

HARDWICK ZONING BYLAW

PROPOSED AMENDMENTS

DRAFT: NOVEMBER 17, 2007

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1.4 Definitions

Existing Definitions

1.4.01 Accessory Building and Use: A building devoted exclusively to a use as an accessory to the principal use of the lot on which it is located. Accessory use: a use incidental and subordinate to and on the same lot as a principle use.

1.4.02 Family: Any number of individuals, including domestic employees, living together in a dwelling unit and living as a single non-profit housekeeping unit; provided that a group of five (5) or more persons who are not within the second degree of kinship to each other, as defined by civil law, shall not be deemed to constitute a family.

1.4.03 Non-Conforming Use: A use of a building or lot that does not conform to a use regularly permitted by this bylaw for the district in which it is located but was in existence at the time of the adoption of the bylaw and was lawful at the time it was established.

1.4.04 Non-Conforming Lot: A lot which is not in accordance with all of the provisions of the bylaw but was in existence at the time of the adoption of the bylaw and was lawful at the time it was established.

~~1.4.05 Housing for the Elderly**~~

~~The term "Housing for the Elderly" shall mean housing for people whose age and income characteristics are such that they would qualify for housing which is constructed or rehabilitated or remodeled and sold, rented, or leased by the Hardwick Housing Authority, or a non profit organization, or a limited dividend organization. Such housing is regulated and financially assisted by agencies of the government of the United States or of the Commonwealth of Massachusetts under programs whose purpose is to provide housing for the handicapped and for older people of low or moderate income. The terms "elderly", "handicapped", "low income", "moderate income", and "limited dividend organization" shall have meanings defined in the programs or laws administered by such agencies.~~

Proposed New Definitions

Accessory Apartment: A separate housekeeping unit, complete with its own sleeping, cooking and sanitary facilities, that is substantially contained within the structure of a single family dwelling but functions as a separate unit.

Bed And Breakfast Inn: A dwelling in which overnight accommodations of not more than five (5) rooms are provided to tourists for compensation. The only meal to be provided shall be breakfast, and it shall only be served to guests taking lodging in the facility.

Boarding or Lodging House: A building arranged or used for lodging for compensation, with or without meals, not open to transient guests, and not occupied as a single dwelling unit.

Club or Lodge, Private: Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational or athletic purposes. Activities are not conducted primarily for gain and there shall be no merchandising or commercial activities except as may be required generally for the membership and purposes of such organization.

Community Center: A building used as a place of meeting, providing religious, fraternal, social or recreation programs, not operated for profit, and in which neither alcoholic beverages nor meals are normally dispensed or consumed.

Conference Center: A facility used for service organizations, business and professional conferences, and seminars limited to accommodations for conference attendees. The accommodations can include sleeping, eating and recreation. A conference center is not designed for use by the general public for overnight purposes.

Day Camp: The use of a site for provision of indoor or outdoor activities for children, including sports, arts and crafts, entertainment, recreation, educational activities, swimming, fishing, horseback riding, and incidental food service, not including overnight accommodations for users.

Day Care Center: Any facility as defined in 102 CMR 7.02 which is operated on a regular basis whether known as a day nursery, nursery school, kindergarten, preschool or known under any other name which receives children, not of common parentage, under seven (7) years of age, or under sixteen (16) years of age if such children have special needs, for nonresidential care during part or all of the day separate from their parent(s). A day care center provides care for more than six (6) children and must be licensed by the Office of Children under state regulations (102 CMR 7.00:). See also Family Day Care Home.

Curb Cut/Driveway: An open space located on the lot to be served built for access to an attached or detached garage, or off-street parking or loading space, and which is not more than twenty-four (24) feet in width for residential two and three car garage purposes and not more than thirty (30) feet in width for general business purposes.

Driveway, Common: A driveway which provides access to more than one (1) lot, each of which has at least the minimum frontage required by this Bylaw. A common driveway does not qualify as a street for determining frontage under this Bylaw.

Dwelling: A building, or any part thereof, and its attendant premises, containing accommodations for permanent human occupancy.

Dwelling, Multifamily: Three or more dwelling units on a single lot, or in a single structure or set of contiguous structures, irrespective of ownership or tenure.

Dwelling, Single Family Detached: A building consisting of one (1) dwelling unit, occupying one (1) lot.

Dwelling, Two Family: A detached building designed for or occupied by two families, and so arranged to include both a “double house” in which the dwelling units are side by side, separated by a party wall, or a “duplex house” in which part of one dwelling unit is over part of the other unit.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Electric Generating Facilities: An electrical power generation facility that, regardless of fuel or energy source, is operated by a public utility or independent power producer and whose primary function is the provision of electricity to the electrical distribution system or transmission grid.

Family Day Care Home: As defined in 102 CMR 8.02 any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven (7) years of age or children under sixteen (16) years of age if such children have special needs; provided however, in either case, that the total number of children under sixteen (16) in a family day care home shall not exceed six (6), including participating children living in the residence. Family day care home shall not mean a private residence used for an arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

Farm Stand: A building or structure used for the retail sales of fresh fruits, vegetables, flowers, herbs or plants. A farm stand may also involve the accessory sales of other unprocessed foodstuffs, home processed food products such as jams, jellies, pickles, sauces or baked goods, and homemade handicrafts.

Hotel: Any building containing six or more guest rooms which are used, rented, or hired for sleeping purposes by transient guests and with access to units primarily from interior lobbies, courts or halls. A central kitchen and dining room and accessory shops and services catering to the general public can be provided. Related ancillary uses may include conference and meeting rooms, restaurants, bars, and recreational facilities. A hotel includes extended stay facilities in which a room or suite of rooms are regularly used or available for occupancy of continuous periods of 30 days or more by persons who use the hotel as their primary residence.

Inn: A building, which contains a dwelling unit occupied by an owner or resident manager, in which up to 10 lodging rooms and/or meals are offered to the general public for compensation, and in which entrance to bedrooms is made through a lobby or other common room. "Inn" includes such terms as "guest house," "lodging house," and "tourist house."

Kennel: One pack or collection of dogs, or domesticated animals, on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection of more than three dogs three months old or over owned or kept by a person on a single premises irrespective of the purpose for which they are maintained (per MGL 140, Sect. 136A). Please note that per MGL 140, Sect. 137A, anyone with more than three (3) dogs per above is also required to have a separate kennel license.

Commercial Manufacturing: Fabrication, assembly, processing, finishing work or packaging that are not noxious, offensive, or hazardous by reason of excessive noise, vibration, odors, dust, debris, gas, fumes, smoke, cinders, effluent, bright lights, or refuse. Business to consumer sales only.

Wholesale Manufacturing: Manufacturing for wholesale businesses that are not noxious, offensive, or hazardous by reason of excessive noise, vibration, odors, dust, debris, gas, fumes, smoke, cinders, effluent, bright lights, or refuse. Business to business sales only.

Motel: An establishment designed primarily for transient automobile travelers, offering lodging for compensation, where access to each dwelling unit or group of dwelling units is through an exterior door, and parking is provided immediately adjacent to each unit.

Nursing or Convalescent Home: Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

Residential Compound: A type of residential development limited to five lots that requires a Special Permit from the Planning Board pursuant to section 5.5.

Restaurant, Fast-Food: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the building or off premises and usually requires ordering food at a counter. Food items are usually served in paper, plastic or other disposable containers.

Self Storage Facility: A permanent set of structures designed as individual enclosed, self-contained storage areas that are made available to the public for the temporary keeping or storage of personal belongings and household goods. These shall be anchored to the ground via a foundation. The storage of noxious, flammable (oil, gas, propane, etc.), explosive, or other dangerous materials is prohibited.

Special Permit Granting Authority (SPGA): The board designated by this Bylaw to issue special permits. The Planning Board shall be the SPGA, unless the Board of Appeals is designated as the SPGA for specific uses.

Trucking or Freight Terminal: A building or area in which freight brought by truck is assembled and/or stored for routing or reshipment, or in which semi-trailers, including tractor and/or trailer units and other trucks, are parked or stored. The terminal may include areas for the fueling and repair of trucks associated with the terminal and similar ancillary activities.

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises.

1.5 Non-Conforming Properties and Uses

1.5.1 Continuation and Change

1. *This Zoning Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by M.G.L. c. 40A, §5 at which this zoning by-law, or any part thereof, was adopted.*
2. *If any non-conforming structure or use is changed to a conforming use, it shall not thereafter be put in any non-conforming use.*
3. *Construction or operations under a Building Permit or Special Permit shall conform to any subsequent amendment of this Bylaw, unless the use or construction is commenced within a period of six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.*

1.5.2 Non-Conforming Uses and Structures

1. *Any non-conforming building or structure destroyed by fire, flood, lightning, wind, or otherwise, may be restored or repaired as a matter of right, provided that such repair or restoration is begun within a period of not more than two years from the date of destruction or damage and the structure as restored or rebuilt shall not be in greater nonconformity with the provisions of this Bylaw.*
2. *If any non-conforming use of land or building or structure be discontinued is abandoned or not used for a period of not less than two years, such use or structure building or land shall thereafter be used only in accordance with the terms of this bylaw for the zoning district in which such property is located, except as may be allowed by Special Permit by the Planning Board of Appeals as provided in this section.*
3. *Alteration or Extension of Nonconforming Uses and Structures: By special permit of the Board of Appeals pursuant to § 10.6.2, pre-existing nonconforming structures or uses may be extended or altered, and upon a finding by the Board of Appeals that such extension or alteration shall not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood.*
4. *Single and Two-Family Residential Structures: The alteration, reconstruction, extension or structural change (collectively "alteration") to a non-conforming single or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted as of right if the proposed alteration, with the exception of the existing nonconformity, complies with the dimensional requirements of this Bylaw.*
5. *Increase of Nonconformity: The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, is prohibited. The extension of an exterior wall at or along the same nonconforming distance within a required yard shall constitute an increase in the nonconformity.*

2.0 Establishment of Districts

2.1 Classes of Districts

The Town of Hardwick is hereby divided into zoning districts as follows:

- ~~R-60 Rural Residential~~ ***AR-60 Agricultural-Residential***
- R-40 Neighborhood Residential
- V Village Residential
- I-40 Industrial
- C-40 Commercial, Light Manufacturing, Residential*

2.2 Intent of Districts

2.2.01 ~~R-60 Rural Residential Districts~~ ***AR-60 Agricultural-Residential Districts***

3.0 Use Regulations

3.1 Basic Requirements

No building shall be erected or used and no land shall be used or divided unless in conformity with the regulations in Section 3.2 of this bylaw and in accordance with the notation system below. All other building and all other uses of land or building are hereby expressly prohibited, except those buildings and uses already lawfully existing which by the provisions of this bylaw become lawfully non-conforming. The construction of multi-family dwellings other than those allowed in Section 3.2 is expressly prohibited.

3.2 Schedule of Use Regulations

Y - Use Permitted

SP - Use Allowed by Special Permit issued by the Planning Board

R - Use Authorized after Site Plan Review by the Planning Board

N - Use Prohibited

<u>Use</u>	<u>District</u>				
	AR-60	R-40	V	I-40	C-40
3.2.1 Agricultural Uses					
1. Use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture on a parcel of more than five acres in area	Y	Y	Y	Y	Y
2. Use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture on a parcel of less than five acres in area.	Y	Y	SP	SP	SP
3. Farm stand for the sale of produce, and wine and dairy products, provided that during the months of June, July, August and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, provided such land contains at least five acres in V, I-40, and C-40.	Y	Y	Y	Y	Y
4. The stabling and boarding of horses, horse riding trails, and riding academies on parcels less than five acres	Y	Y	SP	N	SP
5. Veterinary clinics	SP	SP	SP	SP	SP
3.2.2 Residential Uses					
1. Single family detached dwelling	Y	Y	Y	N	Y
2. A conversion within present dimensions of a single-family dwelling having at least 6 rooms exclusive of hallways existing prior to July 20, 1976 to a 2-family	Y	Y	Y	N	Y

<u>Use</u>	<u>District</u>				
	AR-60	R-40	V	I-40	C-40
dwelling					
3. That a new 2-family dwelling may be constructed provided that the lot has 50% more than the minimum lot size and 50% more than the minimum lot frontage as required by Section 4.2 of this bylaw	Y	Y	Y	N	Y
4. Senior Residential Development Housing for the Elderly (Refer to Section 5.4.)	N	N	SP	N	SP
5. Accessory apartment (Refer to Section 5.9.)	R	R	R	N	R
6. Multi-family dwelling	N	N	SP	N	SP
7. Dwelling units over first floor commercial uses	SP	SP	Y	N	Y
8. Open space subdivision (Refer to section 5.2.)	Y	Y	Y	N	N
9. Residential compound (Refer to section 5.5.)	SP	SP	N	N	N
10. Mobile home (except in case of fire as defined by MGL 40A, Sect. 3)	N	N	N	N	N
3.2.3 Institutional and Recreational Uses					
1. Any religious or educational uses exempt under Chapter 40A, §3 of the General Laws.	R	R	R	R	R
2. Municipal Uses	SP	SP	SP	SP	SP
3. Private schools and dormitories not exempted by Chapter 40A, §3 cemeteries, public service corporations, libraries, hospitals, nursing homes, day nurseries, day camps, recreational facilities, campgrounds, licensed kennels, community centers, and other similar uses.	SP	SP	SP	SP	SP
4. Cemetery	R	R	R	R	R
5. Day care centers	R	R	R	R	R
6. Day camps	SP	SP	SP	N	N
7. Country club, golf course, driving range, and miniature golf	SP	SP	N	N	SP
8. Museum, community theater, performing arts center	SP	SP	SP	SP	SP
9. Privately owned , or non-profit recreational facilities and camp-grounds, including those for recreational vehicles and summer camps for children	SP	SP	N	N	N
10. Other recreational facilities conducted for profit, including physical fitness centers, bowling alleys, health clubs, and indoor sports facilities	N	N	SP	SP	SP

<u>Use</u>	<u>District</u>				
	AR-60	R-40	V	I-40	C-40
11. Private lodge, club, or philanthropic organization	SP	SP	SP	SP	SP
12. Community Centers	SP	SP	SP	SP	SP
3.2.4 Business Uses					
7. Commercial use such as retail stores, offices, highway services, food establishments, and other similar uses. (3)	SP	SP	SP	N	SP
10. Commercial, retail business, light manufacturing and moderate density residential purposes. (4)	SP	SP	SP	SP	SP
1. Retail sales, under 3,000 sq. ft.	SP	SP	SP	SP	SP
2. Retail sales, 3,000 – 10,000 sq. ft.	N	N	SP	SP	SP
3. Retail sales, greater than 10,000 sq. ft.	N	N	N	N	N
4. Hospitals and clinics for in- and out-patient care	N	N	SP	SP	SP
5. Banks and financial institutions	N	N	SP	SP	SP
6. Automatic Teller Machine (ATM), whether free-standing or attached	N	N	R	R	R
7. Professional or administrative uses, and office of licensed medical and dental practitioners limited to general out-patient care and diagnosis	SP	SP	SP	SP	SP
8. Conference center	N	N	N	SP	SP
9. Hotel or Inn	N	N	SP	SP	SP
10. Motel	N	N	N	N	SP
11. Personal and consumer service establishments, such as barber and beauty shops, shoe repair, laundry or dry cleaning establishments, massage parlor, etc.	SP	SP	SP	SP	SP
12. Gasoline service stations, and motor vehicle repair garages that may include a convenience store and/or drive-through window for sale of coffee, donuts and similar foods	N	N	SP	SP	SP
13. Car wash establishments	N	N	N	SP	SP
14. New or used car and truck dealers, automobile rental establishments	N	N	N	SP	SP
15. Sales and service of agricultural and construction equipment, boats, and recreational vehicles.	N	N	N	SP	SP
16. Fast food restaurants, that may provide drive-through service, including such uses as donut shops, hamburger	N	N	SP	SP	SP

<u>Use</u>	<u>District</u>				
	AR-60	R-40	V	I-40	C-40
stands, etc.					
17. Pubs, sit-down restaurants, and pizza parlors dispensing food to be consumed within the building, or for take home dining, but may not contain a drive-thru	SP	SP	SP	SP	SP
18. Funeral homes	SP	SP	SP	SP	SP
19. Adult Entertainment Establishments as defined in M.G.L. c. 40A, §9A (Refer to Section 5.6)	N	N	N	N	SP
20. Wholesale Manufacturing: Manufacturing for wholesale businesses that are not noxious, offensive, or hazardous by reason of excessive noise, vibration, odors, dust, debris, gas, fumes, smoke, cinders, effluent, bright lights, or refuse. Business to business sales only.	SP	N	N	Y	Y
21. Kennels (per MGL 140, Sect. 136A)	SP	SP	N	SP	SP
22. Nursing home	SP	SP	SP	SP	SP
23. Boarding house for more than 4 persons	N	N	SP	N	SP
24. Bed and breakfast inn (Refer to section 5.8.)	SP	SP	SP	N	SP
3.2.5 Communications, Transportation and Public Utility Buildings					
1. Wireless Communications Facilities (Refer to Section 12.)	SP	SP	SP	SP	SP
2. Communications tower for federally licensed amateur radio operator	R	R	R	R	R
3. Radio and television broadcasting facilities	N	N	N	SP	SP
4. Rail terminals, including rail freight yards or freight terminals	N	N	N	SP	N
5. Oil, coal, gas, nuclear, and wood electric generating facilities	N	N	N	N	N
6. Solar, hydroelectric, wind (to comply with height, rated nameplate capacity, and other criteria as permitted by Section 14.0) and other renewable energy facilities	SP	SP	SP	SP	SP
7. Electric distribution station or sub-station	SP	SP	SP	SP	SP

3.2.6 Industrial Uses					
1. Commercial Manufacturing: Fabrication, assembly,	SP	SP	SP	Y	SP

processing, finishing work or packaging that are not noxious, offensive, or hazardous by reason of excessive noise, vibration, odors, dust, debris, gas, fumes, smoke, cinders, effluent, bright lights, or refuse. Business to consumer sales only.					
2. Scrap metal and other materials storage yards including scrap automobiles and trucks	N	N	N	N	N
3. Truck terminals, truck freight yards or freight terminals	N	N	N	SP	N
4. Facilities engaged in disposal or transportation of hazardous, medical or biological waste	N	N	N	N	N
5. Saw mill or lumber producing facility, including incidental sales of wood products produced at the site	SP	SP	N	SP	SP
6. Temporary sawmill for not more than 30 days	Y	Y	N	Y	Y
7. Fuel oil dealers, fuel storage or distribution facility	N	N	N	SP	SP
8. Contractor's yards	SP	SP	N	SP	SP
9. Self-storage facility	N	N	N	SP	SP
10. Recycling facility or transfer station for locally-generated solid waste	N	N	N	Y	N
11. Earth removal greater than 100 cubic yards, unless exempted by section 9.2.	SP	SP	N	SP	SP
3.2.7 Accessory Uses					
1. Accessory buildings and uses including but not limited to garages, greenhouses, and swimming pools	R	R	R	R	R
2. Wind energy conversion system subject to height, rated nameplate capacity limits, and other restrictions as per Section 15.0 of this bylaw	SP	SP	SP	SP	SP
3. Family day care home	R	R	R	R	R
4. Construction trailer only for office and storage use during construction	Y	Y	Y	Y	Y
5. Cafeteria, fitness center, or exercise facility as an accessory use to a business or industrial use	N	N	Y	Y	Y
6. Home Businesses (Refer to Section 5.10)	R	R	R	R	R

4.0 Land Intensity Regulations

4.1 Basic Requirements

No building or structure shall be built nor shall any existing building or structure be enlarged or altered except in conformance with the regulations set forth in Section 4.2 of this bylaw.

4.2 Schedule of Land Intensity Regulations for Buildings and Structures

<u>Zoning Dist.</u>	<u>Min. Lot Size</u>	<u>Min. Lot Front</u>	<u>Min. Yard Depth (Ft.)</u>			<u>Max. Ht.</u>
			Front a	Rear	Side b	
AR-60	Sq. Ft. 60,000	Ft. 200	35	40	20	35
R-40	40,000	150	35	40	20	35
V	20,000	100	25	30	20	35
Housing for the Elderly	80,000	200	50	50	50	35
Industrial I-40	40,000	200	60	50	50	35
C-40	40,000	150	35	40	20	35

Notes:

To be measured from the right of way where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel with the center of the line of the traveled way.

On lots abutting streets on more than one side, the front yard shall apply to each of the yards of the abutting streets. All other frontages will be contiguous.

The limitation on height may be waved by Special Permit if it is determined that it is in the best interest of the town to do so.

5.0 Special Regulations

5.1 ~~Special Permits~~

(Ed. Note: This section 5.1, Special Permits, is being replaced with a new Section 10.6.2.)

5.1.01 ~~Granting Authority~~

~~The Planning Board shall be the Special Permit Granting Authority. Each application for a special permit shall be filed by the petitioner with the Town Clerk and a copy of said application including the date and time of the filing certified by the Town Clerk shall be filed forthwith by the petitioner with the special permit granting authority.~~

5.1.02 ~~Notice of Hearing~~

~~Notice of a public hearing, to be held within 65 days of application, shall be given by the Planning Board in the manner prescribed in Section 11 of Chapter 40A of the General Laws.~~

5.1.03 ~~Site Plan Review~~ *(Ed Note: See new Site Plan Approval section 5.1 starting on the next page.)*

~~A site plan shall be provided to the Planning Board at the Public Hearing. Such site plan review shall be in accordance with standards and procedures adopted by the Planning Board and is on file with the Town Clerk. Any or all of the standards may be waived by the Planning Board.~~

5.1.04 ~~Report and Conditions~~

~~A building permit shall not be issued in a case requiring a special permit unless such approval has been obtained from the Planning Board. The Planning Board may impose conditions to the special permit as to time and use. The applicant for a special permit shall be notified within 90 days from the date of the hearing of action taken or approval will be assumed. A special permit shall lapse unless substantial use or construction has commenced within two years except for good cause. A building permit or special permit shall conform to any subsequent amendment to this bylaw unless the use or construction has commenced within 6 months of issue and such construction is continued as expeditiously as reasonable.~~

5.1.05 ~~Review~~

~~In reviewing each such application, the Planning Board shall study the site plan with reference to the health, safety, and welfare of the prospective occupants of neighboring properties and users of adjoining streets or highways, and the welfare of the Town generally including its amenities. The Board will consider the following factors:~~

- ~~1. Whether the use is consistent with the purpose of the bylaw.~~
- ~~2. Whether the location, intensity, and size of the proposed use is consistent with orderly development of the area and compatible with other existing uses.~~
- ~~3. Whether the kind, size, and height of the structures and respective landscaping will not hinder or discourage the appropriate use of adjoining property.~~
- ~~4. Whether adequate parking and loading facilities are available and that driveways are laid out to~~

~~achieve maximum safety.~~

- ~~5. Whether streets providing access to the property have adequate width, grade, alignment, and visibility for the proposed use.~~
- ~~6. Whether the property has accessibility for fire apparatus and police protection.~~
- ~~7. Whether the proposed use will not detract from the unique natural and historic features of the adjoining properties.~~
- ~~8. Whether the proposed use will not adversely affect the health, safety, and welfare of people residing or using the property of the proposed use or adjoining property.~~
- ~~9. Whether the proposed use has adequate storm water drainage, sewage disposal, and garbage disposal.~~
- ~~10. Whether the proposed use has lighting, noise levels, and outside storage that is not detrimental to the neighborhood.~~

5.1 Site Plan Approval

5.1.1 Purpose: The purpose of this section is to provide for a comprehensive review of site plans for those uses and structures that may have a significant impact on adjacent properties, the Town's character, infrastructure, environment and quality of life. Before applying for a building permit, all projects requiring site plan review, as required by this Bylaw, shall have obtained site plan approval from the Planning Board.

5.1.2 Uses Requiring Site Plan Review and Approval: These site plan approval provisions shall apply to the following types of structures and uses:

1. New construction of all uses identified with the symbol "P" in Section 3.2 of this Bylaw, the Use Regulation Schedule.
2. Expansion of any existing use requiring Site Plan Review as identified with the symbol "P" in Section 3.2 resulting in a floor space increase of twenty-five (25%) percent or three thousand (3,000) square feet, whichever is less.
3. For all uses identified with the symbol "SP" in Section 3.2., a site plan shall also be submitted to the Planning Board as part of an application for a special permit.

5.1.3 Site Plan Review Procedure

- 1. Filing:** An applicant for site plan approval shall file with the Planning Board, at a regularly scheduled meeting, ten (10) copies of the site plan and any supporting documents. The applicant shall also file a copy of the site plan with the Town Clerk.
- 2. Submission Requirements:** Site plans shall be prepared by a registered professional engineer, architect or landscape architect at a scale of 1" = 40' on standard 24" x 36" sheets, (or such other scale or size as the Planning Board may accept) unless this requirement is waived by the Planning Board because of unusually simple circumstances. The site plan shall show the following information:

1. Name of the project, property boundaries, location map, date, north arrow and scale, and the name and address of the owner and registered engineer, architect or landscape architect who prepared the plan.
2. Ownership of the abutting land as indicated on the most recent Town Assessors' records, and location of buildings thereon, within three hundred feet (300') of the property lines.
3. The location of all existing and proposed buildings and structures within the development, including dimensions, height and floor area.
4. The zoning district of the site and the required zoning setback lines on the property.
5. The location of all existing and proposed roads, driveways, parking and loading areas, sidewalks, fences and walls; and the number of parking and loading spaces provided.
6. Service areas, exterior storage areas, waste disposal facilities, and proposed measures to screen them from public view.
7. The location, height, size, and design of all proposed signage and lighting fixtures.
8. Proposed landscaping, including the size and type of plant material.
9. The location of existing and proposed utility systems, including water supply, public sewer or septic system, storm drainage system, and other utilities.
10. Existing and proposed topography at two (2) foot contour intervals, including natural features, water courses, wetlands and the 100-year flood plain.
11. The location where earth removal or filling is proposed and the volume of material to be removed.
12. Elevations for all exterior facades of the proposed structure including the type and color of materials to be used.

Upon written request from the applicant, the Planning Board may waive the submission of such information, plans, studies or analyses, or parts thereof of the above requirements, as may not be necessary for the consideration of the application. The Board's decision shall be in writing and be made part of the record.

3. **Plan Review:** Prior to site plan review, the applicant shall submit one copy of said application and plan to all appropriate boards, committees, and commissions (Board of Health, Conservation Commission, Building Inspector, applicable Water and Sewer Department, Highway Surveyor or their designee, Board of Selectmen, and other boards or officials as deemed necessary, and others as needed) for their review and recommendations to be sent to the SPGA in accordance with MGL Chapter 40A.
4. **Review Fees:** The Planning Board is authorized to retain a professional engineer, architect, landscape architect or other professional consultant to advise the Board on any and all aspects of the site plan. The applicant shall pay the fee at the time of plan submission. The Planning Board shall adopt a fee schedule that accurately reflects the cost of reviewing site plans and regulations regarding the use of outside consultants.
5. **Decision:** The Planning Board shall deliver its written decision to the Building Inspector and Town Clerk within sixty (60) days of the receipt of the site plan application. This time limit may be extended by written agreement between the applicant and the Board. Failure of the Planning Board to take final action within sixty (60) days, or extended time, shall be deemed to be approval of the application as submitted. The Planning Board's final action shall consist of either:

1. Approval of the site plan based on a determination that the proposed project will constitute a suitable development and will not result in substantial detriment to the neighborhood or the Town.
2. Disapproval of the site plan with an explanation of the reasons for such disapproval and the elements of the proposal that are deemed by the Planning Board to be inadequate, unsuitable or detrimental to the neighborhood or the Town.
3. Approval of the site plan subject to such reasonable conditions, modifications and restrictions as the Planning Board may deem necessary to insure that the proposed project will constitute a suitable development and will not result in substantial detriment to the neighborhood or town.

5.1.4 Uses Also Requiring a Special Permit: In cases where a development requires both site plan review and a special permit from the Planning Board, the applicant shall file a combined site plan and special permit application with the Board and the Town Clerk. Procedures for granting special permits as provided in Section 10 shall govern.

5.1.5 Criteria for Approval: The Planning Board shall review all proposed site plans to insure conformance with the following standards and criteria:

1. Conformance with all the provisions of the Hardwick Zoning Bylaw;
2. Provisions for convenient and safe vehicular and pedestrian movement within the site, for driveway openings that are convenient and safe in relation to the adjacent street network, and for adequate emergency vehicle access;
3. Provisions for adequate parking and loading spaces, and site design that minimizes visual intrusion of these areas from public ways;
4. Landscaping measures taken to screen the appearance of off-street parking areas from abutting properties and to create visual and noise buffers that minimize the encroachment of the proposed use on neighboring land uses;
5. Adequate provision for controlling surface water runoff to minimize impacts on neighboring properties and streets and to prevent soil erosion and sedimentation of any surface waters;
6. Measures taken to minimize contamination of ground water from sub-surface sewage disposal and operations involving the use, storage, handling, or containment of hazardous substances;
7. Protection of adjoining property or the Town from any undue disturbance caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, glare, etc.

5.1.6 Site Plan Conditions: The Planning Board may impose conditions, safeguards and limitations on time and operations as may be appropriate for the protection of the natural environment, the neighborhood, and the Town. Such conditions shall be imposed in writing in the site plan approval decision and shall be enforced by the Building Inspector. The applicant may be required to post a bond or other security in an amount satisfactory to the Planning Board for compliance with these conditions.

5.1.7 Modification to an Approved Site Plans

1. In the event a modification is requested to an approved site plan, the applicant shall submit to the Planning Board a written description of the proposed modifications and twelve (12) copies of the revised plan showing such modification. Modifications will be subject to the same review procedures as the original filing.
2. For small and insignificant modifications, the Planning Board may waive one or more requirements if it determines that the proposed changes will have no significant impact on the abutters, the neighborhood or the Town. However, modifications to special permits shall require the issuance of a new special permit. Such a determination shall be made only after a written request and ten (10) copies of the plan showing the modifications have been submitted to and reviewed by the Planning Board. A determination that the modification does not require a public hearing shall be made by the Planning Board within twenty-one (21) days of receipt of the written request and plans. A copy of the determination and revised plans shall be filed with the Town Clerk and Building Inspector. Failure to act within twenty-one (21) days on the request for determination shall be deemed as approval.

5.1.8 Performance Guarantee

The Planning Board may require the posting of a bond or other similar performance guarantee to ensure compliance with the plan and stated conditions of approval. It may suspend any permit or license when work is not performed as required.

5.2 Open Space Subdivision

In AR-60, R-40, and Village districts, as an alternative to a conventional subdivision, an applicant may subdivide their property in accordance with the following procedures and requirements by-right upon approval of the Planning Board pursuant to its Subdivision Rules and Regulations and the Subdivision Control Law, MGL c. 41 §88K-81GG.

5.2.1 Purpose

The primary purposes of an Open Space Subdivision, hereafter OSS, are:

1. To advance the goals and policies of the *Hardwick Master Plan* and the *Hardwick Open Space and Recreation Plan*.
2. To allow for greater flexibility and creativity in the design of residential developments.
3. To facilitate the permanent protection of open space, agricultural land, and natural, historic, and scenic resources.
4. To maintain the town's traditional character and land use pattern in which small villages contrast with open land.
5. To encourage a more economical and efficient form of development that is less sprawling, consumes less open land, does not tax community services unduly, respects a site's physical characteristics and minimizes the total amount of disturbance on the site.
6. To protect scenic vistas from the town's roadways and other places.

5.2.2 Procedures

5.2.2.1 Pre-Application: Applicants are encouraged to meet with the Planning Board at a pre-application conference to consider general development approaches prior to the submission of a complete application.

5.2.2.2 Filing: Each application for an Open Space Subdivision shall be filed with the Planning Board and the Town Clerk in accordance with the provisions of this Section 5.2 and with the Board's Subdivision Regulations.

5.2.2.3 Plan Submission: Applicants shall submit two plans complying with the requirements for a Preliminary Plan as specified in the Planning Board's Subdivision Rules and Regulations: an Open Space Subdivision Plan and a Conventional Subdivision Plan. The Conventional Subdivision Plan shall determine the number of building lots that could reasonably be expected to be built upon in consideration of site conditions and in conformance with all applicable development requirements of the Town and state. The total number of lots or dwelling units in an Open Space Subdivision shall not exceed the number of lots in a Conventional Subdivision Plan as determined by the Planning Board.

Applicants shall file with the Planning Board five copies of the following, to have been prepared by an interdisciplinary team including a registered land surveyor, a professional engineer and a registered architect or landscape architect.

1. The conventional subdivision plan and open space subdivision plan, indicating in a general manner the configuration of access, lots, building siting, reserved open space, landscaping, drainage and utilities, consistent with the drawing requirements for a preliminary subdivision plan under the subdivision regulations of the Hardwick Planning Board.
2. Narrative and tabular materials describing the proposal, including the number and size of dwelling units; proposed project phasing; and any provisions being made to target special occupancies, such as for the elderly or for affordable housing.
3. The maps and supporting documentation as specified in section 5.2.3.4 below, Design Process.

5.2.2.4 Design Process: Each development plan shall follow the design process outlined below. Each applicant shall submit to the Planning Board its analysis for each step to demonstrate that this design process was followed in determining the layout of proposed streets, house lots, and protected open space.

1. *Evaluating Site Context.* The first step is to evaluate the site in its larger context by identifying physical features, (e.g., stream corridors, wetlands, land forms), transportation systems, (e.g., road and bicycle networks), and cultural assets, (e.g., recreational sites, historic and archaeological resources), and surrounding land uses and activities.
2. *Understanding the Site.* The second step is to inventory and map existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other. These resources include wetlands, riverfront areas, floodplains, steep slopes, mature woodlands, hedgerows, unique or special wildlife habitats, historic or cultural features (such as old buildings or stone walls), unusual geologic formations and scenic views into and out of the property.
3. *Designating Open Space to be Preserved.* The third step is to identify the open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
5. *Lot Lines.* The final step is to draw in the lot lines to enable a comparison of the Conventional and Open Space Subdivision Plans. The Conventional Subdivision Plan shall show lots that comply with the dimensional requirements of section 4.2, Schedule of Land Intensity Regulations. The number of lots shown on that Plan and approved by the Planning Board as buildable lots shall be the maximum number of lots permitted on the Open Space Subdivision Plan. Lots in the Open Space Subdivision may have reduced dimensional requirements in accordance with section 5.2.3 below.

5.2.2.5 Planning Board Decision: After reviewing the two development plans, the Planning Board shall determine if the Conventional Plan or Open Space Subdivision Plan shall be the preferred form of development on the site. The applicant shall then proceed to prepare a Definitive Plan complying with the Planning Board's Subdivision Rules and Regulations and seek approval by the Board of a subdivision.

5.2.2.6 Relationship to Subdivision Control Law: Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of this Bylaw or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provisions of the Subdivision Control Law.

5.2.3 Dimensional Requirements

5.2.3.1 Minimum Requirements: Building lots for single-family dwellings within an Open Space Subdivision shall conform to the following Dimensional Requirements:

Zoning District	Minimum Lot Size (sq. ft.)	Minimum Lot Frontage (Ft.)	Minimum Yard Depth			Max. Height (Ft.)
			Front (a)	Rear	Side (b)	
AR-60	20,000	100'	25'	25'	20'	35'
R-40	15,000	80'	20'	20'	15'	35'
V	12,000 ¹	65'	10'	15'	10'	35'

¹ Building lots may contain 12,000 square feet if connected to a public sewer system.

5.2.3.2 Types of Buildings. Dwellings may consist of any combination of single-family, two-family and attached residential structures (townhouses). Attached dwellings shall not contain more than five (5) dwelling units. The number of dwelling units permitted shall not exceed that otherwise determined by the Planning Board according to the procedures of section 5.2.2 above.

5.2.4 Open Space Requirements

5.2.4.1 A minimum of thirty (30%) percent of the land area in an Open Space Subdivision shall be permanently protected open space and shall be suitable for recreation, agriculture, or open space uses. The Planning Board may require that at least fifty (50%) percent of the open space to be free from wetlands as defined in the Wetlands Protection Act.

5.2.4.2 The location of open space provided in an Open Space Subdivision shall be consistent with the policies contained in the Town’s *Master Plan* and the *Open Space and Recreation Plan*. The following design requirements shall apply to open space provided through this bylaw:

1. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred (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.
2. 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 archeological sites, and to avoid development in hazardous areas such as flood plains and steep slopes. The development plan shall take advantage of the natural topography of the parcel, and cuts and fills shall be minimized.
3. 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.

4. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one hundred (100) foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
5. The maximum number of dwelling units compatible with good design shall abut the open space and all homeowners within the Open Space Subdivision shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. Such access may be limited where the Planning Board finds that resource areas are vulnerable to trampling or other disturbance.
6. Open space shall be provided with adequate access, by a strip of land at least twenty (20) feet wide, suitable for a footpath, from one or more streets in the development.
7. The visual impact of new development shall be minimized from scenic and historic roads by open space parcels or buffers separating the Open Space Subdivision from the road. Creation of new driveway openings on existing roadways shall be minimized.
8. 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 shall be provided where appropriate.
9. All buildings, roads and driveways shall be located away from soils that are most suitable for agriculture (prime farmland soils and soils of state and local importance) to the maximum practical extent.

5.2.4.3 Allowable Uses of Protected Open Space:

1. Purposes: Open space shall be used solely for recreation, conservation, agriculture, forestry or educational purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.
2. Recreation: Where appropriate to the topography and natural features of the site, the Planning Board may require that at least ten percent (10%) of the open space or two (2) 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.
3. Leaching Facilities: If not connected to public sewerage, and subject to the approval of the Board of Health, or 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 plan. The Planning Board shall require adequate legal safeguards and covenants, to be included in the deeds to the lots in the development, that such facilities shall be adequately maintained by the lot owners within the development.
4. Accessory Structures: Up to five percent (5%) 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.

5. Agriculture and Forestry Management Plan: For agriculture, horticulture, floriculture, viticulture, or forestry uses, if the land is not conveyed to the Town, the owner shall submit a management plan for the long-term use and stewardship of the land, including, as appropriate, sustainable forestry or agricultural processes. The Planning Board shall review and approve the plan in making its decision.

5.2.4.4 Ownership of Open Space: At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be either:

1. Conveyed to the Town and accepted by it for open space use.
2. Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in Section 5.2.3.5. Such organization shall be approved by the Planning Board as a non-profit conservation organization.
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 a conservation restriction. If such a corporation or trust is utilized, 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.

5.2.4.5 Permanent Restriction: In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with M.G.L. Chapter 184, §§31-33, approved by the Planning Board and 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 approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan.

5.2.4.6 Maintenance of Open Space: In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land and to allow the Town to enter the property for the purposes of inspecting the maintenance of the property. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

5.2.5 Development Permitted by MGL c. 41, §81-P of the Subdivision Control Law

5.2.5.1 Intent: It is the intent of this section to preserve the rural character of Hardwick by minimizing the strip residential pattern of uncontrolled development in Hardwick's countryside. Under current state law, landowners have the right to subdivide their property with no municipal

oversight provided each lot has the required amount of frontage and adequate access along one of the three types of ways specified in the definition of subdivision contained in Subdivision Control Law (MGL c. 41 §81-L). This process is accomplished through the submission of a plan under what is commonly known as an Approval Not Required (ANR) process. In order to offer a viable alternative to such strip development, this Bylaw offers incentives of reduced dimensional requirements for buildable lots and a bonus of more lots than would otherwise be permitted if built in conformance with the requirements of an Open Space Subdivision.

5.2.5.2 Applicability: The division of land into single family building lots pursuant to MGL c. 41, §81-P (also known as ANR Plan) that will result in the creation of five (5) or more new buildable lots requires the submission of two plans: an ANR-Conventional Plan and an ANR-Open Space Subdivision Plan. The ANR-Conventional Plan shall conform to the dimensional requirements of the zoning district in which the land lies. A division of land into fewer than five (5) lots may be submitted as an ANR-Conventional Plan in accordance with the Planning Board's Subdivision Rules and Regulations. Or, at the owner's option, the owner may seek approval of an ANR-Open Space Subdivision to take advantage of the flexibility of this alternative.

5.2.5.3 Pre-Application: Applicants are encouraged to meet with the Planning Board at a pre-application conference to consider general development approaches prior to the submission of a complete application.

5.2.5.4 Lot Calculation: The ANR-Conventional Plan shall determine the number of building lots that could reasonably be expected to be built upon in consideration of site conditions and in conformance with all applicable development requirements of the Town and state. The number of lots shown on the plan shall be used for determining the number of lots that may be authorized in the ANR-Open Space Subdivision.

5.2.5.5 Bonus Lots for ANR-Open Space Subdivision: As an incentive to encourage the use of the ANR-Open Space Subdivision approach that will help to protect open space and retain roadside rural character, the Planning Board may authorize an increase in the number of lots above that which is otherwise possible, as determined by the Planning Board's review of the ANR-Conventional Plan. The bonus shall be one additional lot for each five lots shown on the ANR-Conventional Plan. For example, an ANR-Conventional Plan showing five lots is entitled to one additional lot in an ANR-Open Space Subdivision; a ten-lot ANR-Conventional Plan is entitled to two additional lots, etc.

5.2.5.6 Open Space Design: Lots in an ANR-Open Space Subdivision shall conform to the dimensional requirements of section 5.2.3.1, and the plan shall be prepared in accordance with section 5.2.2.4, Design Process. The Planning Board may reduce the minimum open space requirement in section 5.2.4.1 from 30% to 25% if necessary for proper lot arrangement while still offering the neighborhood or Town the benefits of an Open Space Subdivision. Other provisions of Section 5.2.4, Open Space Requirements, shall apply.

5.2.5.7 Decision: The Planning Board may approve an ANR-Open Space Subdivision Plan and bonus lot(s) if the plan is superior to an ANR-Conventional Plan in preserving natural resources, permanently protecting open space, minimizing the impact of residential roadside development on Town character, and lessening the impact of development on the surrounding neighborhood.

5.3 Outdoor Lighting

5.3.1 Purpose

The purpose of this section is to create standards for outdoor lighting so that its use does not unreasonably interfere with the use and enjoyment of property within the Town. It is the intent of this section to minimize light pollution, glare, and light trespass, improve nighttime public safety and security, reduce energy use of outdoor lighting, and preserve the night sky as a natural resource for people's enjoyment of looking at the stars.

5.3.2 Lighting Plan

All applications for Site Plan Review and Special Permit shall include a proposed lighting plan that meets functional security needs of the proposed land use without adversely affecting adjacent properties or the neighborhood. The plan shall show existing and proposed exterior lighting, the location, mounting height and orientation of luminaires, and sufficient technical information from the manufacturer of the lamps and fixtures to determine their type and resulting illumination levels.

5.3.3 Design Standards

1. Any light used to illuminate signs, parking areas or for any other purposes must be arranged to reflect light away from adjacent residential properties and away from the vision of passing motorists.
2. Each outdoor luminaire shall be a full cutoff luminaire, and the use of decorative luminaires with full cutoff optics is desired. The design of light standards and fixtures shall be consistent with the style and character of architecture existing or proposed on the site.
3. The development shall eliminate glare onto adjacent properties through the use of lighting shields, earthen berms, or retention of existing natural vegetation. All outdoor lighting fixtures, including display lighting, shall be turned off after close-of-business, unless needed for safety or security, provided the average illumination on the ground is not greater than 0.5 footcandles.
4. Maximum on-site lighting levels shall not exceed 8 footcandles, except for loading and unloading platforms where the maximum lighting level shall not exceed 20 footcandles.
5. Light spillover onto adjacent premises shall not exceed 0.5 footcandles in residential districts or 1.0 footcandles in nonresidential districts.
6. The maximum height of the luminaire shall not exceed twenty feet (20') feet in parking areas or twelve feet (12') for sidewalks and paths.
7. Where wall-pack type luminaries/lighting fixtures are utilized for outdoor lighting fixtures, the fixture shall be equipped with a prismatic lens to reduce glare. Wall-pack lighting shall be designed to a maximum cutoff of seventy (70) degrees from vertical. The location of the wall-pack on the structure shall not exceed 20 feet in height.

5.3.4 Exceptions

1. Hazard Warning: All hazard warning luminaires required by government regulatory agencies are exempt from the requirements of this bylaw except that all luminaires used must be shown to be

as close as possible to the Federally required minimum lumen output requirement for the specific task.

2. **Nonconforming Temporary Outdoor Lighting:** Non-conforming temporary outdoor lighting may be permitted for a period of up to seven (7) days upon issuance of a temporary lighting permit by the Building Inspector.
3. **Outdoor Recreational Facilities:** Illumination of outdoor recreational facilities (public or private), shall not occur after 11:00 P.M., except to conclude a scheduled event that was in progress before 11:00 P.M.

5.3.5 Definitions

Direct Light: Light emitted directly from the lamp, off of the reflector or reflector diffuser or through the refractor or diffuser lens of a luminaire.

Fixture: The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, or a refractor or lens.

Flood or Spot Light: Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

Full Cutoff Luminaire: An outdoor light fixture shielded in such a manner that all light emitted by the fixture, either directly from the lamp or indirectly from the fixture is projected below the horizontal plane

Glare: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see and in extreme cases causing momentary blindness.

Height of Luminaire: The vertical distance from the ground directly below the centerline of the luminaire to the lowest direct light emitting part of the luminaire.

Lamp: The component of a luminaire that produces the actual light.

Light Trespass: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Lumen: A unit of luminous flux. One (1) footcandle is one (1) lumen per square foot. For the purposes of this Bylaw the lumen output values shall be the initial lumen output ratings of a lamp.

Luminaire: A complete lighting system including a lamp or lamps and a fixture.

Outdoor Lighting: The illumination of an outside area or object by any man made device located outdoors that produces light by any means.

Temporary Outdoor Lighting: The specific illumination of an outside area or object by any man made device located outdoors that produces light by any means for a period of less than seven (7) days with at least one-hundred-eighty (180) days passing before the device is used again.

5.5 Residential Compound

5.5.1 Purpose

The purpose of this section is to provide an option for limited residential development within large tracts of land in a manner that minimizes Town maintenance responsibility and cost, while preserving the rural character of the Town. A residential compound minimizes construction costs through lower road standards, reduces the impact of new development on abutting properties, and helps to preserve open space and natural resources.

5.5.2 Applicability

A residential compound is allowed in AR-60 and R-40 districts by special permit of the Planning Board. A residential compound shall consist of not more than five (5) single-family dwelling sharing common frontage and a private access road.

5.5.3 Development Standards

A Residential Compound shall comply with the following standards.

5.5.3.1 Density: The Residential Compound tract shall contain at least four (4) acres per dwelling unit. Land that, at the time of submission of an application under this section, is subject to a perpetual restriction of the type described in M.G.L. c. 184 §§31-33 or any restriction similar thereto, shall not be included in the minimum tract size.

5.5.3.2 Tract Frontage: A Residential Compound may be permitted on a single tract of land in one ownership, having a minimum frontage of one hundred fifty feet (150') on a public way or a private way that has been approved and constructed in accordance with the Planning Board's Subdivision Rules and Regulations.

5.5.3.3 Dimensional Requirements: There is no minimum lot frontage requirement in a Residential Compound, but no structure other than a fence may be erected within thirty (30) feet of any lot line. Building lots within a Residential Compound shall be at least one-half the minimum lot size for the district in which it is located.

5.5.3.4 Access: Each building lot in the Residential Compound shall have adequate and legally enforceable rights of access to a public street via a common driveway.

5.5.3.5 Open Space: Any land within the Residential Compound not designated as a building lot shall be designated as permanent open space. Such land may be used only for conservation, outdoor recreational facilities of a noncommercial nature, agriculture, preservation of scenic or historic structures, and structures accessory to any of the above uses (including swimming pools, tennis courts, stables, greenhouses). In all cases where the open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with M.G.L. c. 184 §§31-33 enforceable by the Town shall be recorded in respect of such land. Such restrictions shall be in such form and substance as the Board shall prescribe and may contain such additional restrictions on development and use as the Board may deem appropriate.

5.5.4 Limitation on Further Development

No such tract for which a special permit has been issued under this section may be further subdivided and a notation to this effect shall be shown on the plan and recorded at the Registry of Deeds.

5.5.5 Other Restrictions

The approved subdivision plan of the Residential Compound shall contain statements indicating the following: that the land lies within an approved Residential Compound; that development of the land is permitted only in accordance with the land uses indicated thereon; that the Town will not be requested to accept or maintain the common driveway, drainage facilities, or any other improvements within the compound. Further, all deed restrictions with respect to ownership, use, and maintenance of permanent open space shall be referenced on, and recorded with, the plan.

5.5.6 Procedure for Approval

5.5.6.1 Pre-Application: Applicants are encouraged to meet with the Planning Board at a pre-application conference to consider general development approaches prior to the submission of a complete application.

5.5.6.2 Special Permit Requirements: Any person seeking a special permit for a Residential Compound shall submit an application in writing to the Planning Board that complies with the requirements for special permits of Section 10 of this bylaw. The following additional information shall be submitted to the Planning Board:

1. Plans meeting to the extent applicable the requirements set forth for a preliminary plan in the Planning Board's Subdivision Rules and Regulations, including proposed locations of all structures.
2. The details of all entrances and exits to and from the public street.
3. A filing fee as required by the Planning Board to cover costs of processing and engineering review. If the Board determines that unusual circumstances necessitate expert technical review that exceeds the filing fee, the additional cost of such review shall be paid by the applicant.

5.5.7 Common Driveway Covenants/Easements

Roadways in Residential Compounds may be constructed as Common Driveways in accordance with section 5.7 of this Bylaw, and shall be built according to the Design and Construction Standards for Common Driveways as set forth in section 15 of Hardwick's Curb Cut bylaw.

5.5.8 Criteria for Approval

A special permit shall be issued under this section only if the Planning Board finds that the Residential Compound is in harmony with the general purpose and intent of this section and that it is designed in such a manner to make it sufficiently advantageous to the Town to depart from the requirements of this Bylaw otherwise applicable to the residential district(s) in which the Residential Compound is located. If a special permit is granted, the Planning Board shall impose as a condition of approval that copies of all recorded instruments be filed with the Planning Board prior to the issuance of any building permit.

5.5.9 Subdivision Approval

Upon receipt of a special permit from the Planning Board, the applicant shall file a definitive plan with the Planning Board and the Town Clerk for approval of a subdivision and comply with the Common Driveway provisions of the Board's Subdivision Rules and Regulations and the Town of Hardwick Curb Cut Bylaw. The Board may waive regulations consistent with its approval of the special permit. With the permission of the Board, the applicant may file the special permit and subdivision applications concurrently, and the Board may hold a combined hearing and act on both requests simultaneously. In acting on the application, the procedures and time periods for issuing special permits shall govern.

5.6 Adult Entertainment Establishments

5.6.1 Purpose: The purpose of this section is to serve the compelling public interest of preventing the concentration of adult entertainment establishments because of their adverse impacts on the business climate and quality of life of the Town and on the property values of near-by residential and commercial properties, and in response to studies demonstrating their effect on generating crime and blight. Similarly, it is not the 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.

5.6.2 Definitions:

Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31.

Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31.

Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31.

Establishment Which Displays Live Nudity for its Patrons: Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in section thirty-one of chapter two hundred and seventy-two.

5.6.3 Special Permit for Adult Uses: No special permit may be granted for any Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, or Establishment Which Displays Live Nudity for its Patrons, unless the following conditions are satisfied:

1. No Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, or Establishment Which Displays Live Nudity for its Patrons may be located less than:
 1. One thousand (1,000) feet from a school, library, church or other religious use, child care facility, park, playground, or recreational areas where large numbers of minors regularly travel or congregate.
 2. Seven hundred fifty (750) feet of the nearest residential use.
 3. Five hundred (500) feet from another adult entertainment establishment.
2. Distance shall be measured between the closest points of the lot lines of the uses or zoning district boundaries.

3. No special permit shall be issued to any person convicted of violating the provisions of M.G.L. c. 119, § 63 or M.G.L. c. 272, § 28.
4. No adult entertainment use shall be allowed to display for advertisement or other purposes 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 the glass or other like transparent material any sexually explicit figures or words as defined in M.G.L. Chapter 272, §31.
5. The Planning Board may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted. The Planning Board shall require that the any such special permit granted shall be personal to the applicant, shall not run with the land and shall expire upon the sale, transfer or assignment of the business or license or upon sale or transfer of the property.

5.6.4 Submittal Requirements: In addition to the submittal requirements for Site Plan Approval as detailed in Section 5.1, special permit applications for approval under this Section shall contain the following additional information:

1. Name and address of the legal owners of the establishment and the property, as well as the manager of the proposed establishment.
2. Proposed security precautions detailing how the property will be policed to avoid unruly and/or illegal activities from taking place.
3. The external and internal physical layout of the premises, including measures to protect adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features
4. Full description of the intended nature of the business.

5.7 Common Driveways

5.7.1 Purpose

The purpose of this Bylaw is to promote public safety, avoid the alteration of the physical appearance of the land through cuts and fills, reduce the number of curb cuts on public ways, minimize the alteration of wetland resource areas, and retain physical characteristics of the landscape, including rock outcrops, stone walls, significant trees, and other natural vegetation. All common driveways shall be constructed in a manner ensuring reasonable and safe access for all vehicles including emergency, fire and police vehicles.

5.7.2 Applicability

The Planning Board may permit a common driveway serving two (2) or three (3) lots upon approval of a common driveway site plan. The Planning Board may permit a common driveway serving four (4) to six (6) lots upon approval of a special permit and common driveway site plan. Common driveways shall not be used to satisfy frontage requirements of the Hardwick Zoning Bylaw. The frontage shall otherwise be suitable to provide safe and adequate vehicular access from the street to the principal use on the lot. Common driveways shall not be considered private ways and shall not be further extended.

5.7.3 Submission Requirements

For common driveways serving two (2) or three (3) lots, the applicant shall submit to the Planning Board eight (8) copies of a common driveway site plan, prepared by a Registered Land Surveyor or Professional Engineer, and one copy to the Town Clerk. The date of the Planning Board meeting shall be the submission date. The Board shall send a copy of the plan to the Highway Surveyor, Building Inspector, Fire Chief, Police Chief, Conservation Commission, and Board of Health. These officials shall have thirty (30) days to submit comments to the Planning Board. The Planning Board shall deliver its written decision to the Town Clerk within sixty (60) days of the submission of the application. This time limit may be extended by written agreement between the applicant and the Board. For common driveway special permits, the applicant shall submit a common driveway site plan and follow the procedures for issuance of special permits provided elsewhere in this Zoning Bylaw.

1. The plan shall show all existing structures, waterways, wetlands and flood hazard areas, the dimensions of existing and proposed lots, drainage calculations, existing and proposed streets and easements, profiles of the proposed centerline of the common driveway, names of abutters, proposed sign, and major features of the land, including rock outcrops, stone walls, significant trees, and other natural vegetation.
2. The Planning Board is authorized to retain a professional engineer or other professional consultant to advise the Board on all aspects of the site plan. The applicant shall pay the fee at the time of plan submission. The Planning Board shall adopt a fee schedule that accurately reflects the cost of reviewing common driveway site plans and the use of outside consultants.
3. The Planning Board shall not approve a common driveway site plan until it has first obtained from the applicant a covenant or agreement that the common driveway shall not become a public way, unless it is both redesigned and improved in accordance with the Planning Board's Subdivision Regulations. This covenant shall also stipulate that the individual lot owners served by the common driveway shall be responsible for plowing and maintaining the driveway without

cost to the Town. The covenant or agreement shall run with the land, shall hold the Town harmless for any damages due to the repair, use, or maintenance of the common driveway, shall be recorded at the Registry of Deeds, and shall be attached to the deed to every lot served by the common driveway.

5.7.4 Design and Construction Standards

Common driveways shall be built according to the design and construction standards set forth in the Town of Hardwick Curb Cut Bylaw and the Planning Board's Subdivision Rules and Regulations.

5.7.5 Inspection Requirements

During construction, the applicant shall arrange for four (4) inspections from the Highway Surveyor or their designee at completion of each stage. The Planning Board shall establish a fee to cover the Town's inspection costs. The applicant shall submit certified as-built plans to the Highway Surveyor and obtain the approval of the Building Inspector prior to the issuance of an occupancy permit.

5.7.6 Common Driveway Covenants/Easements

The applicant shall submit documents to the Planning Board, demonstrating through easements, restrictive covenants or other appropriate legal devices, that the maintenance, repair, snow removal and liability of the common driveway shall remain perpetually the responsibility of the private parties or their successors-in-interest. Said documents shall be recorded at the Registry of Deeds, and a copy of the recorded documents shall be provided to the Planning Board prior to issuance of a building permit for any structure to be served by the common driveway. At a minimum, the Covenants/Agreement shall contain provisions for:

1. The right to use in common the driveway for all purposes for which private driveways are customarily used, including the right to install, maintain, and repair drains, culverts and underground utilities in, along, under and across the driveway.
2. The obligation of repair, maintenance and snow removal so as to cause the driveway (including the drains and culverts) to be repaired and maintained and snow to be removed in such a manner as to insure continuous year-round access to each lot by fire, police, ambulance/rescue and other vehicles. In appropriate cases, the maintenance agreement might provide for the clearing of brush and foliage that obstructs vision.
3. The right of each and every owner of the lots served by a common driveway to enforce the obligations to repair and maintain the common driveway so as to provide to all lots safe and convenient access by fire, police, ambulance/rescue, moving, construction and maintenance vehicles.
4. A clear expression of construction specifications so that the initial condition and intended maintained condition of the common driveway are understood by all present and future owners of the lots served.
5. A clear expression that the Town of Hardwick, under no circumstances, shall now or in the future be held liable for construction, reconstruction, repairs or snow removal on private common driveways.

5.8 Bed and Breakfast Inns

Bed and Breakfast Inns shall be permitted by special permit of the Planning Board, and shall comply with the following conditions:

- 5.8.1 Bed and breakfast inns are permitted as an accessory use to a single-family dwelling. The dwelling shall be the primary residence of the owner or manager.
- 5.8.2 There shall be no separate cooking facilities; however, breakfast may be provided to bed and breakfast lodgers.
- 5.8.3 Rooms used for sleeping shall be part of the existing residential structure or existing accessory building thereto (such as a barn or carriage house) and shall not have been newly constructed for rental purposes.
- 5.8.4 The premises shall retain the appearance of a single-family residence. If an accessory building is converted to a bed and breakfast inn, it shall retain its previous appearance from the street.
- 5.8.5 Parking shall be provided at the rate of one space per guest room in addition to that required for the principal residential use.
- 5.8.6 The applicant shall submit a plan showing the location, wording, dimensions, and construction materials of any proposed signs. The Board may waive applicable sign provisions of this Bylaw if necessary to provide adequate notice to tourists of the use and location of the facility.

5.9 Accessory Apartments

5.9.1 Purpose: The purpose of permitting Accessory Apartments is to:

1. Help provide homeowners with a means of obtaining rental income, companionship, security and services; and, thereby enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.
2. Help add rental units to the housing stock, to meet the needs of smaller households.
3. Help make housing units available to moderate-income households who might otherwise have difficulty finding homes within the town.
4. Help protect stability, property values, and the single-family residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses, and under such additional conditions as may be appropriate to further the purposes of this Bylaw.

5.9.2 Applicability: One accessory apartment may be permitted within a single-family dwelling upon site plan approval by the Planning Board in AR-60, R-40, V and C-40 districts:

5.9.3 Design Standards

1. The owner(s) of the dwelling in which the accessory apartment is located shall occupy one of the dwelling units except for bona fide, temporary absences. The owner's dwelling unit shall not be rented during any such temporary absence.
2. The design of the accessory apartment shall be such that the appearance of the building remains that of a one-family residence. Any new entrances or additions shall be located on the side or rear of the building and shall not increase the floor area of the dwelling by more than ten percent (10%). Additions shall not be permitted on any lot not conforming to the minimum lot size or yard setback requirements of the district where the building is located, nor shall any new non conformance be created by any additions.
3. The accessory apartment shall be clearly secondary in nature to the principal dwelling, and it shall not exceed six hundred (600) square feet in area.
4. The one accessory apartment permitted per dwelling may be created in an attached or detached garage existing on the date of adoption of this Bylaw.
5. If the lot is not connected to public sewer, prior to obtaining a building permit, the Board of Health shall certify that the septic system is in compliance with Title 5 of the State Environmental Code and the Board of Health's regulations.
6. There shall be no more than one (1) bedroom in an accessory apartment.
7. There shall be at least three (3), but no more than five (5), off-street parking spaces available for use by the owner(s) and tenant(s).
8. The Planning Board may impose appropriate conditions in order to protect the public health and safety and preserve the single-family character of the neighborhood. The Board may allow deviation from the above standards where necessary to install features that facilitate use by disabled persons.

5.10 Home Businesses

5.10.1 Purpose

1. This bylaw is designed to help promote small businesses, and layout guidelines for the accessory use of portions of a residence for that business while balancing the needs of other residences in the area. The essential component of a home business is that it does not detract from the character of the existing land use.
2. Home businesses that meet the following criteria are required to complete a home business application to be reviewed by the Planning Board. There is no fee for this application.

5.10.2 Limitations

The following limitations apply to all classes of home businesses as defined for the purposes of this chapter.

1. The business is situated in the petitioner's dwelling.
2. The maximum space allowed for a home business shall not exceed the lesser of 15% of the dwelling or 300 square feet.
3. There is no major structural change to the exterior, nor any other external evidence of such home business, other than one accessory, non-flashing sign that must conform to Hardwick's sign bylaw of Section 7.
4. No more than one person other than the owner may be employed on the premises.
5. No more than four (4) clients shall be scheduled in any one hour not more than 8 in any one day, and only between the hours of 8:00 a.m. and 6:00 p.m.
6. There shall be a sufficient parking area on the lot to accommodate expected peak parking by the resident family, employees, and clients.
7. No produce or stock in trade shall be sold at retail except insofar as incidental to the home occupation (e.g. teaching supplies), or as specifically permitted in connection with agricultural uses, or home retail occupations.

5.10.3 Permit Required

Home businesses that do not meet the above criteria shall apply for a Special Permit per Section 10.6.2.

9.0 Changes to the Earth Removal Bylaw

Change # 1: Add the text shown below in italics at the end of Section 9.1 C:

- C) No special permit shall be granted for a period of more than two (2) years. The Planning Board may grant annual extensions of the special permit beyond the initial period, but no extension shall be granted unless the applicant has conformed to all requirements of the original special permit.

Sixty (60) days prior to the expiration of the one-year period, the owner or operator of the earth removal operation shall contact the Planning Board and request an inspection by the Board's engineering consultant. The consultant shall arrange a field visit to review the work authorized by the special permit in order to determine if any violations or problems exist. The consultant shall submit a report to the Board documenting its findings and propose recommendations to correct violations or mitigate negative impacts on abutters, the neighborhood, or the Town. The applicant shall pay for all expenses incurred in the Town's review prior to the issuance by the Board of the renewal of the special permit. At the time of renewal, the applicant shall provide evidence that the surety bond required pursuant to section 9.6 to secure performance of the terms of the special permit is in effect for the time period subject to the renewal.

Each renewal of the special permit for another one-year period shall require a favorable vote of five members of the Planning Board. At the applicant's expense, the Board shall advertise for a public hearing and notify parties in interest as set forth in Section 10 of this Zoning By-Law.

Change # 2: Delete the language shown in a strikethrough font and add the phrase "plus 25%" at the end of Section 9.2.A

- A) Excavations required for the construction of structures for which all permits have been issued, nor for the installation of walks, driveways, septic systems, swimming pools, ~~landscaping~~ or other accessory uses to such buildings and expansions thereto, provided the quantity of material removed shall not exceed that displaced by the portion of the buildings, or accessory use ~~below finished grade~~ *plus 25%*.

Change # 3: Modify paragraph E. of Section 9.3, Special Permit Application, by inserting the text shown below in italics:

- E) A filing fee in the amount established by the Planning Board *and a plan review fee determined by detailed engineering estimates of ten cents (\$.10) per cubic yard of material that will be excavated and removed by the applicant.*

10.0 Administration

10.1 Enforcement

This bylaw shall be enforced by the Building Inspector under the authority of M.G.L. c. 40A §7.

10.2 Building or Use Permit

No building permit shall be issued until the construction or alteration of a building or structure, as proposed, shall comply in all respects with the provisions of this bylaw or with a decision rendered by the Board of Appeals or the Planning Board.

10.2.1

All applications for building permits shall be accompanied by such plan or plans drawn to scale and showing the elevations, locations and dimensions of the lot to be built upon, existing and/or proposed improvements, setbacks, significant features and any such other information as may be deemed necessary by the Building Inspector to determine compliance with the provisions of this Bylaw.

10.3 Certificate of Occupancy

No land shall be occupied or used, and no building or structure hereinafter erected or structurally altered shall be occupied unless a Certificate of Occupancy has been issued by the Building Inspector. Such certificate shall state that the structure and land comply in every respect with the provision of this bylaw in effect at the time of issuance or with a decision of the Board of Appeals or the Planning Board. A Certificate of Occupancy shall be conditional on the maintenance of full compliance with the provisions of this bylaw in effect at the time of issuance or with the restrictions imposed in a decision of the Board of Appeals or the Planning Board and shall lapse if such compliance fails.

10.4 Board of Appeals

There is hereby established a Board of Appeals of five (5) members and two (2) associate members to be appointed by the Board of Selectmen as provided in M.G.L. c. 40A. The Board of Appeals shall establish procedures consistent with the provisions of this bylaw and with the provisions of Chapter 40A or other applicable provisions of the General Laws, and shall file a copy thereof with the Town Clerk. The Board of Appeals shall have the following powers and duties.

10.4.1 Appeals: To hear and decide appeals taken by any person aggrieved by reason of their inability to obtain a permit from the Building Inspector under the provisions of M.G.L. c. 40A, or by any officer or Board of the Town of Hardwick or by any person aggrieved by any order or decision of the Building Inspector in violation of any provision of Chapter 40A or of this bylaw.

10.4.2 Variances: To grant an appeal or upon petition with respect to particular land or structure a variance from the terms of the applicable provision of the bylaw, where, owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally the Zoning District in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the petitioner, and that desirable relief may be granted without substantial detriment to be public good and without nullifying or substantially derogating from the intent and purpose of this bylaw.

1. Conditions and Safeguards: In granting a variance, the Board of Appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular structure but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the petitioner or any other owner.
2. Use Variances Prohibited: Under this Bylaw, no variance may be authorized by the Board of Appeals for a use or activity not otherwise permitted by right in the zoning district in which the land or structure is located.

10.4.3 Special Permits: To hear and decide applications for special permits in accordance with Section 10.6.2.

10.4.4 Powers of the Board of Appeals

In exercising these powers, the Board of Appeals may, in conformity with M.G.L. c. 40A, make orders or decision, reverse or affirm in whole or in part, or modify any order or decision; and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

10.5 Penalty

Any person, firm, or corporation violating any section or provision of this bylaw shall be fined not more than three hundred (\$300.00) dollars for each offense *unless otherwise provided*. Each day that willful violation continues shall constitute a separate offense. Enforcement of penalty, limitation on action, suit or proceeding of zoning violations, and appeals shall be according to M.G.L. c. 40A §7.

10.5.1 Non-Criminal Disposition

1. *The provisions of this Bylaw may also be enforced by the Building Inspector by way of the non-criminal disposition procedure provided in M.G.L. c. 40 §21D. The penalty shall be twenty-five dollars (\$25) for the first offense, fifty dollars (\$50) for the second offense, and one hundred dollars (\$100) for the third and each subsequent offense. Each day on which a violation exists shall constitute a separate offense.*
2. *Before proceeding with non-criminal disposition of a zoning violation, the Building Inspector may give a written warning to an offender allowing the offender up to fifteen (15) days to terminate the violation and repair any damage caused thereby.*
3. *If the violation is not corrected after said fifteen (15) days, the Building Inspector shall give to the offender a written notice to appear before the clerk of the district court at any time during office hours, not later than twenty-one (21) days after the date of such notice. If the offender desires to contest the violation alleged in the notice, they may avail himself of the procedure provided in M.G.L. c. 40 §21D.*
4. *Any person notified to appear before the clerk of the district court may mail to the Town Clerk together with the notice the specific sum of money as penalty for violation of the Bylaw. Such payment shall if mailed be made only by postal note, money order or check. Upon receipt of such notice, the Town Clerk shall forthwith notify the district court clerk of such payment and the*

receipt by the district court clerk of such notification shall operate as a final disposition of the case.

10.9 Validity

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

10.10 Regulations

This bylaw shall not interfere with or annul any other town bylaw, rule, regulation, or permit provided that, unless specifically accepted, where this bylaw is more stringent, it shall control. All matters not covered by this bylaw shall be governed by the provisions of M.G.L. c. 40A.

13.0 Mill Conversion Overlay District

13.1 Purpose

The purpose of the Mill Conversion Overlay District (MCO) is to encourage the preservation of Hardwick’s historic mills that may no longer be suitable for industrial purposes by affording an opportunity to convert these historic properties to other productive uses. This section is intended to offer regulatory flexibility to encourage the adaptive reuse of abandoned, vacant or underutilized mill buildings into vibrant mixed-use centers with a variety of uses encouraged, including residential, commercial, institutional, and artistic uses and community facilities.

13.2 Overlay District

The MCO is hereby established and shall be construed as an overlay district. Within the MCO all regulations of the underlying district(s) shall continue to be in full force and effect, except where these regulations provide an alternative to such requirements. The boundaries of the MCO are shown on the Hardwick Zoning Map. The MCO shall consist of the following properties (identified by street address and assessor’s map, block, and lot number):

94 Main Street	055.0-0000-0019.0
266 Main Street	058.0-0000-0001.0
268 Main Street	060.0-0000-0001.0
268 Main Street	060.0-0000-0001.A
36 Mill Street	119.0-0000-0015.0

13.3 Uses Permitted

13.3.1 Within the MCO, the Planning Board may issue a special permit for the conversion of an existing mill, or portion thereof, to a mixed-use facility. The following uses may be permitted as part of a mill conversion project (MCP) to implement the principal residential component and to promote a lively mix of compatible uses.

1. Multi-Family Residential
2. Commercial uses, including retail sales, restaurants (excluding fast food restaurants), banks, financial services, theaters, health/fitness clubs, and medical services;
3. Personal service establishments;
4. Business and professional offices and conference facilities;
5. Artist studio/residence, art gallery, and similar artistic and cultural endeavors;
6. Institutional uses, including museums, educational uses, charitable or philanthropic institutions, municipal uses, and child care facilities; and
7. Parks and playgrounds.

13.3.2 Uses prohibited within an MCO include:

1. Adult entertainment uses as defined by M.G.L. c. 40A §9A;
2. Automobile or truck sales and automobile service stations;
3. Animal hospitals;
4. Junk yards and recycling facilities;
5. Wholesale businesses, freight terminals, and similar transportation uses;
6. Industrial activities; and
7. Similar uses determined by the Planning Board to be detrimental to the adjacent neighborhood.

13.4 Nonconforming Structures

13.4.1 Existing Structures: Structural alterations and repairs may be made to existing mill buildings or accessory structures even though at the time of the application for the building permit for the alteration or repair, the lot, building or structure does not conform to one or more of the dimensional requirements for the district where the mill is located. The special permit may authorize alteration, extension or expansion of the structure to conform to the Building Code for health and safety purposes or to accommodate unusual design constraints as a result of the historic development pattern of the premises.

13.4.2 New Construction: For all new structures or buildings, the dimensional requirements of the underlying district shall apply. New buildings and structures shall be permitted to the extent reasonably necessary to accommodate the proposed development. The type, architectural style, and uses within such new buildings and structures shall be subject to Planning Board approval, shall be in keeping with the historical context of the mill, and shall not have a detrimental effect on the neighborhood.

13.5 Application Procedures

An applicant seeking a Special Permit from the Planning Board for a MCP shall file an original and ten (10) copies of a special permit application in accordance with the procedures specified in section 10.6.2 of this bylaw. At the expense of the applicant, the Planning Board may retain a registered professional engineer or other professional consultants to advise the Board on any or all aspects of the application. If the review fees are not adequate to cover expenses, the Board reserves the right to require an additional amount necessary to cover such expenses. Any unspent funds shall be returned to the applicant.

13.5.1 Submission Requirements

Each application shall contain the information specified for site plan review in section 5.1.3 of this bylaw. In addition, the following information shall be submitted with the application:

1. A plan at a scale of 1" = 40' showing the topography of the site at two foot intervals, as well as vegetation and special features, including wetlands and significant wildlife habitats, perennial streams and ponds, dams and mill structures, rock outcrops, existing and proposed trails and paths, open vistas, structures of historical importance to be preserved or demolished, and proposed conservation and recreation areas.
2. Architectural drawings and typical elevations illustrating the design, location and layout of buildings. Perspective renderings shall show the finished appearance of the MCP and its visual impact on adjacent properties.
3. For residential uses, a floor plan to scale for each floor of each building shall show the location and number of residential units, the number of bedrooms, floor area of each unit, and location of affordable dwelling units, if applicable. For non-residential uses, a floor plan to scale shall show the location, floor area, and proposed use of each space.
4. A plan describing the care, custody and control of all dams and water rights.
5. The following information shall be submitted in narrative form:
 1. A project summary containing an overview of the project, number of residential units, floor area of non-residential uses, number of parking spaces, and form of ownership.

2. A proposed development schedule showing the phases of development, the timing of new construction and renovation, and the estimated date of completion.
3. A concise narrative prepared by a preservation consultant that includes the architectural history of all structures on the site, including period, style, method of building construction, and association with any particular architect or builder.
4. Description of the impact of the MCP on environmental and historical resources, as well as alternatives to the proposed action and their effects on environmental and historic resources.
5. Manner of water supply, estimate of water use, ability of public water supplier to serve the proposed use, and impact of the MCP on the water distribution system.
6. Estimate of sewage generation from the MCP. If the project will be served by a public sewer system, provide a description of the effect of the project on that system. If the project will provide a private wastewater treatment facility, provide a detailed report describing the facility, cost estimate, and operation and maintenance plan.
7. Estimate of the number of new school children and total population generated by the MCP. In addition, projected net tax and other revenues over anticipated municipal costs should be submitted to help the Planning Board gain an understanding of the total fiscal impact of the proposed project upon Town resources.
8. Copies of all proposed covenants, easements, and other restrictions which the applicant proposes to grant to the Town, and any condominium or other ownership organization documents, for approval as to form by Town Counsel.

13.6 Standards

In order to receive a special permit, the proposed MCP shall meet all of the following standards:

1. **Preservation of Natural Features:** The MCP shall be designed to preserve the natural features of the site, to avoid areas of environmental sensitivity, and to incorporate natural and cultural features into public open spaces to the extent practicable.
2. **Buffer:** Landscaped buffers shall be employed to shield neighboring property from objectionable views, and to minimize negative impacts such as glare, noise, and odors.
3. **Pedestrian Paths:** The MCP shall contain a series of pedestrian paths linking the major buildings and open space parcels on the property, and also linking the property with the surrounding neighborhood. Paths shall be constructed with brick, pavers, or other decorative materials, and shall be bordered with fencing or landscape plantings to separate pedestrians from automobiles.
4. **Outside Storage:** Outside storage areas for materials, equipment or trash shall be provided with an opaque screen to shield such areas from view. Such screens may be walls, fences, landscaped berms, evergreen plantings, or any combination thereof. Fences shall consist of wood, stone, or brick materials; chain link, plastic, or concrete materials are prohibited.
5. **Utility Structures:** Elements such as HVAC units, telephone boxes, or electrical transformers shall be integrated into the site design through use of landscaping, berms, or fences and shall be as unobtrusive as possible. HVAC units may be located behind roof ridgelines so they are not visible from the front view of the building.
6. **Parking Lot Landscaping:** Parking lots shall be provided with interior landscaping covering not less than five percent (5%) of the total area of the lot. Landscaping shall also be provided around the perimeter of the lot for a width of ten feet (10') and planted with trees and shrubs. In total, there shall be provided one shade tree for every ten (10) spaces.

7. **Underground Wiring:** All electric, telephone, television and other communication lines servicing the MCP shall be provided by underground wiring. These lines shall be installed in accordance with the prevailing standards and practices of the utility company providing such services.
8. **Environmental Conformance:** The MCP shall comply with the requirements of the Hardwick Conservation Commission and the Mass. Department of Environmental Protection.

13.7 Action by the Planning Board

The Planning Board may grant a special permit for a MCP where it complies with the requirements of this section and achieves the following objectives:

1. **Vehicle and Pedestrian Movements:** Provisions for convenient and safe vehicular and pedestrian movement within the site, for traffic circulation that is convenient and safe in relation to the adjacent street network, and for adequate emergency vehicle access.
2. **Parking:** Provisions for adequate off-street parking and internal traffic control to accommodate the needs of the MCP without detriment to the surrounding neighborhood.
3. **Town Services:** Reasonable demands placed on Town services and infrastructure.
4. **Landscaping:** Measures taken to minimize the visual impact of off-street parking areas on abutting properties and to enhance the overall appearance of the MCP.
5. **Amenities:** The applicant's efforts to integrate the proposed development into the existing neighborhood through design features such as vegetative buffers, retention of views, and the provision of open space accessible to the public.
6. **Town Character:** Efforts to preserve mill features, architectural compatibility of new structures, landscaping, and parking lot design, and how these features harmonize with the surrounding mill village and the natural landscape.
7. **Utilities:** Placement of underground utilities, reduction of light pollution, and installation of signs consistent with the architectural theme of the mill.
8. **Water Supply:** Safe and adequate water supply and distribution; including sufficient water and pressure for fire fighting on the site.
9. **Sewage and Solid Waste Disposal:** Safe and adequate sewage treatment and solid waste disposal.

13.8 Waivers

The Board may modify or waive or modify any requirement of the overlay district upon finding that due to topography, location or other unusual conditions affecting the property, the requirements of this section would unreasonably restrict redevelopment of the property. In granting such modification or waiver, the Board may impose conditions it deems necessary to protect the public interest and to insure that the MCP will be consistent with the purpose of this section.