



DESIGN REVIEW BOARD - *Revised 12-29-2022 in italics*

Meeting Minutes
November 17, 2022
7:00 PM
Acton Town Hall

Present: Peter Darlow, (Chair), David Honn, Holly Ben-Joseph, Richard Keleher, Dean Charter (BOS Liaison), John Cappetta (Planning Board Liaison)

Public Attending: none

1. Opening

Chair, Peter Darlow opened the meeting at 7:05 p.m.

2. Regular Business

A. Meeting Minutes:
No minutes were reviewed.

B. Citizen's Concerns: None
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3. Special Business

A. Land Clearing and Tree Protection discussion

Documents/ Video referred to in discussion:

Model Land Clearing, Grading and Protection of Specimen Trees Bylaw from Cape Cod Commission Model Bylaws and Regulations.

Town of Ashland Site Alteration Special Permit

Richard Keleher Memo on Tree Protection

BOS Oct. 17 meeting discussion on getting feedback on Land Clearing and Tree Management – In summary, the BOS, (in response to a non-binding citizen's petition concerning land clearing and tree management), supports getting DRB thoughts on these topics to determine how to move forward.



Steps for the process of moving forward are:

- DRB to review different by-laws and make comments on them.
- Present to planning board for feedback
- DRB refine ideas on by-laws and have ready to present to BOS by late winter/early spring so that it can be considered for a BOS priority goal for 2023.
- Once established as a priority goal, town staff can be tasked with working on documents to craft into new by-law or to add to existing by-laws.

There are two ways to make land clearing and tree protection laws –

1. Make a new by-law (requires simple majority in Town Meeting)
2. Change zoning law (requires 2/3 majority in Town Meeting).

Generally, the DRB finds the Cape Cod Commission by-law covers too much and is too complicated for our use; the DRB is thinking that the *Town of Ashland's Site Alteration Special Permit* document can be used as a guide for Acton to prevent land clearing prior to an owner/developer obtaining approval for a project.

Land Clearing

The Ashland by-law says no clearing until the special permit is awarded. This would prevent clearing like the lot behind the CVS on Mass Ave.

Acton already has an Earth Removal By-law, but this is rarely enforced. It was originally written to prevent landowners from scraping all of the top soil off their properties. This by-law could be updated by incorporating the ideas from the Ashland Site Alteration Special Permit to create a law that would work. This law clearly states what the proponent is required to submit to the board.

The law can't be too complex, or it will be unenforceable.

Plus, this law doesn't protect trees once the proponent gets approval, *which the DRB thinks could be problematic.*

In the case of 40B projects, DRB suspects that these projects will fall under the multi-family and commercial development category.

If we decide to use this as a model, DRB can present our comments to the Planning Board with examples around town of clear-cutting and complete demolition of a site that then sits for years as a visual blight to reinforce the importance of passing a by-law for this.

Which types of projects will this apply to – not sub-divisions, but to multi-family housing and any commercial development. Richard K. would still like to discuss including single-family residential properties under land clearing protection.

Tree Protection

Some laws already exist for trees in the Right of Way (ROW)

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MGL chap 87 protects public shade trees in street ROW.



Town of Acton has a Tree Protection in ROW as well.

Single Family Residential Tree Protection

Develop a by-law based on the Town of Concord's guidelines.

We can also refer to DCR guide to Local Tree Ordinances. – Richard will forward link to this document. Members should review for next meeting.

Wellesley also has a by-law that we can look at.

This by-law would apply to the Trees in setbacks only, not the entire property, possible exclusions would be made for driveways and removal of trees for solar purposes – still to be discussed by DRB.

If trees had to be removed, the Owner could provide either alternate tree planting on their property or give the Town cash for tree planting elsewhere. A formula would be followed for this.

The tree management within setbacks is typically specific to single family lots in the various examples such as from Concord as shown above.

How would this by-law be reviewed and enforced? By a staff member, land use committee? Or building commissioner?

In the other towns the Owner has to hire a certified arborist to report on status and location of trees. The town could provide a list of approved Arborists.

Acton could hire a consulting Arborist to review the application.

Dean will send us an example of projects that he has worked on as a consulting arborist.

The DRB believes focusing on protecting trees within the setbacks is at this stage is the way forward at this point. Richard K. would like to continue the discussion on including heritage trees or those trees larger than 36" cal, no matter where it is located on the property.

4. Adjournment

At 8:35 p.m. it was moved and seconded to adjourn the meeting. The motion was approved unanimously.

Respectfully Submitted,
The DRB

Cape Cod Commission Model Bylaws and Regulations

Model Land Clearing, Grading and Protection of Specimen Trees Bylaw

Background

Growth and development have created permanent changes to the Cape Cod landscape and its natural resources. Forested areas, open spaces, and other naturally vegetated areas have been permanently lost through clearing and grading activities often associated with land development. Clearing and grading activities also impact both water quality and quantity. Loss of ground cover coupled with grading, smoothing, and compaction of the land contributes to decreased groundwater infiltration, increased stormwater flow and erosion and increased sediment runoff into streams and other water bodies. This in turn results in decreased water quality in aquatic habitats and breeding grounds. Erosion and sedimentation often results in environmental damage to abutting properties.

In addition to the physical and ecological changes associated with grading and land clearing activities, aesthetic values and community character can also be impacted. Cape Cod is defined in part by its mix of woodlands, open landscapes and scenic views. As noted in the Cape Cod Commission's "Designing the Future to Honor the Past," Cape Cod is a place of abundant nature, surrounded by and connected to the sea. Land clearing and grading activities can have a direct impact on the quality of the visual experience for both residents and tourists.

Local bylaws address the issues of clearing and grading to varying degrees, ranging from limits on clearing prior to the issuance of development permits to earthmoving regulations. However, most of the existing Cape bylaws do not address the issues of combined clearing and grading activities. In addition, while local Conservation Commissions require erosion and sediment control for projects within 100 feet of wetlands through the Wetlands Protection Act and local bylaws and regulations, they do not have authority beyond the 100 foot buffer until after an erosion problem has resulted in damage to wetlands and waterways.

Through a combination of Site Plan Review Standards and Special Permit requirements, this model bylaw seeks to minimize the loss of natural vegetation and topography and to protect specimen trees, significant forest types, and the most valuable wildlife habitat when developing a site. Minimizing the loss of natural vegetation provides for a cost-effective means of controlling erosion, flooding, and managing stormwater runoff from nonpoint sources such as development sites, streets and parking lots.

Commentary: Towns may choose between two different mechanisms for minimizing clearing and grading activities. One approach involves adopting these regulations into the zoning bylaw, requiring a special permit for clearing and grading of projects that exceed a certain size. In the alternative the town may adopt Site Plan Review standards that

apply to all projects requiring Site Plan approval. Where a Special Permit is required the reviewing board has authority to approve or deny a proposed use. Site Plan Review, on the other hand, simply stipulates the conditions applicable to a given use.

01.0 Purposes: The purposes of this bylaw are to:

01.1 Protect the health, safety and property of the residents of the Town of _____ by regulating clearing and grading activities associated with land development and preserving existing trees and vegetation, preventing erosion and sedimentation of inland and coastal wetlands, ponds and other waterbodies, controlling stormwater runoff, minimizing fragmentation of wildlife habitat and loss of vegetation;

01.2 Limit land clearing and alteration of natural topography prior to development review;

01.3 Protect specimen trees and significant forest communities from damage or removal during site development;

01.4 Protect water quality of adjacent wetlands and surface water bodies;

01.5 Encourage the use of Best Management Practices that prevent and reduce nonpoint sources of pollutants;

01.6 Promote land development and site planning practices that are responsive to the town's scenic character without preventing the reasonable development of land;

01.7 Protect archaeological and/or historic resources.

02.0 Definitions: In this bylaw, the following words have the meanings indicated:

02.1 Applicant - Any person proposing to engage in or engaged in any non-exempt clearing of trees or understory vegetation within the Town.

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

02.3 Caliper - American Association of Nurserymen standard for measurement of trunk size of nursery stock. Caliper of the trunk shall be taken 6" above the ground up to and including 4" caliper trees, and 12" above the ground for larger sizes.

02.4 Certified arborist - A professional who possesses the technical competence through experience and related training to provide for or supervise the maintenance of trees and other woody plants in the residential, commercial, and public landscape.

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

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

02.7 Essential Root Zone - An area located on the ground between the tree trunk and 10 feet beyond the dripline of a tree which is required for protection of a tree's root system.

02.8 Diameter/diameter-breast-height (dbh) - The diameter of any tree trunk, measured at 4.5 feet above existing grade.

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

02.10 Grading - Any excavating, filling, clearing, or the creation of impervious surface, or any combination thereof, which alters the existing surface of the land.

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

02.12 Landscape architect - A person licensed by the Commonwealth of Massachusetts to engage in the practice of landscape architecture.

02.13 Protected tree/vegetation - A tree or area of understory vegetation identified on an approved landscape plan to be retained and protected during construction.

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

02.15 Significant forest community - Unfragmented forests including forest types that provide habitat for rare species, unusual ecological processes, highly diverse forest communities, rare forest types, and those

forest types which maintain connections between similar or different habitat patches.

02.16 Site Alteration Special Permit - A special permit issued by the Planning Board authorizing land clearing and grading activities in the town of _____.

02.17 Understory vegetation - Small trees, shrubs, and groundcover plants, growing beneath and shaded by the canopy of trees.

03.0 Applicability: No person shall undertake land clearing/grading activities of an area greater than 40,000 square feet without first obtaining a Site Alteration Special Permit from the Planning Board, unless specifically exempted under Section 05.0 of this bylaw.

Commentary: The Cape Cod Commission has proposed this threshold for review, however, towns may wish to adopt a higher or lower threshold depending on their particular circumstances.

04.0 Review and Decision: Upon receipt of a completed application and required plans as described in Section 06.0 below, the Planning Board shall transmit one copy each to the Conservation Commission, Building Inspector, and Department of Public Works. Within 45 days of receipt of completed application/plans, these agencies shall submit recommendations to the Planning Board. The Planning Board shall act on applications according to the procedure specified in G.L. c. 40A, §9.

05.0 Exemptions: The provisions of this bylaw shall not apply to the following activities:

05.1 Removal of hazardous trees, as defined herein;

05.2 Routine maintenance of vegetation and removal of dead or diseased limbs and/or trees necessary to maintain the health of cultivated plants, to contain noxious weeds and/or vines in accordance with a Department of Environmental Management (DEM) - approved Forest Management Plan, or to remedy a potential fire or health hazard or threat to public safety;

05.3 Construction and maintenance of public and private streets and utilities within town-approved roadway layouts and easements;

05.4 Work conducted in accordance with a valid earth removal permit issued by the Town of _____;

05.5 Agricultural activities in existence at the time a bylaw is adopted, work conducted in accordance with an approved Natural Resource Conservation Service Agricultural Plan or agricultural uses on parcels of land of more than five acres as specified in MGL c. 40A Section 3.

05.6 Construction of roadways and associated infrastructure for subdivisions approved in accordance with the Town Subdivision Rules and Regulations.

05.7 Construction of any state or town agency project approved by the town manager, town council, or town selectmen.

05.8 Construction or installation of public utilities.

05.9 Non-commercial cutting for fuel, provided that clear-cutting does not occur.

06.0 Application Requirements: Unless determined otherwise by the Planning Board the following submittals are required at the time of application:

06.1 Survey of existing vegetation conducted by an individual qualified through appropriate academic credentials and field experience. A statement of credentials should be submitted with the survey.

The survey of existing vegetation shall include the following information:

06.1.1 major upland vegetational communities located on the site, including trees, shrub layer, ground cover and herbaceous vegetation;

06.1.2 size and height of trees, noting specimen trees and/or forest communities;

06.1.3 location of any rare and endangered species as mapped by the Massachusetts Natural Heritage Program or Association for the Preservation of Cape Cod;

06.2 Submission of a locus map at a scale of 1" = 500' showing the proposed site in relation to the surrounding area.

06.3 Submission of a plan at a scale of 1" = 40' of the project site showing existing and proposed contour lines at intervals of not more than 2 feet prepared by a registered civil engineer or land surveyor.

06.4 Soil survey or soil logs indicating predominant soil types on the project site, including information on erosion potential from the Natural Resources Conservation Service.

06.5 Delineation of all bodies of water, including wetlands, vernal pools, streams, ponds, and coastal waters within 100 feet of the project site/limit of work and delineation of the 100-year floodplain.

06.6 Submission of a plan at a scale of 1" = 40' indicating the limit of work. The limit of work shall include all building, parking, and vehicular use areas, and any grading associated with the proposed development. The plan or accompanying narrative shall document the species and quantities of specimen trees and/or other vegetation to be removed or relocated within the project area.

06.7 Construction schedule which describes the timing of vegetation removal, transplanting or replacement in relation to other construction activities.

06.8 Plans and/or description of Best Management Practices to be employed in development of the project site.

06.9 Submission of an erosion and sedimentation control plan at a scale of 1" = 40'. This plan shall include BMPs for erosion and sediment control (vegetative and/or structural) to prevent surface water from eroding cut and fill side slopes, road shoulders and other areas and measures to avoid sedimentation of nearby wetlands and ponds. The following information shall be submitted on erosion control and sedimentation plans submitted with the project application:

06.9.1 Plans and details of any sediment and erosion control structure drawn at a scale of 1" = 40', details @ _____ scale

06.9.2 Spillway designs showing calculations and profiles

06.9.3 Notes and construction specifications

06.9.4 Type of sediment trap

06.9.5 Drainage area to any sediment trap

06.9.6 Volume of storage required

06.9.7 Outlet length or pipe sizes

06.9.8 A description of the sequence of construction activities which specifies the time frame for soil stabilization and completion and any necessary winter stabilization measures.

Commentary: Some of the application submittals may require the review of the town engineer or a landscape architect. The town may retain a technical expert to review the application at the expense of the applicant. The town must first adopt the provisions of Chapter 593 of the Acts and Resolves of 1989, which allows towns to establish special accounts to hire consultants. If the Planning Board wishes to use developer funds for review of special permits, it must adopt regulations specifying a procedure for the submission and expenditure of such funds. Such rules and regulations must be adopted under G.L. c. 40A.

07.0 Review Standards:

Commentary: The following section contains standards that could be added to existing Site Plan Review Bylaws, independent of this bylaw. However, and as previously discussed, towns may also wish to adopt these standards only for larger projects, as defined by a size threshold.

The applicant shall demonstrate that the following measures are employed in development of the site:

07.1 Minimize site alteration/land clearing:

07.1.1 Site/building design shall preserve natural topography outside of the development footprint to reduce unnecessary land disturbance and to preserve natural drainage channels on the site.

07.1.2 Clearing of vegetation and alteration of topography shall be limited to _____% of the site with native vegetation planted in disturbed areas as needed to enhance or restore wildlife habitat.

Land Use	% Clearing Allowed
Agriculture	50%
Residential	35%
Institutional, Commercial, Industrial	40%

Commentary: The percentages for land clearing within specific land use types, and even the types themselves may need to be adjusted according to the constraints and land use patterns of the town, and relative to lot size. An alternate method could employ the Significant Natural Resource Area Map of the 1996 Regional Policy Plan as a way of identifying clearing limits. For example, projects within a Significant Natural Resource Area (SNRA) may only clear 35% of the site; land outside of SNRAs may clear up to 50%, and areas both outside of SNRAs and in certified growth centers may clear up to 60%. These percentages could be further fine tuned within the Town's zoning bylaw/ordinance. For example, the town may wish to limit clearing within residential districts more strictly than within non-residential districts.

07.1.3 Clearing for utility trenching shall be limited to the minimum area necessary to maneuver a backhoe or other construction equipment. Roots should be cut cleanly rather than pulled or ripped out during utility trenching. Tunneling for utilities installation should be utilized wherever feasible to protect root systems of trees.

07.1.4 Protect hilltops and/or scenic views within the town of _____:

07.1.4.1 Placement of buildings, structures, or parking facilities shall not detract from the site's scenic qualities and shall blend with the natural landscape. Building sites shall be directed away from the crest of hills, and foundations shall be constructed to reflect the natural terrain.

07.1.5 Protect wildlife habitat:

07.1.5.1 Sites shall be designed in such a way as to avoid impacts to rare and endangered species and wildlife habitat on a site, and to maintain contiguous forested areas.

07.1.6 Avoid impacts to archaeological resources:

07.1.6.1 Applicants shall submit a response from the Massachusetts Historical Commission (MHC) regarding the potential for archaeological or historical resources on the site.

07.1.7 Preserve open space and specimen trees on the site:

07.1.7.1 In the design of a development, priority shall be given to retention of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees.

07.1.8 Understory vegetation beneath the dripline of preserved trees shall also be retained in an undisturbed state. During clearing and/or construction activities, all vegetation to be retained shall be surrounded by temporary protective fencing or other measures before any clearing or grading occurs, and maintained until all construction work is completed and the site is cleaned up. Barriers shall be large enough to encompass the essential root zone of all vegetation to be protected. All vegetation within the protective fencing shall be retained in an undisturbed state.

07.1.9 Forested areas shall be preserved if they are associated with:

- 07.1.9.1 significant forest communities as defined herein;
- 07.1.9.2 wetlands, waterbodies and their buffers;
- 07.1.9.3 critical wildlife habitat areas;
- 07.1.9.4 slopes over 25 percent.

07.1.10 Minimize cut and fill in site development:

07.1.10.1 Development envelopes for structures, driveways, wastewater disposal, lawn areas and utility work shall be designated to limit clearing and grading.

07.1.10.2 Other efforts to minimize the clearing and grading on a site associated with construction activities shall be employed, such as parking of construction vehicles, offices/trailers, stockpiling of equipment/materials, etc. in areas already planned for permanent structures. Topsoil shall not be stockpiled in areas of protected trees, wetlands, and/or their vegetated buffers.

07.1.10.3 Finished grades should be limited to no greater than a 2:1 slope, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible.

07.1.10.4 Employ proper site management techniques during construction:

- (a) BMPs shall be employed to avoid detrimental impacts to existing vegetation, soil compaction, and damage to root systems.
- (b) The extent of a site exposed at any one time shall be limited through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

07.1.10.5 Protect the site during construction through adequate erosion and sedimentation controls:

- (a) Temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes or such other mechanical measures as are necessary may be required by the Board to intercept and divert surface water runoff. Runoff flow shall not be routed through areas of protected vegetation or revegetated slopes and other areas. Temporary runoff from erosion and sedimentation controls shall be directed to BMPs such as vegetated swales. Retaining walls may be required where side slopes are steeper than a ratio of 2:1.
- (b) Erosion and sedimentation controls shall be constructed in accordance with the DEP Stormwater Guidance manual.
- (c) Erosion control measures shall include the use of erosion control matting, mulches and/or temporary or permanent cover crops. Mulch areas damaged from heavy rainfalls, severe storms and construction activity shall be repaired immediately.
- (d) Erosion control matting or mulch shall be anchored where plantings are on areas subject to mulch removal by wind or water flows or where side slopes are steeper than 2:1 or exceed 10 feet in height. During the months of October through March when

seeding and sodding may be impractical, anchored mulch may be applied at the Board's discretion.

(e) Runoff from impervious surfaces shall be recharged on the site by stormwater infiltration basins, vegetated swales, constructed wetlands or similar systems covered with natural vegetation. Runoff shall not be discharged directly to rivers, streams, or other surface water bodies. Dry wells shall be used only where other methods are not feasible. All such basins and wells shall be preceded by oil, grease, and sediment traps. The mouths of all catch basins shall be fitted with filter fabric during the entire construction process to minimize siltation or such basins shall be designed as temporary siltation basins with provisions made for final cleaning.

(f) The applicant shall be required to conduct weekly inspections of all erosion and sedimentation control measures on the site to ensure that they are properly functioning as well as to conduct inspections after severe storm events.

07.1.10.6 Revegetate the site immediately after grading:

(a) Proper revegetation techniques shall be employed using native plant species, proper seed bed preparation, fertilizer and mulching to protect germinating plants. Revegetation shall occur on cleared sites within 7 (seven) calendar days of final grading and shall occur during the planting season appropriate to the selected plant species.

(b) A minimum of 4" of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.

(c) Finished grade shall be no higher than the trunk flare(s) of trees to be retained. If a grade change of 6" or more at the base of the tree is proposed, a retaining wall or tree well may be required.

08.0 Required Security: The Planning Board may require a performance guarantee in a form acceptable to the town to cover the costs associated with compliance with this bylaw under a Site Alteration Special Permit.

08.1 The required performance guarantee in the amount of 150% of the cost of site restoration shall be posted prior to the issuance of a Site Alteration Special Permit for the proposed project.

08.2 The performance guarantee shall be held for the duration of any prescribed maintenance period required by the Site Plan Review Committee/Planning Board to ensure establishment and rooting of all new plantings, and may be reduced from time to time to reflect completed work. Plantings which die within the prescribed maintenance period shall be replaced. Securities shall not be fully released without a final inspection and approval of vegetation replacement by the town.

09.0 Monitoring and Inspections:

09.1 Prior to commencement of construction, the applicant, land owner, contractor and construction crew, town engineer or zoning enforcement officer, and site engineer shall conduct a meeting to review the proposed construction phasing and number and timing of site inspections.

Commentary: Towns should decide what official is appropriate to review clearing and grading proposals, and require that official to report to the Planning Board.

09.2 Initial site inspection of erosion and sedimentation controls and placement of tree protection measures shall occur after installation of barriers around preserved areas and construction of all structural erosion and sedimentation controls, but before any clearing or grading has begun.

09.3 Routine inspections of preserved areas and erosion and sedimentation controls shall be made at varying intervals depending on the extent of site alteration and the frequency and intensity of rainfall.

09.4 Effective stabilization of revegetated areas must be approved by the town before erosion and sedimentation controls are removed. The town shall complete an inspection prior to removal of temporary erosion and sedimentation controls.

10.0 Enforcement: The town of _____ may take any or all of the enforcement actions prescribed in this bylaw to ensure compliance with, and/or remedy a violation of this bylaw; and/or when immediate danger exists to the public or adjacent property, as determined by the _____ Building Inspector. Securities described in Section 07.0 above may be used by the town in carrying out any necessary enforcement actions.

10.1 The _____ Building Inspector may post the site with a Stop Work order directing that all vegetation clearing not authorized under a Site

Alteration Permit cease immediately. The issuance of a Stop Work order may include remediation or other requirements which must be met before clearing activities may resume.

10.2 The Town may, after written notice is provided to the applicant, or after the site has been posted with a Stop Work order, suspend or revoke any Site Alteration Special Permit issued by the Town.

10.3 No person shall continue clearing in an area covered by a Stop Work order, or during the suspension or revocation of a Site Alteration Special Permit except work required to correct an imminent safety hazard as prescribed by the Town.

0.11 Severability:

0.11.1 If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

Commentary: This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.

SITE ALTERATION SPECIAL PERMIT

[Amended 5-5-2010 ATM, Art. 17; 5-7-2014 ATM, Art. 24]

5.8.1

Intent and Purpose. The intent of this section is to promote and protect the public health, safety, and welfare through the preservation and protection of the environment and by recognizing the vital importance of tree and vegetation growth in the ecological system. It is further the purpose of this section to:

1.

Preserve and protect the natural scenic beauty and related natural resources in the Town of Ashland;

2.

Limit land clearing and alteration of natural topography prior to site plan, preliminary plan, and/or definitive plan approval;

3.

To protect, preserve, and promote the aesthetic appeal, character, and value of the surrounding neighborhoods; and,

4.

To regulate prior to development plan approval, the removal of natural vegetation, especially major trees, and excavation and alteration of land, in order to minimize any danger of erosion, sedimentation, flooding, water pollution, unnecessary detracting from natural visual setting, obstruction of significant views, and other adverse impacts of development.

5.8.2

Applicability.^[5] No person shall undertake the following land clearing/grading activities without first obtaining a Site Alteration Special Permit from the Planning Board:

1.

Clearing of an area greater than 5,000 square feet; or,

2.

Grading if involving more than one hundred (100) cubic yards of earth.

[5]

Editor's Note: Former Section 5.8.2, Definitions, was deleted 11-19-2013 STM, Art. 22, and the contents moved to Section 10.0, Definitions. Article 22 also renumbered former Sections 5.8.3 through 5.8.8 as Sections 5.8.2 through 5.8.7, respectively.

5.8.3

Exemption. The provisions of this bylaw shall not apply to the following activities:

1.

Clearing of land zoned residential when such parcel is included in a submission for development to the Planning Board;

2.

Removal of hazardous trees;

3.

Routine maintenance of vegetation and removal of dead or diseased limbs and/or trees necessary to maintain the health of cultivated plants, to contain noxious weeds and/or vines in accordance with Department of Environmental Management (DEM) approved Forest Management Plan, or to remedy a potential fire or health hazard or threat to public safety;

4.

Maintenance of public and private streets and utilities within town-approved roadway layouts and easements;

5.

Agricultural activities on land zoned for agriculture, work conducted in accordance with an approved Natural Resource Conservation Service Agricultural Plan or agricultural uses on parcels of land of more than five acres as specified in G.L. c. 40A, Section 3.

5.8.4

Application. Any person seeking a Site Alteration Special Permit shall submit an application and plan including appropriate fees to the Planning Board which includes the following:

1.

Reason for site alteration;

2.

Photographs of the site of development taken from at least three significant public vantage points exterior to the project together with a map to indicate the location of points and approximate distance to the proposed development;

3.

The present location and size of all major trees and vegetation, with a designation of major trees and vegetation sought to be removed;

4.

The location, size and description of landscaping materials proposed to be placed on the lot in order to comply with a Landscape Plan;

5.

The location and boundaries of the lot and adjacent streets or ways and showing owners' names of all adjacent properties;

6.

Existing and proposed topography, including contours, the location of the wetlands, streams, water bodies, drainage swales, areas subject to flooding and unique natural land features;

7.

A timetable indicating estimate startup and completion dates; and,

8.

A written narrative indicating how runoff will be controlled and erosion avoided. Either a constructed surface or cover vegetation will be provided not later than the first full spring season

immediately following completion of the stripping operation. No stripped area or areas which are allowed by special permit shall remain through the winter without a temporary cover of winter rye or similar plant material being provided for soil control, except in the case of agricultural activity where such temporary cover would be infeasible.

5.8.5

Special Permit. Special Permits will be filed and reviewed in accordance to the time periods and provisions of M.G.L. Chapter 40A Section 11. The SPGA shall be the Planning Board for the purposes of this section.

[Amended 5-2-2018 ATM, Art. 19]

5.8.6

Other Permits. Issuance of a Site Alteration Special Permit does not exclude the applicant from applying for an Order of Conditions in Areas Subject to Protection under the Massachusetts Wetlands Protection Act. These areas include bank, bordering vegetated wetlands, riverfronts and the 25-foot and 100-foot buffer zones.

5.8.7

Priority Development Site(s). Where a Site Alteration Special Permit is required in connection with the development of a Priority Development Site (PDS), an application therefor shall be submitted simultaneously with any other permit application(s) required by the Code of the Town of Ashland, including these Zoning By-laws, relating to the use or development of the PDS or the buildings and/or structures located thereon, and not otherwise exempted by G.L. c. 43D, and a decision thereon shall be rendered no later than one hundred eighty (180) days from said date of submittal.

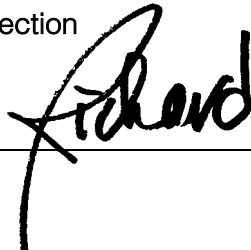
Date: November 7, 2022

To: Design Review Board

Via Email: [pdarlow@darlowchrist.com]

Subject: **Tree Protection**

From: Richard



At our meeting on October 20 we discussed whether the DRB should take up the issue of tree protection beyond the issue of protection of street trees, which we have already addressed, at least for the time being, via the recently enacted change in the Select Board policy on Public Shade Tree Removal.

The other areas of tree protection are:

- 1 Land Clearing: This is being taken up by Green Acton (witness their recent issuance of the Cape Cod Model Land Clearing Bylaw, by the Cape Cod Commission by Terra Friedrichs).
- 2 Forest Protection: This is a very comprehensive and complicated and expensive approach, which we (or, more likely, Green Acton) might take up in the future.
- 3 Front, Side, and Back Yard (setbacks) Protection: This refers to the "yards" as defined in the Acton Zoning Bylaw.

Land Clearing:

With regard to number 1, the members of the DRB should review for discussion at our next meeting the Cape Cod Model Land Clearing Bylaw, by the Cape Cod Commission and the Ashland SITE ALTERATION SPECIAL PERMIT (also attached to the email by which this is sent).

Front, Side, and Back Yard (setbacks) Protection:

It was proposed by yours truly that the DRB look into number 3. Dean Charter suggested that we look at the Concord and Wellesley bylaws (attached to the email by which this is sent). Dean noted that in Concord it is administered by a consulting arborist and enforced via the Building Inspector in the permit process. It is different in Wellesley. It was suggested that we should talk to Concord: how is it working? [See transcription of conversation at the end of this memo].

It was noted that we need to consider an exception to allow compliance with the Commonwealth's solar access law. State law allows communities to do this; but do not see this in Acton's ZBL. Is it somewhere else?

There was a lengthy discussion regarding what happens when an owner wants to do something really simple, like add a porch. Do they have to hire an arborist, have a plan drawn, etc.? Perhaps the bylaw should be restricted to demolition of existing houses or construction of new houses. [Note subsequent to the meeting: someone adding a porch must prepare a site plan proving that they are not intruding on setbacks. For existing houses, the requirement for an arborist could be waived and the surveyor preparing the site plan could be required to locate all trees over, say, 8" DBH].

[Note subsequent to the meeting: My original (and current) intention was to regulate removal of trees on all lots, not just lots subject to a building permit. But, the question arises, how do you make people aware that they can't just cut down any tree they want on their property when it is in a front, side, or rear yard setback?]

[Note subsequent to the meeting: the Select Board met on October 17, 2022 and discussed this at length. It was reported by Jim Snyder-Grant and Dean Charter that we are working on this. My reading is that they expect us to meet with Town staff and then, with staff, to present to them a plan of approach. A video of their meeting is available at: <http://actontv.org/on-demand/post-video/acton-select-board-meeting-10-17-221> The specific discussion starts at 2 hours, and 4 minutes.]

Attachments (via email by which this is sent):

Cape Cod Model Land Clearing Bylaw, by the Cape Cod Commission
Ashland SITE ALTERATION SPECIAL PERMIT
Tree-Ordinance-Guide-Massachusetts (from MA DCR)
Concord Tree Preservation Bylaw
Wellesley Tree-Bylaw-With-Proposed-2020-ATM-Warrant-Changes-v2

[Note subsequent to the meeting:]

Transcription of conversation with Will Holden in Natural Resources:

Small properties; not enough space to plant trees. So, they make hedges, even though the bylaw doesn't allow hedges. The Town allows them to plant them close together, but not in a row.

Hard to protect all of the trees on small lots with the space needed for excavators, etc. Bylaw calls for not disturbing a foot for each inch of DBH. Roots sometimes go out 3-4x the canopy.

Applicant required to have their arborist make a plan of how to protect the trees and do work in the critical root zone.

A problem: Can clear a whole property a year before applying for a building permit. How are people made aware of the requirements?

Difficult to get people to submit the full application; materials are often not submitted correctly. They are working on making it a better process with clearer instructions.

[Note subsequent to the meeting:]

Partial transcription of email from Elizabeth Hughes, Concord Town Planner:

I am not sure there is anything I would have done differently because we didn't know better. Will and I are working on various amendments to the bylaw and the rules & regs as we learn things. I think the one thing I would put more thought into is whether some type of mitigation should be required for the removal of certain invasive trees, such as Norway Maples. While they may be invasive, a 30" Norway maple does provide some climate benefits.