear lot lines and at least 25 feet from street lot lines and the buildings to be constructed on said lot will not exceed the maximum site coverage restrictions of the zoning bylaw in effect when the lot was created or, if no such restrictions applied, coverage of buildings shall not exceed 35% of said lot for lots between 10,000 square feet and 15,000 square feet and 25% for lots over 15,000 square feet;
- (3) Said lots are buildable under other applicable provisions of the law; and
- (4) If said lots are shown on a subdivision plan as defined in the Subdivision Control Law,² which plan has been approved by the Planning Board, the roads shown on such plan have been installed in accordance with Planning Board requirements, if any, in effect at the time the plan was submitted to the Planning Board and a release of the road covenant or release of other security, if any, has been obtained from the Board prior to five years from the date of endorsement of approval or prior to the lots becoming nonconforming, whichever occurs later.

B. Existing lots lawfully laid out by plan or deed which complied at the time of layout with applicable provisions of zoning bylaws, if any, and which had as of January 1, 1984, a single-family dwelling constructed thereon may, by alteration or addition to said existing dwelling, be converted to a single-family dwelling with accessory apartment as herein defined, provided that:

- (1) The lot area equals 20,000 square feet if situated in an RR, RL or RM District, 15,000 square feet if situated in an RH-1, CV, CH-1 or MRL District. Substandard lots in other zoning districts cannot be built upon or converted to this use without a variance.
- (2) The lot has frontage of at least 100 feet.
- (3) If an addition is to be built in connection with development of said use, the addition will be set back from front, side and rear lot lines the distance then required in the zoning district for new construction.

2. Editor's Note: See MGL c. 41, §§ 81K to 81GG.

- C. Existing lots in a CH-1 District which complied at the time of layout with applicable provisions of zoning bylaws, if any, may be used for single-family residential purposes as set forth above and may be used for nonresidential purposes as established in the Table of Use Regulations,³ provided that:
- (1) Said lots have 100 feet of frontage and 10,000 square feet of area;
 - (2) The buildings to be located thereon are set back at least 10 feet from side and rear lot lines and at least 25 feet from street lot lines and the buildings to be constructed on said lot will not exceed the maximum site coverage restrictions of the zoning bylaw in effect when the lot was created or, if no such restrictions applied, coverage of buildings shall not exceed 35% of said lot for lots between 10,000 square feet and 15,000 square feet and 25% for lots over 15,000 square feet;
 - (3) Said lots are buildable under other applicable provisions of the lot; and
 - (4) If said lots are shown on a subdivision plan as defined in the Subdivision Control Law, which plan has been approved by the Planning Board, the roads shown on such plan have been installed in accordance with Planning Board requirements, if any, in effect at the time the plan was submitted to the Planning Board and a release of the road covenant or release of other security, if any, has been obtained from the Board prior to five years from the date of endorsement of approval or prior to the lots becoming nonconforming, whichever occurs later.
- D. Existing parking areas lawfully established as of the effective date of this bylaw, whether conforming or nonconforming to the current requirements of this bylaw, may be altered to accommodate the inclusion of one or more universal accessible parking spaces without an approved site plan, variance, or special permit, provided that:
- (1) Said accommodation does not reduce the conformity of any of the following features with the respective requirements of this bylaw by more than the amount indicated:
 - (a) Interior landscaping: 50% of minimum required as applicable to subject property;
 - (b) Front, side, or rear parking setback: 50% of required or existing setback, whichever is the greater reduction;
 - (c) Site coverage: 10% additional site coverage over the maximum allowable site coverage or, if existing site coverage exceeds the maximum allowed, an additional 5%; and
 - (d) Required number of spaces:
 - [1] Areas with one to 50 parking spaces: one space less than the total required;

3. Editor's Note: See Table 1 at the end of this chapter.

- [2] Areas with 51 to 200 parking spaces: two spaces less than the total required; and
 - [3] Areas with more than 200 parking spaces: three spaces less than the total required; and
- (2) A detailed plan, which clearly depicts such accommodation, is approved by the Building Official. Said plan shall be accurately scaled at a size no smaller than one inch equals 40 feet and shall show for the subject parcel or parcels all existing structures, parking spaces, access aisles, landscape areas, driveways, loading areas, and accommodation areas for disabled people (when applicable) with legible dimensions for the above features.
- E. Any lawfully nonconforming building or structure which has been damaged or destroyed by fire or other accident or natural disaster may be repaired or rebuilt to its original dimensions, either in its original location or in a more conforming location, provided that the owner shall apply for a building permit and start operations for restoring and rebuilding of said premises within 18 months after such catastrophe. Further, said reconstruction shall comply with all other applicable state laws and regulations and such construction shall be completed within 30 months of the date of the catastrophe or such reconstruction must comply with the current zoning bylaw.

ARTICLE V

Use Regulations

§ 325-8. Applicability of use regulations.

Except as provided by the Zoning Act or this bylaw, in each district no building, structure, water body or lot shall be used or occupied except for a purpose which is authorized by the Table of Use Regulations in the zoning district wherein the land is located, and, if the land, building, structure or water body is located in a Drinking Water Resource Protection District or Personal Wireless Service Overlay District, said land shall not be used or occupied except for a purpose permitted in the underlying zoning district as well as the Drinking Water Resource Protection District or Personal Wireless Service Overlay District, respectively. Any use not listed shall be construed to be prohibited. Personal wireless service facilities shall be exempt from the use regulations contained in this bylaw when located on land owned by the Town of Harwich.

§ 325-9. Permitted uses.

In the following Table of Use Regulations, the uses permitted by right in the district shall be designated by the letter (P). Those uses that may be permitted by special permit in the district, in accordance with §§ 325-51 and 325-53, shall be designated by the letter (S). Uses designated (-) shall not be permitted in the district. Any use presently listed as a permitted use in the Table of Use Regulations shall be designated as a special permit if the use proposes a structure or structures having a gross floor area of more than 7,500 square feet or 20 or more new parking spaces on the site, except that single-family, religious and educational uses shall

be exempt from this provision. Some uses listed in the table as allowed as of right (P) or on special permit (S) require a special permit under the site plan provisions of this bylaw.

§ 325-10. Prohibited uses in all zoning districts.

The following uses are strictly prohibited in all zoning districts:

- A. Trailers used for dwelling purposes, when occupied on said premises.
- B. Food sales with drive-up or drive-through facilities.
- C. Airport, landing strip and helicopter pad, except for emergency purposes.
- D. Bituminous concrete or cement mixing plants or establishments.
- E. Metal plating establishments.
- F. Chemical and bacteriological laboratories.
- G. Uses involving the storage of commercial fertilizers as defined in MGL c. 128, § 64 unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- H. Nonresidential uses involving the generation, storage, treatment or disposal of hazardous materials as defined in MGL c. 21E unless such storage is above ground level, on an impervious surface, and in an area that has a containment system designed and operated to hold either 10% of total possible storage capacity of all containers or 110% of the largest container's storage capacity, whichever is larger.
- I. Use involving the storage of animal manure unless said storage is in a manner consistent with all applicable state and local regulations relative thereto and as determined by the Board of Health.
- J. The commercial raising or keeping, for use or sale, of swine or fur-bearing animals.

§ 325-11. Uses subject to other regulations.

Uses permitted by right or by special permit shall be subject to applicable regulations set forth in this bylaw. Uses permitted by variance from the Board, or changes or extensions of nonconforming uses on permit from the Board, shall be required to comply with all applicable provisions of this bylaw not specifically and expressly varied by the Board. The grant of one form of relief by the Board shall not constitute a finding that all other elements of the project or proposal comply with applicable zoning bylaws.

§ 325-12. Road construction requirements for certificate of occupancy.

No building designed and intended for residential or commercial use or occupation shall be so occupied until any related road construction or improvements have been completed in accordance with Planning Board requirements and the Planning Board has released the road construction covenant or other security provided to the Board pursuant to MGL c. 41, § 81U.

Notwithstanding the foregoing, if in the opinion of the Board actual construction of the road or road improvements has been completed in a manner sufficient to warrant occupancy of the building or buildings while the balance of the work is completed, the Board may so certify to the Building Official. Thereafter, the Inspector shall not withhold a certificate of occupancy for said building based on noncompliance with this provision.

§ 325-13. Table of Use Regulations.

The Table of Use Regulations is included at the end of this bylaw. The Table of Use Regulations is divided into paragraphs as follows:

- A. Paragraph I, Residential Uses.
- B. Paragraph II, Public and Quasi-Public Uses.
- C. Paragraph III, Agricultural and Related Uses.
- D. Paragraph IV, Commercial Uses.

§ 325-14. Supplemental regulations.

- A. A trailer, houseboat or other boat shall not be less than 25 feet from any street lot line and shall not be used at any time for sleeping or living purposes.
- B. Agricultural uses consistent with MGL c. 40A, § 3 are permitted by right on lots containing a minimum of five acres. For lots less than five acres, such agricultural uses shall be by special permit.
- C. Animal hospitals and/or kennels and their activities, including the keeping of animals, shall be completely enclosed in pens or other structures.
- D. The noncommercial raising and keeping of not more than two pigs. Pigs and/or swine shall be kept in an enclosure approved by the Board of Health. Said enclosure shall be not less than 50 feet from any bound, boundary line or building used for human habitation in any residential zone, and in no case shall the keeping and raising of pigs and/or swine be permitted on any lot containing less than 40,000 square feet.
- E. Horses are allowable provided that they meet the necessary requirements of the Board of Health. The horse(s) shall be owned by the owner/occupant of the property. There shall be no commercial use of the horse on site, including but not limited to riding lessons, except for lots greater than five acres. Horses are allowable in the Water Resource Protection District with a special permit pursuant to § 325-51C.
- F. Automotive service and repair facilities shall not include a junkyard of any kind or open storage of unregistered vehicles.
- G. Construction industry, including suppliers, shall store all equipment and materials within a building or buildings.
- H. The storage for resale of heating fuels includes but is not limited to oil, coal and gas.

- I. Manufacturing is permitted per Table 1, provided that at no time will such use result in or cause excessive dust, smoke, smog, observable gas, fumes or odors, or other atmospheric pollution, objectionable noise, glare, or vibration discernible beyond the property lines of the industry, hazard of fire or explosion or other physical hazard to any adjacent building or land, or to surface water or groundwater.
- J. Outside storage of materials and supplies displayed for retail sales on the premises does not require screening. All other outside storage, including storage of construction, manufacturing, service wholesale equipment, materials, junk or heavy motorized equipment of any type or open storage of unregistered motor vehicles, automobiles or other vehicles shall be completely enclosed by a solid fence or wall not less than eight feet nor more than 12 feet in height or dense shrubbery in which, when planted, the individual plants are at least three feet in height, with the exception of vehicular entrances and exits not to exceed 24 feet in width. Said fence shall be set back a minimum of 15 feet from abutting road side lines.
- K. Miscellaneous repair services shall be conducted entirely within an enclosed building.
- L. Storage trailers shall be screened from view at the lot frontage.
- M. Yard sales shall not exceed three such sales in any calendar year per property.
- N. In the IL District, retail sale of products is allowed subject to the granting of a special use permit by the Planning Board. Retail sales shall be prohibited in the IL District along Main Street (North Harwich) from Depot Street west to the Dennis town line or any road off said portion of Main Street, as there are existing traffic issues with this dead-end road. In addition, a new retail use in an industrial zone will be subject to site plan review pursuant to § 325-55. The following criteria must be met for granting of the special use permit: the proposed retail establishment or component must offer a product that is allied or connected to a permitted or existing industrial use and the proposed retail establishment or component must be able to coexist with other permitted or existing industrial uses. All such uses that preexist this bylaw will be required to file for a special use permit and a site plan special permit or waiver within 12 months of the effective date of this bylaw.
- O. In commercial and industrial districts, fast-food/takeout restaurants are allowed subject to the granting of a special use permit by the Planning Board. In addition, a new fast-food/takeout restaurant is subject to site plan review pursuant to § 325-55. The following criteria must be met for granting of the special use permit: the proposed use will not adversely impact traffic flow and safety and the proposed use will be compatible with surrounding land uses.
- P. A personal wireless service facility may locate on any existing guyed tower or lattice tower, monopole, electric utility transmission tower, fire tower or any other tower without a special permit, subject to the requirements of § 325-59 and site plan approval.

ARTICLE VI
Area, Height and Bulk Regulations

§ 325-15. Applicability of area, height and bulk regulations.

The regulations for each district pertaining to minimum lot area, minimum lot frontage, maximum front yard depth, minimum side yard width, minimum rear yard depth, and minimum residential net floor area shall be as specified in this article and set forth in the Table of Area Regulations and Table of Height and Bulk Regulations and subject to the further provisions of this article. In the Drinking Water Resource Protection Districts, the regulations as herein set forth for the underlying zoning district shall apply. A fence, wall or other enclosure, unless otherwise regulated, shall be regulated as provided in § 325-17 below.

§ 325-16. Tables of area and height and bulk regulations.

See tables on accompanying pages, plus attached notes, which are declared to be a part of this bylaw.⁴

§ 325-17. Fences, walls or other enclosures.

A fence, hedge, wall or other enclosure may be maintained on any premises. In order to preserve and promote the safety of the public, any fence, hedge or shrub or other growth or enclosure wall on the corner lot or curb obstructing the view of motorists and situated within 15 feet of a public street or curb or side line thereof shall not be permitted by the owner or occupant of the premises to exceed the height of three feet above road grade, and any and all trees within said fifteen-foot area (shade trees to be subject to the provisions of MGL c. 87, § 3) shall have limbs trimmed to the height of six feet above road grade, provided that on a corner lot no structure or vegetation shall be over three feet in height within the sight triangle as hereafter defined. The sight triangle is defined as the area within a triangle formed by two lines measured along the center of the nearest lane of the traveled way of intersecting streets from the point of intersection for a distance of 25 feet and a third line connecting the points on the two legs. The height restrictions shall designate the distance above each point in the plane of the sight triangle.

§ 325-18. Additional regulations.

- A. The required minimum width of any lot hereafter laid out or created, measured along the front yard setback line, shall not be less than 80% of the required minimum lot frontage. All lots hereafter created for building purposes shall be shaped so that they can contain either one circle of a diameter not less than the frontage requirement of the zoning district within which the lot is located or two circles tangent to each other, each of a diameter of not less than 70% of the frontage requirement of the zoning district within which the lot is located. In either case, one circle must be tangent to the lot frontage. The diameter of circles in cluster subdivision lots may be as small as the minimum allowable frontage for cluster lots.

4. Editor's Note: See Tables 2 and 3 at the end of this bylaw.

- B. In all districts where single-family dwellings are permitted, no more than one such dwelling shall be allowed on a lot.
- C. Any structure located on a corner lot shall be set back from all streets a distance equal to the front yard setback requirement in the district.
- D. At each end of a through lot, there shall be a setback depth required which is equal to the front yard depth required for the district in which each street frontage is located.
- E. On a lot used for multifamily, hotel or motel purposes, parking lots, roads, streets, tennis courts, swimming pools and like amenities and facilities shall not cover more than 15% of the area of the lot. For the purpose of this subsection, golf courses, putting greens, bowling greens and similar amenities which do not involve covering the ground with any impervious material shall not be included for the purpose of computing the total ground coverage of a project.
- F. Projections into required yards or other required open spaces are permitted, subject to the following:
 - (1) Balcony or bay window, limited in total length to 1/2 the length of the building: not more than two feet.
 - (2) Open terrace or steps, stoop or similar structure, under four feet in height: up to 1/2 the required yard setback.
 - (3) Window sill, chimney, roof eave, fire escape, fire tower, storm enclosure or similar architectural structures or steps or stoops over four feet in height: not more than two feet.
- G. In any district, any permitted accessory building, use or structure shall conform to the applicable setback for the principal structure or use, except that any accessory building less than 100 square feet in area and not exceeding 12 feet in height may be set back five feet from side or rear lot lines. In all zoning districts, a shelter for persons awaiting the arrival of public transportation may be erected without observing the area of setback requirements of this bylaw.
- H. No building permit may be issued for a multifamily dwelling project unless and until site plans showing the entire project to be constructed are submitted to the Building Official with the application for a building permit, and this requirement shall apply whether or not the project is to be built in phases.
- I. All ways intended for use by vehicular traffic within the perimeter of a multifamily dwelling project shall be installed and constructed in accordance with the requirements governing road construction set forth in the Subdivision Rules and Regulations, as adopted from time to time by the Harwich Planning Board.⁵
- J. All multifamily dwellings must be connected to a municipal water system.

5. Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

- K. A habitable room in a multifamily dwelling unit shall not have a minimum floor area of less than 120 square feet and shall have no major width or length dimension less than 10 feet. Closets, storage spaces, bathrooms and kitchens are not habitable rooms for the purpose of these minimum area and dimension requirements.
- (1) All outside entrances to multifamily dwellings shall be designed in such manner as to provide protection to the immediate area in front of said entrance from the weather.
 - (2) No outside staircase shall be used to furnish primary access to any of the units in a multifamily dwelling, hotel or motel.
- L. No multifamily dwellings may be erected on any lot in the MRL or MRL-1 District the geographical center of which is closer than 1,500 feet to the geographical center of any lot upon which multifamily dwellings with more than four dwelling units are constructed, provided that, for the purpose of this subsection, contiguous lots in common ownership may be considered as a single parcel and developed for multifamily use, provided further that lots separated by a road, street or way will be considered contiguous for the purpose of this subsection and, if commonly owned, may be treated as one parcel for the purpose of multifamily construction.
- M. Whenever the land upon which a multifamily dwelling is to be erected is located partially within a Drinking Water Resource Protection District, maximum possible use of the area outside the Drinking Water Resource Protection District will be made for the disposal of toxic or hazardous materials and sewage.
- N. Whenever a use is established on a parcel in the IL District and such parcel or parcels abut or face a parcel which is zoned or used for residential purposes, the use in the IL District shall be effectively screened and buffered from the adjoining residential parcel. Screening shall consist of either a contiguous solid fence or wall not less than six feet nor more than eight feet in height or a contiguous staggered row of densely planted evergreen shrubs which, when planted, contains individual plantings which are no less than five feet in height. In no case shall any plantings used for compliance with this screening requirement be planted less than five feet apart on center. Any screening required by this subsection shall be installed at least 10 feet from any side or rear lot line and 15 feet from any street lot line, shall be maintained in good condition, and may be interrupted only by driveway openings which meet a street. Any plantings or fencing components installed for compliance with this subsection which deteriorate to the point where they no longer provide an effective screen shall be replaced.
- O. There shall be no site preparation work done in connection with development of any use of land other than single-family or single-family with accessory apartment use and no such work in connection with development of any subdivision until all necessary permits and approvals have been obtained. This subsection shall not prohibit site work reasonably necessary to the conduct of a land survey or any tests required as a condition precedent to the issuance of any permit or approval. If after obtaining all necessary permits and approvals such work is commenced and later abandoned, any areas of the site which have been disturbed during construction shall be revegetated in a manner sufficient to prevent erosion. To secure revegetation in the case of abandonment of a project, the

Building Official or, in the case of a subdivision of land, the Planning Board may require the owner to post a bond or other satisfactory security in an amount reasonably estimated as sufficient to perform the work.

- P. A lot with the required legal frontage must take access along the required legal frontage. No alternate access may be granted from other streets, roads, or ways, nor should access be taken from an easement across an adjacent property without the issuance of a special permit from the Planning Board. In issuing a special permit, the Planning Board shall make the following findings:
- (1) The alternate access proposed is superior to the access along the frontage;
 - (2) The proposed alternate access is cleared to a minimum of 16 feet in width and 16 feet in height; and
 - (3) When access is proposed from an easement across another lot, the lot providing the easement will have the required legal frontage for the zoning district.

§ 325-19. Height exceptions.

- A. In reference to Table 3, any maximum height permitted in this bylaw shall not apply to:
- (1) Municipal use and essential service structures, provided that the side and rear yards or setbacks required in the district for the highest permitted principal structure shall be increased two feet in width for each foot by which the height or such structures exceeds the height permitted in the district.
 - (2) Special industrial structures, such as a cooling tower and other similar structures where the industrial process requires a greater height.
 - (3) Any personal wireless service facility, provided that no structure erected in connection with such use exceeds 45 feet in height above ground level in all districts and further provided that in a PWS District no structure erected in connection with such use exceeds 150 feet above ground level.
- B. Note: Additional requirements for personal wireless service facilities are contained in Article XI, Personal Wireless Service Facilities, of this bylaw.

§ 325-20. Stories for human use or occupation.

In reference to Table 3, maximum permitted height (stories), in no case may any building used for multifamily dwellings, hotel or motel use exceed 50 feet in height nor contain more than four levels for human occupation. In no case shall a single-family residence contain more than two levels for human occupation, provided that the basement or cellar of a single-family residence can be used as a family room or recreational room but shall not be used as sleeping quarters unless it is made to comply with the provisions of the Building Code regulating the design and construction of such rooms. In no case shall any other building provide more than two stories or levels for human use or occupation.

§ 325-21. Table 2, Area Regulations.

Table 2 is included at the end of this bylaw.

§ 325-22. Table 3, Height and Bulk Regulations

Table 3 is included at the end of this bylaw.

ARTICLE VII
Sign Regulations

§ 325-23. Purpose and scope.

- A. The purpose of this regulation is to permit signs which facilitate communication, promote the safety of motorists and pedestrians, and encourage economic development by identifying businesses and other land uses in ways that complement and enhance the environment.
- B. This sign regulation provides a permitting system to govern the placement of advertising and other informational signs both outdoors and within two feet of any window within the Town of Harwich.

§ 325-24. Relationship to other laws.

- A. Nothing in this bylaw shall be construed as exempting an applicant from any other applicable Town, county, state, or federal bylaws.
- B. To the extent that the requirements of this bylaw differ from or are not in accordance with any other applicable requirements, the more restrictive requirements shall apply.

§ 325-25. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BOARD — The Harwich Zoning Board of Appeals.

BUILDING OFFICIAL — The Harwich Building Official.

CLUSTER SIGN — Any sign identifying a business, commercial or industrial development which provides one space per business entity within the development.

GROUND SIGN — A sign supported by poles, uprights or braces extending from the ground but not attached to any part of a building.

SIGN — Includes every advertising message, announcement, declaration, demonstration, illustration, insignia, surface or space erected or maintained in view of the observer thereof primarily for identification, advertisement, or promotion of the interest of any person, entity, product, or service. The definition of a sign shall also include the sign structure, supports, lighting system, and any attachments, flags, ornaments or other features used to draw the

attention of observers. Indoor or outdoor displays of merchandise for sale at retail on the premises shall not be considered a sign for the purposes of this bylaw. The following are examples of signs:

- A. A-frame/easel/sandwich signs: usually a double-faced, freestanding, portable sign.
- B. Awning/canopy signs: signage affixed to awnings/canopies associated with a business entity.
- C. Display box/menu board sign: usually a freestanding or wall sign, or an erasable chalkboard, sometimes enclosed in glass, for the purpose of displaying menus, entertainment announcements or similar items or events.
- D. Window signs: signage displayed within two feet of windows primarily for view from outside the business entity.

SIGN PERMIT — A permit issued by the Building Department for the erection, construction, enlargement, alteration, repair, or improvement of any sign.

WALL SIGN — A sign attached to, painted on, or erected against a wall or roof of a building or structure which extends no more than 36 inches from the surface upon which it is attached and whose display surface is either parallel or perpendicular to the face of the building and does not exceed the height of the building on which it is mounted. Projecting wall signs must have at least eight feet of ground clearance.

§ 325-26. Permit requirements.

- A. Before any sign is erected, constructed, structurally altered or moved, it shall conform to the requirements contained in this bylaw and shall be approved and shall have received a permit from the Building Official unless the sign is expressly exempted herein from the provisions of this bylaw.
- B. Before any commercial sign receives a permit from the Building Official it shall be reviewed by the Architectural Advisory Committee.
- C. A preapplication conference with the Building Department is encouraged in order for the applicant to become acquainted with application procedures, design standards, and related Town bylaws and regulations.

§ 325-27. Signs allowed without permits.

The following signs do not count towards the total permitted signage unless otherwise indicated, do not require a permit and shall comply as follows:

- A. Business hour signs. "Open/closed" and related hours-of-operation signs which do not exceed one square foot.
- B. Cautionary signs. Signs warning of prohibited activities such as trespassing, hunting, fishing, or swimming may be posted on each lot line; however, no signs may be within 100 feet of each other. Cautionary signs are limited to one square foot or less per sign.

- C. Construction signs. A temporary wall or ground sign not more than eight square feet advertising the construction, remodeling or rebuilding of a certain structure for a permitted use on which the signs are located. One sign shall be allowed per lot, shall not be illuminated and shall be removed immediately upon final inspection.
- D. Directional signs. Any on-premises sign that directs the movement or placement of pedestrian or vehicular traffic without reference to or inclusion of the name of a product sold or services performed.
- E. Election/Town Meeting signs. Any sign erected by the Town of Harwich to alert the public to an election or a Town Meeting. The location and size of these signs are to be determined by the Town Clerk with the input of the Building Official.
- F. Home occupation signs. Signs identifying any home occupation as defined by this bylaw⁶ shall be limited to a wall or a ground sign. The total square footage of any home occupation sign shall not exceed four square feet in area and the sign may be illuminated in commercial zones per § 325-30 of this bylaw. Wall signs may be attached to any structure and/or fence.
- G. "Open" flag. One "open" flag per business establishment shall be allowed and shall not exceed 24 square feet in size.
- H. Political campaign signs. Political signs are permitted. Campaign signs are allowed in all zoning districts with the authorization of the owner of the property on which the sign is displayed. Campaign signs are prohibited on Town-owned property, including road rights-of-way. The signs must be removed within one week following the date of the election.
- I. Public signs. Signs required or authorized for a public purpose by law or statute.
- J. Real estate signs. A temporary wall or ground sign not more than eight square feet advertising the sale, rental, or lease of a designated structure or land area for a permitted use on which the signs are located. One sign shall be allowed per street frontage, shall not be illuminated, and shall be removed immediately once the property is rented or leased or the sale is completed.
- K. Residential quarterboard. A traditional quarterboard, not to exceed 18 inches in height or 10 feet in length. A residential quarterboard shall not advertise a business or profession.
- L. Special event flyers. Flyers for special events measuring not more than two square feet in total area shall be permitted for display in the windows of nonresidential uses. For those flyers not displayed in windows, they may not be attached to trees, utility poles or be located within a public right-of-way. Such flyers may be erected no sooner than two weeks before the event and shall be removed within 72 hours after the event; but in no event shall a flyer be erected more than 30 days.

6. Editor's Note: See § 325-2 of this chapter.

- M. Subdivision signs. Subdivision signs are limited to a maximum of 20 square feet per sign and may not exceed six feet in height. One sign may appear at each entrance. Illumination of subdivision signs is prohibited.
- N. Temporary signs. Signs of more than two square feet in area advertising a special event. Notice of such signs shall be required to be filed by the sponsoring organization with the Building Official prior to display. Such signs may be erected no sooner than two weeks before the event and shall be removed within 72 hours after the event, but in no event shall a sign be erected more than 30 days.
- O. Umbrella signs. Signage as part of an umbrella that advertises a product for sale on the premises. Umbrellas containing the name of a particular establishment shall count against the establishment's total signage.
- P. Vending machines. The portion of any internally illuminated vending machine which advertises a product shall be counted against the total allowable signage unless it is completely shielded from public view by a fence or other barrier.
- Q. Water Department sign. Any sign erected by the Town of Harwich Water Department to alert the public to any drinking water related event, including but not limited to flushing of pipes and water use restrictions. The location and size of these signs are to be determined by the Water Superintendent with the input of the Building Official.

§ 325-28. Commercial, industrial and business cluster signs.

Business, commercial, or industrial developments may construct one cluster sign containing the name of the development and/or listings of individual businesses, products or services within the development. Signage at the location of each establishment within the development is also allowed per §§ 325-30 through 325-32 of this bylaw.

§ 325-29. Nonconforming signs.

Lawfully preexisting signs that do not comply with the provisions of this bylaw at the time of its adoption may be maintained so long as they are kept in a state of good repair as specified in § 325-31 of this bylaw and so long as they are not relocated, replaced or structurally altered. Preexisting signs that are relocated, replaced, structurally altered or not kept in a state of good repair as specified in § 325-31 of this bylaw shall not be allowed to continue as nonconforming signs and shall require new permits and compliance with this bylaw. A lawfully preexisting nonconforming sign destroyed by natural disaster or accident can be replaced by a sign of the same dimensions in the same location as the original sign.

§ 325-30. General requirements.

- A. Sign placement shall not interfere with snow removal or vision or movement of motorists, pedestrians and bicyclists.
- B. Signs shall be externally lit or backlit only and shall be designed, installed and maintained so as to eliminate or minimize upward directed light and glare and so that

lights illuminate only the sign and not property which adjoins or is nearby. Luminous tube/neon/internally illuminated signs are permitted to be displayed in windows only. The total area of all luminous tube/neon/internally illuminated signs shall not exceed six square feet. No animated signs are permitted.

- C. No ground sign may exceed 12 feet in height.

§ 325-31. Construction and maintenance.

- A. All signs and sign structures shall be constructed of materials of sufficient strength and quality to withstand weathering or deterioration by wind, moisture and other natural elements and shall be maintained in a state of good repair with all braces, bolts, supporting framework, fastenings, lettering and design work free from deterioration.
- B. The Building Official shall have the authority to order the repair, alteration or removal of any sign or structure which constitutes a hazard to public health and safety or which is otherwise not in compliance with this bylaw.

§ 325-32. Sign area measurement.

- A. For single-tenant businesses accessed directly from a street, right-of-way or parking area, the maximum permitted sign per public entrance facade shall be 48 square feet.
- B. Buildings within a project or premises having more than one tenant or use shall provide a master sign plan for the entire structure or project for review and approval by the Planning Board prior to any sign permit approval by the Building Official. Once the Planning Board has approved a master sign plan, further approval by the Planning Board will only be required if there are changes to the structure in question that would require site plan review pursuant to § 325-55 of the Harwich Zoning Bylaw. For office buildings, shopping plazas and shopping centers, a cluster sign of up to 60 square feet is permitted as part of the master sign plan to identify the name of the complex and each individual tenant, plus each tenant may have signage at the location of its business of up to 48 square feet per entrance facade. Total sign area within the master sign plan is subject to the size limitations of this article. Sign area cannot be transferred to a single building or facade from other buildings in the project. In addition, the amount of signage assigned to a specific space in a building shall be tied to that space through the lease or purchase agreement. Under no circumstances may the sign area designated for an individual space be transferred to another space in the same building or complex. In the case where a single tenant occupies more than one space, the sign area may be combined for as long as a single tenant occupies both spaces. If the spaces are separated, the original sign area will be returned to each individual space.
- C. The area of a sign face shall be computed by measurement of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display. This shall include any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed. The area calculation shall not include structural supporting framework, bracing or wall. If any advertising is present on

the supports of a sign, the area of the supports will count towards the total allowable signage. Where there are two faces back to back, the total area of the largest face shall determine the area of the sign.

- D. Where two faces are placed at greater than thirty-degree angles to one another, the sign area shall mean the total area of both faces.

§ 325-33. Appeals.

Any applicant who believes a denial is not justified has the right to appeal to the Board and to appear at a meeting for which proper notice can be given and agenda time is available. Intention to take an appeal to the Board shall be filed with the Town Clerk in writing within 30 business days following the denial of the permit by the Building Official, pursuant to MGL c. 40A. Applicants appealing to the Board may request review of the decision of the Building Official or a variance to the sign regulation pursuant to MGL c. 40A, § 10.

§ 325-34. Violations and penalties.

Violation of this bylaw is subject to enforcement action through the Building Department pursuant to § 325-48 of the Town of Harwich Zoning Bylaw.

§ 325-35. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of this bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Harwich Zoning Bylaw.

**ARTICLE VIII
Home Occupations**

§ 325-36. Regulations for home occupations.

Home occupations shall be subject to the following regulations:

- A. No person other than members of the family residing on the premises, nor more than one apprentice, shall be regularly engaged in such occupation.
- B. The use of the dwelling unit for the home occupation shall be clearly secondary and subordinate to its use for residential purposes by its occupants, and not more than 25% of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
- C. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.

- D. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot if the occupation is conducted in a single-family residence or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
- E. Any sign erected to advertise a home occupation as defined in this bylaw shall conform to the requirements set forth in Article VII (Sign Regulations) of this bylaw.
- F. Not more than two commercial vehicles may be used in connection with said home occupation, one of which may not exceed a three-fourths-ton rating and the second of which may not exceed a one-ton rating. Any one-ton vehicle used in connection with said home occupation must be parked and stored indoors in a residential-type garage, and in no event may more than one commercial vehicle be parked or stored in the open at said premises.
- G. There shall be no disposal of toxic or hazardous materials as defined in this bylaw in connection with the home occupation.

ARTICLE IX Off-Street Parking and Loading Requirements

§ 325-37. Objective.

It is the intent of this article that adequate off-street parking and loading shall be provided to serve all parking demand created by new construction, whether through new structures or additions to existing ones or through change of use which creates higher parking demand.

§ 325-38. Applicability.

Existing buildings, structures and land uses are not subject to these off-street parking and loading requirements and may be rebuilt, changed or repaired but not enlarged, altered or subject to a change in use so as to increase demand without becoming subject to these requirements.

§ 325-39. Off-street parking schedule.

- A. These standards are the minimum requirement. The Planning Board, under site plan review, may vary the required number of spaces if the nature and scale of a proposed use warrant such a change. In determining the number of spaces required, only actual or delineated spaces shall be calculated. In the case of multiple uses on a single lot, the required number of parking spaces will be equal to the combined total of parking spaces for each use.

Use	Parking Spaces
Residential Uses	
Single-family dwelling, two-family dwelling	2
Single-family dwelling with accessory apartment, multifamily or mixed-use development	1.5 per unit
Home occupation	1 per employee/apprentice or 2 per 400 square feet of space dedicated to home occupation
Dormitory	1 per room
Lodging house, hotel, motel, inn, guest house, bed-and-breakfast	1.25 per guest room or suite
Public and Quasi-Public Uses	
School, municipal building, library, charitable institution or similar use	1 per employee, plus 1 per 3 seats in area of public assembly
Church, assembly hall, club or similar place of public or semipublic amusement or assembly	1 per 3 seats, plus 1 per classroom and office
Movie theater	1 per 2 seats
Nursing home and/or personal care facilities	1 per 3 beds, plus 1 per employee maximum shift
Recreational Uses	
Standard golf, par 3, and other outdoor recreational uses, including but not limited to amusement parks and other similar attractions.	1 per employee maximum shift, plus 1 per 3 patrons at maximum capacity of facility as determined by the Building Official
Golf teaching facility	1 per employee, plus 1 per student, maximum capacity
Miniature golf course	1 per employee maximum shift, plus 1 per 2 patrons at maximum capacity of facility as determined by the Building Official
Playing fields (parking is per field)	1 per 2 players, plus 1 per 2 bleacher seats, plus 20
Public swimming pools	1 per employee maximum shift, plus 1 per maximum rated capacity for pool and any associated decks
Stable; commercial or riding school	1 per 2 stalls, plus 1 per employee maximum shift, plus area for storing trailers
Indoor recreational uses, including but not limited to tennis clubs, health clubs	1 per employee maximum shift, plus 2 per tennis court, plus 1 per 2 players for other court sport, plus 1 per 3 spectator seats

Use	Parking Spaces
Commercial Uses	
Auction galleries, gift shops, arts and crafts, antique shops, general merchandise, apparel and accessories, other retail sales and customer service	1 per 150 square feet of floor area dedicated to customer use or display, but not less than 70% of the total area
Food stores and supermarkets	1 per 200 square feet customer area, plus 1 per employee maximum shift
Furniture and home furnishings, large appliances, lumber, showroom or other retail display of large items	1 per 700 square feet
Restaurant, lunchroom, bar, tavern, private club or other similar use	1 per 4 seats, including outdoor seating, plus 1 per employee maximum shift
Restaurant, fast-food/takeout	1 per employee maximum shift, plus 6, plus 1 per 4 seats, indoor or outdoor
Establishments offering entertainment, including public and private clubs and restaurant areas dedicated solely to entertainment	1 per 2 patrons at maximum capacity of facility as determined by the Building Official, plus 1 per employee on maximum shift
Medical office	1 per employee maximum shift, plus 1 per 2 seats in waiting room, plus 1 per treatment room
Professional or administrative office, bank or other financial institution and general business office	1 per employee maximum shift, plus 1 per 250 square feet of floor area
Funeral home	1 per 2 seats at maximum capacity of facility as determined by the Building Official
Animal hospital and animal kennel	1 per employee maximum shift, plus 1 per 2 seats in waiting room, plus 1 per treatment room
Motor Vehicle or Boat — Transportation Uses	
Sales or rental of motor vehicles	1 per 3,000 square feet of indoor or outdoor vehicle or boat display area, plus 1 per employee maximum shift
Filling station, automotive service and repair facility, automobile service station	1 per employee maximum shift, plus 2 per service bay, including spray paint booth, plus 2 per 150 square feet service waiting area, plus 1 per car stored overnight
Car wash	1 per employee maximum shift
Other transportation uses	1 per employee maximum shift, plus as determined by site plan approval

Use

Marina or boat yard use

Parking Spaces

1 per employee maximum shift, plus 1 per slip, or 1 space per dry storage capacity, whichever is greater, and 1 per each 2 moorings assigned to the marina or boat yard

Industrial, Utility and Other Uses

Light industry and manufacturing

1 per employee maximum shift, plus 1 per 2,500 square feet of floor area

Warehousing and wholesale trade

1 per employee maximum shift, plus 1 per 1,000 square feet of floor area

Other industrial

1.3 per employee maximum shift, plus 1 per 200 square feet of office space

- B. Parking company-owned vehicles. In addition to the requirements outlined above, one space will be required for each company-owned vehicle kept on the premises, including trailers and heavy machinery. The space provided must be of an adequate size to accommodate the equipment utilizing the space.

§ 325-40. Loading requirements.

Every building hereafter erected, altered, enlarged, or occupied for business, industrial or institutional purposes which has over 5,000 square feet of gross building area shall provide a minimum of one area for the loading and unloading of service vehicles. Loading and unloading areas shall be provided in addition to off-street parking spaces and shall not be considered as supplying required parking spaces. One additional area shall be provided for every additional 20,000 square feet of gross floor area in the building. Unless otherwise authorized by the Planning Board under site plan review, loading and unloading areas shall be located in the rear of the building.

§ 325-41. Location requirements.

- A. Parking and loading areas and garages shall be provided on the same lot as the use they are required to serve, except as provided in § 325-44A.
- B. No parking area/space shall be used for disposal containers (dumpsters). An additional area, outside, but adjacent to the parking area, shall be required for each disposal container.

§ 325-42. Design requirements.

- A. A parking area or loading area shall be designed to provide for adequate backing and turning movements for the type of vehicle being maneuvered and to eliminate the need to back a vehicle out onto any public or private street or way, except that single-family residences and single-family residences with accessory apartments which front on other

than a state-maintained and/or designated roadway may provide for backing out of vehicles.

- B. The area and access driveways thereto shall be graded and drained so as to dispose of on site all surface water accumulation on the site.
- C. A substantial bumper of masonry, steel or heavy timber or a concrete curb or berm or curb which is backfilled shall be placed at the edge of paved parking areas, except driveways, in order to protect abutting structures, properties and sidewalks.
- D. Any fixture used to illuminate a parking area shall be so arranged as to direct light away from the street and away from adjoining properties used for residential purposes.
- E. There shall be no commercial repair of motor vehicles within the required parking or loading area.
- F. There shall not be any storage of materials or equipment or display of merchandise within the required parking or loading area. In addition, there shall be no placement of outdoor seating within the required parking or loading area.
- G. For any multifamily, commercial or industrial parcel of land, there shall be no more than two driveways per roadway frontage.
- H. Any entrance or exit driveway shall not exceed 24 feet in width at its intersection with the front lot line, except that in any commercial or industrial zone any entrance or exit driveway shall not exceed 30 feet in width when measured in the aforesaid manner. Notwithstanding the foregoing, in any case where state regulations or requirements mandate a different driveway width or location, the provision of said regulations or requirements shall govern and supersede this provision. The radius of the access drive at the road shall be 25 feet. The radius of any access road shall not extend beyond the property line of the property which it serves. The minimum distance between the side lines of such drives and the side lines of any intersecting street and any other street access drive, measured between where such street and driveway side lines intersect the adjacent street line, shall be as follows:

Types of Drive	Minimum Distance (feet)		
	From Intersecting Streets	From Other Drives	From Side Lot Line
Drives serving a dwelling	50	20	—
Drives serving a hotel or motel	50	50	—
Drives serving other permitted principal structures/uses in a			
Residential district	50	50	10
Commercial district	50	50	10
Industrial district	50	50	10

- I. No parking spaces shall be established in the right-of-way of any road or way, except that the Town of Harwich may establish on-street parking spaces in accordance with the applicable provisions of state law.
- J. Parking and loading areas shall be graded, surfaced with a nondusting material, drained and suitably maintained to the extent necessary to avoid the nuisance of dust or erosion. The parking lot shall be designed such that no surface water is allowed to flow onto streets or adjoining property. Access drives serving unpaved parking areas shall be constructed with a paved apron meeting the minimum construction requirements described below. Said apron shall extend from the paved road edge to the street line. Paved or unpaved parking areas containing more than five spaces shall conform to construction requirements as follows:
- (1) Base: two feet of frost-free material.
 - (2) Subbase: four inches of gravel as the subbase plus two inches of processed stone.
 - (3) Pavement: a minimum depth of asphalt composed of a binder course of 1 1/2 inches plus a one-inch top course after rolling or compacting.
 - (4) For all parking areas of five or more parking spaces, drainage systems serving the parking and vehicular access areas shall be designed in accordance with the Rational Method, or equivalent, based on a twenty-five-year storm frequency.
 - (5) Calculations shall be made by using topographic maps for the entire drainage area, including those areas outside the site plan area. Copies of all drainage calculations shall be submitted with the site plans. Percolation tests shall be required at all proposed drainage locations (leaching areas). Subsurface leaching systems shall be utilized meeting the current Planning Board Subdivision Rules and Regulations standards.⁷
 - (6) In addition, all paved parking areas containing more than five spaces shall utilize a system of absorbent pillows or similar device to absorb vehicle fluids in runoff. This system will be maintained twice a year, with written proof of maintenance provided to the Planning Board.
- K. Parking areas for passenger vehicles shall typically be laid out to meet the following design criteria:

Angle	Space Width (in feet)	Space Length (perpendicular to aisle)	Aisle Width (feet)	Total Width (feet)
45°	9	17.5	15	50
60°	9	19	18	56
90°	9	20	24	64

7. Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

- (1) The above chart is for parking areas with double-loaded aisles. For single-loaded aisles, subtract the space length from the total width. Aisle widths for 45° and 60° are for one-way directional flow patterns.
 - (2) The Board, at its discretion, may allow the use of a maximum two-foot overhang strip as part of the space length. This strip shall be solely designated for the purpose of vehicular parking and shall not be part of any walkway, planting area or front or side yard indicated in § 325-41B.
- L. Parking and loading zone setbacks for all uses except single-family, two-family and single-family with accessory apartment shall be as follows. For commercial structures, wheel stops for parking spaces perpendicular to or at an angle to a structure shall be located so as to provide a clear area of three feet between the end of a vehicle parked in the space and the nearest structure.

Parking Setbacks¹
(feet)

Zone	Street	Side Line	Rear
RR, RM, RL, RH-1, RH-2 and RH-3	20	10	10
CV, CH-1 and CH-2	20	10	10
IL	15	5	5
MRL and MRL-1	50	50	50

Notes:

- ¹ No parking area containing more than four spaces or loading area shall be located within a required front yard, except that those buildings utilizing the provisions of § 325-51L (Village Commercial Overlay District) shall not locate any parking within the front yard.

§ 325-43. Landscape requirements.

Unless otherwise authorized by the Planning Board on special permit under the site plan provision of this bylaw, all parking areas containing over five spaces, including automobile service and drive-in establishments, shall be either contained within structures or subject to the following:

- A. The parking area shall be effectively screened on each side which adjoins or faces the side or rear lot line of a lot situated in any residential district or any lot used for residential purposes. The screening shall consist of a solid fence or wall not less than three feet nor more than six feet in height or a planting screen which shall be composed of shrubs which are planted in such a manner so as to effectively screen the parking area from view of the adjoining residential lot or lots. Such shrubs shall be evergreen varieties which are no less than three feet in height upon planting. Either type of screening shall

be at least two feet from a non-street line and 15 feet from any street lot line and all maintained in good condition. All planted materials shall be maintained in such a manner so as not to create an obstruction to motorists' vision of traffic and pedestrians.

- B. Parking areas containing more than five spaces shall include or be bordered within five feet of the spaces by at least one tree of three-inch caliper, measured six inches off the ground, for each five spaces. Trees within a parking area shall be in curb- or berm-protected plots of at least 90 square feet per tree. No such protective plot shall be paved with any impervious material.
- C. At least 10% of the interior area of any parking area containing 20 or more parking spaces shall consist of landscaped islands which shall be composed of shrubs and trees and other landscaping materials. The interior area of a parking area shall be derived by computing the area within the general perimeter of contiguous area containing parking spaces, maneuvering areas behind the spaces and landscaping areas within such perimeter, except that required parking setback areas and required buffers shall not be included in the interior area computation.

§ 325-44. Special cases.

- A. Parking space may be provided on lots separate from a nonresidential use they are to serve, and be credited to such use in meeting the requirements of this bylaw, provided that they are legally available, are not designated as off-site parking for another use, and are within 300 feet of the principal structure, measured within street rights-of-way. Proof of legal availability shall be required, and failure to retain the availability of such parking spaces for the need they are required to serve shall be sufficient cause to deny or revoke a special permit until such spaces are restored or replaced. When such parking spaces are part of Town-owned and Town-operated parking lots, the Planning Board shall determine availability based on Town need and the applicant shall not be required to furnish proof of such availability.
- B. The number of parking spaces required for a multiple dwelling may, by special permit, be reduced to not less than one per family for the duration of any special occupancy upon Planning Board determination that sufficient area is available and will be retained to provide such otherwise required spaces.
- C. No structure subject to site plan approval may be elevated to allow parking in the structure or open parking beneath the structure unless for each parking space so provided the site coverage is reduced by a minimum of 325 square feet.
- D. In certain cases the Planning Board may allow the applicant to delineate a number of parking spaces as a reserve area that is available to be constructed in the future as specified by the Planning Board. It is the responsibility of the applicant to provide documentation showing that the proposed use of the property does not require the number of spaces listed under § 325-39A. Plans shall incorporate and detail all design aspects of the reserve parking area. As it is the intent of this special delineation to preserve as much of the site's natural state as possible, the proposed reserve area shall be dedicated for parking only. In any case in which the Board permits an applicant to create a reserve parking area, in lieu of development of the required parking area, then the

Board shall require, as a condition of approval, that the resulting site plan special permit shall be reviewed on a periodic basis in order to monitor the adequacy of the constructed parking and the need to construct all or a portion of the reserve area. After such review, if appropriate, the Board may require that all or a portion of the reserve area be actually constructed.

ARTICLE X

Administration and Enforcement

§ 325-45. Building Official.

The Building Official is hereby appointed and authorized to administer and enforce the provisions of this bylaw.

§ 325-46. Other approvals required.

- A. Where authorization of a use of land or of a structure is required by a board, a copy of such written authorization shall be sent by the clerk of the board to the Building Official within 22 days of a granting of the approval by the board and shall be received by the Building Official prior to issuance of a permit. In addition, the Building Official, in such case, shall not issue a permit until the applicant submits an affidavit from the Barnstable County Registrar of Deeds that the authorization of the board is recorded, if such recording is required by law. Where approval under the Subdivision Control Law⁸ by the Planning Board is required and/or Conservation Commission and the State Department of Public Works, no permit shall be issued by the Building Official until these requirements also are met in writing and any other necessary permits or licenses are obtained. Within 10 days of the completion of all these actions, the Building Official shall act upon the application.
- B. The rights authorized by a variance must be exercised within one year of the date of grant of such variance or said rights shall lapse. Rights authorized by a special permit must be exercised within two years of the date of grant thereof. Said time periods shall not include the period of time during which any appeal of a decision is being processed to final judgment in any court. Notwithstanding the foregoing provisions, any subsequent amendment of this Zoning Bylaw shall apply to construction or use authorized by a special permit, unless the construction or use is commenced within a period of not more than six months after the issuance of the permit, exclusive of any time periods involved in appealing the grant of a permit through the courts, and in cases involving construction after a bona fide start, unless said construction is continued through to completion as continuously and expeditiously as is reasonable under the applicable circumstances.

§ 325-47. Notice of violation.

The Building Official shall serve, by certified mail, a notice of violation on any person responsible for any violation of this bylaw, and such notice shall direct the immediate

8. Editor's Note: See MGL c. 41, §§ 81K to 81GG.

discontinuance of the unlawful action, use or condition and the abatement of the violation. Any owner who has been served with a notice and ceases any work or other activity shall not leave any structure or lot in such a condition as to be a hazard or menace to the public safety, health, morals or general welfare.

§ 325-48. Violations and penalties.

- A. Any person who, after receipt of the notice above provided, continues in violation or refuses to comply with any of the provisions of this bylaw may be prosecuted in a criminal action brought by the Building Official on behalf of the Town and, upon conviction, be fined a sum of \$150 for each offense. Each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense.
- B. In addition to the enforcement procedures set forth in Subsection A above, the Building Official may enforce the provisions of this bylaw by the noncriminal complaint procedures as established by MGL c. 40, § 21D. The penalty for each offense shall be \$150 as provided in Subsection A, and each day, or portion of a day, that any violation is allowed to continue shall constitute a separate offense.
- C. Nothing herein contained shall be construed so as to limit the Building Official from enforcing this bylaw through an appropriate civil action seeking injunctive as well as other relief, commenced in a court of competent jurisdiction.

§ 325-49. Board of Appeals.

There is hereby created a Board of Appeals of five members and five associate members. Members in office at the effective date of this bylaw shall continue in office. Hereafter, as terms expire or vacancies occur, the Board of Selectmen shall make appointments pursuant to the Zoning Act.⁹ The Board shall have those powers and duties granted under the Zoning Act, by this bylaw and all other pertinent acts of the commonwealth. The Board shall adopt rules to govern its proceedings pursuant to the Zoning Act. The Board of Appeals is hereby authorized to establish, from time to time, by regulation, the filing fee to be charged for filing a petition or appeal with the Board.

§ 325-50. Petitions, applications and appeals.

All petitions, applications and appeals to the Board of Appeals shall be made in quadruplicate on forms provided by the Board of Appeals and shall be filed together with copies of all information previously submitted to the Building Official with or in the original application for a building permit, if any, and four copies of a site plan when a site plan is required under § 325-55 of this bylaw. In addition, one copy of the application, petition or appeal together with any accompanying material and four copies of the site plan, if any, shall be submitted to the Planning Board at the time of submission to the Board of Appeals. The Planning Board shall render an advisory opinion on the application to the Board of Appeals, and if no such

9. Editor's Note: See MGL c. 40A.

advisory opinion is submitted by the Planning Board prior to the Board of Appeals hearing on the application, the Board of Appeals may act without such advisory opinion.

§ 325-51. Special permits.

The Planning Board shall have authority to hear and decide applications for special permits for dwellings with accessory apartments, shared housing for the elderly, multifamily dwellings, cluster developments, hotel or motel uses, structures (except those dedicated to single-family, religious or educational uses) having a gross floor area of more than 7,500 square feet or requiring 20 or more new parking spaces, site plans pursuant to § 325-55 hereof, all uses requiring a special permit in Drinking Water Resource Protection Districts, personal wireless service facilities, and adult entertainment. The Board of Appeals shall have authority to hear and decide all other applications for special permits. Special permits shall only be issued following public hearings held within 65 days after filing of an application with the Board of Appeals or the Planning Board, a copy of which shall forthwith be given to the Clerk by the applicant, and all notices and other requirements provided by the Zoning Act shall govern said hearing.

A. Conditions of approval.

- (1) The Board of Appeals or Planning Board shall not approve any application for a special permit, except a special permit for a site plan, unless it finds that in its judgment all of the following conditions are met:
 - (a) The use as developed will not adversely affect the neighborhood.
 - (b) The specific site is an appropriate location for such a use, structure or condition.
 - (c) There will be no nuisance or serious hazard to vehicles or pedestrians.
 - (d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use. This includes the provision of appropriate sewage treatment facilities which provide for denitrification, when the permit granting authority deems such facilities necessary for protection of drinking water supply wells, ponds or saltwater embayments.
- (2) The permit granting authority may require the applicant to submit professionally prepared documentation of the environmental, traffic or other impacts of a particular project or project element in order to determine compliance with these general conditions.

B. In approving a special permit, except a special permit for a site plan, the Board of Appeals or Planning Board may attach such conditions and safeguards as are deemed necessary to protect the public and the neighborhood, such as but not limited to the following:

- (1) Modification of the exterior features or appearances of the structure or structures.
 - (2) Limitation of size, number of occupants, method or time of operation, or extent of facilities.
 - (3) Regulation of number, design, and location of access drives or other traffic features.
 - (4) Requirement of off-street parking or other special features beyond the minimum required by this or other applicable bylaws.
 - (5) Limitation of the total projected volume of sewage or nitrate discharge from the project based on standard sewage flow projection or nitrate loading calculations to be provided by the applicant when required by the permit granting authority. Such calculations must be reviewed and approved by the Harwich Town Engineer prior to their acceptance as facts by the permit granting authority.
- C. Notwithstanding the provisions of Subsection A above, the conditions set forth therein shall not apply to applications for special permits in the Drinking Water Resource Protection Districts unless a special permit is required for the intended use in the underlying zoning district.
- (1) In granting a special permit for a use requiring such permit in the Drinking Water Resource Protection District, the Planning Board shall make the following findings:
 - (a) Adequate provision has been made to safely and adequately store, handle and dispose of all toxic or hazardous materials, as well as to protect said materials from vandalism, corrosion, leakage and spills.
 - (b) Any proposed wastewater treatment or disposal system must be submitted for approval by responsible state and local health agencies as a condition precedent to construction.
 - (c) All anticipated runoff from impervious surfaces will, whenever possible, be diverted to areas covered with vegetation.
 - (d) In cases where part of a site is located outside the Drinking Water Resource Protection District, maximum possible use of the area outside the district will be made for disposal of toxic or hazardous materials and sewage.
 - (e) All systems designed and intended to minimize or eliminate the threat of pollution to the groundwater resource are adequate in terms of design and proposed construction to provide reasonable protection against such pollution and, in the event said systems should fail, corrective measures and procedures are available to warrant the conclusion that no unreasonable threat of pollution to groundwater resources will be created. In making this required finding, the special permit granting authority shall require submission by the applicant of a written determination by the Board of Health of the Town of Harwich that all such systems called for or required are designed and intended to meet all applicable design and construction standards for such

facilities and will limit to five parts per million the total concentration of nitrate nitrogen discharged to the groundwater on the site.

- (2) To assist in making the required findings, the Board shall require, by regulation, an hydrogeologic impact statement which addresses the specific issues herein set forth, and the Board shall, by regulation, establish a format for such hydrogeologic impact statement. Upon receipt of an application for a special permit under this section, the Building Official or the applicant at the direction of the Building Official will provide to the Planning Board, Conservation Commission, Board of Health, Town Engineer, Water Department, and such other affected Town agencies as the Building Official shall determine a complete copy of the application and accompanying documents for review and such comment and advice to the Board as the affected departments should deem appropriate.

D. Special permit to construct multifamily dwellings, hotels or motels.

- (1) The Planning Board, in acting upon an application for special permit to construct multifamily dwellings, hotels or motels, shall have the authority, pursuant to MGL c. 40A, § 9, to include in the grant of permission authorization to increase the permissible density of population or intensity of a particular use in a proposed development, provided that the petitioner or applicant shall, as a condition for the grant of authority to increase permissible density, provide certain open space or some or all of the amenities hereafter listed, but the Board shall not have the authority to increase the density of population or intensity of uses beyond the maximums hereafter specified.

Amenity	Maximum Density Increase
Swimming pool	8%
Tennis courts	4%
Golf course	16%
Community building or recreation building	2%

- (2) For the purpose of ensuring that an applicant or petitioner constructs the proposed amenities in accordance with the plans and specifications submitted to the Planning Board, the Planning Board shall require, as a condition to the granting of the permit, that the applicant or petitioner execute a covenant on such reasonable terms and conditions as the Planning Board may specify and wherein the petitioner or applicant shall agree to construct the amenities as proposed in accordance with a timetable approved by the Planning Board, and the Planning Board may require that the amenity or amenities, once constructed, shall be under the control or jurisdiction of a nonprofit organization, the principal purpose of which is the maintenance and management of said amenities, or that control of said amenities be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development. The covenant required hereunder shall be recorded at the Barnstable County Registry of Deeds before any work authorized by the special permit is begun, and no lot, dwelling or multifamily dwelling unit shall be conveyed (except as provided in MGL c. 41, § 81U, Clause

2) until said covenant has been released in whole or as it relates to the portion of the premises to be conveyed by duly executed instrument or release by the Planning Board.

E. Special permits for open space residential development. Special permits for open space residential development may be granted upon a determination by the Planning Board that the plan is preferable to a conventional residential subdivision and that it conforms to the requirements of this section and other applicable provisions of this bylaw.

- (1) Rules and regulations. The Planning Board shall adopt and may from time to time amend rules and regulations consistent with the provisions of this bylaw and shall file the same with the Town Clerk. Such rules and regulations shall address, at the minimum, procedures and submission requirements for open space residential development applications.
- (2) Density/number of dwelling units.
 - (a) The total number of dwelling units permitted in an open space residential development shall not exceed that which would be permitted under a conventional subdivision that complies with the Harwich Zoning Bylaw and Planning Board Rules and Regulations Governing the Subdivision of Land¹⁰ and other applicable laws of the Town, County of Barnstable, or Commonwealth of Massachusetts, unless said total is increased in accordance with the provisions of Subsection E(8) hereunder which sets forth opportunities for density increases.
 - (b) The exact number of dwelling units shall be determined by the Planning Board following its review of a preliminary subdivision plan depicting compliance with the aforesaid laws. Such plan may be submitted prior to the formal submission of an application or together with all other materials submitted with a formal application for a special permit.
- (3) Criteria for special permit decision.
 - (a) Findings. The Planning Board may approve a special permit for an open space residential development upon finding that it complies with the requirements of this bylaw and the rules and regulations adopted pursuant to Subsection E(1) above and that it is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources on the site.
 - [1] In making its finding on design, the Planning Board shall consider the following criteria:
 - [a] Open space as required by this bylaw has been provided and generally conforms to the design requirements in Subsection E(7) below.

10. Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

- [b] Approximate building sites have been identified and none are located closer than 100 feet to wetlands or water bodies.
 - [c] Proposed streets have been aligned to provide vehicular access to each house in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide views of and access to the open space for most, if not all, of the home sites.
 - [d] All lots meet the applicable dimensional requirements of Subsection D(4) below.
- [2] The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval, or denial of the application for special permit and shall require a two-thirds vote for approval.
- (b) Conditions. The Planning Board may impose conditions in its decision as necessary to ensure compliance with the purposes of this bylaw. Approval of an open space residential development shall be conditioned upon definitive subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require modification of the special permit issued by the Planning Board and shall be in compliance with the governing provisions of this bylaw and the Subdivision Rules and Regulations.
- (4) Standards and dimensional requirements.
 - (a) Minimum lot size. The minimum lot size shall be 12,000 square feet.
 - (b) Minimum frontage. The minimum frontage shall be 50 feet for lots fronting on any proposed roadway within the development. Lots which will utilize existing frontage shall have a minimum frontage of 100 feet. Lots may have a minimum of 25 feet of frontage on any roadway within the development where the building site is to be generally behind another building site relative to the same road frontage or at least 75 feet from the front lot line.
 - (c) Lot shape. All building lots must be designed to contain within them a circle with a diameter of 50 feet with said circle being tangent to the front lot line, provided that in cases where the frontage will be less than 50 feet, the fifty-foot circle must fit within the boundaries of the proposed building site on the same lot.
 - (d) Setbacks. The Planning Board may reduce by up to 1/2 the setbacks listed in Table 2, Area Regulations, of this bylaw, if the Board finds that such reduction will result in better overall design and improved protection of natural and scenic resources and will otherwise comply with this bylaw. Notwithstanding this provision or the requirements of the Zoning Bylaw,

every dwelling fronting on a proposed roadway shall be set back a minimum of 15 feet from the roadway right-of-way and a minimum of 50 feet from the outer perimeter of the entire open space residential development site. This fifty-foot setback shall be maintained in a naturally vegetated state to screen and buffer the development and may be included within the open space. This fifty-foot setback may be eliminated where the proposed development abuts existing protected open space.

(5) Permissible uses.

- (a) Purposes. Open space shall be used solely for noncommercial recreation, conservation, or commercial or noncommercial agriculture. Proposed use of the open space area(s) shall be specified in the application. The Planning Board shall have the authority to specify what uses will be allowed in the open space, what uses will occur in what areas of the open space, and how much of the open space shall remain undisturbed.
- (b) Recreation areas. Where appropriate to the topography and natural features of the site, the Planning Board may require that at least 10% of the open space or two acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the subdivision.
- (c) Leaching facilities. Subject to the approval of the Board of Health and as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or water bodies, and enhances the site design, consistent with these regulations. In permitting such use of the open space area, the Planning Board shall find, based on the report of the Board of Health, that the use of open space for sewage disposal system components shall not result in more building lots than achievable under a conventional subdivision. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the lot owners within the development.
- (d) Accessory structures. Up to 10% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space, including parking and paved pathways. With this exception, no other impervious areas may be included within the open space.

(6) Ownership of open space.

- (a) Options. At the developer's option and subject to approval by the Planning Board, all areas to be protected as permanent open space shall be:
 - [1] Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission and be accepted by it for a park or open space use; land conveyed to the Town will be open for public use;

- [2] Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in Subsection E(6)(b) below; such organization shall be acceptable to the Board as a bona fide conservation organization; or
 - [3] Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e., "homeowners' association") and placed under conservation restriction. The documents which form said association are subject to approval by the Planning Board. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.
- (b) Permanent restriction. In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction approved by the Board of Selectmen and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways except as permitted by this bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to endorsement of the plan and covenant for the project and recorded at the Registry of Deeds/Land Court prior to endorsement of the definitive subdivision plan. A management plan may be required by the Planning Board which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.
 - (c) Encumbrances. All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances. Certification of said condition by a qualified title examiner shall be provided to the Planning Board at the time of conveyance.
 - (d) Maintenance of open space. Removal of underbrush in designated open space shall be permitted only when a plan for such activity is approved by the Planning Board as part of approval of a special permit to create an open space residential development.
 - (e) Monumentation. The Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

- (7) Design requirements. The location of open space provided through this bylaw shall be substantially consistent with the policies contained in the local Comprehensive Plan and the Open Space and Recreation Plan of the Town (where available). The following design requirements shall apply to open space and lots provided through this bylaw:
- (a) Open space shall be planned as large, wide, contiguous areas whenever possible. Long, thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
 - (b) Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archaeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
 - (c) Open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails. Said trails shall be shown on the open space residential definitive plan.
 - (d) Where the proposed development abuts or includes a body of water or a wetland, these areas and the one-hundred-foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
 - (e) The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
 - (f) Open space shall be provided with adequate access, by a strip of land at least 20 feet wide and suitable for a footpath, from one or more streets in the development.
 - (g) Development along existing scenic roads and creation of new driveway openings on existing roadways shall be minimized.
 - (h) Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections should be provided where appropriate.
- (8) Optional incentive provisions.
- (a) Reduction of roadway standards. The Planning Board may reduce applicable subdivision road construction standards (roadway width, center line radii,

curbing, cul-de-sac radius, drainage requirements, etc.) in exchange for the provision of greater than 50% open space within the open space residential development where, in the opinion of the Planning Board, such reductions will result in enhanced overall site design and provide adequate and safe access for the development.

- (9) Enforcement. The Building Official shall enforce the provisions of this Subsection E.
- F. The Planning Board, in granting a special permit for cluster development, shall have the authority, pursuant to MGL c. 40A, § 9 and MGL c. 41, §§ 81K through 81GG, to require that open space be conveyed to the Town or a nonprofit organization, the principal purpose of which is the conservation of open space, or a corporation or trust owned or to be owned by the owners of lots or residential units within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots or residential units. In any case, where the open space is not conveyed to the Town, a restriction enforceable by the Town shall be recorded providing that such land be kept in an open or natural state, not to be built upon or developed for accessory uses such as parking or roadways.
- G. In a cluster development, the total number of dwelling units shall not exceed the number of units which could be developed under a conventional grid-type subdivision.
- (1) The maximum number of dwellings per development shall equal the applicable land area divided by the minimum lot area requirements for a conventional grid-type subdivision in that district or districts.
 - (2) Applicable land area shall be determined by a registered land surveyor and equal the total area encompassed by the development plan minus all marsh or wetland and minus land for road construction or land otherwise prohibited from development by local bylaw or other regulations.
 - (3) When the cluster development includes more than one ownership and/or lies in more than one district, the number of units allowed shall be calculated as above for each zoning district and summed to give an overall total, which may be located on the plan without respect to allowable subtotals by district or ownership.
- H. Special permits for dwellings with an accessory apartment and shared housing for the elderly may be granted upon determination by the Planning Board that the following additional criteria have been met:
- (1) The dwelling shall be so designed as to have the appearance of a single-family dwelling with one entrance. An entrance leading to a foyer with entrances leading to the dwelling units will be acceptable. All other entrances must be on the side or rear of the dwelling.
 - (2) The proposed use will not create traffic hazards or volume greater than the capacity of the streets affected.
 - (3) The proposed use is not in violation of any private deed restrictions applicable to the subject locus.

- (4) An applicant for an accessory apartment in the Drinking Water Resource Protection District (WR) shall submit proof of recording of a covenant, enforceable by the Town, which states that the lot containing the dwelling with an accessory apartment will not be reduced to less than 60,000 square feet by any means, unless the kitchen facilities of the apartment are removed and the property has been returned to a single-family dwelling.
- I. Granting of a special permit for a dwelling with an accessory apartment shall be conditioned upon the owner maintaining occupancy of one of the units or provided both units are owned by a not-for-profit housing entity. Proof of ownership by the not-for-profit housing entity shall be provided at the time of application. For owner-occupied units, a certificate in the form of a notarized affidavit to verify that the owner is or will be in residence in one of the units shall be provided at the time of application. Every two years such notarized affidavit for owner-occupied units or proof of ownership for not-for-profit agencies shall be submitted to the Building Official by January 31. Failure to comply with these provisions or termination of occupancy by the owner, including not-for-profit ownership, will result in the special permit becoming null and void, and within 12 months thereafter one kitchen unit shall be removed and the property returned to a single-family dwelling.
- J. Granting of a special permit for a personal wireless service facility shall be pursuant to the requirements of Article XI, Personal Wireless Service Facilities, in addition to all other special permit requirements hereunder.
- K. Granting of a special permit for an adult entertainment use shall be pursuant to the requirements of Article XIII, Adult Entertainment, in addition to all other special permit requirements hereunder.
- L. Village Commercial Overlay District.
 - (1) Purpose. The Village Commercial Overlay District enables the development and redevelopment of Harwich Port's village center to be in keeping with its historic development patterns, including the size and spacing of structures and additional open space. The redevelopment of existing structures will allow them to come into compliance with current plumbing, electric and building codes, as well as the latest fire and handicapped access regulations.
 - (2) Scope.
 - (a) Within the Village Commercial District only property that has frontage on Route 28 (Main Street), Harwich Port, is permitted to utilize this section. Property located on the south side of Lower County Road between Ayer Lane and the intersection of Route 28 and Lower County Road is also permitted to utilize this section. A contiguous section of property is permitted for commercial uses and mixed-use development. All property owners, including the Town of Harwich, are required to locate the majority of these structures on the portion of this property facing Route 28 and to locate parking, septic and open space to the rear of this property. All single uses remain under the present Town of Harwich Zoning Bylaw. All other property

that does not have frontage on Route 28 in this overlay district is not affected by this section.

- (b) The dimensional requirements, including building setbacks, maximum site coverage and heights of these structures, are outlined in Subsection L(5) of this section.
 - (c) This bylaw is intended to be used in conjunction with other regulations of the Town, including site plan review and other bylaws designed to encourage appropriate and consistent patterns of village development.
 - (d) Applicants, with the approval of the Board of Health and Water Quality Management Task Force, are encouraged to utilize new and improved technologies for septic treatment and rainwater drainage purposes.
- (3) Location. The Village Commercial Overlay District is shown on the following map: Village Commercial Overlay District, dated June 2001, prepared by the Town of Harwich Planning Department. Only contiguous sections of property with frontage on Route 28 (Main Street), Harwich Port, or Lower County Road in Harwich Port as described in Subsection L(2) are included in this overlay district. The overlay district is bounded on the north side of Route 28 by Freeman Street to the east and by the east side of Bank Street to the west to a depth of 200 feet; also by the west side of Bank Street to the east and the east side of South Street to the west to a depth of 200 feet; also by the west side of South Street to the east and Miles Street to the west to a depth of 200 feet. The overlay district is bounded on the south of Route 28 by Bay View Road to the east and by the intersection of Route 28 and Lower County Road to the west to a depth of 200 feet. In addition, the overlay district includes the south side of Route 28 bounded by Route 28, Lower County Road and the irregular line formed by the westernmost property line of Assessor's Map 13, Parcel W7-10.
- (4) Procedure.
- (a) The Planning Board shall serve as the special permit granting authority for developments within the Village Commercial Overlay District.
 - (b) Prior to the submission of an application for special permit under this bylaw, the applicant may meet with the Planning Board at a public meeting for a preapplication conference to discuss the proposed development in general terms and establish the plan filing requirements. The Planning Board shall schedule a meeting for a preapplication conference following a written request from the applicant, inviting preliminary comments from the Board of Health, Conservation Commission, and any other interested officials or agencies. The purpose of this preapplication conference is to inform the Planning Board as to the nature of the proposed project. As such, no formal filings are required for the preapplication conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Planning Board of the scale and overall concept of the proposed project and its relationship to abutting properties.

- (c) Special permit applications shall comply with and be subject to the requirements of § 325-55, Site plan approval.
- (5) Dimensional requirements.
 - (a) Lots shall have frontage along Route 28 (Main Street) to utilize the dimensional requirements of this Subsection L(5). Adjacent parcels may be included provided that they are under the same ownership and are also located within the overlay district. Where possible, lots should be combined by plan or deed prior to the issuance of the special permit.
 - (b) Setback requirements.
 - [1] Front setback requirements shall be determined at the time of site plan review based on existing development patterns and the elements of the proposed project.
 - [2] Side lot line setback shall be 10 feet.
 - [3] Rear lot line setback shall be 20 feet.
 - (c) Parking shall be permitted at the side or rear of the property.
 - (d) Maximum site coverage shall not exceed 80%.
 - (e) The maximum permitted height for new constructions shall not exceed 30 feet or 2 1/2 stories.
 - (f) Assessor's Map 13, Parcel W7-10 is included in this overlay district with the provision that the westernmost property line, that abuts residential property, must comply with the minimum of twenty-foot setback and open space, if the property is redeveloped.
 - (g) The Board may waive or modify these dimensional requirements if it is found that such waiver or modification will not substantially derogate from the purpose and intent of this bylaw and that such waiver or modification may be granted without substantial detriment to the neighborhood or overall public good.
- M. Mixed-use development. Special permits for mixed-use development may be granted upon a determination by the Planning Board that the following additional criteria have been met:
 - (1) There shall be no less than 33% of the floor area of the building or buildings dedicated to a commercial use(s). A commercial use(s) shall be located at the front of the building, facing the street, and shall be located on the ground level.
 - (2) For each mixed-use development, there shall be 10,000 square feet of lot area per unit. Applications for mixed-use development shall also comply with Board of Health regulations.

- (3) The parking shall comply with the requirements of Article IX, Off-Street Parking Regulations.
 - (4) There shall be an outdoor landscaped public area provided as part of the landscaping requirement.
 - (5) Special permit applications shall comply with the requirements of § 325-55, Site plan approval.
 - (6) Screening of parking shall comply with the provisions of § 325-43.
- N. Two-family dwelling. Special permits for two-family dwellings may be granted upon a determination by the Planning Board that the following additional criteria have been met:
- (1) The lot area shall contain a minimum of 40,000 square feet of contiguous upland in all applicable zoning districts; however, in the Drinking Water Resource Protection District (WR) the minimum lot area shall be 60,000 square feet of contiguous upland.
 - (2) The floor area for each dwelling unit shall be a minimum of 800 square feet.
 - (3) A common roof or a series of roofs shall connect the dwelling units.
 - (4) There shall be two off-street parking spaces per each unit.
- O. Harwich Center Overlay District.
- (1) Purpose. The Harwich Center Overlay District enables the development and redevelopment of Harwich Center to be in keeping with its historic development patterns, including the size and spacing of structures and provision of open space. The redevelopment of existing structures will encourage them to come into compliance with current plumbing, electric and building codes, as well as the latest fire and handicapped access regulations. Agencies involved with historic preservation will be encouraged to make recommendations on proposed development or redevelopment.
 - (2) Scope.
 - (a) Within the Harwich Center Overlay District, only property that is currently within the Commercial - Village (CV) Zoning District in Harwich Center is permitted to utilize this section, with the following two exceptions: property located on the southeast corner of the intersection of Sisson Road and Parallel Street just east of Forest Street, currently shown on Assessor's Map 40 as Parcel Z5, and the parcel located at the southwest corner of the intersection of Bank Street and Parallel Street, currently shown on Assessor's Map 41 as Parcel N4, are also permitted to utilize this section. All property owners, including the Town of Harwich, are required to locate the majority of structures on the street frontage portion of the property and to locate parking, septic and open space to the rear of the property.

- (b) The dimensional requirements, including building setbacks, maximum site coverage and heights of these structures, are outlined in Subsection O(5) of this section.
 - (c) This bylaw is intended to be used in conjunction with other regulations of the Town, including site plan review and other bylaws designed to encourage appropriate and consistent patterns of village development.
 - (d) Applicants, with the approval of the Board of Health, and other agencies as required are encouraged to utilize new and improved technologies for septic treatment and stormwater drainage purposes.
- (3) Location. The Harwich Center Overlay District is shown on the following map: Harwich Center Overlay District, October 2003, prepared by the Town of Harwich Planning Department. The Harwich Center Overlay District is bounded on the south by Parallel Street from Bank Street to Sisson Road, but including the parcel on the south side of Parallel Street at Bank Street (also shown on Harwich Assessor's Map 41 as Parcel N4) and the parcel on the south side of Parallel Street at Sisson Road (also shown on Harwich Assessor's Map 40 as Parcel Z5); the district is bounded on the west by Sisson Road, Route 39 (Main Street) and Route 124 (Pleasant Lake Avenue); the district is bounded on the north by Old Colony Way to the west boundary line of Parcel C4-B, on Assessor's Map 41; the district is bound on the east by the west boundary line of Parcel C4-B, on Assessor's Map 41, and the east boundary line of the Town of Harwich owned land (Parcel C302 and C5, on Assessor's Map 41) and Bank Street to the southeast corner of Parcel N4 at Bank Street.
- (4) Procedure.
 - (a) The Planning Board shall serve as the special permit granting authority for developments within the Harwich Center Overlay District.
 - (b) Prior to the submission of an application for special permit under this bylaw, the applicant may meet with the Planning Board at a public meeting for a preapplication conference to discuss the proposed development in general terms and establish the plan filing requirements. The Planning Board shall schedule a meeting for a preapplication conference following a written request from the applicant, inviting preliminary comments from the Board of Health, Conservation Commission, and any other interested officials or agencies. The purpose of this preapplication conference is to inform the Planning Board as to the nature of the proposed project. As such, no formal filings are required for the preapplication conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Planning Board of the scale and overall concept of the proposed project and its relationship to abutting properties.
 - (c) Special permit applications shall comply with and be subject to the requirements of § 325-55, Site plan approval.
- (5) Dimensional requirements.

- (a) Setback requirements:
 - [1] Front setback requirements shall be determined at the time of site plan review based on existing development patterns and the elements of the proposed project.
 - [2] Side lot line setback shall be 10 feet.
 - [3] Rear lot line setback shall be 10 feet.
- (b) Parking shall be permitted at the side or rear of the property.
- (c) Maximum site coverage shall not exceed 80%.
- (d) The maximum permitted height for new constructions shall not exceed 30 feet or 2 1/2 stories.
- (e) The Board may waive or modify these dimensional requirements if it finds that such waiver or modification will not substantially derogate from the purpose and intent of this bylaw and that such waiver or modification may be granted without substantial detriment to the neighborhood or overall public good.
- (6) Uses. Uses permitted by right or special permit for the underlying zoning district remain. However, the following additional uses are allowable by special permit in the Harwich Center Overlay District, provided that all other zoning requirements herein are met:
 - (a) Inn.
 - (b) Bed-and-breakfast.

P. Certification of dwelling units.

- (1) An accessory apartment or any dwellings in existence on the effective date of this bylaw that were not in compliance with existing zoning when constructed may be granted a special permit from the Board of Appeals to allow the use to continue, provided that any unit (either the main or accessory unit or a number of units equal to the number not permitted) is deed restricted to remain affordable as defined by the Department of Housing and Community Development for a period of 20 years and that the Board of Appeals finds that the issuance of the special permit will not be detrimental to the neighborhood. Prior to appearance before the Board of Appeals, the dwelling in question must be inspected and found to comply with all building codes and Board of Health regulations.
- (2) For the purpose of this section, any accessory apartment or dwelling being brought up to code within 60 days of the discovery of the violations will remain eligible for a special permit. Once the violations are corrected, if zoning violations are also present, an application for a special permit to the Board of Appeals is required, pursuant to Subsection I above.

§ 325-52. Variances.

The Board of Appeals shall have the power to hear and decide applications for variances from the provisions of the protective bylaws, including the power to grant a variance authorizing a use or activity not otherwise permitted in the district in which the land or structure is located, except that no variance shall be granted to allow food sales with drive-up or drive-through facilities. Variances may be granted by the Board only after a public hearing and only after the Board has made the finding required by the Zoning Act.¹¹

§ 325-53. Other requirements.

The granting of any appeal by a permit granting authority shall not exempt the applicant from compliance with any applicable provisions of the Zoning Bylaw not specifically varied by the Board of Appeals.

§ 325-54. Nonconforming structures and uses.**A. Nonconforming structures.**

- (1) Alteration or extension of single- or two-family residential structure.
 - (a) A preexisting nonconforming single- or two-family residential structure may be altered or extended by right if the Building Official determines that it meets the following criteria:
 - [1] The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located; and
 - [2] The nonconformance concerns the size of the lot in question and/or the frontage of said lot and/or an encroachment of the existing structure.
 - (b) In addition, a preexisting nonconforming single- or two-family structure may be altered by right through the addition of a dormer or dormers if the Building Official determines that it meets the following criteria:
 - [1] The proposed dormer or dormers do not allow for any increase in the square footage of the single- or two-family dwelling; and
 - [2] The nonconformance concerns the size of the lot in question and/or the frontage of said lot and/or an encroachment of the existing structure.
 - (c) In making such determination, the Building Official, after identifying the particular respect or respects in which the structure or lot does not presently conform to the Zoning Bylaw, shall consider whether the proposed addition/extension meets the criteria stated above. If the Building Official determines that the addition/extension meets the criteria stated above, the Building Official may allow the addition/extension or rebuild by right.

11. Editor's Note: See MGL c. 40A.

- (2) If the Building Official determines that a proposed addition/extension to a nonconforming single- or two-family residential structure increases the nonconforming nature of the structure, the applicant may seek a new determination from the Board of Appeals. If the Board of Appeals determines that the alteration or extension will increase the nonconforming nature of the structure, no such alteration or extension may occur unless the Board of Appeals issues a special permit for alteration or extension after finding that the alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconformity. An addition/extension that increases the nonconforming nature of the structure would include:
- (a) A structure built in the same footprint to an increased building height.
 - (b) A structure built in the same footprint that does increase the habitable floor area.
 - (c) A structure that continues along the same line as an existing encroachment without increasing that encroachment.
- (3) A single- or two-family residential structure is determined to be demolished and replaced if the area of the existing structure to be removed meets the definition of "demolition" in this bylaw.¹²
- (4) A lawfully preexisting nonconforming single- or two-family residential structure may, by right, be demolished and replaced with a new structure on the same site, provided that:
- (a) The proposed new construction will conform to current setbacks and coverage for the zoning district in which the lot is located; and
 - (b) The nonconformance concerns the size of the lot in question and/or the frontage of said lot.
- (5) A lawfully preexisting nonconforming single- or two-family residential structure may, by special permit, be demolished and replaced with a new structure on the same site, provided that it is determined by the Board of Appeals that:
- (a) The replacement of the structure will not be substantially more detrimental to the neighborhood than the existing structure;
 - (b) The replacement of the structure will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, zoning district or Town;
 - (c) The replacement structure will not increase any of the following existing nonconformances: building coverage, site coverage, or setback encroachment;
 - (d) The replacement structure will reduce at least one of the following existing nonconformances: building coverage, site coverage, or setback encroachment; and

12. Editor's Note: See § 325-2.

- (e) The replacement structure may not increase the habitable square footage of the structure by more than 25% over the habitable square footage of the existing structure over a ten-year period beginning on the date of the issuance of the special permit by the Board of Appeals.
- (6) A proposal to demolish and replace a single- or two-family residential structure which will increase the nonconforming nature of the structure will require a variance from the Board of Appeals pursuant to MGL c. 40A, § 10.
- (7) Alteration or extension of other structures.
 - (a) A preexisting nonconforming structure other than a single- or two-family residential structure may be altered or extended by right if the Building Official determines that it meets the following criteria:
 - [1] The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located; and
 - [2] The nonconformance concerns the size of the lot in question and/or the frontage of said lot and/or an encroachment of the existing structure.
 - (b) All other nonconforming structures shall require a variance from the Board of Appeals pursuant to MGL c. 40A , § 10 for any alteration/extension or reconstruction.

B. Nonconforming uses.

- (1) Except for single- and two-family dwellings provided for in Subsection A(5) of this section, a lawfully preexisting structure, whether conforming or not, used for a lawfully nonconforming use may, by special permit, be changed, altered, or razed and replaced with a new structure on the same site, provided that it is determined by the Board of Appeals that:
 - (a) The replacement, alteration or change of the structure will not be substantially more detrimental to the neighborhood than the existing structure;
 - (b) The replacement, alteration or change of the structure will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, zoning district or Town; and
 - (c) The replacement, altered or changed structure will be used for the same use or for a conforming use.
- (2) In no case shall a nonconforming use be changed to another nonconforming use.
- (3) Notwithstanding the provisions hereof, nonconforming uses, actual use of which has been discontinued for a period of two consecutive years, shall be conclusively presumed to be abandoned and thereafter shall not be reestablished, changed (except to a conforming use), or extended without a variance from the Board of Appeals.

§ 325-55. Site plan approval.

- A. Purpose. The purpose of this section is to protect the safety, public health, convenience and general welfare of the inhabitants of the Town of Harwich by providing detailed review of the design and layout of certain developments which have a substantial impact upon the character of the Town and upon traffic, utilities and services therein.
- B. Powers. The Planning Board is hereby designated the special permit granting authority for site plan approval regarding activities which are set forth in Subsection C.
- C. Applicability. In addition to any special permit or variance required under the Table of Use Regulations, the following development activities shall require a site plan special permit from the Planning Board:
- (1) Any floor area expansion of any structure or expansion of exterior space, other than parking, serving any of the following: a commercial, industrial, multifamily, or educational use or personal wireless service facility; or the creation of a drive-up or drive-through window.
 - (2) Expansion or reconfiguration of an existing parking lot and/or driveway(s) serving said parking lot.
 - (3) Establishment of any new commercial, industrial, multifamily, educational, fast-food/takeout restaurant or personal wireless service facility.
 - (4) Establishment of any new retail use(s) in the Industrial - Limited (IL) Zone.
- D. Required submission. The submission of an application and plans for site plan approval shall conform to the Planning Board Rules and Regulations Governing Subdivision of Land and Site Plan Review, as amended.¹³ The Planning Board shall consider all applications at a public hearing according to the procedure set forth in MGL c. 40A.
- E. Conditions of approval.
- (1) If the site plan meets the requirements of this bylaw and the Planning Board Rules and Regulations Governing Subdivision of Land and Site Plan Review, as amended, the Planning Board shall approve it. Notwithstanding the foregoing, such approval may include reasonable conditions to ensure that:
 - (a) Reasonable measures are implemented to provide for screening of parking areas or other parts of the premises, for adjoining premises or from the street, by walls, fences, plantings or other devices.
 - (b) The convenience and safety of vehicular and pedestrian traffic are enhanced.
 - (c) Surface water from parking areas and driveways will be efficiently and safely disposed of by means of a proper drainage system as specified in the Board's approval.

13. Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

- (2) However, the Board cannot deny approval of a site plan for a use which is allowed by right (not by special permit) in the district but may impose reasonable conditions on the proposed use. The Board may not impose conditions on the grant of a special permit the implementation of which would be contrary to any requirement of this bylaw or require a variance from it or any other applicable provision of law.
- F. Waivers. When in the opinion of the Planning Board the requirements of Subsection C, Applicability, do not substantially change the relationship of the structure to the site and to abutting properties and structures, the Planning Board may determine, without a public hearing, that submission of a site plan for special permit approval is not required. Upon application consistent with the Planning Board Rules and Regulations Governing Site Plan Review, such a determination may be made by an affirmative vote of a majority of the Planning Board present, and in no event fewer than four members, in a manner consistent with the Planning Board Rules and Regulations Governing Site Plan Review.

§ 325-56. Conversion.

Conversion of any nonconforming motel, hotel, multifamily dwelling, two-family dwelling or two or more buildings designated for human habitation on one lot to a condominium form of ownership, cooperative form of ownership, time-sharing or similar usage, if such conversion changes, extends, or alters the existing usage, shall require a permit from the Board of Appeals to change or extend such nonconforming use in accordance with § 325-54 of the Harwich Zoning Bylaw.

ARTICLE XI Personal Wireless Service Facilities

§ 325-57. Purpose and intent.

- A. It is the express purpose of this bylaw to minimize the visual and environmental impacts of personal wireless service facilities. The bylaw enables and requires the review and approval of all new and expanded personal wireless service facilities by the Planning Board in keeping with the Town's existing bylaws and historic development patterns, including the size and spacing of structures and open spaces. This bylaw is intended to be used in conjunction with other regulations adopted by the Town, including historic district regulations, site plan review, and other local bylaws designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development in the Town of Harwich.
- B. The regulation of personal wireless service facilities is consistent with the Town's planning efforts through its local Comprehensive Plan to further the conservation and preservation of developed, natural, and undeveloped areas, wildlife, flora, and habitats for endangered species; the preservation of coastal resources; protection of the natural resources of the Town; balanced economic growth; the provision of adequate capital facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; and the preservation of historical, cultural, archaeological, architectural and recreational values.

§ 325-58. Definitions.

The following terms shall have the respective meanings within the context of regulation of personal wireless service facilities under this bylaw:

ABOVE GROUND LEVEL (AGL) — A measurement of height from the natural grade of a site to the highest point of a structure.

ANTENNA — The surface from which wireless radio signals are sent and received by a personal wireless service facility.

CAMOUFLAGED — A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered camouflaged.

CARRIER — A company that provides wireless services.

CO-LOCATION — The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

CROSS-POLARIZED (OR DUAL-POLARIZED) ANTENNA — A low mount that has three panels flush mounted or attached very close to the shaft.

ELEVATION — The measurement of height above sea level.

ENVIRONMENTAL ASSESSMENT (EA) — The document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

EQUIPMENT SHELTER — An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

FALL ZONE — The area on the ground within a prescribed radius from the base of a personal wireless facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FUNCTIONALLY EQUIVALENT SERVICES — Cellular, personal communication services (PCS), enhanced specialized mobile radio, specialized mobile radio, and paging.

GUYED TOWER — A monopole or lattice tower that is anchored to the ground or other surface by diagonal cables.

LATTICE TOWER — A type of mount that is self-supporting with multiple legs and cross bracing of structural steel.

LICENSED CARRIER — A company authorized by the FCC to construct and operate a commercial mobile radio services system.

MONOPOLE — The type of mount that is self-supporting with a single shaft of wood, steel or concrete and one or more platforms (or racks) for panel antennas.

MOUNT — The structure or surface upon which antennas are mounted, including the following four types of mounts:

- A. **ROOF-MOUNTED** — Mounted on the roof of a building.
- B. **SIDE-MOUNTED** — Mounted on the side of a building.
- C. **GROUND-MOUNTED** — Mounted on the ground.
- D. **STRUCTURE-MOUNTED** — Mounted on a structure other than a building.

OMNIDIRECTIONAL (WHIP) ANTENNA — A thin rod that beams and receives a signal in all directions.

PANEL ANTENNA — A flat surface antenna usually developed in multiples.

PERSONAL WIRELESS SERVICE FACILITY — Facility for the provision of personal wireless services, including antennas, telecommunication equipment, communications towers, monopoles and/or other support structures, including existing and proposed structures having personal wireless service devices attached thereto as accessory uses, installed and operated for the purpose of providing personal wireless services.

PERSONAL WIRELESS SERVICES — The three types of services regulated by this bylaw: commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services.

RADIO FREQUENCY (RF) ENGINEER — An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

RADIO FREQUENCY RADIATION (RFR) — The emissions from personal wireless service facilities.

SECURITY BARRIER — A lockable, secure wall, fence or berm that effectively discourages unauthorized entry or trespass.

SEPARATION — The distance between one carrier's array of antennas and another carrier's array.

§ 325-59. District regulations.

- A. Use regulations. A personal wireless service facility, after Planning Board review and approval, shall require a building permit in all cases and may be permitted as provided in Article V, Use Regulations, and as follows:
 - (1) A personal wireless service facility may locate on any existing guyed tower or lattice tower, monopole, electric utility transmission tower, fire tower or any other tower, provided that the installation of the new facility does not increase the height of the existing structure except as provided in Subsection C(3) below. Such installations shall not require a special permit but shall require site plan approval pursuant to § 325-55 of this bylaw.

- (2) All new or expanded personal wireless service facilities involving construction of one or more ground or building (roof or side) mounts, or expansion of an existing facility, shall require a site plan review and approval as outlined in § 325-55 and the issuance of a special permit pursuant to Article V, Use Regulations, except that no special permit shall be required for such facilities when located on land owned by the Town of Harwich. Such facilities may be established by special permit in all zoning districts within the Town, provided that the proposed use complies with the height and setback requirements of Subsection C hereunder and Article VI, Area, Height and Bulk Regulations, of this bylaw and all of the special permit requirements set forth in § 325-60 of this bylaw.
- B. Location. Applicants seeking approval for personal wireless service facilities shall comply with the following:
- (1) If feasible, personal wireless service facilities shall be located on or within any existing or new structures, including but not limited to buildings, existing telecommunications facilities, utility poles and towers, any other towers, and related facilities, provided that such installation preserves the character and integrity of those structures. Special consideration will be given to new construction of internally concealed wireless facilities that are installed in a manner that preserves the character of the neighborhood and the integrity of the structure (example: within a flagpole). In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.
 - (2) If the applicant can demonstrate that it is not feasible to locate on an existing structure, personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to use of compatible building materials and colors, screening, landscaping, and placement within trees. The applicant is also encouraged to consider using contained structures, including but not limited to steeples and flagpoles, for the antennas and an underground vault to store necessary equipment and equipment cabinets.
 - (3) The applicant shall submit documentation of the legal right to install the proposed facility mount at the time of the application for a building permit and/or special permit.
- C. Dimensional requirements. Personal wireless service facilities shall comply with the following requirements:
- (1) Height, general. Regardless of the type of mount, personal wireless service facilities shall be no higher than 45 feet above ground level [except as described in Subsection C(4), Height, Personal Wireless Service Overlay Districts]. Personal wireless service facilities may be established on a building that is legally nonconforming with respect to height, provided that the facilities do not exceed 45 feet above ground level.
 - (2) Height, existing structures. New antennas for personal wireless services may be installed on or within any of the preexisting structures listed below. Such

preexisting structures shall be exempt from the height restrictions of this article to the extent that the following conditions are met: provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility and that its installation is incidental to the structure and not the structure's primary purpose. Such structures include guyed towers, lattice towers, fire towers, any other towers, and monopoles, chimneys and steeples.

- (3) Height, existing utility structures. New antennas located on any of the following existing structures shall be exempt from the height restrictions of this bylaw, provided that there is no more than a twenty-foot increase in the height of the existing structure as a result of the installation of a personal wireless service facility and further provided that no such structure shall be permitted to exceed 150 feet in total height above ground level: electric transmission and distribution towers, telephone poles and similar utility structures. This exemption shall not apply to historic districts, within 150 feet of the right-of-way of any scenic roadway or in designated scenic viewsheds.
- (4) Height, Personal Wireless Service Overlay Districts. Personal wireless service facilities in Personal Wireless Service Overlay Districts may be built to a height of up to 150 feet above ground level, provided that such structure and site are designed to accommodate a total of four licensed carriers. Said wireless facilities which can only accommodate a total of three licensed carriers shall not exceed 135 feet above ground level. Said wireless facilities which can only accommodate a total of two licensed carriers shall not exceed 120 feet above ground level. Said wireless facilities which can only accommodate a single licensed carrier shall not exceed 105 feet above ground level.
- (5) Setbacks. All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:
 - (a) In order to ensure public safety, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road or habitable dwelling, business or institutional use, or public recreational area shall be determined and documented by an independent, certified engineering firm to determine the structural integrity and fall zone of the proposed structure for each contract agreement and/or renewal. These findings, including all signed and certified documentation, will be submitted to the Town of Harwich Planning Board at the specified site plan review public hearing for review and approval. This fall zone engineering certification and inspection process shall be at no cost to the Town of Harwich.
 - (b) In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of preexisting, nonconforming structures, personal wireless service facilities and their equipment shelters shall not increase any nonconformities, except as provided in Subsection C(6) below.

- (6) In reviewing a special permit application for a personal wireless service facility, the Planning Board may reduce the required fall zone and/or setback distance of the zoning district by as much as 50% of the required distance if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

§ 325-60. Special permits for personal wireless service facilities.

All personal wireless service facilities shall comply with the performance standards set forth in this section.

A. Design standards.

- (1) Visibility/camouflage. Personal wireless service facilities shall be camouflaged as follows:
 - (a) Camouflage by existing buildings or structures.
 - [1] When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
 - [2] Personal wireless service facilities which are side-mounted shall blend with the existing building's architecture and shall conform to Subsection A(1)(c).
 - (b) Camouflage by vegetation. If personal wireless service facilities are not camouflaged from public viewing areas by existing buildings or structures they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless service facilities shall provide a vegetated buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The special permit granting authority shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions.
- (c) Color.
 - [1] Personal wireless service facilities which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.
 - [2] To the extent that any personal wireless service facilities extend above the height of the vegetation immediately surrounding them, they shall

be painted in a light grey or light blue hue which blends with sky and clouds.

- (2) Equipment shelters. Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:
 - (a) Equipment shelters shall be located in underground vaults;
 - (b) Equipment shelters shall be designed consistent with traditional Cape Cod architectural styles and materials, with a roof pitch of at least 10/12 and wood clapboard or shingle siding; or
 - (c) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The special permit granting authority shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood.
- (3) Lighting, signage and security.
 - (a) Personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.0 initial footcandle when measured at grade.
 - (b) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with Article VII, Sign Regulations, of this bylaw.
 - (c) All ground-mounted personal wireless service facilities shall be surrounded by a security barrier.
- (4) Historic buildings and districts.
 - (a) Any personal wireless service facilities located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
 - (b) Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.
 - (c) Personal wireless service facilities within an historic district shall be concealed within or behind existing architectural features or shall be located so that they are not visible from public roads and viewing areas within the district.

B. Environmental standards.

- (1) Personal wireless service facilities shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.

- (2) No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- (3) Stormwater runoff shall be contained on site.
- (4) Ground-mounted equipment for personal wireless service facilities shall not generate noise in excess of 50 db at the property line.
- (5) Roof-mounted or side-mounted equipment for personal wireless service facilities shall not generate noise in excess of 50 db at ground level at the base of the building closest to the antenna.

C. Safety standards.

- (1) Radio frequency radiation (RFR) standards. All equipment proposed for a personal wireless service facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines).

§ 325-61. Application and approval process.

The special permit granting authority shall adopt and may from time to time amend rules and regulations governing the application and approval process for personal wireless service facilities. Special permits and site plan applications for personal wireless service facilities shall be governed by said rules and regulations and the special permit and site plan requirements of Article X.

§ 325-62. Co-location.

- A. Licensed carriers shall share personal wireless service facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless service facilities that are stand-alone facilities. All applicants for a special permit for a personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:
 - (1) A survey of all existing structures that may be feasible sites for co-locating personal wireless service facilities;
 - (2) Contact with all the other licensed carriers for commercial mobile radio services operating in the County of Barnstable; and
 - (3) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.
- B. In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Planning Board may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to

co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a special permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

- C. If the applicant does intend to co-locate or to permit co-location, the Planning Board shall request drawings and studies which show the ultimate appearance and operation of the personal wireless service facility at maximum capacity.
- D. If the special permit granting authority approves co-location for a personal wireless service facility site, the special permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the special permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved special permit shall require a new special permit. Estimates of RFR emissions will be required for all facilities, including proposed and future facilities.

§ 325-63. Modifications.

A modification of a personal wireless service facility may be considered equivalent to an application for a new personal wireless service facility and will require a special permit when the following events apply:

- A. The applicant and/or co-applicant wants to alter the terms of the special permit by changing the personal wireless service facility in one or more of the following ways:
 - (1) Change in the number of facilities permitted on the site.
 - (2) Change in technology used for the personal wireless service facility.
- B. The applicant or co-applicant wants to add any equipment or additional height not specified in the original design filing.

§ 325-64. Monitoring and maintenance.

- A. After a personal wireless service facility is operational, the applicant shall submit to the Planning Board and Board of Health, within 90 days of beginning operations and at annual intervals from the date of issuance of the special permit, existing measurements of RFR from the personal wireless service facility. Such measurements shall be signed and certified by an RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the radio frequency standards section [§ 325-60C(1)] of this bylaw.
- B. After a personal wireless service facility is operational, the applicant shall submit to the Planning Board and Board of Health, within 90 days of beginning operations and at annual intervals from the date of issuance of the special permit, existing measurements of noise from the personal wireless service facility. Such measurements shall be certified by an acoustical engineer, stating that noise measurements are accurate and meet the noise standards of § 325-60B(4) of this bylaw.

- C. The applicant and co-applicant shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

§ 325-65. Abandonment or discontinuation of use.

- A. At such time that a licensed carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Building Official by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice, a copy of which shall be sent to the Planning Board via regular U.S. mail, shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, any personal wireless service facility allowed on special permit by this bylaw shall be considered abandoned upon such discontinuation of operations.
- B. Upon abandonment or discontinuation of use, the carrier shall physically remove the personal wireless service facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include but not be limited to:
- (1) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - (3) Restoring the location of the personal wireless service facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

§ 325-66. Reconstruction or replacement of existing towers and monopoles.

Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this bylaw may be reconstructed, altered, extended or replaced on the same site by special permit from the Planning Board, provided that the Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the tower than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than 20 feet.

§ 325-67. Term of special permit.

A special permit issued for any personal wireless service facility over 45 feet in height shall be valid for 15 years. At the end of that time period, the personal wireless service facility shall be removed by the carrier or a new special permit shall be required.

§ 325-68. Severability.

The provisions of this article are severable, and in the event that any provision of this article is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

ARTICLE XII
Elderly Affordable Housing District

§ 325-69. Purpose.

The purpose of this Article XII is to provide for elderly affordable housing. The Elderly Affordable Housing District is established as a special district which overlays an existing residential zoning district. The Elderly Affordable Housing District permits the development of elderly affordable housing units subject to the specific regulations and requirements contained in this Article XII, which regulations and requirements shall govern even where they are inconsistent with or less restrictive than the other requirements of the Zoning Bylaw. The regulations of this Article XII relating to use, building and lot dimensions, development intensity, parking, ingress and egress, and site plan review shall only apply to an elderly affordable housing development and not to any other use that is allowed or permitted in the underlying zoning district.

§ 325-70. Relationship to underlying district.

- A. The Elderly Affordable Housing District shall overlay the underlying residential district so that any parcel of land in the Elderly Affordable Housing District shall also lie in the residential zone in which it is otherwise classified by this Zoning Bylaw.
- B. All reductions, requirements, and definitions contained in the Zoning Bylaw shall apply within the Elderly Affordable Housing District to the extent they are not inconsistent with the specific provisions of this Article XII. To the extent any such provisions are inconsistent, the provisions of this Article XII shall prevail.

§ 325-71. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AFFORDABLE — Dwelling units leased by a nonprofit corporation or governmental entity, the rents for which do not exceed the guidelines for such rental housing established by the United States Department of Housing and Urban Development (HUD) or any successor agency or by any comparable agency of the Commonwealth of Massachusetts.

ELDERLY AFFORDABLE HOUSING DEVELOPMENT — An affordable multifamily housing development whose occupants shall and must be 60 years of age or older.

§ 325-72. Permitted uses.

The following uses are permitted: elderly affordable housing development.

§ 325-73. Dimensional and bulk requirements.

An elderly affordable housing development shall comply with the following requirements:

- A. Minimum lot area: eight acres.
- B. Minimum lot frontage: 50 feet.
- C. Minimum front yard: 50 feet.
- D. Minimum side yard: 50 feet.
- E. Minimum rear yard: 50 feet.
- F. Minimum density: eight units per acre of contiguous upland.
- G. Maximum building height: 40 feet.
- H. Maximum permitted height: 2 1/2 stories.
- I. Maximum building coverage of lot (covered area as percentage of total lot area): 15%.
- J. Maximum site coverage as percentage of total site area: 50%.
- K. Minimum residential net floor area (square feet): none.

§ 325-74. Parking standards.

Parking standards are as follows: one space per dwelling unit.

ARTICLE XIII
Adult Entertainment

§ 325-75. Authority.

This bylaw is enacted pursuant to MGL c. 40A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

§ 325-76. Purpose.

- A. It is the purpose of this adult entertainment bylaw to address and mitigate the secondary effects of adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the Town. All of said secondary impacts are adverse to the health, safety, and general welfare of the Town of Harwich and its inhabitants.

- B. The provisions of this bylaw have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this bylaw to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this bylaw to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

§ 325-77. Definitions.

Adult entertainment uses shall include the following uses:

- A. Adult bookstore, as defined by MGL c. 40A, § 9A.
- B. Adult motion-picture theater, as defined by MGL c. 40A, § 9A.
- C. Adult paraphernalia store, as defined by MGL c. 40A, § 9A.
- D. Adult video store, as defined by MGL c. 40A, § 9A.
- E. Any establishment which displays live nudity for its patrons, with the term "nudity" as defined by MGL c. 272, § 31.

§ 325-78. Adult entertainment uses by special permit.

Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this bylaw and may be permitted only upon the grant of a special permit by the Planning Board. Such special permit shall not be granted unless each of the following standards has been met:

- A. The application for a special permit for an adult entertainment use shall provide the name, address, and telephone number of the legal owner and all principal investors of the establishment, the legal owner and all principal investors of the property, and the manager of the proposed establishment.
- B. No adult entertainment use special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63 or MGL c. 272, § 28. The applicant shall be responsible for all related costs for record check processing.
- C. Location.
 - (1) Adult entertainment uses shall not be located within:
 - (a) One thousand feet from the nearest church, school, park, playground, play field, youth center, children's day-care center, licensed home day-care facility, library (public or private), recreation facility or area open to the public; or

- (b) One thousand feet from the nearest establishment licensed under MGL c. 138, § 12.
 - (2) The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest property line of any of the designated uses set forth above.
 - (3) In addition, no structure which contains an adult entertainment use shall be closer than 100 feet to any primarily residential zoning district boundary.
- D. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- E. No adult entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material which contain any sexually explicit figures or words as defined in MGL c. 272, § 31.
- F. No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- G. The proposed adult entertainment use shall comply with the off-street parking requirements set forth in this bylaw.
- H. No adult entertainment use shall have any flashing lights or neon signs visible from outside the establishment.
- I. No adult entertainment use shall have a freestanding accessory sign or off-premises sign.
- J. No adult entertainment use shall be established prior to submission and approval of a site plan by the Planning Board, pursuant to § 325-55. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest primarily residential zoning district and the nearest property line of each of the uses set forth in Subsection C above.
- K. No adult entertainment establishment shall employ any person or persons who would be excluded as a permit holder under this bylaw.

§ 325-79. Conditions.

The special permit granting authority may impose reasonable conditions, safeguards and limitations on the time or use of any special permit granted and may require that any such special permit granted shall be personal to the applicant, shall not run with the land, and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject property.

§ 325-80. Expiration of special permit.

A special permit to conduct an adult entertainment use shall expire after a period of two calendar years from its date of issuance and shall be automatically renewable for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon public safety factors applied at the time that the original special permit was granted.

§ 325-81. Variances.

In no event shall any variances of the requirements pertaining to adult entertainment as defined and set forth in this bylaw be granted.

§ 325-82. Severability.

The provisions of this article are severable, and in the event that any provision of this article is determined to be invalid for any reason the remaining provisions shall remain in full force and effect.

ARTICLE XIV**Residential Subdivision Growth Rate Limit****§ 325-83. Purpose and intent.**

- A. The purpose of this Article XIV, Residential Subdivision Growth Rate Limit, is to ensure that the rate of development does not exceed the Town's ability to provide at least the current level of municipal services (e.g., schools, fire and police protection, an adequate supply and distribution of clean drinking water, roadways, solid waste disposal, etc.) and maintain at least the current ratio of protected open space area per year-round resident. The Town's 1993 Comprehensive Plan and 1999 Revised Comprehensive Plan Draft and supporting documents indicate the consequences of unchecked growth and recommend provision of adequate capital facilities and municipal services to meet the demands of current and future residents. These objectives are best accomplished by restraining the rate of residential growth to an annual level at which the Town can achieve its open space preservation goals and provide adequate municipal facilities and services within the constraints imposed by "Proposition 2 1/2," so called. Environmental constraints require that open land be developed at a minimum density of one dwelling per acre. Careful evaluation of this rate of land consumption has indicated that the costs associated with population growth would prevent the Town from providing adequate facilities and services and/or work against the Town's effort to protect sufficient open space and water supplies due to increased competition for limited funding. In addition, this article is intended to further the legitimate commonwealth and local interests in the provision of a fair share of housing that is affordable to persons of low and moderate income.
- B. The intent of this Article XIV, Residential Subdivision Growth Rate Limit, is to limit residential subdivision development within the Town of Harwich to no more than 50

building permits per year, as further defined herein. No person or persons as defined in § 325-87 may be granted more than 10% of this total, as described herein.

§ 325-84. Definitions.

As used in this article, the following terms shall have the meanings indicated:

RESIDENTIAL SUBDIVISION — As described herein, shall be defined as property subdivided and governed by the Subdivision Control Law.¹⁴

RESIDENTIAL SUBDIVISION BUILDING PERMIT — A building permit granted to property/lots created by means subdivision plans approved subsequent to the adoption of this bylaw, as defined in "residential subdivision" above.

§ 325-85. Applicability.

This bylaw shall limit the issuance of residential subdivision building permits for subdivision lots created after approval of this bylaw and issued pursuant to an approved subdivision as defined in the Rules and Regulations Governing the Subdivision of Land and Site Plans of the Town of Harwich, Massachusetts,¹⁵ except division of land not creating new road frontage.

§ 325-86. Issuance of residential subdivision building permits.

The Building Department shall issue no more than 50 residential subdivision building permits per year for lots governed by this bylaw. As it is the intent of this bylaw that an equitable number of permits be available to all applicants, permits shall be issued under this section as follows:

- A. Residential subdivision building permits shall be issued on a first come, first served basis as further governed herein.
- B. No more than 10% of the available residential subdivision building permits shall be issued in one calendar month.
- C. Applicants shall demonstrate, by means of a deed or other similar instrument, ownership of the property at the time of application and prior twelve-month period.
- D. To ensure equitable distribution, all applicants for residential subdivision building permits under this section (whether an individual, a corporation or a realty trust) must, under penalty of perjury, divulge those holding a beneficial interest in excess of 1%. No permit shall be issued to any corporation or realty trust if any individual holder of beneficial interest in excess of 1% has been party to the issuance of five residential subdivision building permits during the current calendar year, whether such interest was as an individual or as a holder of beneficial interest in excess of 1% in any corporation or realty trust.

14. Editor's Note: See MGL c. 41, §§ 81K to 81GG.

15. Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

§ 325-87. Exemption.

Low- and moderate-income housing constructed by a public agency, nonprofit organization, or limited dividend sponsor of affordable housing, as defined by MGL c. 40B, provided that such housing units have deed restrictions to ensure that they remain affordable for no less than the time period specified by the relevant subsidy program or statute, is hereby exempted from the provision of this bylaw.

§ 325-88. Severability.

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Harwich Zoning Bylaw.

ARTICLE XV
Special Conditions

§ 325-89. Excavation and removal of sand, gravel, quarry or other earth materials.

In addition to the general conditions set forth in § 325-51 of this bylaw, for all special permits the following special conditions shall apply to the excavation and removal of sand, gravel, quarry or other earth materials other than that which is incidental to and in connection with construction of a building on the same lot, and for processing and treating raw materials:

- A. No sand, gravel, quarry or other earth materials shall be removed below the four-foot elevation above maximum groundwater elevation. These elevations shall be established from a test pit and the levels related to a fixed benchmark on the property.
- B. Removal and processing operations shall not be conducted closer than 100 feet to a street or closer than 25 feet to neighboring lot lines. Natural vegetation shall be left and maintained on the undisturbed land for screening and noise reduction purposes.
- C. All equipment for sorting, washing, crushing, grading, drying, processing and treating or other operation machinery shall not be used closer than 100 feet to any street or to any adjoining lot line.
- D. No more than one entrance and one exit shall be permitted to any excavation area.
- E. Any access to excavated areas or areas in the process of excavation will be adequately posted with "Keep Out - Danger" signs.
- F. Adequate provisions shall be made for drainage during and after completion of operations. The land shall be left so that natural storm drainage leaves the property at the original points and so that the area of drainage to any one point shall not be increased.
- G. Any temporary shelters or buildings erected on the premises for use by personnel or storage of equipment shall be screened from public view. These structures shall be removed from the premises within 30 days after they are no longer needed.

- H. No excavation shall be allowed closer than 50 feet to a natural stream.
- I. In all zones, other than the Industrial - Limited Zone, operation hours shall be only between the hours of 7:00 a.m. and 8:00 p.m. weekdays, excluding Sundays and legal holidays, and loaded trucks may leave prescribed premises only within such hours.
- J. During operations, when an excavation is located closer than 200 feet to a residential area public way and where the excavation will leave a depth of more than 15 feet with a slope in excess of 1:1, a fence of at least six feet high shall be erected to limit access to this area.
- K. Lateral support shall be maintained for all adjacent lots in order to prevent landsliding and cave-ins.
- L. A special permit, if issued, shall be issued for an initial three-year period. A renewal permit shall be necessary after a three-year period from the Board.
- M. If, during the period of excavation of any area used for the removal of sand, gravel, quarry, or other earth materials, any portion thereof amounting to more than 30,000 square feet becomes unsuited for further use or is abandoned for removal operations, whichever comes first, such area or portion thereof shall be graded and replanted with grass, trees or shrubs or any permanent cover crop.
- N. All sand and gravel pits presently operated as such are exempt from the requirement of obtaining a permit but must conform to all of the other conditions of this section.
- O. No topsoil (loam) or subsoil (hardening) shall be removed from any area of ground within the legal limits of the Town consisting of more than 50,000 square feet, other than that which is incidental to and in connection with the construction of a building on the same lot, unless that person removing such topsoil or subsoil shall replant the entire area with rye, vetch, wheat, legumes or any permanent cover crop or reforest the area.

ARTICLE XVI

Six Ponds Special District

§ 325-90. Purpose.

The purpose of the Six Ponds Special District is to establish zoning regulations that accomplish the following:

- A. Enhance protection of water quality within existing and potential future zones of contribution to water supply wells;
- B. Enhance protection of water quality within the Herring River watershed and the Pleasant Bay coastal embayments;
- C. Evaluate and protect future well areas to serve future Town needs;
- D. Protect the water quality of Aunt Edie's, Cornelius (Eldredge), Walker's, Oliver's, Black and Hawksnest Ponds;

- E. Protect the district's key natural resources, including rare plant and wildlife habitat, wetlands and coastal plain pondshores, unfragmented forest areas, fisheries, and wildlife corridors;
- F. Maintain the scenic character of area roads and views of pondshores and woodlands;
- G. Preserve cultural landscapes, archaeological sites, historic structures and traditional land uses within the district, including agriculture;
- H. Restore areas of the district that have been significantly degraded by excavation, mining, or other activities;
- I. Encourage the continued use of land within the district for open space and recreational purposes; and
- J. Foster land uses that are compatible with the resource protection goals of the district.

§ 325-91. District boundaries.

- A. The Six Ponds Special District encompasses approximately 1,350 acres of land area and approximately 114 acres of pond surface area. The boundaries of the district are shown on a plan titled "Six Ponds Special District" prepared by the Town of Harwich Planning Department dated December 2000 which is hereby made a part of this bylaw. The plan is on file in the Planning Department. The Six Ponds Special District shall be shown on the Zoning Map of the Town of Harwich.
- B. Zoning districts. For the purpose of this bylaw, the Six Ponds Special District is divided into the following zoning overlay districts:
 - (1) Zone A. To permit moderate density along the major roadways of the Six Ponds District's perimeter while minimizing impacts to its resources. Zone A encompasses all land within the Six Ponds Special District 400 feet or less from one of the following roads: Route 124, Queen Anne Road, Route 39 and Route 137.
 - (2) Zone B. To maintain the rural and scenic character of the district's interior and protect its resources. Zone B encompasses all land more than 400 feet from one of the following roads: Route 124, Queen Anne Road, Route 39 and Route 137.

§ 325-92. Definitions.

In addition to the definitions contained in the Town of Harwich Zoning Bylaw, § 325-2, the following definitions shall apply to the provisions of this bylaw:

AGRICULTURAL USE — Premises, including necessary structures and equipment, which are used for the keeping or raising of livestock or the raising of agricultural products, including a stand for the sale of produce, 50% or more of which is raised on the premises upon which the farm stand is located. All such uses are to be defined as defined in MGL c. 40A, § 3 and are subject to compliance with MGL c. 128 and MGL c. 131, § 40 (as described in "Farming in Wetland Resource Areas," 1996).

BED-AND-BREAKFAST — See definition in § 325-2.

BUILDING COVERAGE — The coverage of an individual site by any building. For the purposes of this definition, a building is defined as set forth in § 325-2.

CLEARED AREA — Any part of the area of a lot disturbed from its natural state.

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.

EARTH REMOVAL — The excavation and removal of sand, gravel, quarry or other earth materials other than that which is incidental to and in connection with construction of a building on the same lot.

EDUCATIONAL USE — A school owned and operated by a public, sectarian, denominational, or nonprofit educational corporation. All such uses are to be defined as defined in MGL c. 40A, § 3.

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

FLEXIBLE CLUSTER DEVELOPMENT (FCD) — A subdivision plan allowing for variations in development styles in order to minimize the impacts of development while preserving open space in perpetuity.

GRADING — Any excavating, clearing, filling, or the creation of impervious surfaces, or any combination thereof, which alters the existing surface of the land.

GRID SUBDIVISION (GS) — A subdivision consistent with MGL c. 41, §§ 81K through 81GG and Town of Harwich rules and regulations.¹⁶

LOT COVERAGE — See "site coverage" in § 325-2 of this Zoning Bylaw.

MUNICIPAL USE — A municipal use as defined in § 325-2 that would be compatible with the purpose of the district.

RELIGIOUS USE — See definition of "church or religious use" in § 325-2 of this bylaw.

SPECIAL PERMIT GRANTING AUTHORITY — For the purposes of this article, the Planning Board is the special permit granting authority. The special permit granting authority of the Planning Board is outlined in § 325-51 of the Town of Harwich Zoning Bylaw.

§ 325-93. Permitted uses.

A. The following uses are permitted within underlying residential districts:

¹⁶ Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

- (1) Agricultural use.
- (2) Home occupation.
- (3) Religious use.
- (4) Single-family home.

B. The following uses are permitted within underlying commercial districts:

- (1) Religious use.
- (2) Educational use.
- (3) Municipal use.
- (4) Medical facility.
- (5) Agricultural use.
- (6) Retail store.
- (7) Professional office.

§ 325-94. Special permit uses.

The following uses are conditionally allowed through a special permit to be granted by the Planning Board, provided that the use does not conflict with the purpose of the district or more specifically endanger or unacceptably impact district resources as described in § 325-90. For the purpose of this Article XVI (Six Ponds Special District), Article X, § 325-51 inclusive shall apply to any special permit under this Article XVI. As special permit granting authority, the Planning Board is authorized to waive submission requirements of § 325-51 if it deems a requirement to be duplicative or unnecessary.

A. Within the underlying residential district:

- (1) Single-family dwelling with accessory apartment. For existing lots lawfully laid out by plan or deed prior to the effective date of this article the minimum required lot size within the Six Ponds District shall be 60,000 square feet for any single-family dwelling with accessory apartment. For all lots created after the effective date of this article the minimum required lot size within the Six Ponds District shall be 100,000 square feet for any single-family dwelling with accessory apartment.
- (2) Bed-and-breakfast.
- (3) Flexible cluster development.
- (4) Swimming pools as an accessory to an allowed principal use.
- (5) Grid subdivision as described in MGL c. 41, §§ 81K through 81GG.

- (6) Earth removal/sand and gravel mining. An operation permit is required pursuant to § 325-102. Operators of cranberry bogs within the Six Ponds Special District using sand specifically in the operation of the bog are exempt from the requirements of § 325-102. Excavation associated with the construction of a permitted structure is exempt from the requirements of § 325-102.

B. Within the underlying commercial district: mixed-use development.

§ 325-95. Prohibited uses.

Any uses not specifically allowed as of right or by special permit within this district are prohibited.

§ 325-96. Preexisting uses.

Any lawfully existing use of a structure or land that does not conform to the provisions of this bylaw may continue. Any change of such use shall be governed by the provisions of this bylaw.

§ 325-97. Dimensional regulations.

Lot size, lot width, setbacks, coverage and height regulations shall be as set forth below:

A. Zone A, up to 400 feet from the following roads: Route 137, Route 39, Queen Anne Road, and Route 124. Lots partially within Zone A must have at least 50% of their lot area within Zone A to utilize the Zone A dimensional requirements.

- (1) Minimum lot size: 60,000 square feet.
- (2) Minimum lot frontage: 150 feet.
- (3) Minimum front yard setback: 50 feet.
- (4) Minimum side and rear yard setbacks: 25 feet.
- (5) Maximum lot coverage: 30%.
- (6) Maximum building coverage: 10%.
- (7) Maximum building height: 30 feet.

B. Zone B, all other land within the district.

- (1) Minimum lot size: 100,000 square feet.
- (2) Minimum lot frontage: 200 feet.
- (3) Minimum front yard setback: 80 feet.
- (4) Minimum side and rear yard setbacks: 40 feet.

- (5) Maximum lot coverage: 15%.
- (6) Maximum building coverage: 10%.
- (7) Maximum building height: 30 feet.
- C. Lots in more than one district. Where the district boundary line between Zone A and Zone B divides a lot in existence at the time such line is adopted, each portion of the lot shall comply with the area requirements for the applicable zoning district.
- D. Accessory uses to single-family dwelling. A garage and/or a shed greater than 100 square feet are accessory uses allowed as of right in the Six Ponds Special District and are subject to setback and coverage regulations as outlined in Subsections A and B.
- E. Preexisting lots. Existing lots lawfully laid out by plan or deed prior to the effective date of this article shall be considered lawfully preexisting, nonconforming lots, provided that the lot meets the provisions of § 325-7 of the Town of Harwich Zoning Bylaw.
- F. Developed lots. Structures on preexisting, nonconforming lots may be added to or extended, and accessory structures exceeding 100 square feet constructed, on the provision that the addition, extension, or accessory structure exceeding 100 square feet meets the following criteria:
 - (1) The addition, extension, or accessory structure exceeding 100 square feet is set back no less than 25 feet from any street and 20 feet from the side and rear lot lines; and
 - (2) Maximum lot coverage does not exceed 25%.

§ 325-98. Clearing and grading.

No person may clear any portion of a lot for construction without first obtaining a foundation permit or a building permit from the Building Department. No person shall undertake land clearing/grading activities exceeding an area of 30,000 square feet without first obtaining a special permit from the Planning Board. While the clearing/grading of an area less than 30,000 square feet does not require a special permit, compliance with the measures contained in Subsection B(1) through (8) is encouraged for all development within the district.

- A. Application requirements. Unless determined otherwise by the Planning Board the following submittals are required at the time of application:
 - (1) A plan must be accurately drawn to scale (not less than one inch equals 40 feet) on a sheet or sheets having dimensions of not less than 11 inches by 17 inches. Multiple sheet site plan sets must be labeled using the format of "Sheet 1 of _____, Sheet 2 of _____, etc." The plan must contain adequate drawings, symbols, and notations to indicate the following information:
 - (a) Seal and signature of the contributing registered land surveyor for any plan showing property line locations and seal and signature of the contributing registered civil engineer for any plan proposing new or altered stormwater drainage facilities. Information may be superimposed on a valid survey plan

or a valid existing site plan, provided that the following notation is included on the site plan: "[This site plan was prepared by (name of preparer) using a (plan of land/site plan) titled _____, dated _____ and last revised on _____, scale: _____, prepared by _____.]"

- (b) Scaled site locus map (at a scale of one inch equals 500 feet), Assessor map(s) and parcel number(s), North arrow, graphic scale, title block, plan references, names of applicant(s) and record owner(s) and date of site plan preparation.
 - (c) Total area of property containing the site of proposed development. Plans for redevelopment of a site shall show all land on the subject parcel and any other parcels relating to the subject use. Failure to show all property pertaining to the subject use(s) may result in incomplete notification to all parties in interest that may invalidate any approval obtained.
 - (d) All existing and proposed contour lines at intervals of no more than two feet.
 - (e) All proposed structures and facilities, including all property line setbacks.
 - (f) Existing and proposed surface water drainage facilities.
 - (g) Location and extent of subsurface drainage and sewage disposal facilities.
 - (h) Location of existing waterlines, if any. The location of proposed waterlines is to be determined pursuant to the requirements of the Board of Water Commissioners and shall be shown on the plan.
 - (i) A zoning compliance table showing the required and proposed dimensions/quantities or lot size, frontage, setbacks (structures and parking), building coverage, site coverage, building height, and clearing and grading area.
 - (j) Delineation of all bodies of water, including vernal pools, streams, ponds, and any wetlands as defined by MGL c. 131, § 40 located within 100 feet of any disturbance or alteration on the site. Delineation of the one-hundred-year floodplain should also be provided.
 - (k) Plan indicating the limit of work. The limit of work shall include all building, parking and vehicular use areas and any grading associated with the proposed development. The plan or accompanying narrative shall document the species and quantities of specimen trees and/or other vegetation to be removed or relocated within the project area.
- B. Granting of a special permit by the Planning Board for clearing/grading shall be based on the applicant's ability to prepare and execute a plan that meets the review standards listed below. The applicant shall demonstrate that the following measures are employed in the development of the site:

- (1) Site/building design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage channels on the site.
- (2) Clearing of vegetation and alteration of topography shall be limited to 30% of the site. Disturbed areas shall be revegetated with native plants.
- (3) 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 utility installation should be utilized wherever feasible to protect root systems of trees.
- (4) In the design of a development or siting of a structure, priority shall be given to retention of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites, and specimen trees.
- (5) Additional 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 shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.
- (6) Finished grades should be limited to a slope no greater than 4:1, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible.
- (7) The site shall be protected during construction through erosion and sedimentation controls, such as the following:
 - (a) Temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes and other mechanical measures as are necessary should be provided to intercept and divert surface water runoff.
 - (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, mulches and/or temporary or permanent cover crops. Mulch areas damaged from heavy rainfalls, severe storm or construction activity shall be repaired immediately.
 - (d) Runoff from impervious surfaces shall be recharged on the site by stormwater infiltration basins, vegetated swales, constructed wetlands or similar systems covered with natural vegetation. Runoff shall not be discharged directly to ponds, streams, rivers or other surface water bodies. All basins shall be preceded by oil, grease and sediment traps. The mouths of all basins shall be fitted with filter fabric during the entire construction process to minimize siltation. Basins shall not be located within the three-hundred-foot wetland buffer. Dry wells shall be used only where other methods are not feasible.

- (8) The site shall be revegetated immediately after grading.
 - (a) Proper revegetation techniques shall be employed using native plant species, proper seedbed preparation, appropriate fertilizer and mulching to protect germinating plants. Revegetation shall occur on cleared sites within seven calendar days of final grading and shall occur during the planting season appropriate to the selected plant species.
 - (b) A minimum of four inches of topsoil shall be placed on all disturbed surfaces that are proposed to be planted.
 - (c) Finished grades shall be no higher than the trunk flare(s) of trees to be retained.

§ 325-99. Pond buffer regulations.

- A. Shoreline location. The pond shoreline location for the six ponds shall be measured from the extreme high-water line of the ponds within the district.
- B. Prohibitions. The following are prohibited within 300 feet of the pond shoreline:
 - (1) Septic systems (soil absorption systems) and leaching fields.
 - (2) Direct discharge of stormwater from roads, rooftops, developed land areas and any other uses and/or activities.
 - (3) Any disturbance or removal of natural vegetation, with the exception of a single path not more than five feet wide to provide access from a single point at the edge of the buffer zone to the pond shore. Appropriate erosion controls, such as terracing of the path, should be incorporated into any design. The layout of this path must be reviewed and approved by the Conservation Commission.
 - (4) Use of pesticides will be in conformity with 333 CMR 1.00 to 11.00 as authorized by the Commonwealth of Massachusetts Pesticide Board.
 - (5) All other structures.
- C. Nonconformity. In cases where existing lots lawfully laid out by plan or deed prior to the effective date of this article are too small to accommodate soil absorption systems, structures and/or stormwater runoff discharge outside the three-hundred-foot buffer, these structures shall be located at the maximum possible distance from the shoreline elevation of the pond. Additional provisions for protection of ponds, such as advanced wastewater treatment and evaluation of nutrient loading capacity of adjacent pond, are advised in this instance.
- D. Existing single-family homes. An existing single-family home shall become preexisting nonconforming if it, at the time of the adoption of this bylaw, does not meet the requirements of § 325-97. Any additions or alterations shall be consistent with the provisions of Subsection B for the express purpose of becoming as conforming as possible.

- E. Existing commercial structures. An existing commercial structure shall become preexisting nonconforming if it, at the time of the adoption of this bylaw, does not meet the requirements of § 325-97. Any additions or alterations shall be consistent with the provisions of Subsection B for the express purpose of becoming as conforming as possible.

§ 325-100. Scenic road corridor regulations.

- A. The following regulations shall apply to both sides of the following roadways and roadway segments:
- (1) Seth Whitefield Road (county road).
 - (2) Nathan Walker Road (private road).
 - (3) Spruce Road (Town road).
 - (4) Hall's Path (Town road).
 - (5) Hawksnest Road (county road).
 - (6) Round Cove Road (Town road).
- B. New structures. The following criteria shall be met to preserve the character and enhance safe travel on the scenic roadways:
- (1) New structures shall be set back at least 100 feet from the edge of pavement on any of the roadways or roadway segments described in Subsection A.
 - (2) With the exception of a curb cut for a driveway, a minimum one-hundred-foot buffer of natural vegetation, including overstory and understory vegetation, shall be maintained along the frontage of all lots fronting on the roadways and roadway segments described in Subsection A.
 - (3) Where lot depth or the three-hundred-foot pond buffer as required in § 325-99 would prevent development of a lot, the Planning Board may grant a special permit allowing development if the following criteria are met:
 - (a) Dense plantings of evergreen vegetation combined with the construction of berms to screen new construction from the scenic road. Plant varieties shall be indigenous to the area and may include rhododendron, cedar, white pine, American holly, inkberry, spruce, fir and sheep laurel.
 - (b) New lawn area shall not be planted within the one-hundred-foot scenic road corridor.
 - (c) New subdivisions shall be designed to incorporate the one-hundred-foot scenic road corridor along subdivision roadways as part of the required open space.

C. Design guidelines. The following guidelines are recommended for new development and driveway construction on any of the roadways and roadway segments as described in Subsection A:

- (1) The use of shared driveways is encouraged whenever two or more lots are being created by any division of land regulated by the Subdivision Control Law.¹⁷ A special permit from the Planning Board may reduce the frontage required by § 325-97 to a minimum of 100 feet for any lot that is subject to a permanent deed restriction requiring a shared driveway. The deed restriction language shall be submitted with the application for the division of the land and must be of a form and content acceptable to the Planning Board and Town Counsel. The deed restriction shall be recorded with the plan that divides the parcel. This provision shall only apply to the frontage dimensional requirement; no other dimensional requirement shall be lessened through this provision.
- (2) Where shared driveways are not feasible, applicants are encouraged to design driveways and new subdivision roadways to obscure views of new development from the scenic roadway.
- (3) The use of board fencing stained to blend with the natural landscape or natural finish wooden fencing, especially split rail fencing, is encouraged when installing fencing along front lot lines.
- (4) Landowners and land developers are encouraged to use siding and roofing colors that blend with the natural landscape. Such colors include browns, grays, dark greens, and naturally stained building materials.
- (5) New structures shall be sited to minimize obstruction of existing views of the ponds from the scenic roadway.

§ 325-101. Flexible cluster development and grid subdivision.

This section is established to permit variation in development styles and minimize the impacts of development while preserving open space in perpetuity for the protection of natural resources, protecting the historical and archaeological resources of the district, and providing for the efficient layout of roads and utilities.

- A. Application. A flexible cluster development (FCD) or grid subdivision (GS) as defined in MGL c. 41, §§ 81K to 81GG is permitted in the Six Ponds Special District by special permit from the Planning Board.
- B. Permitted uses. The following uses are permitted in a flexible cluster development or grid subdivision:
 - (1) Single-family dwelling. Detached, single-family dwellings are allowed and permitted accessory uses, including a cluster unit and a duly permitted wastewater treatment facility.

17. Editor's Note: See MGL c. 41, §§ 81K to 81GG.

- (2) Open space. Common open space, restricted in perpetuity.
- C. Density requirements. The total number of residential units allowable within a flexible cluster residential development shall not exceed the number of units that would be allowed as demonstrated under a conventional grid subdivision according to the dimensional requirements of § 325-97 and in conformance with the Town of Harwich Zoning Bylaw and the Town of Harwich Rules and Regulations Governing the Subdivision of Land and Site Plans,¹⁸ most recent edition, without bonuses, variances or waivers. The sharing of driveways is encouraged to reduce curb cuts.
- D. Density calculation. The allowed number of dwelling units (density) in an FCD shall be calculated as follows:
 - (1) For the purposes of calculating the number of dwelling units for an FCD, the applicants shall list which map and parcel numbers of land in their ownership they wish to develop.
 - (2) Land that is the subject of a permanent conservation restriction or that has been dedicated as open space by any special permit or "development of regional impact" decision shall not be used in the density calculation.
- E. Dimensional requirements. FCD lot coverage, yard, frontage and lot area regulations shall be as follows:
 - (1) Minimum lot area: 20,000 square feet.
 - (2) Minimum frontage: 100 feet.
 - (3) Minimum front yard setback: 20 feet.
 - (4) Minimum side and rear yard setback: 10 feet.
 - (5) Maximum lot coverage: 15%.
- F. Wastewater. The FCD shall comply with the provisions of 310 CMR 15.00 of the State Environmental Code (Title V) and the on-site wastewater disposal regulations of the Board of Health.
- G. Common open space. Within an FCD all land area not utilized for lots, roads, and drainage shall be set aside as open space. Applicants are encouraged to include any areas of high natural resource value or historic resource value within this open space. Common open space shall be maintained in an open and natural condition, without clearing, in its natural condition for the protection of habitat. The open space shall be used, designed and maintained in accordance with the following standards:
 - (1) Purposes. Open space shall be used solely for recreation, conservation or agricultural purposes by residents of the FCD and/or the public. The proposed use of the open space shall be specified in the application and depicted on the plan.

18. Editor's Note: See Ch. 400, Subdivision of Land and Site Plan Special Permits.

The Planning Board shall reserve the authority to approve or disapprove use(s) proposed for designated open space.

- (2) Open space shall be planned as large, contiguous areas wherever possible. Long, thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- (3) Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archaeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel.
- (4) Where a proposed development abuts land held for conservation purposes, including the designated open space of a preapproved open space residential development or flexible cluster development, the development shall be configured to minimize adverse impacts to abutting conservation land or designated open space of a preapproved open space residential development or flexible cluster development. Trail connections should be provided where appropriate.

H. Common open space ownership and management. At the developer's option and subject to approval by the Planning Board, all areas to be protected as permanent open space shall be:

- (1) Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission and be accepted by it for open space use; land conveyed to the Town will be open for public use;
- (2) Conveyed to a nonprofit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction; such organization shall be acceptable to the Board as a bona fide conservation organization; or
- (3) Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e., homeowners' association) and placed under conservation restriction. The documents which form said association are subject to approval by the Planning Board. If such a corporation or trust is utilized, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners' association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners' association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

I. Review procedure.

- (1) Submission requirements.
 - (a) Any person who seeks approval of the Planning Board for a flexible cluster development or grid subdivision shall file with the Board the following:
 - [1] One linen or reproducible copy and 13 positive prints of the flexible cluster or grid plan.
 - [2] A properly executed Form 11.
 - [3] One linen or reproducible film copy and four positive prints of all plans, profiles, and cross sections showing proposed design and location of streets, sidewalks, drainage, sanitary sewers (if any), and water supply (if any).
 - (b) The applicant shall file by delivery or registered mail a notice with the Town Clerk stating the date of submission of the flexible cluster or grid plan and accompanied by a copy of the completed application form (Form 11).
 - (c) The applicant shall submit to the Harwich Board of Health one copy of the flexible cluster or grid plan and any additional material needed by the Board of Health to determine which, if any, of the lots shown on the flexible cluster or grid plan can be used for building sites without injury to the public health.
 - (d) The applicant shall submit two positive prints of the flexible cluster or grid plan prepared at a scale of one inch equals 100 feet. The plan shall include the lot numbers and lot areas in acres. Distances and bearings need not be shown.
 - (e) One copy of drainage calculations, including drainage curves and contour plan delineating contributing areas, shall be submitted.
 - (f) The applicant may be required to provide a natural resource inventory of the property in question at the request of the Planning Board.
 - (g) In the case of an application to amend an existing cluster special permit, the procedures in § 325-51E shall apply, except as to such materials as the Planning Board may waive as duplicative of materials previously submitted. Modification of any existing flexible cluster development, open space residential development or grid subdivision within the Six Ponds District must comply with the requirements set forth in this article.
- (2) Flexible cluster development or grid subdivision criteria for approval. Approval of a flexible cluster development or grid subdivision can be granted upon a determination by the Planning Board that the plan complies with the requirements of this section and that the flexible cluster development or grid subdivision plan meets or exceeds the following criteria:
 - (a) Preserves open space for conservation, recreation and the protection of the resources within the Six Ponds Special District.
 - (b) Utilizes, preserves and enhances the natural features of the land.

- (c) Provides the most efficient arrangement of streets, utilities and other public services.
- (d) Minimizes to the greatest extent possible the impacts of development upon the natural features and resources of the Six Ponds Special District.
- (e) Enhances the character of the Six Ponds Special District by preserving scenic vistas, limiting traffic impacts, and using building materials that blend with existing structures and the surrounding area.
- (f) Preserves, improves or enhances the surface water quality of the district.
- (g) Preserves existing unfragmented forest.

§ 325-102. Earth removal; sand and gravel mining.

- A. Purpose. One of the purposes of these regulations is to control accelerated stormwater runoff, soil erosion and resulting sedimentation as a result of earthmoving and sand and gravel mining activities. The primary purpose and most important goal of this Zoning Bylaw is to protect groundwater and enhance public safety in the Six Ponds Special District.
- B. Scope.
 - (1) Within the Six Ponds Special District, no person, firm or corporation shall undertake any mining of sand or gravel or excavation or filling of topsoil or subsoil material exceeding 500 cubic yards or exceeding a combined area of 10,000 square feet over a period of six months without first obtaining an operations permit from the Planning Board pursuant to these regulations.
 - (2) In cases where previously preexisting lots were used for earth removal/sand and gravel mining and continued use is planned, accommodations must be made for soil absorption systems and/or stormwater runoff discharge outside of the three-hundred-foot wetland buffer. All of these earth removal/sand and gravel mining or related operations shall be located at the maximum possible distance from the shoreline elevation of a pond. Additional provisions for protection of adjacent ponds are also advised in these instances. Facilities for the dumping of construction debris or other solid waste, including wood waste reclamation facilities, are prohibited within the Six Ponds Special District.
- C. Operations permit. Earth removal shall be allowed only under an operations permit issued by the Planning Board. Any applicant must first file a written application for this purpose on Form 11 that includes the required information and materials. Permits shall be issued for a period of not more than two years. An operations permit only covers earth removal and sand and gravel mining. All applicants for earth removal operations permits are also subject to site plan review by the Planning Board.
 - (1) Required elements for application. Ten sets of plans drawn to a scale of at least one inch equals 40 feet, prepared and stamped by a registered land surveyor and registered engineer, shall be submitted containing the following information:

(a) Preexcavation plan.

- [1] Existing property lines for the subject property, with names and addresses of all direct abutters.
- [2] Existing topography in the proposed area for earth removal and for 100 feet beyond the proposed area within the boundaries of the subject property.
- [3] Any existing wetlands.
- [4] Estimates of the evaluation of historic high groundwater as determined from monitoring wells and historical water table fluctuation compiled by United States Geological Survey (USGS).
- [5] Grades below which excavation will not take place.
- [6] Existing cover vegetation and trees.
- [7] Proposed signage.
- [8] Surface runoff plan.
- [9] Commencement and estimated completion dates.
- [10] Municipal lien certificate.
- [11] Proof of ownership of the property in question. If the applicant is not the owner of the property, the owners will provide a notarized statement that they are aware of and support the applicant's request.

(b) Post-excavation plan.

- [1] Proposed finish grades upon completion of removal and restoration activities.
- [2] Proposed cover vegetation and trees.

(2) Waivers. The Planning Board may waive any of the above requirements. An applicant seeking a waiver from any of these requirements should include a written request for waivers with the application materials for the operations permit.

(3) Review considerations.

- (a) Before granting a permit, the Planning Board shall give due consideration to the location of the proposed earth removal, the general character of the surrounding neighborhood, the protection of water supply, and the general safety of the public on the public ways in the vicinity and in any publicly accessible areas adjacent to the earth removal operation, as well as those set forth in § 325-90 (Purpose).
- (b) Where the subject property covers an area larger than five acres, the operations permit may be granted for a specific area not to exceed five

contiguous acres. Approval of additional areas shall be contingent upon the satisfactory completion and reclamation of each previous section. The Planning Board may allow the applicant to delay reclamation of a specified area to facilitate circulation on the site and for continuity of the earthmoving operation. Work of any sort connected with earthmoving shall not be performed on more than one phase area at a time without prior approval of the Planning Board.

- (4) Public hearing. The Planning Board shall conduct a public hearing following the procedures set forth in MGL c. 40A, § 9 (Special permits).
- D. Criteria for approval. Approval by the Planning Board will be contingent upon receipt of a removal and restoration plan by the applicant. Approval shall be based on the following criteria:
- (1) Removal criteria.
 - (a) Areas proposed for excavation shall be posted and/or secured to prevent trespassing. Security measures may include signage, fencing, vegetated screening or other suitable measures.
 - (b) Finish grade shall not lie below a level that would reasonably be considered a desirable grade for later development of the area or below the grades specified on the plan accompanying the permit application. The Board may specify a base grade below which excavation shall not take place under any circumstances. No excavation shall take place within 10 feet of historic high groundwater.
 - (c) Provision shall be made for safe drainage of water and for prevention of wind or water erosion carrying materials onto adjoining properties.
 - (d) A minimum two-hundred-foot buffer strip shall be maintained at all boundaries of earth removal/sand and gravel mining operations. Excavation may take place within the buffer strip; however, a slope of not greater than four feet horizontal to one foot vertical shall be maintained.
 - (e) All stumps shall be removed to a licensed wood waste reclamation facility.
 - (f) A road map shall be provided indicating the routes to be used to transport the materials removed. The map will include any driveways to and from the subject property. Not more than one entrance or exit from a public or private way shall be provided to any area of operation. Access points shall be located in such a way so as to avoid routing of vehicles over developed residential streets if possible.
 - (g) No excavation shall be allowed closer than 300 feet to a natural stream or pond.
 - (h) No topsoil (loam) or subsoil (hardening) shall be removed from any area of ground within the legal limits of the Town consisting of more than 50,000 square feet, other than that which is incidental to and in connection with the

construction of a building on the same lot, unless that person removing such topsoil or subsoil shall replant the entire area with rye, vetch, wheat, legumes or any permanent cover crop or reforest the area and stabilize the soil.

- (i) Operation hours shall be only between the hours of 8:00 a.m. and 7:00 p.m. weekdays, excluding Sundays and legal holidays, and loaded trucks may leave the subject parcel only within these hours.
 - (j) Earth removal/sand and gravel operations must comply with existing state and federal regulations governing the visibility, sound and airborne particulates from processing equipment and dust created through the operations of the pit.
 - (2) Restoration. Following the expiration or withdrawal of a permit, or upon voluntary cessation of operations, the entire area shall be restored as follows:
 - (a) All land shall be graded so that no slope exceeds one foot vertical rise in a four-foot horizontal distance and shall be graded to safely provide for drainage without erosion.
 - (b) The entire area shall be covered with not less than four inches of topsoil, which shall be planted with cover vegetation adequate to prevent soil erosion.
- E. Additional conditions. The Planning Board must be notified of any transfer of ownership or legal interest or change in contractual interest in the subject premises within 10 days of such transfer or change. Failure to do so will be grounds for revocation of said permit.
- F. Renewal or review of permit.
 - (1) No operations permit shall be issued under the provisions of this section for a period of more than two years. A permit may be renewed upon application without a public hearing at the discretion of the Planning Board. Prior to any renewal, an inspection of the premises shall be made by the Planning Board or its agent to determine if the provisions of this bylaw and the operations permit have been and are being complied with.
 - (2) The Planning Board may conduct a duly noticed public hearing at any time to determine whether any operations permit has been or is being violated and shall notify the Building Official to request an inspection of the property and appropriate enforcement if necessary.
- G. Expenses. The Town shall require the permit holder to pay a permit fee based on the following: for up to one acre to be excavated: \$200; for each additional acre: \$100, to a maximum fee of \$600 for five acres.
- H. Applicability.
 - (1) Removal of earth material from a parcel for which removal was previously authorized under a special permit pursuant to Town of Harwich Zoning Bylaw Article XV (Special Conditions) shall be permitted until the expiration date of said

permit. From that expiration date, full compliance with the requirements of this bylaw must be met.

- (2) In the case when no special permit was ever issued for the removal of earth materials under the prior zoning bylaw because said activity preceded the adoption of said zoning bylaw, an owner and/or operator must file an application for an operations permit within 90 days of the effective date of this bylaw as set forth in Subsection C (Operations permit).

§ 325-103. Severability.

If a court of competent jurisdiction holds any provision of this bylaw invalid, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the bylaw.

ARTICLE XVII Floodplain Regulations

§ 325-104. Purpose.

The purposes of the floodplain regulations are to ensure public safety through reducing the threats to life and personal injury, to eliminate new hazards to emergency response officials, to prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding, to avoid the loss of utility services which if damaged by flood would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding, to eliminate costs associated with the response and cleanup of flooding conditions and to reduce damage to public and private property resulting from flooding waters.

§ 325-105. Floodplain areas.

The areas in which these regulations apply (floodplain) are designated on the Town of Harwich Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP) dated July 3, 1986, and July 12, 1992, as Zones A, AE, AH, AO, A1-A30, A99, V, and V1-30, which indicates the one-hundred-year regulatory floodplain. The exact boundaries of the district may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study booklet dated July 3, 1986. The FIRM and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Department and Building Official.

§ 325-106. Use regulations.

- A. Existing regulations.

- (1) All development in the floodplain, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with the following:
 - (a) Section of the State Building Code which addresses floodplain and coastal high-hazard areas (currently 780 CMR 3107.0, Flood Resistant Construction).
 - (b) Wetland Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00).
 - (c) Inland Wetlands Restriction, DEP (currently 302 CMR 6.00).
 - (d) Coastal Wetlands Restriction, DEP (currently 302 CMR 4.00).
 - (e) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).
 - (f) Minimum Requirements for the Subsurface Disposal of Sewage Regulations, Town of Harwich.
 - (g) Harwich Wetlands Protective Bylaw.¹⁹
- (2) Any variance from the provisions and requirements of the above-referenced state or local regulations may only be granted in accordance with the required variance procedures of these state or local regulations.

B. Other use regulations.

- (1) Within Zones AH and AO on the FIRM, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- (2) In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town of Harwich FIRM, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (3) Man-made alterations of sand dunes are prohibited within Zones V1-30, VE, and V which would increase potential flood damage.
- (4) Located within the floodplain are areas designated as coastal high-hazard areas (Zones V1-30, VE, and V). Since these areas are extremely hazardous due to high-velocity waters from tidal surges and hurricane wave wash, the following provision shall apply: all new construction shall be located landward of the reach of mean high tide. Existing contour intervals of site and elevations of existing structures must be included on any plan proposal.
- (5) All subdivision proposals shall be reviewed to assure that:

19. Editor's Note: See Ch. 310, Wetlands Protection.

- (a) Such proposals minimize flood damage;
 - (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage;
 - (c) Adequate drainage is provided to reduce exposure to flood hazards; and
 - (d) Each lot will be served by water and sanitary disposal systems certified by the Board of Health to be so designed as to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters in the event of flooding to base elevations.
- (6) In unnumbered A Zones, in the absence of Federal Insurance Administration data, the base flood elevations shall be determined by obtaining, reviewing and reasonably utilizing any existing base flood elevation data.

§ 325-107. Permitted uses.

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged, provided that they are permitted in the underlying district and they do not require structures, fill, or storage of material or equipment:

- A. Agricultural uses, such as farming, grazing, horticulture, etc.
- B. Forestry and nursery uses.
- C. Outdoor recreational uses, including fishing, boating, play areas, etc.
- D. Conservation of water, plants, and wildlife.
- E. Wildlife management areas and foot, bicycle and/or horse paths.
- F. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- G. Buildings lawfully existing prior to the adoption of these provisions.

§ 325-108. Definitions.

The definitions contained herein pertain only to this article of the bylaw.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99, V1-30, VE, or V.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

COASTAL HIGH-HAZARD AREA — The area subject to high-velocity waters, including but not limited to hurricane wave wash. The area is designated on a FIRM as Zone V1-30, VE, VO or V.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT — Floodplain District.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) — Administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of flood-related erosion hazards.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of state and local regulations.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP) — Administered by the Federal Emergency Management Agency (FEMA)

NEW CONSTRUCTION — For floodplain management purposes, structures for which the start of construction commenced on or after the effective date of October 6, 1976. For the purpose of determining insurance rates, "new construction" means structures for which the start of construction commenced on or after the effective of an initial FIRM or after December 31, 1974, whichever is later.

ONE-HUNDRED-YEAR FLOOD — See "base flood."

SPECIAL FLOOD HAZARD AREA — An area having special flood and/or flood-related erosion hazards and shown on a FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, or VE.

STRUCTURE — For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure," for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

ARTICLE XVIII Regulations for Wind Energy Systems

§ 325-109. Residential wind energy systems.

- A. Purpose. It is the purpose of this regulation to promote the safe, effective and efficient use of residential wind energy systems installed to reduce the on-site consumption of utility-supplied electricity.
- B. Findings.
- (1) Harwich finds that wind energy is an abundant, renewable, and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Distributed small wind energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the state's energy supply portfolio. Small wind systems also make the residential electricity supply market more competitive by promoting customer choice.
 - (2) The Commonwealth of Massachusetts has enacted a number of laws and programs to encourage the use of small-scale renewable residential energy systems, including rebates, net metering, property and sales tax exemptions, and solar easements. However, many existing zoning ordinances contain restrictions which, while not intended to discourage the installation of small wind turbines, can substantially increase the time and costs required to obtain necessary construction permits.
 - (3) Therefore, it is necessary to standardize and streamline the issuance of permits for small residential wind energy systems so that this clean, renewable energy resource can be utilized in a cost-effective and timely manner.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

RESIDENTIAL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 25 kW and which is intended to reduce on-site consumption of residential utility power for a single residential lot.

ROTOR — The blades and hub of the wind turbine that rotate during turbine operations.

TOWER HEIGHT — The height above existing grade of the fixed portion of the tower, excluding the wind turbine itself.

- D. Special permit requirements. The Planning Board is hereby established as the special permit granting authority in connection with the construction of residential wind energy systems (RWES) in the Town of Harwich. A special permit may be issued for the erection of a RWES as an accessory use in any designated residential district or in connection with any residential use in a designated commercial district, provided that the following conditions are met:
- (1) Lot size. RWES may not be placed on lots of less than 40,000 square feet.
 - (2) Tower placement. No part of the wind system, support structure, or the structure on which the rotor is located is to be located within a wetland area.
 - (3) Tower height. Tower height shall be limited to 150 feet from existing grade.
 - (4) Setback. No part of the wind system support structure, including guy wire anchors, may extend closer to the property boundaries than the standard structure setbacks for the zone where the land is located. The structure on which the rotor is located must be set back at least 10 feet from any habitable structure on the lot on which it is located. The structure on which the rotor is located must be set back from habitable structures on abutting lots in place at the time of RWES installation a distance equal to the height of the structure from ground level to the tip of the rotor blade. The structure on which the rotor is located must be set back from lot lines a distance equal to 3/4 of the height of the structure from ground level to the tip of the rotor blade. A setback from a lot line shall not be required when the abutting owner(s) grants an easement to the owner of the RWES. In a case where the applicant is also the owner of the abutting property, the setback shall be measured from the furthest lot line of the abutting property. Setback distances may be reduced with the permission of the abutting property owner(s) and the Planning Board.
 - (5) Noise. In no instance may the noise level at the lot line exceed 10 dB(A) over the ambient sound level. In a case where the applicant is also the owner of the abutting property, the distance shall be measured from the furthest lot line of the abutting property. In addition, any RWES is required to comply with Chapter 189, Noise, of the Town of Harwich General Bylaws.
 - (6) Prevention of tower access. Climbing access to the tower shall be limited by one of the following methods: by placing climbing apparatus no lower than 10 feet from the ground, or by placing shielding over climbing apparatus or access, or by installation of a fence.
 - (7) Compliance with State Building Code. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the State Building Code and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.

- (8) Compliance with FAA regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
 - (9) Compliance with Massachusetts Electric Code. Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the Massachusetts Electrical Code. This information is frequently supplied by the manufacturer.
 - (10) Utility notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
 - (11) Special permit approval criteria. Any special permit granted shall meet the conditions of § 325-51A of the Zoning Bylaw.
- E. Abandonment. A residential wind energy system (RWES) will be considered to be abandoned if it is not operated for a period of two years or if it is designated a safety hazard by the Building Official. Once an RWES is designated as abandoned, the owner shall be required to immediately physically remove the installation. "Physically remove" shall include, but not be limited to:
- (1) Removal of RWES, any equipment shelters and security barriers from the subject property.
 - (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - (3) Restoring the location of the RWES to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- F. Severability. The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

§ 325-110. Wind energy systems in commercial districts.

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

ROTOR — The blades and hub of the wind turbine that rotate during turbine operations.

TOWER HEIGHT — The height above existing grade of the fixed portion of the tower, excluding the wind turbine itself.

WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 25 kW and which is intended to reduce on-site consumption of utility power for a single nonresidential lot. A meteorological/test tower used to measure

factors including wind speed and wind directions for the purpose of determining the appropriateness of a specific location for a wind energy system is also considered part of a wind energy system.

- B. Special permit requirements. The Planning Board is hereby established as the special permit granting authority in connection with the construction of wind energy systems (WES) in commercial districts in the Town of Harwich. A special permit may be issued for the erection of a WES as an accessory use in any designated commercial district, provided that the conditions outlined in § 325-109D(1) to (11) of this article are met.

§ 325-111. Wind energy systems in the Industrial - Limited (IL) District.

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

ROTOR — The blades and hub of the wind turbine that rotate during turbine operations.

TOWER HEIGHT — The height above existing grade of the fixed portion of the tower, excluding the wind turbine itself.

WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 25 kW and which is intended to reduce on-site consumption of utility power for a single nonresidential lot. A meteorological/test tower used to measure factors including wind speed and wind directions for the purpose of determining the appropriateness of a specific location for a wind energy system is also considered part of a wind energy system.

- B. Special permit requirements. The Planning Board is hereby established as the special permit granting authority in connection with the construction of wind energy systems (WES) in the Industrial - Limited (IL) District in the Town of Harwich. A special permit may be issued for the erection of a WES as an accessory use in any designated industrial district, provided that the conditions outlined in § 325-109D(1) to (11) of this article are met.

**ARTICLE XIX
Amendment and Validity**

§ 325-112. Validity.

The invalidity, unconstitutionality, or illegality of any provision of this bylaw or boundary shown on the Zoning Map shall not have any effect upon the validity, constitutionality, or legality of any other provisions or boundary.

§ 325-113. Amendment in whole.

The Protective Bylaw originally adopted in 1951, and amended from time to time, is hereby amended in whole and replaced in whole by this bylaw.

§ 325-114. Amendment, adoption or change.

Amendment, adoption or change of this bylaw may be initiated by the submission to the Board of Selectmen of a proposed zoning ordinance or bylaw by the Board of Selectmen, a board of appeals, planning board, regional planning agency, by an individual owning land to be affected by change or adoption, or by request of registered voters pursuant to MGL c. 39, § 10. The Board of Selectmen shall, within 14 days of receipt of such proposed zoning ordinance or bylaw, submit it to the Planning Board for a public hearing.

ZONING

325 Attachment I

Town of Harwich

Table 1, Use Regulations

Note: Uses followed by parentheses designate uses with further requirements. The number referenced is a section(s) of the Zoning Bylaw.

Use	RR	RL	RM	RH-1	RH-2	RH-3	CV	CH-1	CH-2	IL	MRL	MRL-1	WR	PWS
Paragraph I – Residential Uses														
1 Accessory building, residential	P	P	P	P	P	P	P	P	—	—	P	P	P	P
2 Mixed-use development (§ 325-51M)	—	—	—	—	—	—	S	S	S	—	—	—	S	—
3 Bed-and-breakfast	S	S	S	S	S	S	S	S	—	—	S	S	S	P
4 Cluster development, single-family dwellings (§ 325-51E)	S	S	S	—	—	—	—	—	—	—	—	S	P	P
5 Guest houses	—	—	S	P	P	—	P	P	—	—	—	—	S	P
6 Home occupation (Article VIII)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
7 Lodging house	—	—	—	—	—	—	—	S	—	—	—	—	—	P
8 Multifamily dwelling	—	—	—	—	S	S	—	—	—	—	S	S	S	P
9 Single-family dwelling	P	P	P	P	P	P	P	P	—	—	P	P	P	P
10 Single-family dwelling with accessory apartment (§ 325-51H and I)	S	S	S	S	—	—	S	S	—	—	S	S	S	P
11 Shared elderly housing	S	—	S	—	—	—	S	S	—	—	—	—	—	P
12 Trailer, houseboat or other boat storage (§ 325-14A)	P	P	P	P	P	P	P	P	—	P	P	P	P	P
13 Two-family dwelling (§ 325-51N)	S	S	S	S	S	S	S	S	S	—	S	S	S	S

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Use	RR	RL	RM	RH-1	RH-2	RH-3	CV	CH-1	CH-2	IL	MRL	MRL-1	WR	PWS
Paragraph II – Public and Quasi-Public Uses														
1 Church or other religious purposes	P	P	P	P	P	P	P	P	P	P	P	P	P	P
2 Educational use, nonprofit	P	P	P	P	P	P	P	P	P	P	P	P	P	P
3 Essential service: facility, utilities	S	S	S	S	S	S	S	S	S	S	S	S	S	P
4 Institutional use, other	S	S	S	S	S	S	S	S	S	S	S	S	S	P
5 Municipal use	P	P	P	P	P	P	P	P	P	P	P	P	P	P
6 Nonprofit library, museum or historical use	S	S	S	—	—	—	—	—	—	—	S	S	P	P
7 Personal wireless facility, 45 to 150 feet (§ 325-14P; Article XI)	S	S	S	—	—	—	—	S	S	S	—	—	S	S
8 Personal wireless facility, up to 45 feet (§ 325-14P; Article XI)	S	S	S	S	S	S	S	S	S	S	S	S	S	S
9 Hospice	S	S	S	—	—	—	S	S	—	—	S	S	S	P
10 Nursing home	S	S	S	—	—	—	S	S	—	S	S	S	S	P
11 Assisted living facility	S	S	S	—	—	—	S	S	—	—	S	S	S	P
Paragraph III – Agricultural and Related Uses														
1 Agriculture, horticulture, floriculture less than 5 acres (§ 325-14B)	S	S	S	S	S	S	S	S	S	S	S	S	S	P
2 Agriculture, horticulture, floriculture 5 or more acres (§ 325-14B)	P	P	P	P	P	P	P	P	P	P	P	P	P	P
3 Animal hospital (§ 325-14C)	—	—	—	—	—	—	—	S	—	S	—	—	—	P
4 Animal kennel (§ 325-14C)	—	—	—	—	—	—	—	—	—	S	—	—	—	P
5 Aquaculture	P	P	P	P	P	P	P	P	P	P	P	P	P	P
6 Commercial stable, riding rings	—	—	—	—	—	—	—	—	S	S	S	S	S	P
7 Pigs, not more than 2 (§ 325-14D)	S	—	—	—	—	—	—	—	—	—	—	—	S	P
8 Horse(s) (§ 325-14E)	P	P	P	P	P	P	P	P	P	P	P	P	S	P

ZONING

Use	RR	RL	RM	RH-1	RH-2	RH-3	CV	CH-1	CH-2	IL	MRL	MRL-1	WR	PWS
Paragraph IV – Commercial Uses														
1 Adult entertainment (Article XIII)	—	—	—	—	—	—	—	S	S	—	—	—	S	P
2 Automotive service and repair facility (§ 325-14F)	—	—	—	—	—	—	—	—	—	S	—	—	—	—
3 Boat storage	—	—	—	—	—	—	—	P	—	P	—	—	—	P
4 Car wash facility	—	—	—	—	—	—	S	S	—	S	—	—	—	P
5 Commercial parking, garage or lot	—	—	—	—	—	—	P	P	—	P	—	—	—	P
6 Construction industry (§ 325-14G)	—	—	—	—	—	—	—	—	—	P	—	—	—	P
7 Dry-cleaning establishments	—	—	—	—	—	—	S	S	—	—	—	—	—	P
8 Educational use, for profit	—	—	—	—	—	—	S	S	S	S	—	—	P	P
9 Filling station	—	—	—	—	—	—	—	—	—	S	—	—	—	P
10 Fish processing facilities	—	—	—	—	—	—	—	—	—	P	—	—	—	P
11 Funeral home or mortuary	—	—	—	—	—	S	S	S	S	—	—	—	—	P
12 Golf course	P	P	P	—	—	—	—	—	—	—	P	P	S	P
13 Heating fuel resale and storage (§ 325-14H)	—	—	—	—	—	—	—	—	—	P	—	—	—	P
14 Hospital	S	—	—	—	—	—	—	—	—	—	—	—	—	P
15 Hotel	—	—	—	—	S	S	—	—	—	—	—	—	—	P
16 Hotel, motel – incidental use	—	—	—	—	P	P	—	—	—	—	—	—	—	P
17 Inn	—	—	—	—	S	S	S	SS	—	—	—	—	—	P
18 Manufacturing (§ 325-14I)	—	—	—	—	—	—	—	—	—	S	—	—	—	P
19 Marine use	—	—	—	—	—	—	S	S	—	P	—	—	—	—
20 Medical clinic	—	—	—	—	—	—	P	P	P	—	—	—	S	P
21 Motel	—	—	—	—	S	S	—	—	—	—	—	—	—	P
22 Motion-picture establishment, indoor	—	—	—	—	—	—	—	S	S	—	—	—	S	P
23 Offices, professional or business	—	—	—	—	—	S	P	P	P	P	S	—	P	P

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Use	RR	RL	RM	RH-1	RH-2	RH-3	CV	CH-1	CH-2	IL	MRL	MRL-1	WR	PWS
24 Outside display for retail sales	—	—	—	—	—	—	S	S	S	S	—	—	S	P
25 Outside storage, retail (§ 325-14J)	—	—	—	—	—	—	—	—	—	P	—	—	—	P
26 Outside storage, other (§ 325-14J)	—	—	—	—	—	—	—	—	—	P	—	—	—	P
27 Personal service establishment	—	—	—	—	—	—	P	P	P	—	—	—	P	P
28 Photographic developing laboratories	—	—	—	—	—	—	S	S	—	S	—	—	—	P
29 Processing of mined and quarried raw material (Article XV)	—	—	—	—	—	—	—	—	—	P	—	—	—	P
30 Recreation and amusement services	—	—	—	—	—	—	S	S	S	—	—	—	S	P
31 Repair service, miscellaneous (§ 325-14K)	—	—	—	—	—	—	P	P	P	P	—	—	S	P
32 Restaurant or lounge	—	—	—	—	—	—	P	S	P	—	—	—	S	P
32A Restaurant, fast-food/takeout (§ 325-14O)	—	—	—	—	—	—	S	S	S	S	—	—	S	P
33 Retail sales (§ 325-14N)	—	—	—	—	—	—	P	P	P	S	—	—	P	P
34 Road salt	—	—	—	—	—	—	—	—	—	P	—	—	—	P
35 Sale or rental of aircraft and house trailers	—	—	—	—	—	—	—	—	—	P	—	—	—	P
36 Sale or rental of new or used motor vehicles	—	—	—	—	—	—	—	—	P	S	—	—	S	P
37 Sand, gravel, quarry, raw material removal (Article XV)	—	—	—	—	—	—	—	—	—	S	—	—	—	P
38 Scientific research or development	S	S	S	S	S	S	S	S	S	S	S	S	S	S
39 Self-storage	—	—	—	—	—	—	—	—	—	P	—	—	—	P
40 Storage trailers/containers (§ 325-14L)	—	—	—	—	—	—	—	—	—	S	—	—	S	P
41 Vending machine sales as principal use	—	—	—	—	—	—	P	P	P	—	—	—	P	P

ZONING

Use	RR	RL	RM	RH-1	RH-2	RH-3	CV	CH-1	CH-2	IL	MRL	MRL-1	WR	PWS
42 Warehousing	—	—	—	—	—	—	—	—	—	P	—	—	—	P
43 Wholesale trade	—	—	—	—	—	—	—	—	S	P	—	—	—	P
44 X-ray facilities	—	—	—	—	—	—	S	S	—	S	—	—	—	P
45 Yard sales (§ 325-14M)	P	P	P	P	P	P	P	P	P	P	P	P	P	P

ZONING

325 Attachment 2

Town of Harwich

Table 2, Area Regulations

District	Use	Minimum Required				
		Lot Area (square feet)	Lot Frontage (contiguous feet)	Front (feet)	Side (feet)	Rear (feet)
RR	Any permitted use	40,000	150	25	20	20
	Single-family dwellings in open space residential developments	5 contiguous acres with 30% of the applicable land to remain open space; lot area per unit 12,000	50 feet within interior of development ¹	25	20 ²	20 ²
	Shared elderly housing	40,000	150	25	20	20
RL	Single-family dwellings in open space residential developments	5 contiguous acres with 30% of the applicable land to remain open space; lot area per unit 12,000	50 feet within interior of development ¹	25	20 ²	20 ²
	Any other permitted use	40,000	150	25	20	20
RM	Guest house	40,000 plus 2,000 per rental unit	150	25	20	20
	Single-family dwellings in open space residential developments	5 contiguous acres with 30% of the applicable land to remain open space; lot area per unit 12,000	50 feet within interior of development ¹	25	20 ²	20 ²
	Any other permitted use	40,000	150	25	20	20
RH-1	Guest house	40,000 plus 2,000 per rental unit	150	25	20	20
	Any other permitted use	40,000	150	25	20	20
RH-2	Multifamily	40,000 plus 7,500 for every dwelling unit	150	50	50	50
	Hotel and motel	40,000 plus 2,000 per rental unit	150	50	50	50
	Guest house	40,000 plus 2,000 per rental unit	150	25	20	20

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District	Use	Minimum Required				
		Lot Area (square feet)	Lot Frontage (contiguous feet)	Front (feet)	Side (feet)	Rear (feet)
	Any other permitted use	40,000	150	25	20	20
RH-3	Multifamily	40,000 plus 4,500 per dwelling unit	150	25	20	20
	Hotel and motel	40,000 plus 3,000 per rental unit	150	25	20	20
	Any other permitted use	40,000	150	25	20	20
CV	Guest house	40,000 plus 2,000 per rental unit	150	25	10	10
	Shared elderly housing	40,000	150	25	20	20
	Single-family dwelling	40,000	150	25	20	20
	Dwelling, single-family, with accessory apartment	40,000	150	25	20	20
	Any other permitted use	40,000	150	25	20	20
CH-1	Guest house	40,000 plus 2,000 per rental unit	150	25	20	20
	Shared elderly housing	40,000	150	25	20	20
	Single-family dwelling	40,000	150	25	20	20
	Dwelling, single-family, with accessory apartment	40,000	150	25	20	20
	Adult entertainment	50,000	150	50	50	100
	Any other permitted use	20,000	100	25	10	10
CH-2	Any permitted use	50,000	150	50	25	25
	Adult entertainment	50,000	150	50	50	100
IL	Any permitted use	20,000	100	25	25	50
MRL	Multifamily residential	10 contiguous acres minimum, 25 contiguous acres maximum; maximum density 8 bedrooms per acre	150	50	50	50

ZONING

District	Use	Minimum Required				
		Lot Area (square feet)	Lot Frontage (contiguous feet)	Front (feet)	Side (feet)	Rear (feet)
	Any other permitted use	40,000	150	25	20	20
MRL-1	Multifamily residential	8 contiguous acres minimum; maximum density 4 bedrooms per acre, provided Planning Board may give a density bonus as elsewhere provided in this bylaw	150	50	50	50
	Single-family dwellings in open space residential developments	5 contiguous acres with 30% of the applicable land to remain open space; lot area per unit 12,000	50 feet within interior of the development ¹	25	20 ²	20 ²
	Any permitted use other than multifamily residential	40,000	150	25	20	20
WR	Dwelling, single-family, with accessory apartment	60,000	Same as underlying district			
	Any other permitted use	Same as underlying district				
PWS	Personal wireless service facility	90,000	75	150	150	150
		Note: These dimensional requirements may be reduced by the Planning Board in its approval of a special permit for a personal wireless service facility which is less than 150 feet in height in this district.				
	Any other permitted use	Same as underlying district				

NOTES:

¹ In an open space residential development, lots may have a minimum of 25 feet of frontage on any roadway within the development where the building site is generally behind another building site relative to the same road frontage or at least 75 feet from the front lot line.

² May be reduced pursuant to § 325-51E(4)(d).

ZONING

325 Attachment 3

Town of Harwich

Table 3, Height and Bulk Regulations

District	Maximum Permitted Height (feet)	Maximum Permitted Height (Stories)	Maximum Building Coverage of Lot (covered area as % of total lot area)	Maximum Site Coverage as % of Total Site Area	Minimum Residential Net Floor Area (square feet)
RR	30	2 1/2	15	25	None
RL	30	2 1/2	15	30	None
RM	30	2 1/2	20	35	None
RH-1	30	2 1/2	30	35	None
RH-2	30	2 1/2	30	35	None
RH-3	50	4	15	35	364 (see Article VI, § 325-18K)
CV	30	2 1/2	50	80	None
CH-1	30	2 1/2	30	70	None
CH-2	30	2 1/2	30	70	None
IL	40	2 1/2	40	70	Not permitted
MRL	40	2 1/2	15	50	Studio or efficiency unit: 250; bedroom unit: 550; 2-bedroom unit: 940
MRL-1	40	2 1/2	15	50	Studio or efficiency unit: 250; bedroom unit: 550; 2-bedroom unit: 940
Cluster Development RR and RL	30	2 1/2	15	Lot area 10,000 to 20,000 square feet: 30	None
				Lot area 20,001 to 40,000 square feet: 30	
				Lot area over 40,000 square feet: 25	

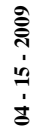
HARWICH CODE

District	Maximum Permitted Height (feet)	Maximum Permitted Height (Stories)	Maximum Building Coverage of Lot (covered area as % of total lot area)	Maximum Site Coverage as % of Total Site Area	Minimum Residential Net Floor Area (square feet)
Cluster Development RM	30	2 1/2	20	Lot area 10,000 to 20,000 square feet: 35	None
				Lot area 20,001 to 40,000 square feet: 30	
				Lot area over 40,000 square feet: 25	None
WR	As specified in the underlying district	As specified in the underlying district	20	All uses 40% provided a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality; otherwise 15% or 2,500 square feet whichever is greater	As specified in the underlying district
Personal Wireless Service Facilities	45	NA	15	40	None
Personal Wireless Service Facilities in PWS Districts	150	NA	15	40	None

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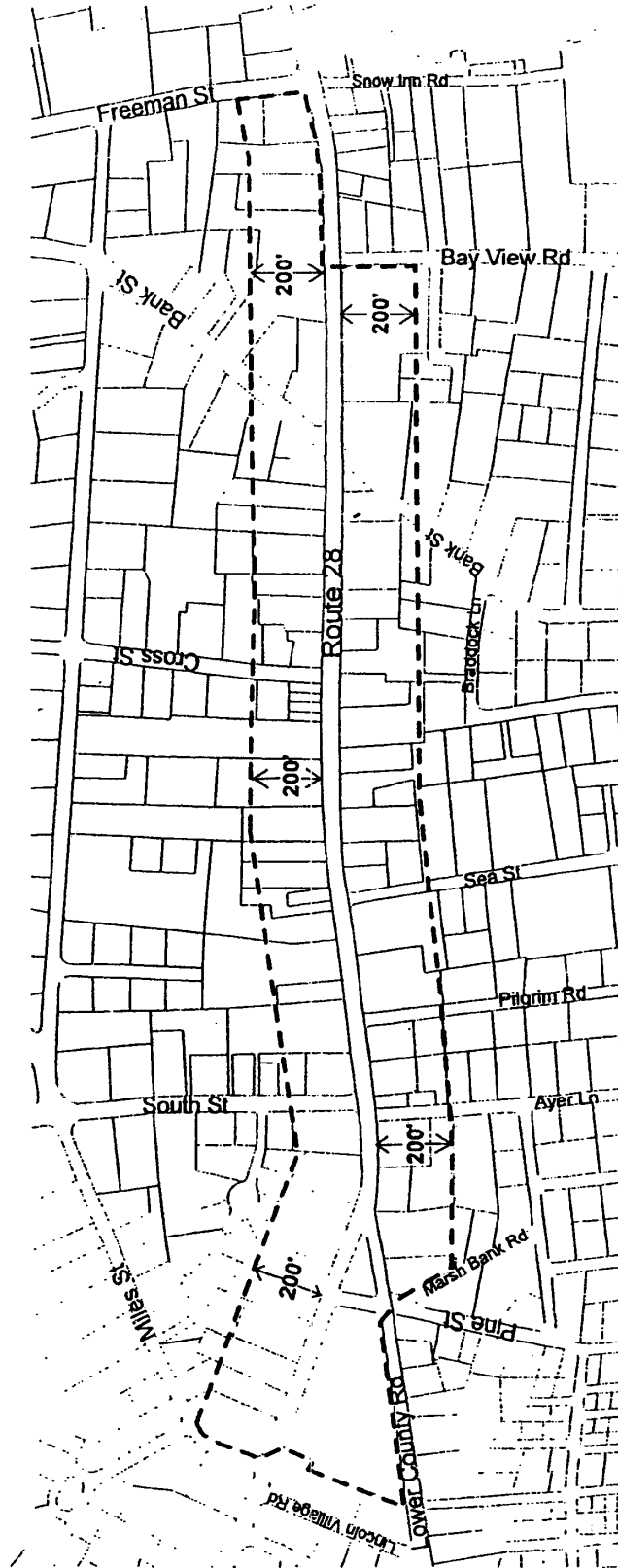


ZONING

325 Attachment 5

Town of Harwich

Village Commercial Overlay District
June 2001



----- Boundaries of Overlay District

This map is not to scale. The noted distances are the boundary setbacks for the overlay district.

Prepared by the Harwich Planning Department, June 2001

325 Attachment 5:1

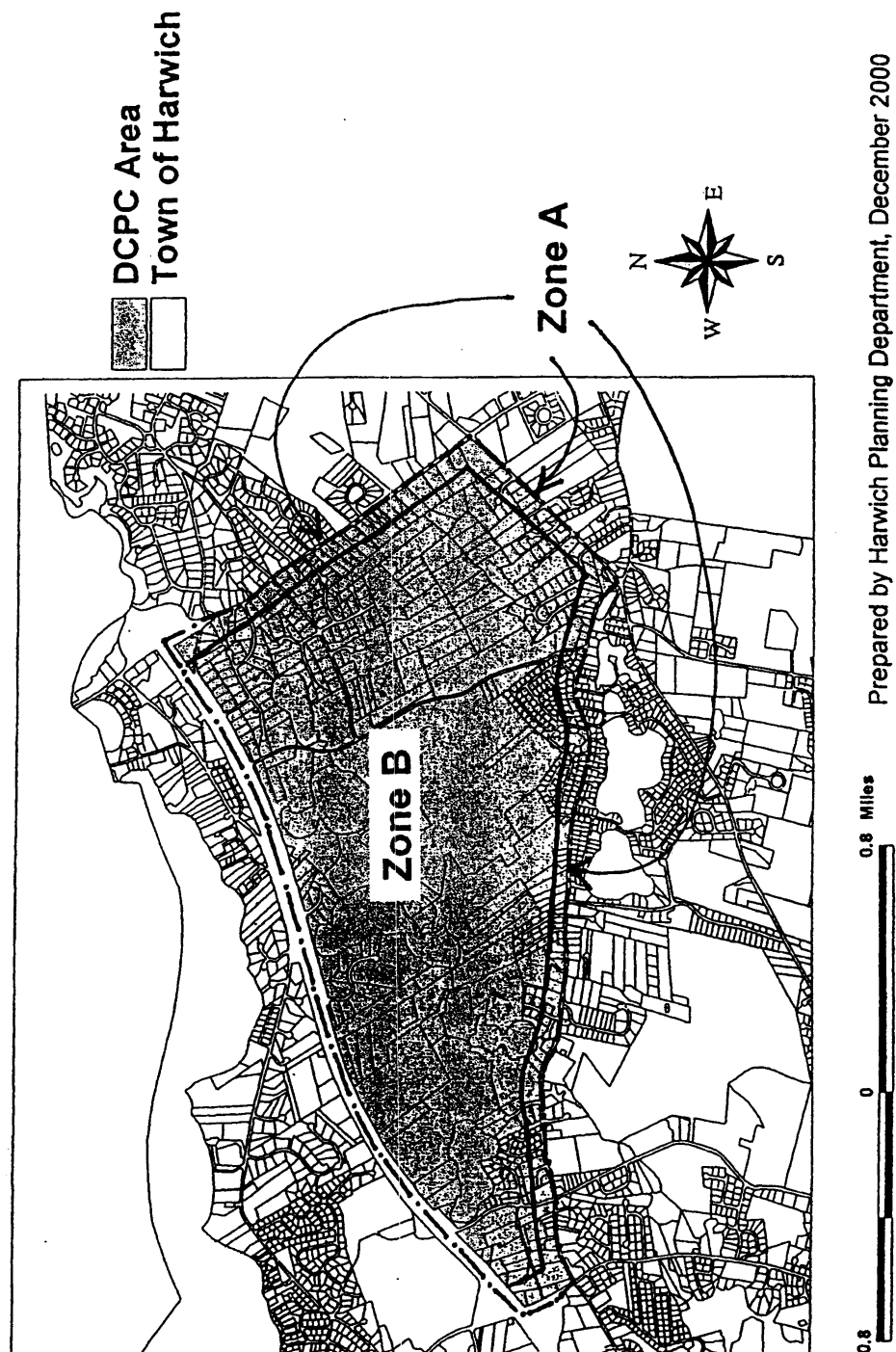
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ZONING

325 Attachment 6

Town of Harwich

Six Ponds District



Prepared by Harwich Planning Department, December 2000

325 Attachment 6:1

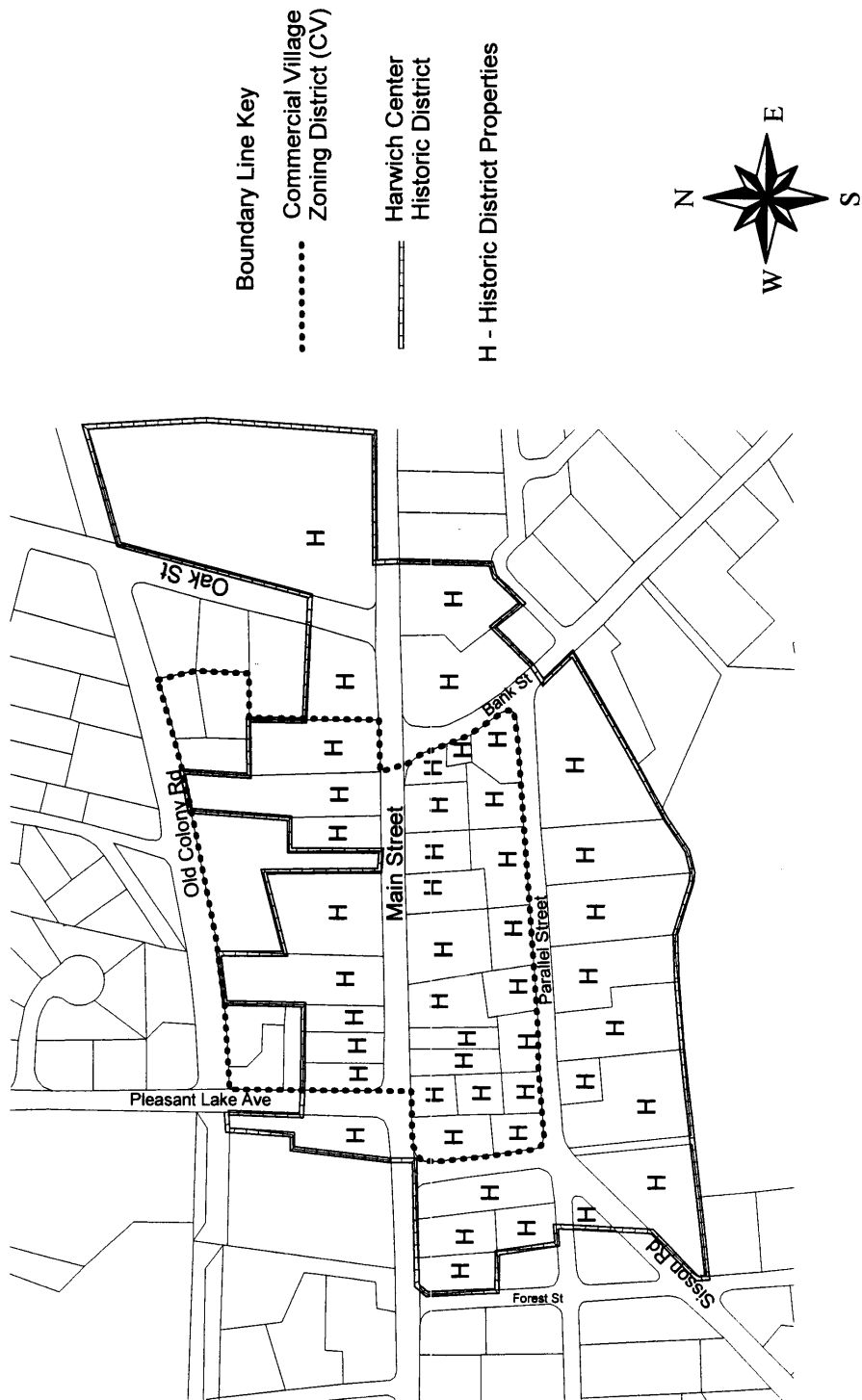
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ZONING

325 Attachment 7

Town of Harwich

Harwich Center Historic District and Commercial Village Zoning District Boundary Lines



325 Attachment 7:1

PART III

REGULATIONS

Chapter 400

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

ARTICLE I General Provisions

- § 400-1. Authority.
- § 400-2. Original regulations; adoption of state law.
- § 400-3. Title.
- § 400-4. Purpose.
- § 400-5. Definitions.
- § 400-6. Waiver of rules and regulations.
- § 400-7. Informal discussions.

ARTICLE II Subdivision of Land

- § 400-8. Introduction.
- § 400-9. Approval not required (ANR) plan.
- § 400-10. Subdivision filing.
- § 400-11. Subdivision review procedure.
- § 400-12. Design standards for new roadways.

- § 400-13. Design standards for utilities.
- § 400-14. Required improvements and specifications for construction.
- § 400-15. Inspections during construction.

ARTICLE III Site Plan Special Permits

- § 400-16. General requirements.
- § 400-17. Additional requirements.
- § 400-18. Review procedure.
- § 400-19. Other requests.
- § 400-20. Earth removal and sand and gravel mining in Six Ponds Special District.

Appendix 1, The Rational
Method of Drainage Design

Appendix 2, Tables 1 to 7

Appendix 3, Figures 1 to 10

Appendix 4, Requirements for
Applications and Plans

[HISTORY: Adopted by the Planning Board of the Town of Harwich 11-12-2008. Amendments noted where applicable.]

ARTICLE I General Provisions

§ 400-1. Authority.

- A. Under the authority vested in the Planning Board of the Town of Harwich by MGL c. 41, § 81Q and all other applicable sections thereof, said Board hereby adopts these Rules and Regulations Governing the Division of Land and Special Permits including Site Plan Review in the Town of Harwich, Massachusetts, to supersede present regulations and to be effective on the date of adoption.
- B. For matters not covered by these rules and regulations, reference is made to MGL c. 41, §§ 81K to 81GG and MGL c. 40A.

§ 400-2. Original regulations; adoption of state law.

The Town of Harwich originally adopted local subdivision regulations made effective March 25, 1949. The State Subdivision Control Law, MGL c. 41, §§ 81A to 81Y, inclusive, was adopted by the Town of Harwich effective October 2, 1953.

§ 400-3. Title.

These rules and regulations of the Harwich Planning Board shall be known and may be cited as the "Rules and Regulations Governing the Subdivision of Land and Special Permits including Site Plan Review in the Town of Harwich, Massachusetts," which herein are called "these rules and regulations." As a short title, these rules and regulations shall be known and may be cited as the "Harwich Rules and Regulations."

§ 400-4. Purpose.

- A. These rules and regulations have been enacted for the purpose of protecting the safety, convenience, and welfare of the inhabitants of the Town of Harwich by regulating the laying out and construction of roadways in subdivisions providing access to the several lots therein, but which have not become public roadways, and ensuring sanitary conditions in subdivisions and, in proper cases, parks and open areas.
- B. The Harwich Planning Board, through these rules and regulations, shall pursue the objectives of:
 - (1) Providing adequate access to all of the lots in a subdivision by roadways that will be safe and convenient for travel;
 - (2) Lessening congestion in such ways and in the adjacent public ways;
 - (3) Reducing danger to life and limb in the operation of motor vehicles;
 - (4) Securing safety in the case of fire, flood, panic, and other emergencies;
 - (5) Ensuring compliance with the applicable zoning bylaws;
 - (6) Securing adequate provision for water, sewerage, drainage, and other requirements where necessary in a subdivision;
 - (7) Coordinating the ways in a subdivision with each other and with the public ways in the Town of Harwich and with the ways in neighboring subdivisions;
 - (8) Encouraging good subdivision design;
 - (9) Ensuring sound community growth with minimum governmental costs consistent with the encouragement of the appropriate development of land; and
 - (10) Relating new subdivisions to the Harwich Local Comprehensive Plan.

§ 400-5. Definitions.

For the purpose of these regulations, the terms and words defined in the Subdivision Control Law shall have the meaning given therein.

ABUTTER — A person who owns property that adjoins, or faces across a way, a lot/parcel that is the subject of the subdivision application or related procedure.

APPLICANT — An owner, agent, representative or assign who is authorized to propose and/or develop the proposed subdivision.

APPROVAL NOT REQUIRED (ANR) PLAN — A plan showing a division of land where each lot created is served by existing safe and adequate access (with limited exceptions). While an ANR does not require Planning Board approval, it does require Planning Board endorsement verifying that the plan is consistent with MGL c. 41, § 81L.

BOARD — The Planning Board of the Town of Harwich.

BYLAWS, GENERAL — Legislation governing aspects dealing primarily with administrative policies and quality of life in the Town of Harwich.

BYLAWS, ZONING — Legislation that deals primarily with land use in the Town of Harwich.¹

DEFINITIVE PLAN — A plan submitted for Planning Board approval which represents the proposed specifications for the division of land and construction of roadways and utilities (MGL c. 41, § 81L).

DRINKING WATER RESOURCE PROTECTION DISTRICT (DWRPD) — Any designated district falling within the recharge boundaries for the drinking water/aquifer area. This specially zoned area places limitations on certain uses within its boundaries as defined in Article V, Table 1 of the Harwich Zoning Bylaw.² The Drinking Water Resource Protection Districts established in the Harwich Zoning Bylaw are shown on a map titled "Drinking Water Resource Protection District and Approved Zone II Delineations, Harwich, Massachusetts," dated December 1997, scale: 1:12,000, which map is on file in the office of the Town Clerk, the authenticity of said map to be established in the same manner as provided for establishing the authenticity of the Zoning Map.

ENGINEER — A professional engineer registered in the Commonwealth of Massachusetts.

FRONTAGE — The boundary of a lot that runs adjacent to a roadway.

GENERAL LAWS — The Commonwealth of Massachusetts General Laws (MGL), with all additions and amendments. In case of a rearrangement of the General Laws, any citation of particular sections of the General Laws shall be applicable to the corresponding sections in the new codification.

1. Editor's Note: See Ch. 325, Zoning.

2. Editor's Note: See Ch. 325, Zoning.

LAND SURVEYOR — A professional land surveyor registered in the Commonwealth of Massachusetts.

LOT — A measured parcel of land having fixed boundaries and designated on a plot or survey in one ownership, with definite boundaries, used, or available for use, as the site of one or more lots or buildings.

PARCEL — A tract or plot of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more lots or buildings.

PRELIMINARY PLAN — An informal and optional working plan which precedes a definitive plan used to confirm direction and details needed for a definitive plan submitted for Planning Board approval (MGL c. 41, § 81L).

ROADWAY — A traveled path that allows for safe and adequate access to lots and parcels. The term "roadway" shall mean, but is not limited to, street, place, path, court, trail, way, road, avenue, boulevard, etc. Roadways as referenced in Table 1, Recommended Geometric Design Standards for Roadways,³ are categorized as follows:

- A. **WAY** — A traveled roadway which in the opinion of the Board is used to service abutting lots and is not intended for use by through traffic, and shall include any roadway servicing five or fewer lots or dwelling units.
- B. **MINOR** — A traveled roadway which in the opinion of the Board is used to service abutting lots and is not intended for use by through traffic, and shall include any roadway servicing six to 49 lots or dwelling units.
- C. **MAJOR** — A traveled roadway collecting traffic from several minor roadways, and shall include any roadway servicing 50 to 99 lots or dwelling units.
- D. **COLLECTOR** — A traveled roadway which in the opinion of the Board is being used or will be used as a thoroughfare between different sections of the Town, or which will be used as a principal access to a business or industrial subdivision, and shall include any roadway servicing 100 or more lots or dwelling units.

ROADWAY, PAPER — A way shown on a recorded plan but not built on the ground.

RULES AND REGULATIONS — A publication of the Planning Board which governs the procedures for the submission and approval of applications for subdivision, site plan review and special permits (MGL c. 41, § 81Q).

SUBDIVISION — The division of a tract of land into two or more lots, including resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the Subdivision Control Law if, at the time when it is made, every lot within the tract so divided has frontage on a public way or a way which the Town Clerk certifies is maintained and used as a public way, or a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law, or a way in existence when the Subdivision Control Law

3. Editor's Note: Table 1 is included at the end of this chapter.

became effective in the Town, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by the Zoning Bylaw of the Town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the Subdivision Control Law went into effect in the Town into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision (MGL c. 41, § 81L).

SUBDIVISION CONTROL LAW — Sections 81K to 81GG, inclusive, of Chapter 41, General Laws of the Commonwealth of Massachusetts, and any modifications or additions thereto. See <http://www.mass.gov/legis/laws/mgl/mgllink.htm>.

UTILITIES — Sewers, surface water drains, water pipes, gas pipes, electric lines, telephone lines, fire alarm lines, cable television and/or internet lines, their respective appurtenances, and other like services.

WETLANDS — Resource areas subject to regulation under MGL c. 131, § 40 and the Town of Harwich Wetland Bylaw.⁴

§ 400-6. Waiver of rules and regulations.

- A. As provided in MGL c. 41, § 81R, the Planning Board may waive strict compliance with these rules and regulations when, in its judgment, such action is in the public interest and not inconsistent with the intent or purposes of the Subdivision Control Law. However, it cannot waive those requirements that originate from the General and Zoning Bylaws.
- B. Applicants seeking waivers from the requirements of the rules and regulations must, at the time of filing of an application for approval, submit a separate written request for waivers. Said request shall:
 - (1) Specify the waivers requested by section and subsection;
 - (2) Provide a concise statement of the nature and extent of the waiver(s) requested; and
 - (3) Specify the reason(s) for the request and how such waiver(s) would serve the public interest.
- C. In acting to approve waiver requests, the Board may consult with other agencies as appropriate and may impose reasonable conditions and/or requirements not expressly written in these rules and regulations, provided that such conditions or requirements represent a reasonable consideration for the waiver requested, serve the public interest, and are not unduly burdensome to the applicant.

4. Editor's Note: See Ch. 310, Wetlands Protection.

§ 400-7. Informal discussions.

Requests for informal discussions shall be made to the Planning Department in writing. Written requests must include the requester's name, address, local phone number, and a brief explanation of the matter to be discussed with the Board. Such discussions will be scheduled for the next available time slot on the Board's regular meeting agenda. No informal discussions will be scheduled less than seven days prior to a meeting date.

ARTICLE II
Subdivision of Land

§ 400-8. Introduction.

- A. The primary intent of subdivision review is for protecting the safety, convenience, and welfare of the inhabitants of the Town of Harwich by regulating the laying out and construction of roadways which provide access to the lots within the subdivision.
- B. Applications for a subdivision may be submitted to the Planning Board under two conditions:
 - (1) Access to the lots already exists and is safe and adequate*. Approval of a plan for subdivision by the Planning Board is not required for this type which is referred to as an "ANR." (*Most commonly. There are other situations where approval is not required pursuant to MGL c. 41, § 81L.)
 - (2) Access to the lots does not exist or is not safe and adequate. Approval of the subdivision by the Planning Board is required (subdivision). Plans will be referred to as "subdivision" and may be submitted in the following forms:
 - (a) Preliminary.
 - (b) Definitive.
 - (c) Modification or amendment of an approved plan.
 - (d) Rescission of an approved plan.

§ 400-9. Approval not required (ANR) plan.

- A. Criteria for endorsement of ANR. In determining whether or not a plan constitutes a subdivision, the Board shall determine whether or not all three of the following standards have been met in accordance with MGL c. 41, §§ 81L and 81M:
 - (1) The lots shown on such plan must meet the minimum frontage requirements as specified in MGL c. 41, § 81L;
 - (2) The lots shown on such plan must front on one of the three types of ways specified in MGL c. 41, § 81L:
 - (a) A public way or a way that the Harwich Town Clerk certifies is maintained and used as a public way;

- (b) A way shown on a plan previously approved and endorsed in accordance with the Subdivision Control Law; or
 - (c) A way in existence when the Subdivision Control Law became effective in the Town of Harwich; and
 - (3) The Planning Board verifies that existing access to such lots provide sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the land abutting or served thereby and for the installation of municipal service to serve such land and the buildings existing thereon to be erected as specified in Table 1 of these rules and regulations.⁵
- B. Determination of safe and adequate access. In determining whether or not existing access meets the standards as defined in these rules and regulations, the Planning Board will examine evidence as follows:
 - (1) The applicant will provide all items listed in Appendix 4.⁶
 - (2) The Planning Board will circulate the application to the Town Engineer and Surveyor for general comments. When necessary, additional comments may be requested from the following departments:
 - (a) Department of Public Works.
 - (b) Fire Department.
 - (c) Police Department.
 - (3) All ways which are neither Town ways nor ways shown on a plan approved and endorsed in accordance with the Subdivision Control Law (existing private ways) must meet the minimum standards for new ways in the Town of Harwich as specified in Table 1 of these rules and regulations in order to be considered frontage for building purposes or the division of land for which approval under the Subdivision Control Law is not required. If such way is substandard, approval may be granted if the applicant agrees to complete the necessary improvements to the substandard way, said agreement to be filed in the form of a covenant at the time of approval of the definitive plan (MGL c. 41, § 81FF).
- C. Satisfaction of safe and adequate access. When in the opinion of the Planning Board the existing condition of the roadway does not meet the minimum standards for roadways in the Town of Harwich in order to be considered frontage for building purposes, and the necessary roadway improvements do not substantially change the nature, layout or composition of the roadway, the Planning Board may determine, without a public hearing, that submission of a subdivision plan for approval is not required by an affirmative vote of a majority of the Planning Board present, and in no event fewer than four members. Once the improvements have been made, the applicant may submit his request for determination of safe and adequate access. Improvements to Town roadways

5. Editor's Note: Table 1 is included at the end of this chapter.

6. Editor's Note: Appendix 4 is included at the end of this chapter.

must also meet the requirements of Town of Harwich General Bylaws Chapter 255, Streets and Sidewalks.

§ 400-10. Subdivision filing.

- A. General filing requirements. Applications shall meet all requirements as specified in this section. Failure to file a complete application with the Planning Board may be considered grounds for denial of Board approval (MGL c. 40A, §§ 9 and 14).
- (1) Prior to submitting any plans showing a proposed road to the Board, the applicant will cause the intersection of the center line of the proposed road and the existing road to be staked on the ground with one point, for inspection by the Board.
 - (2) Prior to submission to the Planning Board, the applicant shall file with the Town Clerk, by delivery or registered mail, a complete set of application materials, including plans and supporting documents to be stamped with the date of submission.
 - (3) All taxes, assessments, and charges relative to land being subdivided must be paid in full prior to submission of the application. The applicant shall be responsible for obtaining a municipal lien certificate from the Town Treasurer indicating that all taxes, assessments, and charges have been paid in full.
 - (4) For preliminary and definitive plans of a subdivision, the information requested shall be submitted by the applicant to both the Planning Board and Board of Health for discussion and approval, modification, or disapproval. The submission of a preliminary plan will enable the applicant, the Planning Board, the Board of Health and other local agencies to discuss and clarify the problems of such subdivision before a definitive plan is prepared.
 - (5) Protection of natural features. Due regard shall be shown for all natural features, such as large trees, watercourses, ponds, wetlands, beaches, dunes, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision.
 - (6) When a filed subdivision plan is to be revised, six full-size copies of the revised subdivision plan which must show the latest revision date and the word "Revised" in bold capital letters, must be submitted to the Town Clerk's office no later than 10 days prior to the next scheduled discussion of the application by the Board. Failure to meet this deadline may cause discussion of the application to be continued until a subsequent meeting or, if the Board is constrained by an action deadline, could result in the denial of said plan (MGL c. 41, § 81S).
 - (7) All other requirements as listed in Appendix 4 shall be met.⁷
- B. Plan, profile and cross-section requirements.

7. Editor's Note: Appendix 4 is included at the end of this chapter.

- (1) All plans shall be prepared and stamped by a professional land surveyor and shall be clearly and legibly drawn in permanent ink upon a reproducible material acceptable for recording at the Registry of Deeds or in Land Court, complying with the requirements of the Registry of Deeds and Land Court, if applicable, and having an error of closure not to exceed 1:12,000.
- (2) When a separate plan and profile are submitted, they shall be of the same exact size. The plan and profile shall be prepared and stamped by a professional engineer.
- (3) All other requirements as listed in Appendix 4 shall be met.

C. Additional requirements.

- (1) Special permits. All applications must comply with any additional requirements as stated in the Zoning Bylaw, Article V, Table 1, such as flexible cluster, open space residential (see Chapter 325, Zoning, § 325-51E), and Six Ponds District.
- (2) Naming new ways. Three proposed street names shall be submitted with a subdivision plan. Duplicate street names or names similar to existing street names shall not be considered.
- (3) Renaming existing ways. Refer to MGL c. 85, §§ 3 and 3B and MGL c. 41, § 74 which require that the Planning Board notice and hold a public hearing to change the name of an existing way. See also the Town of Harwich General Bylaws Chapter 255, Streets and Sidewalks, for petition requirements along private ways.
- (4) The Planning Board may require additional information as necessary.

§ 400-11. Subdivision review procedure.

A. Approval not required (ANR).

- (1) A plan showing a division of land where each lot created is believed to be served by existing adequate access shall be submitted for a determination as to whether or not the plan requires approval by the Planning Board under the Subdivision Control Law. The plan will be scheduled for action by the Board at the earliest reasonable date but no later than 21 days after filing with the Town Clerk's office (MGL c. 41, § 81P).
- (2) If the Board determines that the plan does not require approval, it shall without a public hearing and without unnecessary delay endorse the plan with the words "Approval under the Subdivision Control Law Not Required."
- (3) The Board may add to such endorsement a statement of the reason approval is not required. Notice of the Board's endorsement shall be made to the Town Clerk and the applicant. The original plan shall be returned to the applicant.
- (4) If the Board determines that the plan does require approval under the Subdivision Control Law, it shall give written notice of its determination to the Town Clerk and the applicant.

- (5) If the Board fails to act upon a plan submitted under this section within 21 days after its submission, it shall be deemed to have been determined that approval under the Subdivision Control Law is not required, and it shall make such endorsement on the plan. If the Board fails to do so, the Town Clerk shall issue a certificate to the same effect. In either case, the original shall be delivered to the applicant.

B. Preliminary plan.

- (1) Action.
 - (a) Within 45 days after submission of a preliminary plan, the Planning Board shall approve with modifications, or disapprove the preliminary plan. In the case of disapproval, the Board must state specific reasons for denial. Said notice of decision shall be filed with the Town Clerk and sent via certified mail to the applicant.
 - (b) Approval of a preliminary plan does not constitute approval of a subdivision. The rules and regulations in effect at the time of submission of such preliminary plan shall govern the definitive subdivision plan evolved from such preliminary plan, provided that such definitive plan is submitted within seven months of the submission of the preliminary plan.
- (2) Certificate of approval (decision). The action of the Board with respect to a preliminary plan shall be by vote, copies of which shall be certified by and filed with the Town Clerk and sent by certified mail to the applicant. If the Board modifies or disapproves the plan, it shall state specifically the reasons for its action.

C. Definitive plan, including modification, amendment or rescission. All procedures relating to the submission and approval of a subdivision plan of land shall, so far as apt, be applicable to the approval of the modification, amendment, or rescission, and to the plan which has been changed. A public hearing is required before approval, modification of approval, disapproval or rescission of the definitive plan is given.

- (1) Public notice. A public hearing shall be held by the Board, with notice of the time and place of the hearing as well as the subject matter, sufficient for identification, as follows:
 - (a) The Board shall give notice by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing;
 - (b) The Board shall give notice by advertisement in a newspaper of general circulation in the Town of Harwich, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing; and
 - (c) The applicant shall give notice by mailing a copy of such advertisement via certified mail, return receipt, to property owners within 300 feet abutting the subject property, which may also include abutters to abutters, and properties

across the roadway from the subject property. The advertisement and list of abutters, to include names and addresses of abutters certified by the Harwich Board of Assessors, will be supplied to the applicant by the Planning Department. Said notice shall be mailed out no less than 10 days prior to the scheduled public hearing. A copy of the certified mail receipts must be filed with the Planning Office and the original returned "green cards" shall be submitted as well.

- (2) Public hearing. At a public hearing a presentation is made by the applicant and the Board reviews and considers all information and comments submitted by interested parties and discusses the merits of the application. The Board, on its own motion or acting on the petition of any person interested, may modify, amend, or rescind its approval of a plan of a subdivision or require a change in a plan as a condition of its retaining the status of an approved plan.
 - (3) Action. The Planning Board must take final action and file a notice of decision with the Town Clerk within 90 days of the filing date, provided that the definitive filing was preceded by a preliminary plan within the last seven months or 135 days if either there was no preliminary plan or 45 days have not elapsed since the submission of the preliminary plan. It may approve, modify and approve, or disapprove said plan as provided by statute. In the case of disapproval, the Board must state specifically where the plan does not comply with the rules and regulations or the recommendation of the Board of Health or Health Officer. The Planning Board shall file said decision with the Town Clerk and shall send via certified mail a copy of the decision to the applicant.
 - (4) Certificate of approval (decision). The action of the Board with respect to a definitive plan shall be by vote, copies of which shall be certified by and filed with the Town Clerk and sent by certified mail to the applicant. If the Board modifies or disapproves the plan, it shall state specifically the reasons for its action. Approval, if granted, shall be endorsed on the original drawing of the plan by the signatures of a majority of the Board (or by the signature of the person officially authorized by the Board) but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Board with the Town Clerk and said Clerk has notified the Board that no appeal has been filed.
- D. Performance guarantee. The Board shall require, before endorsement of its approval of a definitive plan of a subdivision, that the applicant shall agree to complete the required improvements specified in § 400-14 according to his plans and profiles, such construction and installation to be secured by one, or in part by one and in part by the other, of the methods described below. In addition, other methods may be approved by the Planning Board.
- (1) Approval with financial security, to include escrow, bonds, and surety. The applicant shall post a financial security in an amount determined by the Board to be sufficient to cover the cost of the improvements shown on the subdivision plans. Such financial security, if filed or deposited, shall be approved as to form and manner of execution by Town Counsel and as to sureties by the Harwich Town Treasurer. Such financial security shall be contingent on the completion of

such improvements within two years of the filing of other surety. At the discretion of the Board, a time extension may be granted.

- (2) Approval with covenant. The applicant shall file a covenant (Form B-2), executed and duly recorded with Barnstable County Registry of Deeds by the owner of record, running with the land, whereby such ways and services as shown on the plans shall be provided to serve any lot before such a lot may be built upon or conveyed, other than by mortgage deed, provided that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of the mortgaged premises or part thereof may sell any such lot, subject to that portion of this covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot, and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Board.
- E. Recording of plan. Once the plan and covenant have been recorded, documentation of said recording shall be filed with the Planning Board. Upon receipt of notification of recording, the Board shall file one print of the definitive plan with the Building Department. In accordance with the statute, where approval with covenant is noted, the Building Department shall issue no permit for the construction of a building on any lot within the subdivision except upon receipt from the Board of a copy of the certificate of release of covenant (Form B-3) releasing the lot or lots in question (see Subsections F and G below). In addition, no site work or road construction work shall commence until the plan and covenant have been recorded and documentation of said recording shall be filed with the Planning Board.
- F. Evidence of satisfactory performance. Before the Board will release the interest of the Town in a performance bond or deposit or, in the case of approval with covenant, issue a release of covenant the following must be submitted to and approved by the Board:
- (1) A certification shall be done by a professional engineer with the following statement or similar statement: "All roadways, sidewalks, sewers, storm drains, and water mains and their appurtenances shown have been constructed in accordance with the approved design plan." Certification shall be by the professional engineer employed by the applicant at his or her own expense.
 - (2) An as-built drawing shall be prepared and certified by a professional land surveyor in accordance with Appendix 4⁸ with the following statement or similar statement: "All roadways, sidewalks, sewers, storm drains, and water mains and their appurtenances shown have been laid out in accordance with the lines and grades of the approved plan and are accurately located as shown hereon." Certification shall be by the professional land surveyor employed by the applicant at his or her own expense.
 - (3) The Board shall obtain in writing from the Town Engineer a statement that all work required by the rules and regulations and the approved definitive subdivision

8. Editor's Note: Appendix 4 is included at the end of this chapter.

plan has been inspected by him or her and completed in each roadway in the subdivision (or the roadway or roadways serving the lots in question), including storm drains, bridges, and sidewalks, and that he or she has approved the methods of construction and materials used in the performance of such work.

- (4) The Board shall obtain in writing from the Board of Water Commissioners a statement that it has inspected and that the applicant has completed each water main and its appurtenances in accordance with the requirements of these rules and regulations and that it has approved the methods of construction and materials used in the performance of such work.
- (5) The applicant shall execute an instrument, in a form approved by the Board, transferring to the Town or to an approved public utility company, without cost, valid unencumbered title to all water mains and appurtenances thereto constructed and installed in the subdivision or approved portion thereof and conveying to the Town or to an approved public utility company, without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate, and forever maintain such water mains, with any manholes, pipes, conduits and other appurtenances, and to do all acts incidental thereto, in, through and under the whole of all roadways in the subdivision or approved portion thereof, and if any such sewers or water mains have been constructed and installed in land not within such roadways, then in, through, and under a strip of land extending 10 feet in width on each side of the center line of all such water mains.

G. Release or partial release of performance guarantee.

- (1) The penal sum or the amount of any financial security held under Subsection D, Performance guarantee, above may, from time to time, be reduced by the Board and the obligations of the parties thereto released by the Board in whole or in part. If release is by reason of covenant, a new plan of the portion to be subject to the covenant may be required.
- (2) A request for a full or partial release of security will be considered by the Board no sooner than 10 days after the Planning Department has received a written request for the release, subject to the availability of Town officials to perform the required inspections of the respective improvements and furnish written reports to the Board.
- (3) Upon completion of improvements shown on the applicant's plans, security for the performance of which was given by financial security or covenant, or upon the performance of any covenant with respect to any lot, the applicant shall submit to the Town Clerk and the Planning Board a written statement that said construction or installation in connection with which such financial security or covenant has been given has been completed in accordance with these rules and regulations, such statement to contain the address of the applicant.
- (4) Upon receiving the applicant's request for a partial or full release of covenant or security, the Board will request from the Town Engineer a report regarding the quality and quantity of work completed. The Town Engineer will produce a list of

the items of work left to be completed in the subdivision, in accordance with the approved definitive subdivision plan and the rules and regulations, and give an estimate of the cost to cover the remaining items of work. Such estimate shall reflect 150% of the calculated cost.

- (5) If the Board determines that said construction or installation has not been completed in accordance with the approved definitive subdivision plan based on the Town Engineer's report, it shall specify in a notice sent by registered mail to the applicant and delivered to the Town Clerk the details wherein said construction and installation fail to comply with these rules and regulations. Upon failure of the Board to act on such application within 45 days after the receipt of the application by the Town Clerk, all obligations under the financial security shall cease and terminate and any deposit shall be returned and any such covenant shall become void. In the event that said forty-five-day period expires without such Board action or without the release and return of the bond or return of the financial security or release of the covenant as aforesaid, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which shall be recorded.

§ 400-12. Design standards for new roadways.

A. Location and alignment.

- (1) All streets/roads in the subdivision shall be designed so that, in the opinion of the Board, they will provide safe vehicular travel. Due consideration shall also be given by the applicant to create an attractive street/road layout.
- (2) The recommended street design standards presented by Table 1 and displayed by the Figures 1 to 9 are to be used by the designer.⁹
- (3) Streets shall be laid out so as to intersect as nearly as possible at right angles. No roadway shall intersect any other roadway at less than 70° (Figure 1). Owners are encouraged to consult with the Town's Tree Warden concerning removal of trees within the Town right-of-way and to plan and locate road intersections to minimize their loss.
- (4) Public and private utilities shall be located within the right-of-way in accordance with Figure 3. All utilities shall be underground. The applicant may be requested to make provisions for streetlighting.
- (5) Other design standards shall be consistent with Table 1.

B. Width.

- (1) The minimum width of a right-of-way shall be consistent with Table 1.
- (2) The minimum width and other dimensions of ways shall be as indicated by Figures 3 and 4 and in Table 1. Eighteen-inch machine berms shall be required to be installed on both sides of the pavement.

9. Editor's Note: Table 1 and Figures 1 to 9 are included at the end of this chapter.

C. Dead-end way (Figure 1).

- (1) Dead-end ways shall be no longer than 1,200 feet unless, in the opinion of the Board, greater length is appropriate. The distance of 1,200 feet shall be measured from the intersecting right-of-way to the center of the turnaround along the proposed center line.
- (2) Dead-end ways shall be provided at the closed end with a circular turnaround having an outside roadway diameter of at least 90 feet and a property line diameter of at least 110 feet. "T" type turnarounds are not permitted. Dead-end ways shall be provided with a turning circle paved in the same manner as the rest of the roadway. The paved turning circle shall have a radius of at least 45 feet with twenty-five-foot transition radii. Within a circular turnaround, a thirty-foot diameter planting area may be considered by the Board.

D. Waivers of road length limit. Where topography or other unique site conditions exist, the Board may waive the specified road length limit as it deems appropriate, provided that such action is, in the opinion of the Planning Board, in the public interest and not inconsistent with the intent or purposes of the Subdivision Control Law.

E. Waivers from design standards for subdivisions to maintain rural character. In order to apply for waivers under this section, the applicant must file a preliminary subdivision plan along with any waiver requests with the Board. In order to maintain the rural character of an area, the Planning Board may grant waivers for a residential subdivision plan which is designed to be in keeping with the rural character of the surrounding area based on the following findings by the Board:

- (1) That the plan is well designed and generally in keeping with the design principles set forth in these rules and regulations.
- (2) That there is adequate access to the lots for the intended uses.
- (3) That the plan is in keeping with the character of the surrounding area.

§ 400-13. Design standards for utilities.

A. Drainage.

- (1) The quantity of stormwater carried to basins or pipes shall be determined by the Rational Method, and the design shall be for twenty-five-year storms, except for bridges in which case it shall be for fifty-year storms. Coefficient of runoff to be used shall be as outlined in Appendix 1, a detailed description of the Rational Method of Drainage Design.¹⁰ Other methods may be used with the approval of the Planning Board on the recommendation of the Town Engineer.
- (2) Pipe drains, where used, shall have a minimum diameter of 12 inches. In general, they shall be designed to flow full with the hydraulic gradient at the crown. However, in flat slope areas surcharge may be allowed. The minimum velocity at

10. Editor's Note: Appendix 1 is included at the end of this chapter.

design flow should be 2 1/2 feet per second and the maximum of 15 feet per second.

- (3) Stone-paved channels shall be installed where requested. The typical section of the channel shall have a flat bottom and side slope at least one foot higher than the design water surface. The maximum velocity allowed in any channel at design flow shall be six feet per second. A coefficient of friction "n" equal to 0.030 should be used for the stone-paved channel.
- (4) All stormwater shall be disposed of by subsurface leaching or drainage easements [see Subsection A(5) below]. No paved surface runoff shall be allowed to be directed to open stream channels or vegetative wetlands as defined in the Harwich Wetland Bylaw.¹¹ Leaching basins shall be of the radial block or precast concrete type (Figure 5). These leaching basins shall be connected [equalizing pipe by a twelve-inch diameter asphalt-coated corrugated metal pipe (ACCMCP) or high-density polyethylene pipe (HDPE) of the proper gauge or reinforced concrete pipe of the proper class]. Aluminum pipe under roadways will not be permitted unless encased in six inches of cement concrete.
- (5) Catch basins shall be spaced so that storm runoff is received from a maximum roadway distance of 250 feet. Catch basins located in low points (sags) shall collect from a roadway for a distance not greater than 200 feet. Runoff collected by catch basins will be piped to suitable leaching facilities located in easements outside the right-of-way. Said easements shall be at least 625 square feet in area and shall be of a suitable configuration for the proposed facility. Sufficient test pits shall be installed to determine the suitability of the soils for subsurface disposal. The center of the catch basins shall be located along the gutter line regardless of the percent grade.
- (6) Frames and grates. The Massachusetts standard square catch basin frame and grate shall be utilized for all catch basins and/or leaching basins.

B. Water.

- (1) Water systems shall be installed in accordance with the standards of the Harwich Board of Water Commissioners.
- (2) For all new subdivisions where access to Town water is available within 500 feet of the point of intersection of any new subdivision road with any Town or private road, the applicant shall be required to hook up to Town water and provide Town water service to all lots within said subdivision. For all new subdivisions where access to Town water is not available within 500 feet of the point of intersection of any new subdivision road with any Town or private road, the applicant shall be required to provide the required piping and hydrants within the entire subdivision to allow for hookup to Town water at such time as a main reaches within 500 feet of the point of intersection of said subdivision road.

11. Editor's Note: See Ch. 310, Wetlands Protection.

- (3) The Board of Water Commissioners may grant a waiver to this requirement following a written request from the applicant explaining the reasons why neither option is feasible for the proposed subdivision. The Board of Water Commissioners shall provide written conformation of the grant of a waiver to the Planning Board. In the case of the grant of a waiver, a water easement shall be provided in accordance with the requirements of the Board of Water Commissioners. Said easement shall be delineated on the subdivision plan and an agreement prepared and submitted to the Board of Water Commissioners.

C. Easements.

- (1) Easements for utilities across lots or centered on rear or side lot lines shall be provided where necessary and shall be at least 20 feet wide.
- (2) Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, the Board may require that there be provided a stormwater easement or drainage right-of-way of adequate width to conform substantially to the lines of such watercourse, drainageway, channel, or stream and to provide for construction or other necessary purposes.

§ 400-14. Required improvements and specifications for construction.

A. General provisions.

- (1) Construction details and specifications shall comply with the standards as shown on Figures 3 and 5¹² unless the Planning Board grants waivers from the rules and regulations requirements.
- (2) All improvements specified on the definitive subdivision plan, road profile plans, and road cross sections shall be constructed or installed by the applicant in accordance with the provisions of the Harwich Bylaws, this section of the rules and regulations, or as directed by the Board. The applicant shall furnish all necessary materials, labor, and equipment that may be required to complete the work called for or implied on the definitive plan, including all related expenses. Items not specifically mentioned herein shall be constructed in accordance with the latest revision of the Standard Specifications for Highways and Bridges of the Massachusetts Department of Public Works (hereinafter referred to as the "Department's Specifications") unless specifically directed otherwise by the Board.
- (3) All work performed by the applicant as a consequence of these rules and regulations will be subject to the review and acceptance or approval of the Board. Therefore, the Town Engineer will act as the Planning Board's agent for the inspection of the work. In order that the Town Engineer may properly inspect the work as it progresses, the applicant will keep the Town Engineer informed of the progress of the work and shall, at any time, provide safe and convenient access to all parts of the work for inspection by members of the Board or the Town Engineer. No work will be approved which has been covered prior to inspection by

12. Editor's Note: Figures 3 and 5 are included at the end of this chapter.

subsequent work. Reference should be made to § 400-15 for inspections required by the Board.

B. Subdivision layout.

- (1) The subdivision, including all ways, lot lines, drain lines and utilities, shall be laid out as to line and grade by a professional land surveyor and a certificate filed with the Board to this effect. Stakes for line and grade, clearly marked with the proper station, shall be maintained throughout construction.
- (2) In the event that the construction of the road deviates from the plan and profile approved by the Board, the applicant must stop work and notify the Town Engineer. The Town Engineer will review the changes and consult with planning staff as necessary. If said changes are deemed to be significant in nature, work shall not resume until said changes are brought before the Board for review and approval. If said changes are deemed to be minor in nature, with the Town Engineer's approval, the work may proceed. All changes must be shown on the as-built plan.
- (3) Any work which in the opinion of the Board has not been properly laid out or does not conform to the plans may be checked by the Town Land Surveyor or a land surveyor employed by the Board. If the Board determines that such work does not conform to the plan, the applicant shall pay all costs that the Board incurs in connection with checking the work. No lots shall be released from the covenant until such payment has been made in full. The Board may require, at the applicant's expense, the removal and correct replacement of any work which has been incorrectly laid out.

C. Clearing, grubbing and excavation.

- (1) No clearing of vegetation or grading for the development of ways or building sites shall commence until an approved, signed definitive plan has been recorded with the Barnstable Registry of Deeds or Land Court and evidence of such recording has been returned to the Board. This shall not apply to limited clearing for the purpose of surveying or performing percolation tests.
- (2) Proposed roadways shall be cleared, grubbed, and excavated to a minimum width of 35 feet. All deleterious materials, such as logs, stumps, branches, and brush, shall not be buried on any part of the subdivision property and shall be removed from the site and disposed of properly. Trees intended to be preserved shall be protected from injury by suitable boxes, or fenders, or wells if in fill.
- (3) The Town Engineer will make an inspection when this phase of the work is completed.

D. Erosion control measures. Erosion control during and after construction shall be accomplished using the following erosion control measures recommended by the United States Soil Conservation Service:

- (1) Erosion minimization. Stripping of vegetation, soil removal, and regrading shall be accomplished so as to minimize erosion.

- (2) Duration of exposure. The duration of exposure of disturbed area shall be kept to a practical minimum.
- (3) Temporary erosion control. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.
- (4) Permanent erosion control installation. Permanent (final) vegetation and mechanical measures to stabilize the land surface and control erosion shall be installed as soon as practicable after construction ends.
- (5) Protection of permanent drainage facilities. Until a disturbed area is stabilized, permanent drainage facilities, including but not limited to catch basins, pipes, retention basins, grass swales, and infiltration devices, shall be protected from sediment in runoff water by the use of temporary drainage facilities such as debris basins, sediment basins, silt traps, or other acceptable methods.
- (6) Dust control. During grading operations, methods of dust control shall be employed wherever practicable. The Board may require the implementation of reasonable soil erosion control measures during construction if, in its opinion, such measures are warranted but have not been implemented by the applicant.

E. Drainage system.

- (1) Drainage specifications. All proposed drainage systems shall be in compliance with Massachusetts Department of Environmental Protection Phase II Stormwater Regulations Best Management Practice.
- (2) Disposal of surface water. Adequate disposal of surface water shall be provided. Catch basin/leaching basin systems shall be constructed on both sides of the roadway and shall be interconnected. Systems shall be located on both sides of the pavement on continuous profile grades, at profile low points and at intersections. Systems shall also be located at intersections of proposed roads with existing roads. It is necessary that storm runoff from existing roads and/or gutter flow not enter the proposed subdivision drainage system and, therefore, disposal must be provided for within the existing road right-of-way in accordance with the requirements of the Director of Division of Highways and Maintenance.
- (3) Inspection required prior to backfilling. The Town Engineer will inspect the completed drainage system or sections thereof prior to placing any backfill.
- (4) Backfill specifications. All trench backfill for the storm and subsurface drains and other backfill within the limits of the way shall conform to the base course requirements. Frozen earth/soil shall not be used for backfill material.

F. Utilities. All utilities shall be installed underground prior to the placing of the bituminous concrete binder course.

- (1) Responsibility. The applicant shall provide and install all necessary materials, appurtenances and equipment to complete the utilities as may be required by these rules and regulations and as provided on the definitive plan in a manner acceptable to the officials or agency having jurisdiction over each service. All costs incurred

by the applicant as a consequence of installing and maintaining such utilities as the Board requires shall be paid by the applicant, including all costs which may be incurred for any reasons whatsoever. The Board will not take any action to have the applicant reimbursed for any costs so incurred.

- (2) Water distribution specifications.
 - (a) General. Water distribution facilities shall be installed in conformity with specifications and requirements of the Harwich Board of Water Commissioners.
 - (b) Hydrant and water main specifications. Water pipes and related equipment, such as hydrants and main shutoff valves, shall be constructed to serve all lots on each roadway. In addition, service connections shall be installed from the main to the opposite side of the roadway right-of-way line. These services shall be installed in accordance with Harwich Water Department specifications, with a proper stopcock at the approximate center of each lot. All stopcocks shall be located by permanent ties, the location of which will be filed with the Harwich Board of Water Commissioners.
- (3) All other utilities. All other utilities shall be installed in conformity with specifications and requirements of the specific utility company.
- (4) Notification of backfill and paving.
 - (a) All work in connection with the utilities shall be left uncovered until the Town Engineer permits the backfill to be placed.
 - (b) The applicant shall notify all companies with utilities installed or to be installed within the ways as to the date and time the applicant intends to place the gravel base course and the paving so that such utility company may properly record the location of pertinent features of the system so that they will not be covered or lost as a result of the paving operation.
- (5) Backfill specifications. All trench backfill material for the utilities within the way limits shall conform to the base course requirements. Frozen earth/soil shall not be used for backfill material.

G. Preparation of subbase.

- (1) Topsoil and stone dust, gravel, processed stone, or reclaimed asphalt shall be stockpiled for future use on the site. The subbase shall be prepared in order to accept the base, base leveling course, and pavement in accordance with the approved plans and profiles. Such preparation shall include compaction of the roadbed prior to installation of the base leveling course.
- (2) All utilities including but not limited to storm drains, subdrains, and drainage structures within the way lines shall be installed prior to the completion of the subbase. This shall include the installation of each service pipe, sleeve, or conduit to the front lot line of each lot in the subdivision. Upon completion of the subbase and the backfill of all service trenches, the work will be inspected by the Town

Engineer. Subsequent work shall not commence until the Town Engineer has approved the fill as acceptable for the application of the roadway foundation material.

H. Base and base leveling course.

- (1) Upon completion of the subbase, four inches of processed stone or reclaimed asphalt (T-base) shall be placed and compacted with suitable equipment to a width of 28 feet. Four inches of dense-graded crushed stone conforming to the gradation shown in Table 2,¹³ or reclaimed asphalt, shall be placed and compacted to the width of the first four-inch layer. Moisture content of the processed material shall be sufficient to enable the material to be compacted into a firm, dense surface.
- (2) Reclaimed base borrow material for subbase course shall consist of crushed asphalt pavement, crushed cement concrete, and gravel borrow (meeting Massachusetts Highway Department Standard Specifications for Highways and Bridges) free from loam, clay and deleterious materials, including but not limited to brick, reinforcing steel, glass, wood, paper, plaster, lathing, and building rubble.
- (3) The coarse aggregate shall have a percentage of wear, by the Los Angeles Abrasion Test, of not more than 50.
- (4) The gradation shall meet the requirements as specified in Table 3.¹⁴
- (5) The approved source of reclaimed pavement borrow material shall be processed by mechanical means. The equipment for producing crushed material shall be of adequate size and with sufficient adjustments to produce the desired materials. The processed material shall be stockpiled in such a manner as to minimize segregation of particle sizes. All reclaimed pavement borrow material shall come from approved stockpiles.
- (6) The composite gradation and moisture content shall be controlled to ensure a uniform product delivered to the job site.

I. Pavement.

- (1) The prepared base shall be paved in two courses of Type 1 bituminous concrete (Figure 3). The binder course shall meet the requirements of Table 1. The bituminous concrete aggregate gradation shall be as given in Table 4. All road pavement shall be crowned in order to maintain a cross slope of 1/4 inch per foot to 3/8 inch per foot.¹⁵
- (2) No bituminous work shall be done during rainy weather, upon any surface where water is ponding, when the temperature is lower than 34° and rising, or when frost is in the ground.

13. Editor's Note: Table 2 is included at the end of this chapter.

14. Editor's Note: Table 3 is included at the end of this chapter.

15. Editor's Note: Tables 1 and 4 and Figure 3 are included at the end of this chapter.

- J. Berms (Figure 8).¹⁶ Machined berms, where required, shall be placed along both edges of all roads. The berms shall be 18 inches wide with a three-inch minimum pitch. The berms shall be Type 1 bituminous concrete.
- K. Side slopes (Figure 8). Side slopes, where necessary, shall be no steeper than three horizontal on one vertical. In areas where fill has been placed to acquire the needed elevation and the vertical fill distance is six feet or greater, guardrails shall be placed. Rails and posts shall be of a design approved by the Town Engineer and/or Director of Division of Highways and Maintenance.
- L. Topsoiling and hydroseeding (Figure 8).
- (1) All areas which are disturbed by the construction shall be graded to blend into undisturbed areas and shall be loamed to a depth of four inches, fertilized, and hydroseeded. Loam obtained from the stripping operations may be used and/or loam may be furnished from off site by the contractor. All areas shall be given an application of lime (dolomitic limestone) and commercial fertilizer of an 8-6-4 mixture. The rate of application of lime shall be 45 pounds per 1,000 square feet and the rate of fertilizer application shall be 20 pounds per 1,000 square feet.
 - (2) The following hydroseed mixture will be required:

38.8%	Rebel II Tall Fescue
38.3%	Tribute Tall Fescue
9.7%	Cowboy Perennial Rye Grass
9.5%	Baron Kentucky Bluegrass
3.2%	Other (weed, inert, crop grass, etc.)
 - (3) The applicant shall be responsible for maintaining the (hydroseeded) areas until growth is established.

M. Sidewalks.

- (1) Sidewalk requirement (Figure 2).¹⁷ Sidewalks (Figure 9) of not less than four feet in width shall be constructed on one side of the roadway, or both sides of the roadway when required by the Planning Board. The maximum grade for a sidewalk in a new subdivision will be 5%. This number reflects the current Americans with Disabilities Act (ADA) requirement for walks. Any steeper grade would be considered in the same category with handicapped ramps and would, therefore, require handrails and grades of restricted length.
- (2) Subgrade (Figure 9). All materials shall be removed for the full width of the sidewalk to subgrade 8 1/2 inches below finished grade. All soft spots and other undesirable material below subgrade shall be replaced with gravel or other good

16. Editor's Note: Figure 8 is included at the end of this chapter.

17. Editor's Note: Figures 2 and 9 are included at the end of this chapter.

binding material and rolled. This excavated area shall then be filled with six inches of a good quality stone dust, gravel, processed stone, or reclaimed asphalt and rolled with a pitch of 3/16 inch per foot toward the gutter/roadway.

- (3) Surface (Figure 9). One of the following methods may be used: forms shall be set to grade, filled with asphalt concrete and rolled to a thickness of 1 1/2 inches. A second course of 1 1/2 inches is then to be placed over the first one, in the same manner. Alternatively, other material may be used for the sidewalk surface, if approved by the Planning Board. In this case, specifications of the Massachusetts Department of Public Works shall be complied with.
- (4) Typical driveway/roadway intersection (Figure 9) The intersection of a sidewalk with a driveway or a roadway shall be constructed in accordance with the specifications detailed in Figure 9. At any point where a sidewalk meets a driveway or a roadway, the sidewalk shall remain at its pitch of 3/16 inch per foot toward the gutter/roadway.
- (5) Typical sidewalk retaining wall (Figure 9). If found to be necessary due to the steepness of side slopes within the layout of a new subdivision road, retaining walls shall be constructed along sidewalks in accordance with the specifications detailed in Figure 9. The height of the retaining wall may vary according to the finished grade of the side slopes. Six-inch by six-inch pressure-treated timbers with one-half-inch thick steel rods at four foot on center shall be installed at a depth of two feet. Lateral tiebacks with a one-inch steel rod and concrete anchor shall be installed when a retaining wall exceeds two feet in height. Filter fabric shall be placed between the pressure-treated timbers and the side slope. The disturbed area of the side slope shall be backfilled with excavated material and loamed and hydroseeded in accordance with Subsection L, Topsoiling and hydroseeding (Figure 8), above.
- (6) Maintenance of subdivision sidewalks during construction of structures and driveways.
 - (a) Where a sidewalk exists along a roadway in the Town of Harwich, the condition and grade of the sidewalk shall not be disturbed when a structure and its driveway are under construction. When a driveway opening permit is applied for from the Division of Highways and Maintenance, each property owner shall provide a plan of the property, proposed driveway curb cut, and any existing subdivision sidewalks which may exist within the subdivision road layout. The Division of Highways and Maintenance will note the existence of a sidewalk on the permit and/or sign-off sheet that is submitted to the Building Department and will inform the applicant that the condition and grade of the sidewalk are to remain undisturbed throughout the building process of the structure.
 - (b) At the final inspection stage of the building process, the local building official will note the condition of the existing sidewalk. If the sidewalk is found to be altered or inadequate in anyway, the local building official will notify the property owner of the sidewalk's condition. The property owner

will be responsible for repairing any damage to the sidewalk and ensuring that it will be restored to its former condition.

- (7) Waiver of sidewalk construction. The Planning Board may grant a waiver of sidewalk construction at the applicant's request, contingent on a finding that the location of the subdivision or the rural nature of the subdivision would not benefit from the construction of a sidewalk as part of the subdivision. If a waiver of sidewalk construction is granted, the applicant will pay, in lieu of performance, an amount equivalent to the cost of constructing the waived sidewalk to the Town of Harwich to be used for sidewalk construction. The amount of the payment will be calculated by the Town Engineer and provided to the Planning Board and the applicant before the waiver request is considered.

N. Granite or concrete bounds.

- (1) Granite or concrete bounds shall be placed at all intersections of roadway lines, angle points, and where there is a change in the direction of curvature or at center line of road.
 - (2) Granite or concrete bounds shall be no less than 2 1/2 feet in length and a minimum of four inches square and shall be set as shown on the approved drawings with a three-eighths-inch drill hole or steel rod or brass cap set into the top to indicate the point. All concrete bounds are required to have a No. 4 reinforcement bar. The top of the granite or concrete bound when placed in a way shall be set flush with or to finish grade. All monuments must be properly placed, backfilled, and tamped with a good binding gravel or stone dust.
- O. Lot corners. At all lot corners where a granite or concrete bound is not required under Subsection N above concrete bounds shall be set.
- P. Roadway name signs. Roadway name signs, of a type, lettering, and material approved by the Planning Board and the Director of the Division of Highways and Maintenance, shall be placed at all intersections. Signs may be ordered from the Harwich Division of Highways and Maintenance. Signs shall be installed prior to the issuance of any certificate of occupancy for any structure within the subdivision.
- Q. Cleaning up. The entire area of the subdivision shall be cleaned up to leave, in the opinion of the Board, a neat and orderly appearance, free from debris and other objectionable materials. All catch basins shall be cleaned out.
- R. Roadway maintenance. If released from restrictions with regard to sale of lots or buildings on lots by the posting of a performance bond or other security, the applicant shall maintain the roadway for vehicular traffic in a manner satisfactory to the Board. Further, the applicant shall maintain the roadway in a subdivision in a condition that meets all the above requirements to the satisfaction of the Board either until acceptance of the way by a vote of the Town or for a period of one year from the date of release.

§ 400-15. Inspections during construction.

A. General provisions.

- (1) Responsibility.
 - (a) All subdivision and road construction work performed in connection with these rules and regulations shall be subject to the review of the Planning Board, which shall approve or reject each phase or portion of such work and at completion shall recommend the acceptance of all work or disapproval of the work with reasons therefor. The Town Engineer, or a representative of the Engineering Department, will act as the Planning Board's agent in the inspection of the work to ensure compliance with these rules and regulations and will report to the Board with recommendations as to approval or disapproval of the work.
 - (b) The applicant will engage the services of a professional engineer throughout both the design and construction phases of the work who will act as agent with the Town Engineer. The Town Engineer shall make certain inspections as prescribed herein prior to such work being covered by subsequent work. However, the Board and the Town Engineer shall have the right to inspect the work at any time. Therefore, the applicant shall at any time provide safe and convenient access to all parts of the work for inspection by the Board or its authorized agents.
- (2) Compliance. All work that has been disapproved or is not acceptable to the Board shall be removed and replaced or otherwise corrected to the point of complying with the requirements of the Board for acceptance. Any work that has been covered by subsequent work prior to acceptance or is otherwise not available or obscured to the point of rendering inspection of the work difficult shall be considered not acceptable to the Board. Such subsequent work shall be removed as directed by the Town Engineer to ensure availability of the work to be inspected as required in this section. The release of the performance guarantee shall depend upon the acceptance of all work prescribed herein and on the definitive plan and as directed by the Board.
- (3) Inspection by the Town Engineer.
 - (a) At points indicated in § 400-14 and as further described in this section hereinafter, the Town Engineer or a representative of the Engineering Department will inspect the construction of the required improvements. Unless approval of the work completed, including approval of the materials used, to each point of construction has been given in writing, no further work shall be commenced. Such inspections may include the taking of certain samples for laboratory analysis or testing. In such cases, the applicant shall ensure that the Town Engineer is in no way hindered or obstructed in the course of obtaining such samples. Where such samples are removed from the completed work, the applicant shall replace and restore such work, to the satisfaction of the Town Engineer, to its condition prior to the taking of the sample.
 - (b) The Town Engineer may require certified copies of delivery receipt or bills of lading or other certification as to the description of materials used or

incorporated in the work. The Town Engineer may also require a sample of any materials or supplies which may be incorporated in the work; such samples shall be furnished at the expense of the applicant, and the applicant shall pay for all costs and fees incurred by the Board as a result of transporting and testing such materials.

B. Notification to the applicant's engineer.

- (1) Applicant's procedure. After the approval of the definitive plan, the applicant shall notify the Board as to the engineer who will act as his agent and keep the Town Engineer fully informed as to the status and progress of the work and shall notify the Town Engineer directly in writing, at least 48 hours in advance, that work has progressed to a stage that an inspection is required. Where applicable the applicant shall also submit testing results.
- (2) Town Engineer procedure. In the event that the Town Engineer makes an inspection of the work at the time designated and finds that such work is not at the proper state of completion or that the work has been covered or otherwise obscured, the Town Engineer shall notify the applicant and the Board as to the additional steps the applicant shall take to complete the work to the point required or to the extent the work shall be uncovered or exposed to full view. The applicant shall notify the Town Engineer again when the work is ready as prescribed in Subsection B(1) above.
- (3) Liability. The applicant shall pay for all costs and fees incurred by the Board as a result of requests by the applicant for inspection of the work that, in the opinion of the Board, was not at an acceptable stage of completion for such inspection.

C. Lines and grades.

- (1) Deviation from plan and profile. The applicant's engineer will advise the Board at any time during the construction if, in the Engineer's opinion, the work has not been laid out to the lines and grades as shown on the plan and profile associated with the approved definitive plan. In such cases, the applicant will proceed as described in § 400-14B.
- (2) Responsibility. Any costs that occur as a result of deviating from the definitive plan during the construction phase of the subdivision are the responsibility of the applicant in addition to any fees required.

D. Inspection of required improvements. The following inspections of the required improvements will be made by the Town Engineer. (Form B-5, Subdivision Road Construction Inspection Form, shall be used during each inspection.) These inspections may be in addition to any other inspection the Board may make or cause to be made. All sampling and testing of materials shall be performed by qualified personnel acceptable to the Town and shall be at the applicant's expense. At the discretion of the Town Engineer or the applicant's engineer, additional sampling may be required.

- (1) First inspection. An inspection will be made of the work upon completion of all clearing, grubbing, and excavation and all work incidental thereto as may be required in § 400-14C. No fill shall have been placed at the time of this inspection.
- (2) Second inspection. An inspection will be made of the completed drainage system (without backfill) as required herein or on the definitive plan.
 - (a) At the same time, or such other time as the work may be available, an inspection will be made of the completed utilities (without backfill) as required on the definitive plan. The inspection of the required utilities will be made by the agency responsible for the particular service as well as by the applicant's engineer. The Town Engineer shall also be notified so that he or she may inspect the utilities prior to backfill. Each agency so involved will notify the Town Engineer of the approval of such work.
 - (b) Backfill of any portion of the drainage system or utilities shall not be made until after receipt of notification of approval or acceptance by the Town Engineer or agency responsible.
 - (c) The inspection of the construction of the ways shall include the inspection of the backfilling and compaction of all utility trenches as may be installed by utility companies, and such work shall be performed in the manner as required by these rules and regulations. It shall be the applicant's responsibility to ensure compliance with these requirements. If, in the opinion of the Planning Board, the backfilling and compaction of utility trenches and the patching of the pavement, if required, have not been performed in accordance with these rules and regulations, the Planning Board may not release the bond or covenant applicable until such work has been performed to the satisfaction of the Planning Board.
- (3) Third inspection. An inspection will be made of the compacted fill as specified in § 400-14G and as may be required to bring the roadways to their proposed grades. The applicant shall notify the Town and the Town Engineer as to the source of gravel for fill, as soon as such information is known, so that samples may be taken and analyzed by the Town and the Town Engineer. The applicant is hereby advised not to proceed with the filling operation until the Town and the Town Engineer notify the applicant that the gravel proposed for the fill is acceptable. If the applicant proceeds with the fill prior to such notice this act shall be at the applicant's own risk. The applicant shall not use a gravel source other than the one designated without prior notice to the Board and the Town Engineer. The applicant's engineer or the Town Engineer may also require compaction tests.
- (4) Fourth inspection. An inspection will be made of the first layer of compacted roadway foundation (stone dust, gravel, processed stone, or reclaimed asphalt) as specified in § 400-14H. A gravel sample or samples may be taken, at the option of the Town Engineer, in the same manner as prescribed for the third inspection. Compaction tests may also be required by the applicant's engineer or the Town Engineer.

- (5) Fifth inspection. An inspection will be made of the final layer of compacted roadway foundation (processed stone) prior to the application of the concrete penetration as specified in § 400-14H, and a gravel sample may be taken by the Town Engineer. Compaction tests may also be required by the applicant's engineer or the Town Engineer.
- (6) Sixth inspection. An inspection of the binder course (bituminous concrete) will be made during placement and following completion. If required, samples of the mix shall be taken by the applicant's engineer or the Town Engineer for the purposes of performing extraction tests, compaction tests, or pavement thickness tests. Core drill samples may be required at the applicant's expense. Certified paving slips indicating bituminous concrete quantities shall be submitted to the applicant's engineer, who will tabulate the quantities, check the correlation with the anticipated qualities, and then forward the slips and a report to the Town Engineer.
- (7) Seventh inspection. An inspection of the finish course (bituminous concrete) before, during, and following the placement of the mix shall be performed. A tack coat shall be applied to the binder course of mix prior to placement of the top coat where required by the applicant's engineer or the Town Engineer. The requirements regarding sampling, testing, and quantity slips indicated in Subsection D(6) above for the binder course shall also apply to the top course.
- (8) Eighth inspection. An inspection will be made of all work as required on sidewalks, berms, topsoil, hydroseeding, open space, side slopes, monuments, bounds, and roadway signs.
- (9) Ninth inspection. A final inspection will be made of all subsequent work as required herein or on the definitive plan, which shall include the final cleanup. An as-built plan shall be filed following this inspection.

E. Town Engineer's report.

- (1) The Town Engineer will submit a completed certified report to the Board for each way in a subdivision.
- (2) If the applicant submits a request for full or partial release from the covenant with the Town, the Planning Board may request a report from the Town Engineer prior to completion of the subdivision road(s).

ARTICLE III Site Plan Special Permits

§ 400-16. General requirements.

- A. Applicability. A site plan special permit from the Planning Board is required for all activities outlined in § 325-55C of the Harwich Zoning Bylaw. This is in addition to any special permit or variance required under § 325-13 (Table of Use Regulations) of the Harwich Zoning Bylaw. The Planning Board may waive strict compliance with these Rules and Regulations Governing Site Plan Special Permits when, in its judgment, such

action is in the public interest and not inconsistent with the intent or purposes of these rules and regulations or the Zoning Bylaw.

B. Applications and plans. The following must be filed with the Town Clerk for application for a special permit, including a site plan special permit:

(1) Complete application.

- (a) A complete application shall include all items listed in Appendix 4¹⁸ respective to the nature of the special permit and any other requirements as specified in § 400-17.
- (b) Failure to submit a complete application at the time of filing may be grounds for denial of the site plan special permit. Failure to submit the required site plan fee prior to the scheduled public hearing may also be grounds for denial. Failure to file a complete application with the Board may be grounds for denial by the Planning Board (MGL c. 40A, §§ 9 and 14).
- (c) For uses that do not utilize a structure, the area of the parcel covered by land areas must be expressed separately for each parcel and for each zoning district affecting each parcel. These numbers must also be shown as a project total for each zoning district. Such use must be specified.
- (d) Plans for redevelopment of a site or modification of an approved site plan must show all land on the subject parcel and any other parcels relating to the subject use, including all structures, parking areas, other appurtenant facilities, and open space (undeveloped natural areas and landscaped areas). Failure to show all property pertaining to the subject use(s) may result in incomplete notification to all parties in interest, which may invalidate any approval obtained.

(2) Traffic study.

- (a) The Board may also require the applicant to submit professionally prepared documentation of the environmental, traffic, or other impacts of a particular project (use) or project element in order to determine compliance with the general conditions for granting a special permit.
- (b) If the Board requires a traffic study for the proposed use/project, the applicant shall document the traffic levels expected for average daily traffic and a.m. and p.m. peak hours. This data shall be presented for summer and nonsummer periods.

(3) Landscaping. See Table 7.¹⁹

- (a) When required, details of the proposed landscaping plan shall include all proposed landscaping, including species names, quantities, location, and size

18. Editor's Note: Appendix 4 is included at the end of this chapter.

19. Editor's Note: Table 7 is included at the end of this chapter.

upon planting. Evergreen species shall be specifically identified as such when used for screening.

- (b) The plan must also show with appropriate graphic symbols the specific areas of landscaping which are counted as interior landscaping. A dotted line shall be used to delineate the area used for total parking lot area for the purpose of interior landscaping computation, which should include parking spaces, the maneuvering area for a single space or row of spaces, the maneuvering area between two rows of spaces, all loading areas, and the landscape islands. Areas to be excluded from total parking area computations and interior landscape area totals are driveway areas where there are no adjacent parking spaces and areas beyond the perimeter of the parking area, such as building yard areas, required parking setback areas and non-island or non-peninsula landscape areas along the perimeter of the parking area.
- (4) Utilities: water.
 - (a) Location of existing waterlines, if any, and the location of any existing hydrants within the site or within the layout of any way adjacent to the site, if any shall be marked on the plan.
 - (b) The location of proposed waterlines and hydrants is to be determined pursuant to the requirements of the Board of Water Commissioners and shall be shown on the site plan.
- (5) Revised site plans. A revised site plan is defined as any plan showing a change in a filed site plan that is awaiting Board action. For the purpose of this section, any plan showing a change in a site plan which has received action by the Board to approve or deny will be subject to all of the requirements for an initial site plan special permit application. When a filed site plan is to be revised, six copies of the revised site plan, which must show the latest revision date, must be submitted to the Town Clerk's office no later than 10 days prior to the next scheduled discussion of the application by the Board.

§ 400-17. Additional requirements.

A. Accessory apartment or two-family dwelling.

- (1) In addition to the general requirements, the following must be filed with the Town Clerk for application for an accessory apartment special permit:
 - (a) Two copies of a signed and notarized affidavit by the owner stating that he or she will live in one of the units on a year-round basis. In the case of a not-for-profit housing entity proof of ownership must be filed.
 - (b) Two copies of the required covenant for parcels in a Water Resource Protection District.

- (c) Accurately drawn and scaled floor plans of both the existing structure and the proposed apartment, showing floor area by room and the common wall between the two units.
 - (d) Building elevation drawings showing all existing and proposed entrances to the main dwelling and the accessory apartment.
- (2) Parking spaces must have direct access to a roadway and may not be lined up one behind the other.

B. Drinking Water Resource Protection District.

- (1) In addition to the general requirements, the following must be filed with the Town Clerk for application for a special permit in the Drinking Water Resource Protection District:
- (a) A plan showing the location of all buildings, impervious surfaces, subsurface disposal systems and boundaries of the district where applicable.
 - (b) A drainage plan for the property showing the method to be used for disposing of all runoff from impervious surfaces. If dry wells are to be used, evidence must be presented to show that other methods of disposal are undesirable.
 - (c) A complete list of the type and quantities of all chemicals, pesticides, fuels and other potentially hazardous or toxic materials to be stored, used, or disposed of on site.
 - (d) A description of how and where the hazardous materials will be stored, accompanied by a description of the provisions which will be employed to protect all said materials from vandalism, corrosion, leakage, and spills. The description should include control measures and the degree of threat to the groundwater quality should controls fail.
 - (e) A description of potentially toxic or hazardous waste or waste by-products to be generated, indicating storage and/or disposal methods to be used.
 - (f) Nitrogen loading calculation of wastewater to be disposed of on site.
- (2) For any project where runoff other than typical runoff from parking lots or driveways may occur and/or subsurface disposal of materials other than typical septage waste may occur, the following additional information shall be supplied:
- (a) Data developed from test borings and test holes or wells to adequately indicate the elevation (mean sea level datum) of the groundwater on site and the nature and composition of the soil.
 - (b) A projection of groundwater flow conditions on site, including a description of down-gradient water resources and an evaluation of the impact of disposal of accidental spills on such resources.

- (c) A description of mitigating measures which the applicant plans to implement to eliminate the potential for groundwater contamination and any backup measure should said measure fail.
- (3) The Planning Board shall make findings with the guidance of the Board of Health and/or Health Department consistent with the requirements of § 325-51C of the Harwich Zoning Bylaw.

§ 400-18. Review procedure.

- A. Public hearing. Following the submittal of a completed application and plans, the planning staff will schedule a public hearing before the Planning Board consistent with the requirements of MGL c. 40A, § 9, which requires public notice of the time and place of the public hearing and of the subject matter, sufficient for identification, as follows:
 - (1) The Board shall give notice by advertisement in a newspaper of general circulation in the Town of Harwich, once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing;
 - (2) The Board shall give notice by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing; and
 - (3) The applicant shall give notice by mailing a copy of such advertisement via certified mail, return receipt, to property owners within 300 feet abutting the subject property, which may also include abutters to abutters, and properties across the roadway from the subject property. The advertisement and list of abutters, to include names and addresses of abutters certified by the Harwich Board of Assessors, will be supplied to the applicant by the Planning Department. Said notice shall be mailed out no less than 10 days prior to the scheduled public hearing. A copy of the certified mail receipts must be filed with the Planning Office and the original returned "green cards" shall be submitted as well.
- B. Planning Board action. In accordance with MGL c. 40A, the Board shall hold the public hearing within 65 days of the filing with the Town Clerk. Following the closing of the hearing, the Planning Board shall have 90 days to render a decision and file it with the Town Clerk. Once the decision is rendered, the Board shall have 14 days to file said decision with the Town Clerk, but within 90 days from the closing of the hearing. The Planning Board may approve, approve with conditions or modifications, or disapprove said plan as provided by MGL c. 40A by a two-thirds vote. Said decision shall state specifically the reasons for such action. A copy of the decision shall be forwarded to the applicant and/or the representative.
- C. Effective date. No special permit shall be effective until the appeal period has passed and a copy certified by the Town Clerk is recorded together with any covenant made in connection with said special permit at the Registry of Deeds in Barnstable County. The site shall not be occupied or used until a certificate of completion has been issued by the Planning Board.

- D. Appeal period and certificate of approval. Following the filing of the decision with the Town Clerk there shall be a twenty-day appeal period. Provided the application is approved or approved with conditions or modifications and following the expiration of the appeal period the applicant or the representative may request from the Town Clerk a certification that no appeal was taken in this matter.
- E. Covenants and agreements. In any case where the Board, pursuant to the authority conferred on it by the Zoning Bylaw, has voted to grant a density bonus to an applicant, the Board shall require, prior to the issuance of a special permit, that the applicant execute a covenant in such form as the Board deems appropriate wherein the applicant agrees to construct the amenities for which the density bonus has been granted according to a specific timetable with such security guaranteeing said construction as the Board and the applicant may agree is appropriate. As a condition to the grant of a special permit, the Board may require that, when constructed, said amenities will be conveyed by the applicant or other person developing the project to any of the individuals, groups, or corporations designated by the Town of Harwich Zoning Bylaw or by MGL c. 40A, § 9.
- F. Recording of the special permit decision. Upon filing the special permit decision with the Town Clerk, the Board shall send a copy of the decision to the applicant notifying the applicant that the decision has been filed with the Harwich Town Clerk and an appeal, if any, from the Board's decision must be filed with the Superior Court or a District Court of Barnstable County or the Massachusetts Land Court within 20 days. After the twenty-day appeal period has expired, the applicant shall present the decision to the Town Clerk for certification that no appeal has been taken. Once this certification is received, the decision must be recorded at the Barnstable County Registry of Deeds. After recording the decision, the applicant shall return copies of the decision, stamped at the Registry, to the Board and the Town Clerk.
- G. Inspection, certificate of completion and as-built plan. The site shall not be occupied or used until one of the following has been complied with:
- (1) The applicant shall notify the Planning Department/Planning Board when all required site work has been completed. The Board shall obtain in writing from the Planning Department, or other designated Planning Board agent, a certification that all work required by the rules and regulations and the approved site plan special permit (with conditions, if any) has been inspected by it or him or her and completed to the satisfaction of all Town agencies involved in the site plan process. In addition, an as-built plan, certified by a professional land surveyor or registered engineer, shall be submitted to the Planning Department/Planning Board. The as-built plan shall attest to the development's conformity with the approved site plan by indicating landscaping, buildings, structures, signs, drainage and all other site improvements. Until the certification and as-built are approved, the site shall not be occupied or used.
 - (2) In the alternative, the applicant may submit a cost estimate to cover the remaining site work to be performed and the cost to prepare and submit an as-built plan. The Town Engineer shall review said estimate and shall submit a report to the Planning Board indicating the accuracy of the estimate and stating any recommendations or discrepancies. The Planning Board shall review the estimate and the Town

Engineer's report and set the amount for a cash bond or passbook account. An incentive factor of 150% shall be calculated in to the final amount. The cash bond or passbook account shall be released or reduced by the Planning Board only after certification by the Planning Board that all of the required improvements or those improvements requested for release have been completed in conformance with the approved plan and all applicable conditions and regulations. There shall be no complete release until an as-built plan is submitted and accepted by the Planning Board.

§ 400-19. Other requests.

- A. Waiver from site plan requirement. Pursuant to § 325-55F of the Harwich Zoning Bylaw, the Planning Board may waive the requirement of the filing of a site plan. When, in the opinion of the Planning Board, the requirements of § 325-55C of the Harwich Zoning Bylaw do not substantially change the relationship of the structure to the site and to abutting properties and structures, the Planning Board may determine, without a public hearing, that submission of a site plan for special permit approval is not required.
- (1) Application requirements. The following must be filed with the Town Clerk for application for a waiver from site plan special permit requirements:
 - (a) All items as listed in Appendix 4.²⁰
 - (b) A clearly drawn plan to scale shall be prepared showing the proposed changes and/or additions to the site. If an approved site plan special permit exists the same plan shall be utilized showing the proposed changes and/or additions to the site.
 - (c) Site plan information may be superimposed on a valid survey plan or a valid existing site plan, provided that the following notation is included on the site plan: "[This site plan was prepared by (name of preparer) using a (plan of land/site plan) titled "_____, dated _____ and last revised on _____, scale: _____, prepared by _____.]"
 - (2) Planning Board action.
 - (a) Following the submittal of a completed application and plan, the planning staff will schedule a public meeting before the Planning Board.
 - (b) A notice of said meeting shall be mailed to the abutters no less than 10 days prior to the scheduled meeting.
 - (c) Failure to submit a complete application at the time of filing may be grounds for denial of the site plan special permit. Failure to submit the required site plan fee prior to the scheduled public hearing may also be grounds for denial.
- B. Repetitive petition. Section 16 of MGL c. 40A provides for a repetitive petition process before the Planning Board. The Planning Board has the ability to refer cases back to the

²⁰. Editor's Note: Appendix 4 is included at the end of this chapter.

permit or special permit granting authority within two years of an unfavorable action by said authority.

- (1) Application requirements. In addition to items listed in Appendix 4, the following must be filed with the Town Clerk for application for a special permit:
 - (a) Original plan presented to the special permit granting authority or the permit granting authority which denied the original request.
 - (b) A revised plan showing, if applicable, showing the changes and/or differences from the original plan.
- (2) Planning Board action. In order for the Planning Board to give its consent for a case to return to said authority, the Board must make a finding, with a vote of all but one member of the Planning Board, that there are specific and material changes in the conditions upon which the previous unfavorable action was based. Notice of the consent proceedings shall be given to parties in interest of the time and place of such proceedings.

§ 400-20. Earth removal and sand and gravel mining in Six Ponds Special District.

Earth removal and sand and gravel mining within the Six Ponds Special District require an operations permit in accordance with § 325-102 of the Zoning Bylaw

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

400 Attachment 1

Town of Harwich

Appendix 1 The Rational Method of Drainage Design

1. The Rational Method of Drainage Design shall be used for all drainage calculations. Drainage calculations, appropriate drawings, and watershed area delineations shall be submitted with the application of the definitive plan. Other drainage calculations methods may be allowed with the approval of the Town Engineer.
2. The runoff coefficients (C) to be used are as follows:

Type of Surface	Runoff Coefficient (C)
Cement or bituminous concrete, roof area	0.9 to 1.0
Gravel	0.4 to 0.6
Bare earth	0.3 to 0.8
Steep grass slopes (2:1 or steeper)	0.5 to 0.7
Turf meadows (gentle slopes)	0.3 to 0.4
Cultivated fields (gentle slopes)	0.3 to 0.4

If variable surfaces exist within an area, the average C value will be determined by the following formula:

$$C \text{ average} = \frac{CA + CA + CA + \underline{\hspace{2cm}}}{A + A + A + \underline{\hspace{2cm}}}$$

3. The rainfall intensity (I) shall be determined by using the rainfall intensity curves (included herewith). Starting at the left of the curve, the distance is the greatest measured distance of water runoff from the highest to the lowest elevation. Plot a horizontal line from the appropriate distance to the % slope (% slope is the drop in elevation divided by the distance times 100). From the appropriate % slope, plot a line vertically downward until it intersects the C value curve, then plot a line horizontally and to the right until it intersects the storm frequency curve. Now plot a line vertically downward and read the rainfall intensity in inches per hour. The minimum rainfall intensity (I) value is three inches per hour.

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4. Calculate the rate of runoff by using the following Rational Method formula:

$$Q = CIA$$

Where

Q = Rate of runoff in cubic feet (cf) per second

C = Runoff coefficient

I = Rainfall intensity in inches per hour

A = Drainage area in acres

Minute (gal/min) as follows:

$$Q \text{ gal/min} = Q \text{ cf/sec} \times 60 \text{ sec/min} \times 7.48 \text{ gal/cf}$$

5. The ratio of square feet of leaching provided to Q gal/min

Soil Percolation Rate	Ration Q – Leaching Area
Less than 2 min/inch	0.7
2 min/inch to 8 min/inch	0.5
8 min/inch to 12 min/inch	0.2
Greater than 12 min/inch is unsuitable for leaching basin	

6. No accounting for storage and/or leaching during a rainstorm will be allowed.
7. Percolation and deep tests shall be required at the proposed location of each leaching system. More tests may be required by the Town Engineer.
8. The USGS method shall be used to estimate probable high groundwater levels.
9. The bottom of leaching structures must be at least one foot above the estimated probable high groundwater level.

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

400 Attachment 2

Town of Harwich

Appendix 2

Tables 1 to 7

Table 1
Recommended Geometric Design Standards for Roadways

Design Elements	Ways	Minor Roadways	Major Roadways	Collector Roadways	Figure Reference
Dead-end roadway length (feet)	1,200	1,200	1,200	1,200	1,200
Roadway layout					
Minimum right-of-way width (feet)	40	50	50	50	Fig. 3
Minimum roadway width, not including berms (feet)	20	22	22	22	Fig. 3
Sidewalks (width) (feet)	N/A	4	4	4	Fig. 9
Clearance above grade (feet)					
Horizontal Alignment					
Minimum radius at street center line (feet)	150	150	300	400	Fig. 4
Vertical Alignment					
Clear sight distance from 4' 6" to 4" above pavement (feet)	200	200	350	350	Fig. 2
Minimum vertical curve (feet)	100	100	100	100	Fig. 2
Grade					
Maximum grade	8%	8%	6%	6%	Fig. 2
Minimum grade	1%	1%	1%	1%	Fig. 2
Maximum grade within 30 feet from intersection	2%	2%	2%	2%	Fig. 2
Intersection Standards					
Minimum intersection angle	70°	70°	85°	85°	Fig. 1
Minimum center-line offset (feet)	125	125	200	200	Fig. 4
Minimum curb (or edge of roadway) radius (feet)	15	15	30	30	N/A
Required Cleared Area at Intersection (feet)	100	100	150	150	Fig. 4

HARWICH CODE

Design Elements	Ways	Minor Roadways	Major Roadways	Collector Roadways	Figure Reference
Dead-end Street					
Maximum length (feet)	1,200	1,200	Not allowable	Not allowable	Fig. 1
Minimum radius of circular turnaround, to curb or to edge of pavement (feet)	45	45	N/A	N/A	Fig. 1
Pavement and Storm Frequency Standards					
Unpaved* (inches)	6 T-base 3 crushed stone	N/A	N/A	N/A	Fig. 3A
Pavement, compacted thickness (inches)	3 total 2 binder 1 finish	3 total 2 binder 1 finish	4 1/2 total 2 1/2 binder 2 finish	4 1/2 total 2 1/2 binder 2 finish	Fig. 3
Base, compacted thickness (inches)	8 total 4 subbase 4 base	8 total 4 subbase 4 base	12 total 6 subbase 6 base	12 total 6 subbase 6 base	Fig. 3
Storm frequency for drainage calculations (years)	25	25	25	50	
Storm frequency for cross culverts sizing (years)	50	50	50	100	

N/A – Not applicable.

* Although unpaved roads may be accepted as access for no more than five lots or dwelling units under these regulations, they will not be considered for acceptance as a Town road unless reconstructed.

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

Table 2
Dense-Graded Crushed Stone Base Material

Sieve Size	Gradation – % Passing
2"	100
1 1/2"	70 to 100
3/4"	50 to 85
No. 4	30 to 55
No. 40	10 to 35
No. 200	2 to 10

Table 3
Reclaimed Pavement Borrow Material for Base Course

Sieve Designation	% Passing
3"	100
1 1/2"	70 to 100
3/4"	50 to 85
No. 4	30 to 60
No. 50	8 to 24
No. 200	0 to 10

Table 4
Gradation for Aggregate in Bituminous Concrete Pavement Type I

Sieve Size	Binder Course % Passing*	Finish Course % Passing*
7/8"	100	
3/4"	80 to 100	
1/2"	50 to 80	100
3/8"	50 to 55	80 to 100
No. 4	28 to 50	50 to 76
No. 10	18 to 35	35 to 45
No. 20	10 to 25	22 to 35
No. 40	7 to 18	14 to 27
No. 80	3 to 10	6 to 18
No. 200	1 to 4	3 to 6

* By weight.

HARWICH CODE

Table 5
Typical Parking Schedule

Parking Requirements Generator	Quantity or Rated Capacity	Basis for Parking Calculation per Zoning Bylaw	Number of Spaces Required
Retail space	4,300 square feet	1 space per each 200 square feet of floor area devoted to customer use	22
Restaurant	59 seats	1 space for each 3 units of rated capacity	20
Employees, maximum shift	18	1 space for every 2 employees, maximum shift	9
Total Number of Spaces Required			51

Table 6
Typical Zoning Compliance Table

Zoning District: _____			
Subject	Existing	Required	Proposed
Lot area (square feet)	32,547	20,000	32,547
Frontage (feet)	112	100	112
Front setback (feet)	20	25	25
Side 1 setback (feet)	5	10	62
Side 2 setback (feet)	20	10	13
Rear setback (feet)	20	10	35
Minimum front parking setback (feet)	10	15	15
Minimum side parking setback (feet)	5	5	5
Minimum rear parking setback (feet)	5	5	5
Building coverage	43%	50% max	31%
Site coverage	78%	80% max	75.5%
Building height (feet)	22	30	26
Interior landscaping	0%	10%	10.8%
Number of parking spaces	17	21	21
Driveway width (feet)	24	30	29

Note: Add additional columns if the project involves more than one zone. Table 6 serves as an example only of how a typical Zoning Compliance Table should be organized on a site plan. Please refer to the Town of Harwich Zoning Bylaw for the requirements for each zoning district.

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

Table 7
Typical Planting Schedule

Symbol	Quantity	Common Name	Type*	Size	Spacing	Comments
	10	Eastern Red Cedar	E, S	3'	5' O.C.	Parking screen
	5	American Holly	E, T	3'	6' O.C.	Parking screen
	12	Japanese Beach Rose	D, S	3 gal.	Random	Parking setback
	4	Winterberry Holly	D, S	3 gal.	1/island	Int landscaping
	4	Green Ash	D, T	8'	1/island	Int landscaping
	8	Red Oak	D, T	8'	Random	Parking setback
	4	Common Bayberry	D, S	30"	Random	Parking setback

*** Types:**

E = Evergreen

D = Deciduous

S = Shrub

T = Tree

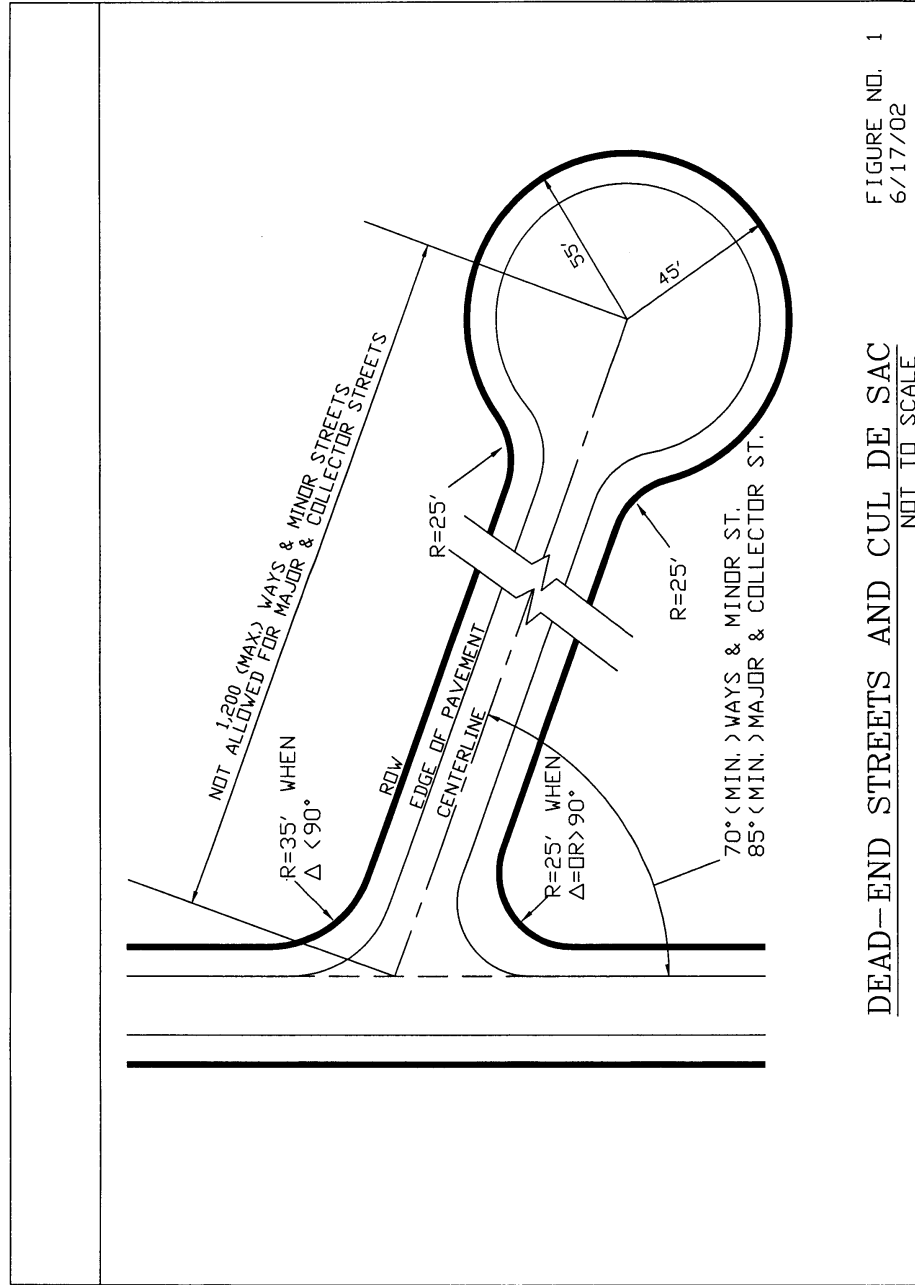
Note: The above species are examples only of native plantings that generally require low maintenance and little or no fertilizers or pesticides. Other species may be proposed. It is Planning Board policy to encourage the use of native species to optimize planting survival and minimize the application of chemicals, which may pollute groundwater.

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

400 Attachment 3

Town of Harwich
Appendix 3, Figures 1 to 10

Figure No. 1



400 Attachment 3:1

04 - 15 - 2009

Figure No. 2

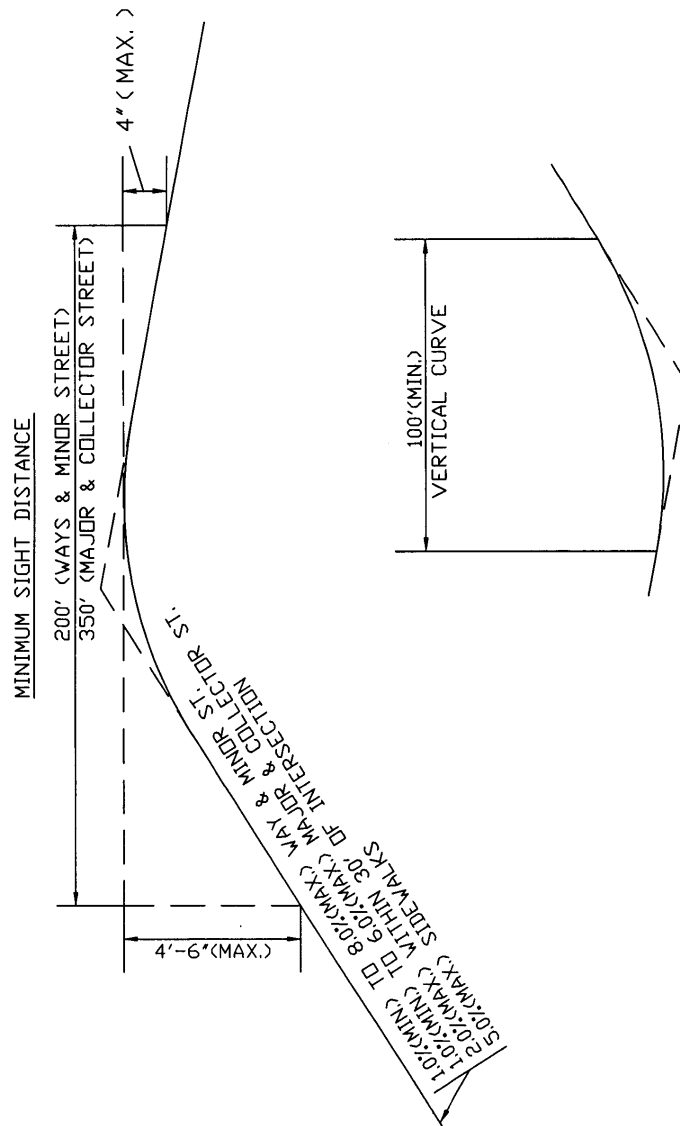


FIGURE NO. 2
6/17/02

STREET AND SIDEWALK PROFILE
NOT TO SCALE

Figure No. 3

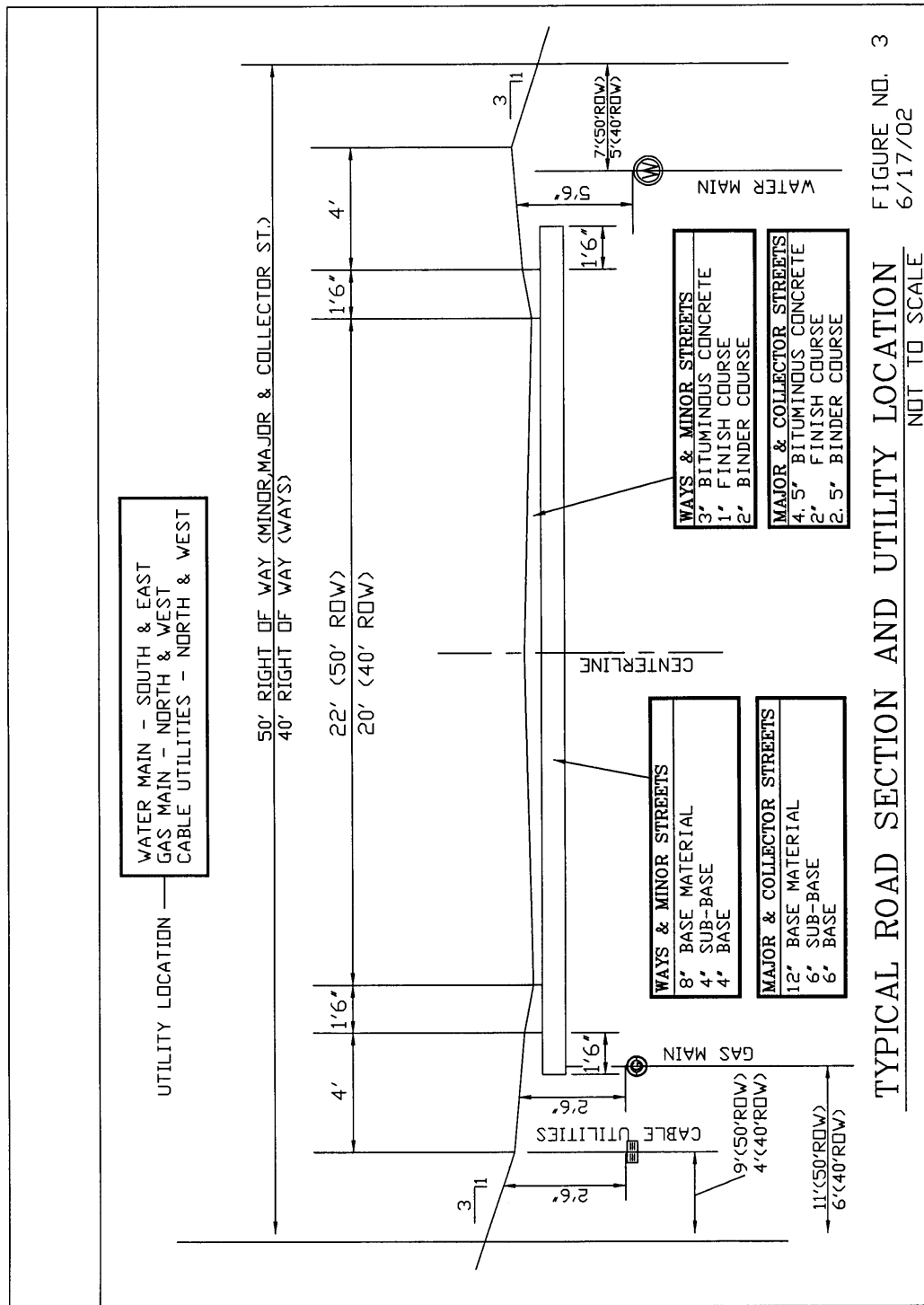


Figure No. 4

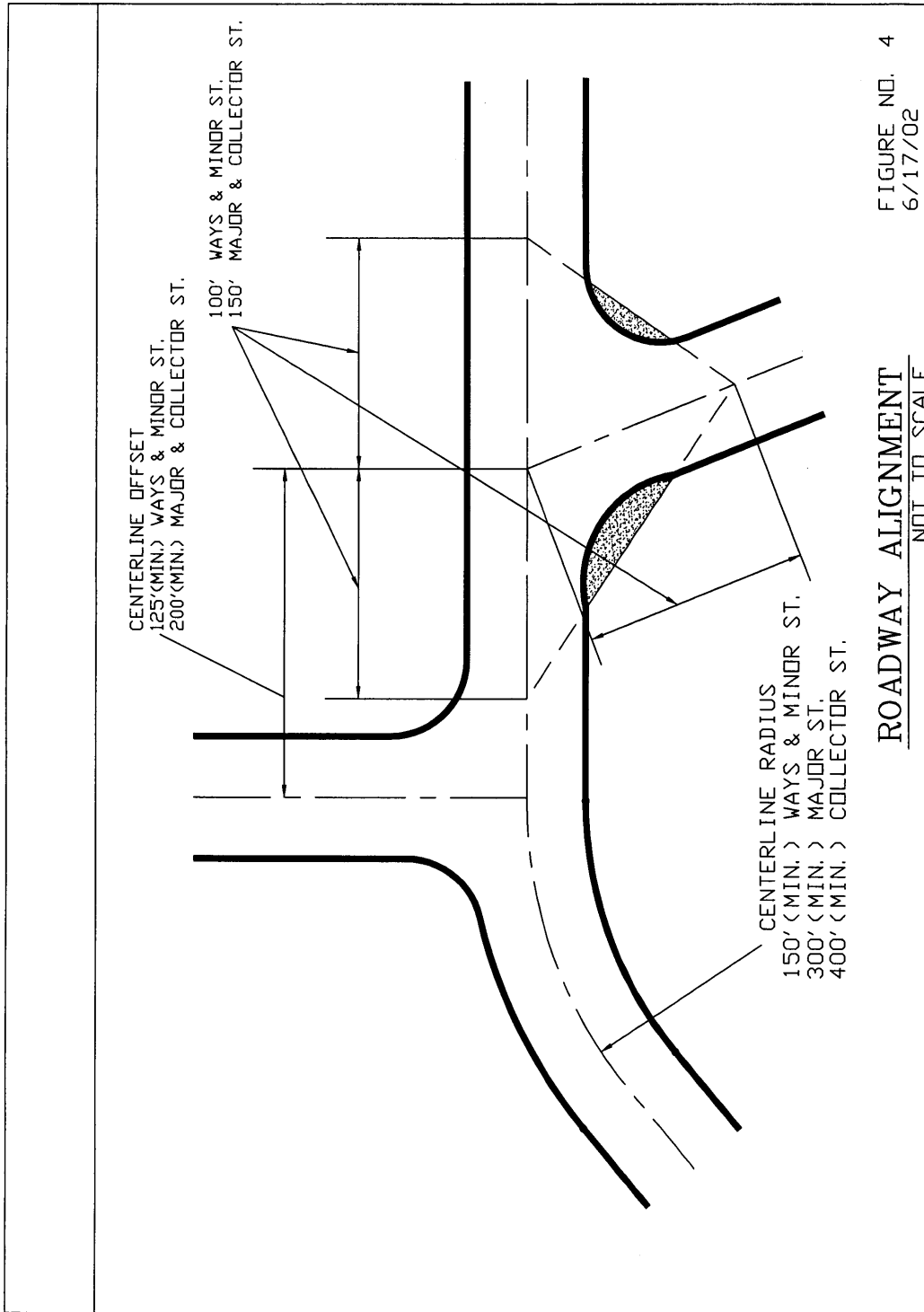


Figure No. 5

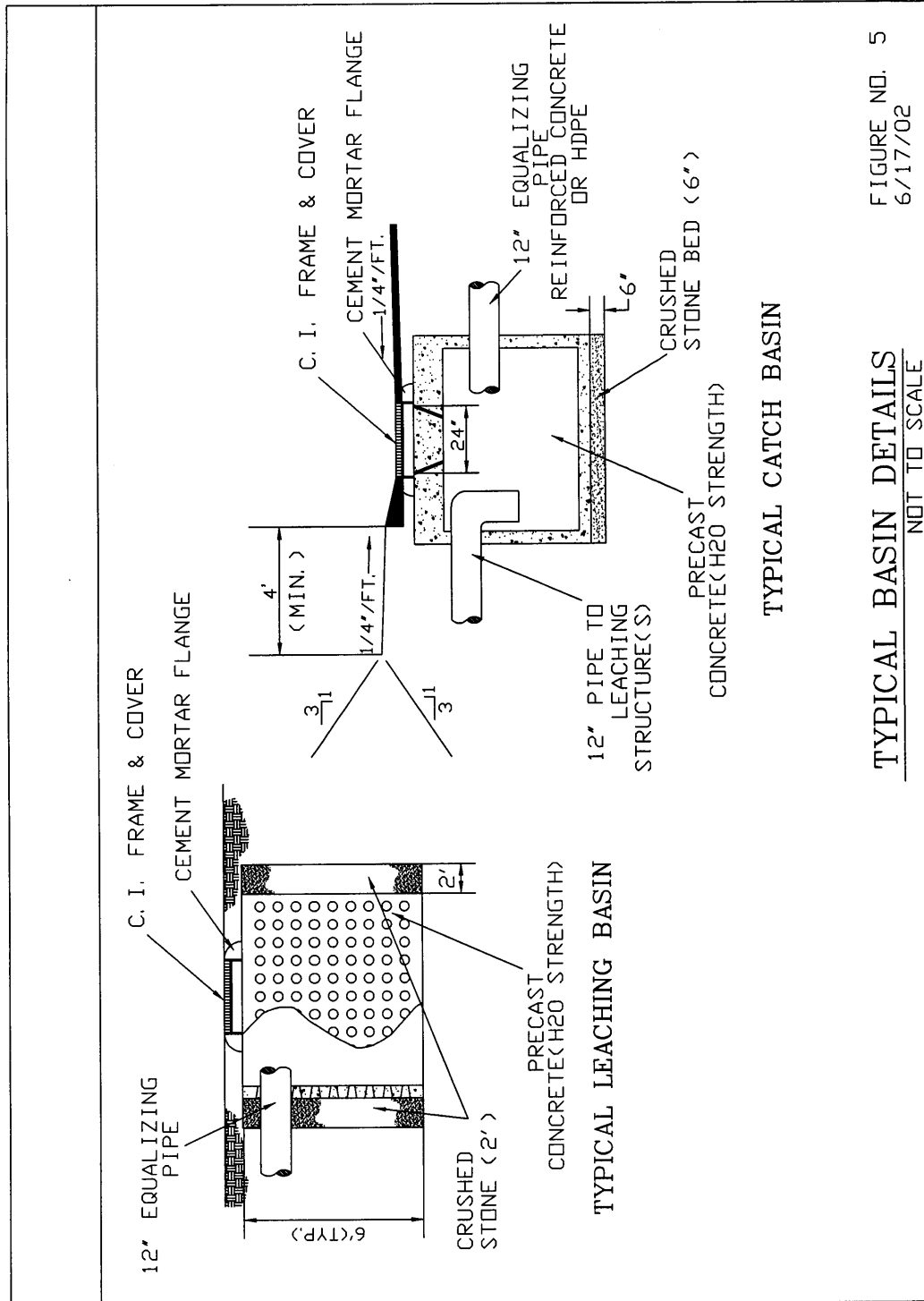


Figure No. 6

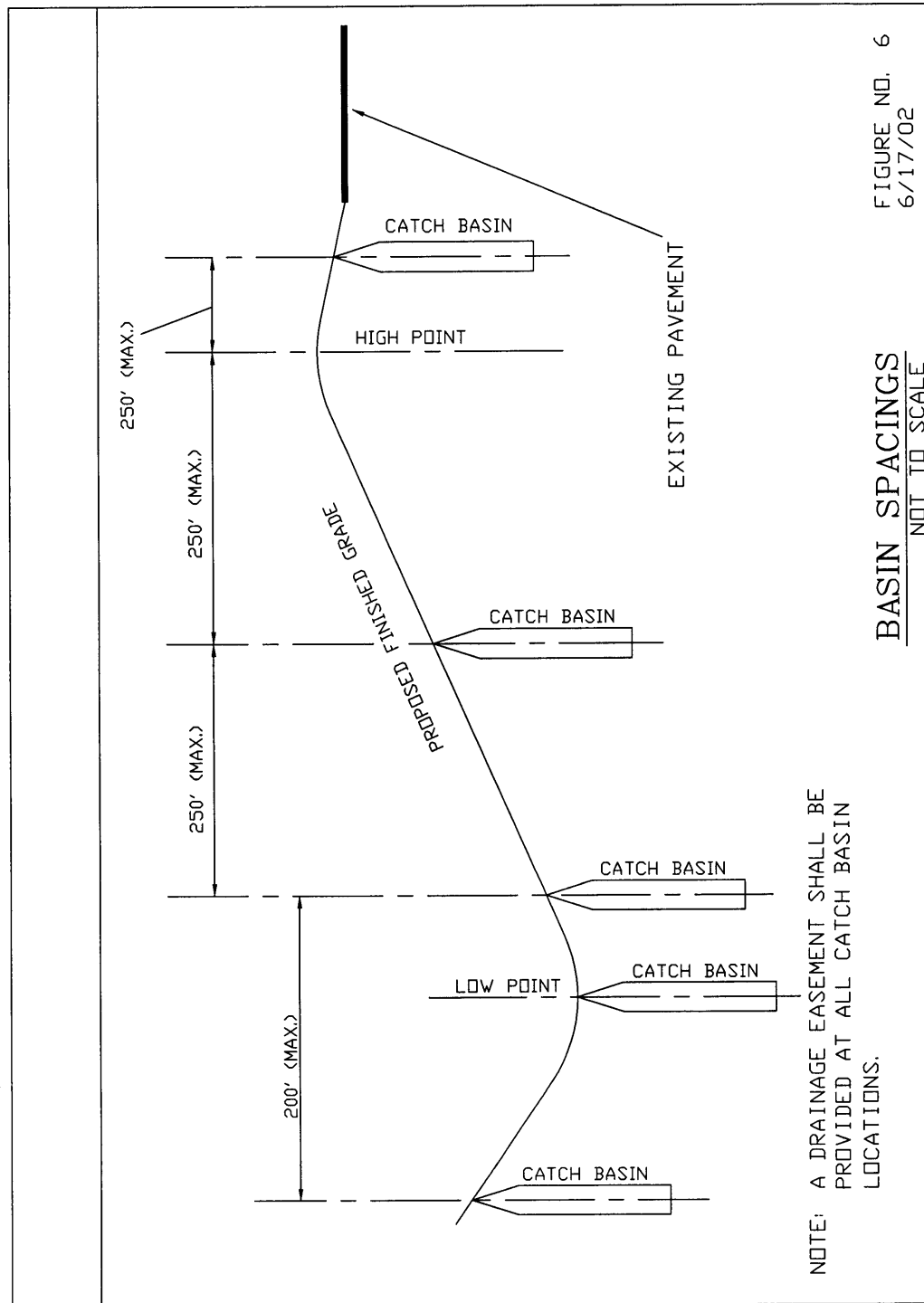


Figure No. 7

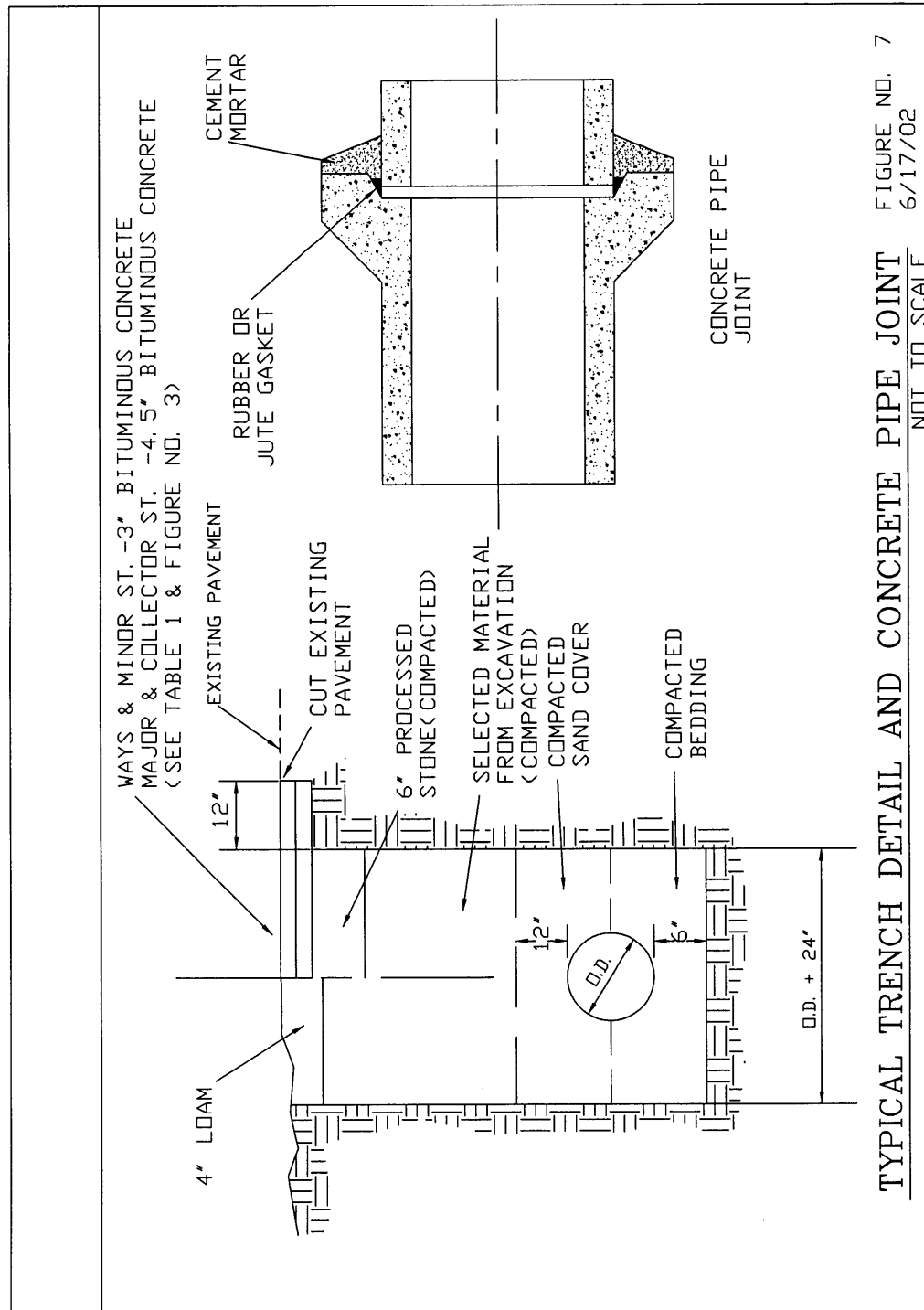


Figure No. 8

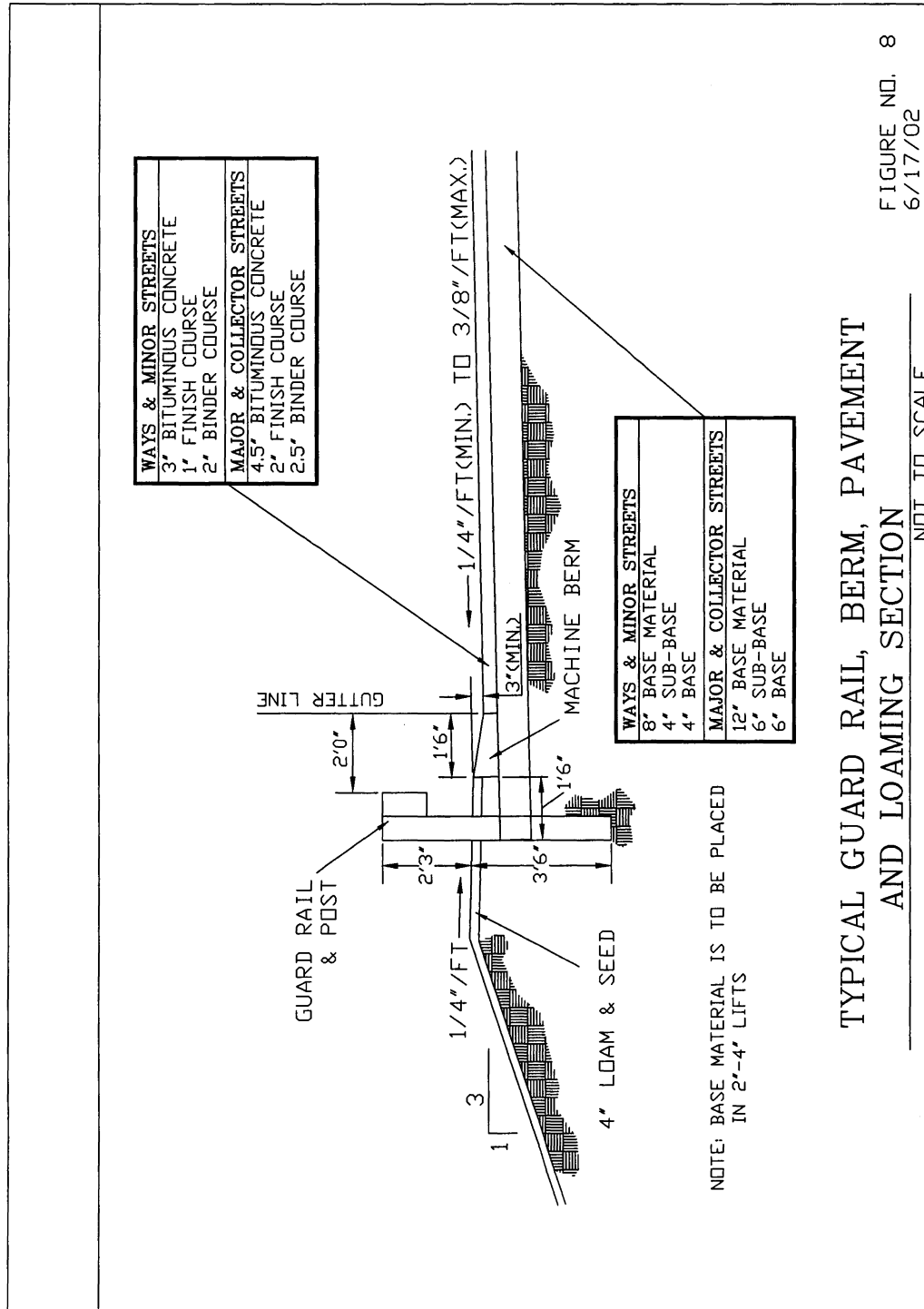


Figure No. 9

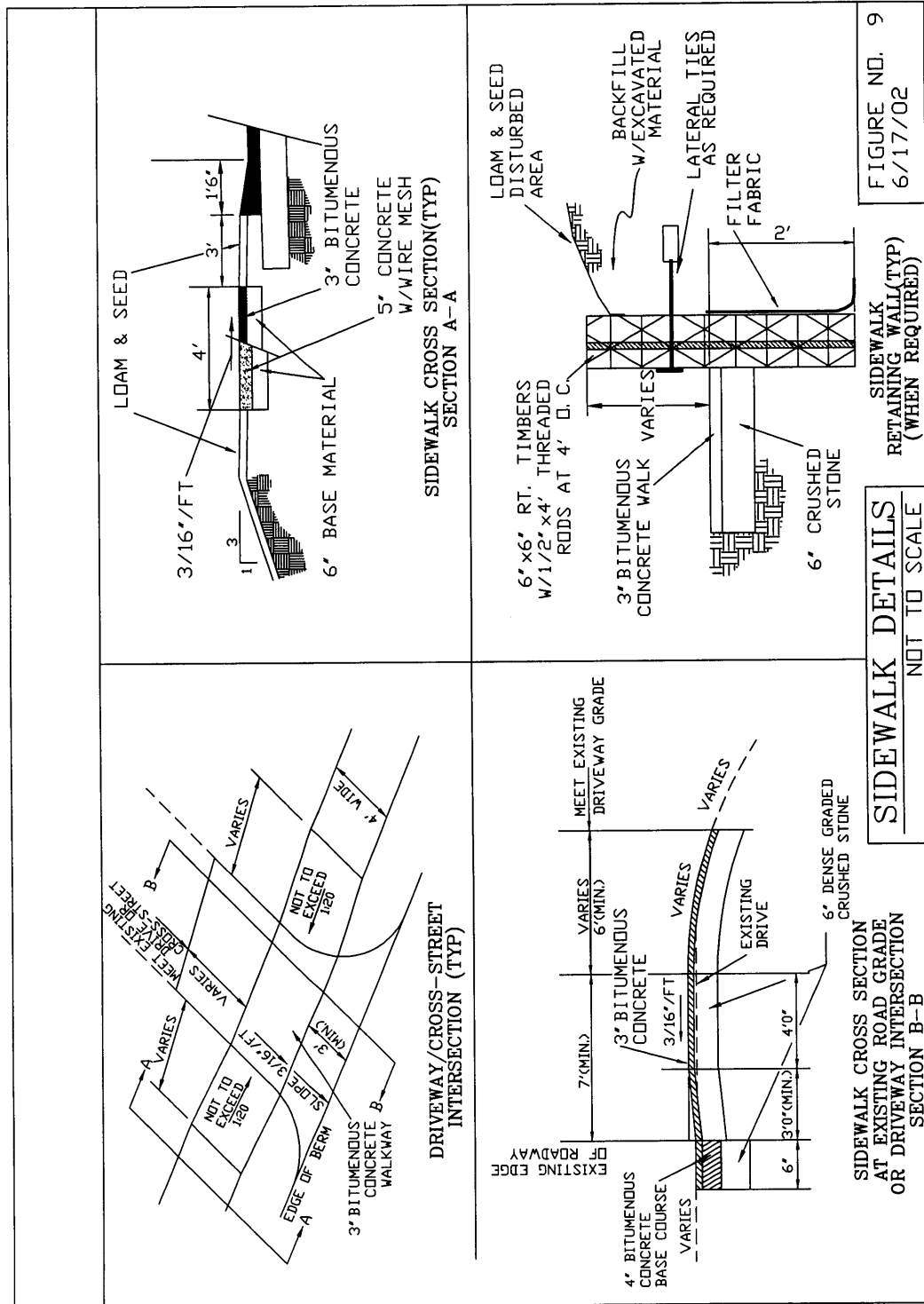
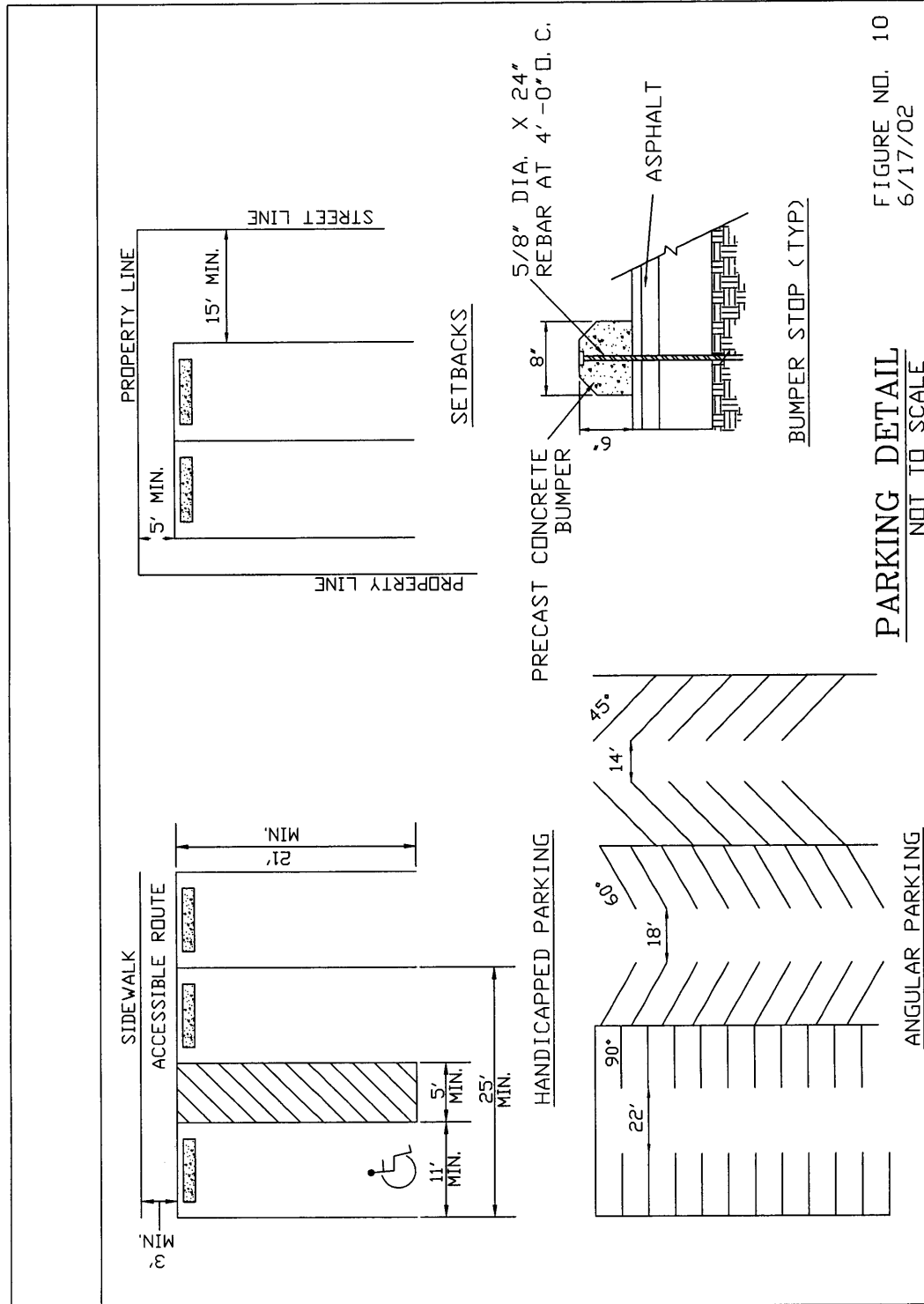


Figure No. 10



SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

400 Attachment 4

Town of Harwich

Appendix 4 Requirements for Applications and Plans

Appendix 4.A Special Permits including Site Plan Review

	Contents Required	Special Permit and Site Plan Review		
		Existing	Proposed	Site Plan Waiver
General Filing	Two completed applications signed by the owner(s) or an agent authorized in writing by the owner to do so (such written authorization must also be submitted when filing the plan). All applications to the Board are to be signed by the owner of record or his authorized representative. Proof of authorization shall be submitted.		YES	YES
	Two copies of the list of waivers being requested.		YES	
	Two copies of the municipal lien certificate from the Town Treasurer indicating that all taxes, assessments and charges have been paid in full . The applicant shall be responsible for the cost of obtaining such certificate.		YES	YES
	Two copies of notarized affidavit.	Accessory apartments/ two-family dwellings only		
	Two copies of covenant for WRPD.			
	Two copies of a brief narrative describing the proposed project.		YES	YES
	Six full-size: 24 inches by 36 inches standard, with a 1/4 inch border, at a scale of not smaller than 1 inch equals 40 feet horizontal; 1 inch equals 4 feet vertical on profiles.	YES	YES	
	Eleven reduced copies no smaller than 8 inches by 11 inches and no larger than 11 inches by 17 inches with a 1/4 inch border.		YES	YES

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	Contents Required	Special Permit and Site Plan Review		
		Existing	Proposed	Site Plan Waiver
General Filing (cont'd)	Two sets of drainage calculations and drainage area map prepared, stamped and signed by a registered professional engineer designed in compliance with Massachusetts Department of Environmental Protection Phase II Stormwater Regulations Best Management Practice.	YES	YES	
	Six copies of hydrogeologic impact statement.	DWRPD		
	A filing fee consistent with the fee schedule.		YES	YES
General Plan Contents	Assessor's map and parcel.	YES	YES	YES
	Zoning districts and boundaries.	YES	YES	YES
	Zoning Compliance Table – see Table 6	YES	YES	YES
	Detailed calculations for required parking – see Article IX of the Zoning Bylaw.		YES	YES
	Legend of all symbols.	YES	YES	YES
	Title block: the respective plan title, date of plan preparation and revisions.	YES	YES	YES
	The name (or names) of the registered professional engineer and/or land surveyor, along with their seal or certification, as applicable, and signatures of each person responsible for the preparation of the plan.	YES	YES	
	Names and addresses of owner(s) of record, petitioner(s) and property deed and plan references.	YES	YES	YES
	Names, deed and plan references of all direct abutters as they appear in the most recent tax list and approximate location of intersecting boundary lines of the abutting land.	YES	YES	

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	Contents Required	Special Permit and Site Plan Review		
		Existing	Proposed	Site Plan Waiver
General Plan Contents (cont'd)	Scaled locus map sufficient to determine the actual location of the property in question and showing the intersection of 2 major roads.	YES	YES	YES
	Plan scale, graphic scale and North arrow.	YES	YES	YES
	If multiple sheets are used, they shall be accompanied by an index showing the entire subdivision.	YES	YES	YES
	Notations indicating any variances granted for the property.	YES	YES	
	Notations stating approval and/or restrictions of the Board of Health.	YES	YES	YES
	Total area and dimensions of the parcel in square feet and acres.	YES	YES	YES
	Gross area of wetlands and uplands for the total parcel in square feet, acres and percentage.	YES	YES	YES
	The topography of the land in two-foot increments.	YES	YES	
	Mark area(s) subject to the Wetlands Protection Act as defined by MGL c. 131, § 40 within 100 feet of any disturbance or alteration on the site and approval and/or restriction of the Conservation Commission or the Planning Board (Six Ponds Special District) within 100 feet.	YES	YES	
	Mark areas set aside for conservation and/or recreational use.	YES	YES	
Detailed Plan Contents	Location, dimensions and setbacks for:			
	Structures	YES	YES	
	Parking areas, spaces and facilities	YES	YES	
	Dumpsters (to be enclosed by fence)	YES	YES	
	Service areas	YES	YES	
	Loading areas	YES	YES	

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	Contents Required	Special Permit and Site Plan Review		
		Existing	Proposed	Site Plan Waiver
Detailed Plan Contents (cont'd)	Maneuvering areas	YES	YES	
	Driveways and curb cuts	YES	YES	
	Existing driveways within 100 feet of site	YES	YES	
	Sidewalks	YES	YES	
	Lighting	YES	YES	
	Easements	YES	YES	
	Freestanding signs	YES	YES	
	Surface drainage	YES	YES	
	Subsurface drainage		YES	
	Drainage facilities		YES	
	Impervious surfaces		YES	
	Subsurface disposal systems		YES	
	Sewage disposal	YES	YES	
	Drainage plan showing the method for disposing of runoff from impervious surfaces		YES	
	Stopping sight distance for all vertical curves and intersections according to Table 1		YES	
	Traffic circulation arrows		YES	
	Utilities			
	§ Waterlines	YES	YES	
	§ Hydrants	YES	YES	
	§ Electrical	YES	YES	
	§ Gas	YES	YES	
	§ Cable	YES	YES	
	§ Other	YES	YES	
	Specifications, details, cross sections for:			
	§ Lighting		YES	
	§ Curbing		YES	

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	Contents Required	Special Permit and Site Plan Review		
		Existing	Proposed	Site Plan Waiver
Detailed Plan Contents (cont'd)	§ Fencing		YES	
	§ Retaining walls		YES	
	§ Parking		YES	
	§ Wheel stops		YES	
Landscaping Plans	General location of trees, trees having a caliper of 6 inches or more, landscaping, wetlands or other significant natural features.		YES	
	Detail of proposed landscaping.		YES	
	Minimize loss of trees.		YES	
Building Plans	Scaled floor plans		YES	
	§ Proposed apartment, showing floor area by room and the common wall between the 2 units	Accessory apartments/ two-family dwellings only		
	§ Proposed second dwelling showing floor area			
	Building elevations, including:		YES	
	§ Door and window locations		YES	
	§ Building height		YES	
	§ Color of surface material		YES	
	§ Texture of surface material		YES	
	§ All entrances to the main dwelling and the accessory apartment/second dwelling	With accessory apartments/ two-family dwellings only		
Water Resource Protection District	Complete list of the type and quantities of all chemicals, pesticides, fuels and other potentially hazardous or toxic materials to be stored, used or disposed of on site.		YES	
	Description of how and where hazardous materials will be stored, with a description of the provisions on how to protect materials from vandalism, corrosion, leakage, etc.		YES	
	Description of toxic or hazardous waste or by-products to be generated, showing storage and/or disposal methods.		YES	

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	Contents Required	Special Permit and Site Plan Review		
		Existing	Proposed	Site Plan Waiver
Water Resource Protection District (cont'd)	For projects where runoff other than typical runoff from parking lots or driveways may occur and/or subsurface disposal of materials other than typical septage waste may occur, the following additional information is required:		YES	
	§ Groundwater flow conditions, including description of down-gradient water resources and evaluation of the impact of disposal of accidental spills on such resources.		YES	
	§ Description of alleviating measures to eliminate groundwater contamination and backup.		YES	

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

Appendix 4B
Subdivision Filing and Plan Requirements

	A	B	C	D	E	F	G	H
1								
2	General Filing Requirements	Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
		Two completed applications signed by the owner(s) or an agent authorized in writing by the owner to do so (such written authorization must also be submitted when filing the plan). All applications to the Board are to be signed by the owner of record or his authorized representative. Proof of authorization shall be submitted.	YES	YES	YES	YES	YES	
3		Two copies of the list of waivers being requested.				YES	YES	
4		Two copies of the municipal lien certificate from the Town Treasurer indicating that all taxes, assessments and charges have been paid in full . The applicant shall be responsible for the cost of obtaining such certificate.	YES			YES	YES	
5		A filing fee consistent with the fee schedule.	YES	YES	YES	YES	YES	

HARWICH CODE

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
6	General Filing Requirements (cont'd)	<i>Copies of the plans, profiles and supporting documents as follows:</i>						
7		One original on Mylar or suitable material for Registry/Land Court.	YES				YES	
8		Six full size: 24 inches by 36 inches standard, with a 1/4 inch border, at a scale of not smaller than 1 inch equals 40 feet horizontal; 1 inch equals 4 feet vertical on profiles.	YES		YES	YES	YES	YES 3 copies
9		Eleven reduced copies no smaller than 8 inches by 11 inches and no larger than 11 inches by 17 inches with a 1/4 inch border.		YES	YES	YES	YES	
10		Two copies of the plan prepared at a scale of 1 inch equals 100 feet. The plan shall include the lot numbers and lot areas in acres. Distances and bearings need not be shown.	YES			YES	YES	
11		The proposed system of drainage, including adjacent existing natural waterways, in a general manner.				YES		

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
12	General Filing Requirements (cont'd)	Two copies of drainage calculations stamped and signed by registered professional engineer along with a topographic plan delineating contributing areas.					YES	
13		Three proposed roadway names shall be submitted. Duplicate roadway names or names similar to existing roadway names shall not be considered.				YES	YES	
14		A computer compact disc containing a file of the subdivision in either .DWG or .DXF file format.					YES	
15	General Plan Contents	Names and addresses of owner(s) of record, petitioner(s) and property deed and plan references.	YES	YES	YES	YES	YES	
16		Assessor's map and parcel; zoning districts.	YES	YES	YES	YES	YES	
17		The name (or names) of the registered professional engineer and/or land surveyor, along with their seal or certification, as applicable, and signatures of each person responsible for the preparation of the plan.	YES			YES	YES	

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	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
18	General Plan Contents (cont'd)	Names, deed and plan references of all direct abutters as they appear in the most recent tax list and approximate location of intersecting boundary lines of the abutting land.	YES	YES	YES	YES	YES	
19		Zoning Compliance Table – see Table 6.	YES	YES	YES	YES	YES	
20		Legend of all symbols.	YES	YES	YES	YES	YES	YES
21		Title block: the subdivision name and respective plan title, i.e., "Definitive," "As-Built" or "Revised," and date of plan preparation and revisions.				YES	YES	YES
22		Scaled locus map sufficient to determine the actual location of the property in question and showing the intersection of 2 major roads.	YES	YES	YES	YES	YES	
23		Plan scale, graphic scale and North arrow.	YES	YES	YES	YES	YES	
24		If multiple sheets are used, they shall be accompanied by an index showing the entire subdivision.	YES	YES	YES	YES	YES	
25		Notations indicating any variances granted for the property.	YES			YES	YES	

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
26	General Plan Contents (cont'd)	Notation stating: "There is no implied compliance with zoning."	YES					
27		Notation stating: "Covenant to be filed with plan."					YES	
28		Notations stating approval and/or restrictions of the Board of Health.					YES	
29		Town Clerk certification note.						
30		Planning Board signature block.						
31		Box for recording date of preliminary application, date of preliminary approval, date of definitive approval, date of definitive approval and date of endorsement of definitive.					YES	
32		Total area and dimensions of the parcel.						
33	Lots, Ways and Bounds	Gross area of wetlands and uplands for the total parcel in square feet, acres and percentage.	YES			YES	YES	
34		Net area of each lot, including upland and wetland in square feet and acres; also in percentage for clusters.	YES			YES	YES	
35		Lot numbers to be noted on plan.	YES			YES	YES	

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	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
36	Lots, Ways and Bounds (cont'd)	Location and setbacks of all existing buildings on lot(s).	YES			YES	YES	
37		The topography of the land.				YES in a general matter	YES in 2-foot increments	
38		Mark area(s) subject to the Wetlands Protection Act and approval and/or restriction of the Conservation Commission or the Planning Board (Six Ponds Special District).	YES			YES	YES	
39		Mark areas set aside for conservation and/or recreational use.				YES	YES	
40		The names, locations and widths of existing and proposed right-of-way lines of streets, ways, and easements and public areas within and adjacent to the subdivision.	YES			YES	YES	
41		Location, names and present widths of streets bounding or providing access to the subdivision from 1 or more corners of the subdivision parcel.						

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
42	Lots, Ways and Bounds (cont'd)	The approximate boundary lines of proposed lots, with approximate areas and dimensions.	YES			YES	YES	
43		Proposed location(s) of street bounds and property line bounds to be set.						
44		Location of all existing monuments sufficient to establish the roadway/lot lines.						
45		Benchmarks taken from USGS datum shall be established within the subdivision. Selection of the benchmark location shall be at a point that will not be disturbed during construction operations. All elevations shall be taken from the USGS datum. All benchmarks when available within 500 feet of the subdivision must be noted on plans and profiles.					YES	
46		Base flood elevation data shall be provided for all proposals where any portion of the subject property lies within the 100-year floodplain.						

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	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
47	Lots, Ways and Bounds (cont'd)	Bearings and distances to any Massachusetts Coordinate System point within 500 feet of the subdivision.					YES	
48		Sufficient data to determine the location, bearing and length of all straight segments of street, lot, easement and boundary lines. On curved segments the arc length, radius and tangent.	YES				YES	
49	Plan and Profile of Roadways	<i>The construction plan and profile of proposed roadway(s) shall include:</i>					YES	
50		Exterior lines of the proposed way and any intersecting way with sufficient data to determine location, direction and length.						
51		The plan shall delineate center line, edge of pavement, property corners and all other information necessary for the construction of the road.					YES	
52		Existing ground profile at the right side line in fine dotted line.					YES	
53		Existing ground profile at the left side line in fine dashed line.					YES	

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
54	Plan and Profile of Roadways (cont'd)	Existing ground profile at the center-line profile in fine solid line.					YES	
55		Proposed center-line profile in heavy solid line.					YES	
56		Proposed center-line grades (in %) shall be shown; vertical tangents and center-line elevations will be shown at 50-foot stations.					YES	
57		Proposed center-line elevation will be shown at points of vertical curvature (PVC), points of vertical intersections (PVI), points of vertical tangency (PVT), high or low points (whichever may apply) and at 25-foot stations on the vertical curve.					YES	
58		Proposed location(s) of street bounds to be set.					YES	
59		Size and location of existing storm drains, water mains, utilities and their appurtenances, including hydrants, within and adjacent to the subdivision.					YES	

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	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
60	Plan and Profile of Roadways (cont'd)	Proposed location, size, grade (in %), invert elevations and finished ground elevation (as applies) of all underground drainage structures, including but not limited to pipes, manholes, leaching pits, catch basins, etc., shall appear on the plan and profile in view in accordance with accepted engineering practice.					YES	
61		Location of deep soil test hole and percolation test. Include all soil logs and percolation rates.					YES	
62		Stopping sight distance for all vertical curves and intersections according to Table 1.				YES	YES	
63		Approximate limit of clearing.			YES	YES	YES	
64	Post-Approval Requirements	Performance guarantee (bond or covenant).					YES	
65		Evidence of recording decision and performance guarantee.					YES	
66		Completed inspection request form (Inspections 1 to 9).					YES	
67		Evidence of satisfactory performance (as-built), including:					YES	

SUBDIVISION OF LAND AND SITE PLAN SPECIAL PERMITS

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
68	Post-Approval Requirements (cont'd)	Final center-line profile and the "as designed" center line.						YES
69		Street lines, traveled ways, berms and sidewalks.						YES
70		Permanent monuments and boundary points.						YES
71		<i>All roadway drainage, including:</i>						YES
72		Basin and manhole rim and invert elevations.						YES
73		Structure type and size.						YES
74		Type and size of all other drainage such as underdrains, trenches, channels and detention/retention areas.						YES
75		Location of water mains, gate valves and hydrants.						YES
76		Location of gas mains and gates.						YES
77		Location of aboveground and underground electric components.						YES
78		Location of all easements, including drainage and slope.						YES

HARWICH CODE

	A	B	C	D	E	F	G	H
		Contents Required	ANR	Determination of Safe and Adequate Access	Satisfaction of Safe and Adequate Access	Preliminary	Definitive	As-Built
79	Post-Approval Requirements (cont'd)	Location of miscellaneous features installed within the street layout such as signs, lights, guardrail, etc.						YES
80		Location of ancient ways, historic walls, foundations, etc.						YES
81	Determination of Sales and Adequate Access	Narrative explaining the background and history of the way, its dimensions and general condition.		YES				
82		Backup information in the form of maps, plans, deeds, etc., shall also be filed.		YES				
83		Plan drawn to scale showing the location of the way relative to the subject lot and the boundaries of the road layout, if any.		YES				
84		One or more photographs of the subject way in its current condition.		YES				
85		Written confirmation from fire and police that access exists sufficient for emergency vehicles.		YES				
86		Written confirmation from the Department of Public Works that the roadway passes the private road inspection.		YES				

APPENDIX

DERIVATION TABLE

DERIVATION TABLE

Town of Harwich

Derivation Table of 2004 General Bylaws to 2009 Code

Article/Part From 2004 General Bylaws	Location in 2009 Code
Article I, Town Meeting	Ch. 271
Article II, Town Administration	
Part 1, General Provisions	Ch. 7, Art. IV
Part 2, Town Clerk	Ch. 7, Arts. II and IV
Part 3, Town Treasurer	Ch. 7, Art. II
Part 4, Selectmen	Ch. 7, Art. I
Part 5, Town Counsel	Ch. 7, Art. II
Part 6, Building Code Board of Appeals	Ch. 7, Art. III
Part 7, Board of Health	REP
Part 8, Planning Board	Ch. 7, Art. III
Article III, Public and Private Ways	Ch. 255
Article IV, Public Safety	
Part 1, Licenses, Permits and Fees	Ch. 164
Part 2, Inspection of Gas Piping and Gas Appliances	Ch. 110
Part 3, Rental of Dwellings - Regulations	Ch. 230
Part 4, Fences, Hedges and Shrubs	
§ 4-401	REP
§ 4-402	REP; see now § 325-17
Part 5, Boating and Water Skiing	Ch. 47, Art. I
Part 6, Launching, Operation and Beaching of Boats	Ch. 47, Art. II
Part 7, Beach Parking	Ch. 40
Part 8, Crimes and Punishments	
§§ 4-801, 4-801A, 4-802 and 4-803A	Ch. 247
§ 4-803	Ch. 164

NCM = Not Code material (legislation is not general or permanent in nature).

REP = Repealed effective with adoption of Code; see Ch. 1, Art. II.

NI = Not included in Code but saved from repeal.

NLP = New legislation is pending.

HARWICH CODE

Article/Part From 2004 General Bylaws	Location in 2009 Code
Article IV (continued)	
§§ 4-804, 4-805 and 4-810	Ch. 214
§ 4-806	Ch. 18, Art. I
§§ 4-807 and 4-808	Ch. 189
§ 4-809	Ch. 293
§ 4-811	Ch. 47, Art. I
§ 4-812	REP
§ 4-813	REP
§ 4-814	Ch. 40
§ 4-815	Ch. 176, Art. I
Part 9, House Numbering	Ch. 53
Part 10, Mechanical Protection Devices and False Alarms	Ch. 14
Part 11, Fire Prevention	Ch. 100
Part 12, Water Supply Emergency	Ch. 300, Art. I
Part 13, Parking for People with Disabilities	Ch. 208, Art. I
Part 14, Water Use Restriction Bylaw	Ch. 300, Art. II
Part 15, Prohibition on the Storage and Use of Materials Containing Perchlorate	Ch. 122, Art. I
Article V, Historic District Commission	Ch. 131
Article VI, Alarm Systems, Regulations and False Alarms	Ch. 14
Article VII, Wetlands Protection	
Part 1	Ch. 310
Part 2, Water Dependent Structures	Ch. 304
Article VIII, Noncriminal Disposition of Violations	Ch. 1, Art. I
Article IX, Cultural Council	REP
Article X, Animal Control Bylaw	Ch. 26

NCM = Not Code material (legislation is not general or permanent in nature).

REP = Repealed effective with adoption of Code; see Ch. 1, Art. II.

NI = Not included in Code but saved from repeal.

NLP = New legislation is pending.

DERIVATION TABLE

Article/Part From 2004 General Bylaws	Location in 2009 Code
Article XI, Community Preservation Committee Bylaw	Ch. 7, Art. III
Article XII, Harwich Right to Farm Bylaw	Ch. 89, Art. I

NCM = Not Code material (legislation is not general or permanent in nature).
REP = Repealed effective with adoption of Code; see Ch. 1, Art. II.
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DISPOSITION LIST

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Harwich adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last legislation reviewed for the original publication of the Code was Art. No. 9 of the May 2008 Special Town Meeting.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
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