ZONING BY-LAWS

OF THE

TOWN OF WARWICK

MASSACHUSETTS

Adopted May 15, 1978
Amended July 11, 1988; November 5, 1991; May 17, 2004; May 1, 2006; May 14, 2007; October 15, 2007; May 12, 2008, February 7, 2011; September 26, 2011, May 5, 2014, September 22, 2014, May 7, 2018, May 6, 2024, December 9, 2024, May 4, 2026

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SECTION ONE: GENERAL PROVISIONS

A. PURPOSE: These By-laws have been enacted and shall be administered to satisfy one or more of the following purposes:

1. To promote the health, safety, financial security and general welfare of residents of the Town;

2. To assure adequate transportation, traffic flow, water supplies, drainage, waste disposal, schools, municipal services, parks, recreational facilities and other amenities of the Town;

3. To encourage the most appropriate use of land and prevent undue concentration of population or other inappropriate use of land;

4. To maintain the character of the Town as a small New England village and maintain the rural character of neighborhoods and natural areas within the Town;

5. To control uses of buildings, structures or land that have an impact on the Town's natural, fiscal and practical capacities;

6. To conserve natural resources, protect open space and preserve the environment;

7. To retain the natural beauty, aesthetic appeal, historic value and scenic attraction of the Town for both residents and tourists;

8. To protect the value of land, buildings and structures in the Town;

9. To promote long-range neighborhood, community and regional planning;

10. To satisfy other lawful needs in accordance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts.

B. DESIGNATION: The entire area of the Town is designated as a primarily residential-agricultural district. In addition, the Town has a Floodplain Overlay District (See Section 12).

C. ADMINISTRATION:

1. Enforcement: These By-laws shall be enforced by the Building Inspector.

2. Penalties: Any violator of any provision of these By-laws may be fined not more than $100.00 per day for each day of each violation commencing ten days after the date upon which the Building Inspector sends a notice of violation to the violator by certified mail or delivers such a notice to the violator in hand or, if the Building Inspector is not able to identify or locate the violator, posts such a notice at the site of

the violation. In addition, the Town may seek injunctive relief in Court against any such violator either with or without prior notice to the violator.

3. Validity: The invalidity of any section or provision of these By -laws shall not invalidate any other section or provision of these By-laws; provided, that if requirements of Section 6 are invalidated such that the overall requirements of Section 6 are substantially modified, a moratorium on approval of conservation developments shall automatically be put into effect for one year for the purpose of permitting the town to consider modification or repeal of Section 6.

SECTION TWO: PERMITTED AND PROHIBITED USES

A. USE OF BUILDINGS, STRUCTURES AND LAND: Any person may construct, alter or use any building, structure or area of land for any lawful purpose which is not injurious, noxious, offensive or detrimental to a neighbor or neighborhood, which does not violate the provisions of any applicable permit and which is not restricted by these By-laws, other Town regulations or By-laws or the laws or regulations of the Commonwealth of Massachusetts.

B. PROHIBITED USES: The following uses are prohibited:

1. The commercial sale of used motor vehicles.
2. Junk yards and motor vehicle junk yards.
3. Mobile home parks, camper parks or accumulations of three or more temporary living facilities on a lot or at a site.
4. Mobile homes, except as stated in Section Five of these By-laws.
5. Drive-in motion picture theaters.
6. Commercial sewage disposal or treatment plants, or commercial dumping sites for waste or refuse, unless operated by the town or mandated by applicable law.
7. The outdoor collection or storage in commercial quantities of salt, de-icing materials, pesticides or herbicides.
8. Commercial wood preserving and furniture dip-stripping operations.
9. The collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to matter classified as high-level or low-level radioactive waste under the provisions of any law or regulation of the United States or the Commonwealth of Massachusetts.
10. The collection, treatment, storage, burial, incineration, or disposal of hazardous waste in any amount exceeding the minimum threshold amount requiring compliance with the Massachusetts Department of Environmental Quality Engineering Hazardous Waste Regulations.
11. More than one principal structure or use on a lot except compatible uses as provided in Section 2(C)(3) associated with a dwelling.
12. More than two (2) dwelling units in a principal structure.

C. USES ALLOWED BY SPECIAL PERMIT: The following uses are allowed only by a Special Permit issued by the Zoning Board of Appeals (or, where indicated, by the Planning Board) in accordance with these By-laws and Chapter 40A of the Massachusetts General Laws

1. Uses involving two or more full-time employees or more than 400 employee-hours per month on the premises.

2. Uses involving or requiring parking, either on or off the site, for four or more motor vehicles, unless all of the vehicles involved are registered vehicles parked in connection with a dwelling or dwellings on a lot and are owned or used by residents of that dwelling or dwellings or their family or social guests.

3. Any commercial or industrial use, except by-right solar, provided that no Special Permit shall be required for a commercial or industrial use which would otherwise be allowed and that, in the determination of the Building Inspector, is solely agricultural or satisfies all of the following criteria:

    a. Such use is accessory to a dwelling located on the same lot.

    b. The primary use of the lot is residential.

    c. Such use is owned and operated by one or more residents of the dwelling on the lot.

    d. Such use is consistent with the residential use of the lot.

    e. Such use is not detrimental to the neighborhood in which it is located or to the Town.

4. Uses involving the construction or alteration of one or more structure containing a total area of more than 10,000 square feet.

5. Uses rendering impervious by any means more than 20% of the area of any lot, or 10,000 square feet (excluding roads in a subdivision), whichever is less.

6. Uses involving the commercial transmission, manufacture or storage of high-tension electrical power, fuel oil, gasoline, natural gas or other liquefied or gaseous petroleum products or requiring a permit for bulk storage of combustible materials or fuels for resale.

7. The raising of pigs, fur-bearing animals or poultry for commercial purposes (not applicable to parcels of land of more than five acres).

8. The use of any structure as an inn, lodging house, bed-and-breakfast, hotel or motel, provided that no such use shall be allowed unless it is licensed under applicable provisions of the Massachusetts General Laws.

9. The conversion of any preexisting nonconforming seasonal dwelling or camp to a dwelling occupied or intended to be occupied for more than eight months in a calendar year.

10. The creation of a lot having less than the required area or frontage under the provisions of Section 4(F) of these By-laws.

11. The use of a nonconforming dwelling, mobile home or temporary living facility during construction under the provisions of Section 5(A)(3) of these By-laws.

12. The use of a temporary living facility under the provisions of Section 5(B) of these By-laws.

13. At the request of the Applicant, the Planning Board may consider granting a Special Permit allowing the Common Open Land, which includes the Protected Open Space and Environmentally Sensitive Areas under the provisions of Section 6 of these By-laws, to be held by a private individual or a trust owned by private individuals provided that the interests of the residents of the Conservation Development will be protected as outlined in the requirements of the Conservation Restriction (Planning Board is permit granting authority). The Conservation Restriction would be held by the Town, the state, or a land trust.

14. Construction or alteration of surface features or contours on excessive slopes under the provisions Section 8(A)(1) of these By-laws.

15. Earth removal under the provisions of Section 8(B) of these By-laws.

16. Design or construction of a nonconforming new driveway under the provisions of Section 8(C)(9) of these By-laws.

17. Exceeding the allowed number or square footage of signs under the provisions of Section 8(D)(5) of these By-laws.

18. Displaying directional or identification signs under the provisions of Section 8(D)(7) of these By-laws.

D. ISSUANCE OF SPECIAL PERMITS:

1. Criteria: Special permits shall be granted in accordance with these By-laws and Chapter 40A of the Massachusetts General Laws upon a written determination by the Zoning Board of Appeals or other permit granting authority identified in these By-laws that the action or use proposed will not have adverse effects which overbalance its beneficial effects on the town, as measured by the purposes of these By -laws. The determination shall indicate consideration of each of the purposes stated in Section l(A)(l) through 1(A)(10) and any other applicable criteria stated in these By-laws or said Chapter 40A.

2. Procedure: Unless a different procedure is mandated by these By-laws or other applicable laws, the permit granting authority shall (a) approve, (b) approve only upon stated conditions or (c) deny an application for a Special Permit following one or more public hearings held within 65 days after the date upon which the applicant filed his or her application with the permit granting authority, provided that applicant shall have forthwith filed a copy of his or her application with the Town Clerk.

3. Permit Lapse: A Special Permit shall lapse upon the expiration of two years from the date upon which said permit was granted, which shall not include the time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced, except for good cause or, in the case of a permit for construction, if construction has not begun by such date, except for good cause.

4. Construction or Operations: Construction or operations under a building or Special Permit shall conform to any subsequent amendment of these By-laws unless the construction or operations are commenced within a period of six months (or any longer period specified in the permit) 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.

SECTION THREE: PREEXISTING USES

A. CONTINUATION AND RESTORATION: The lawful use of any building, structure or land may be continued, provided that such use was properly allowed when it began and has not been discontinued, not used or destroyed by fire or natural cause for a period of two or more consecutive years.

B. ALTERATION: Preexisting nonconforming structures or uses may be changed, extended or altered, provided that no such change, extension or alteration shall be permitted unless the Zoning Board of Appeals finds that such a change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use and provided that all applicable requirements of Section 6 of Chapter 40A of the Massachusetts General Laws are satisfied.

SECTION FOUR: LOTS AND BUILDINGS

A. APPLICATION: The requirements of this Section shall apply as follows:

1. The requirements of Sections 4(B)(1) and 4(C)(1), except as otherwise provided in this Section, shall apply to lots created or altered after March 20, 1978 and to lots reclassified under the provisions of Section 4(F)(1) after June 8, 1988.

2. A lot used for no more than one dwelling unit and not held in common ownership with any adjoining land, or a lot qualifying under the provisions of Section 4(A)(6), is exempt from the requirements of Sections 4(B)(1) and 4(C)(1), provided that such lot, at the time of recording or endorsement, must have conformed to the then-existing requirements and provided that such lot must have at least 5,000 square feet of area and 50 feet of frontage, measured along the front lot line as defined in these By-laws, for a building permit to be issued.

3. The requirements of Section 4(C)(2) shall apply to any construction of a new dwelling or dwelling unit without regard to when the lot was created.

4. The requirements of Sections 4(D) and 4(E) shall apply to any lot created or altered after March 20, 1978, to any change of use of an existing lot and to any construction, extension, reconstruction or alteration of a building on a lot performed after March 20, 1978 without regard to when the lot was created.

5. A lot used or intended to be used for more than one dwelling unit must comply with all provisions of this Section, except lots created under Section Six, Conservation Development, without regard to when the lot was created before any building permit for residential construction or any Special Permit authorized by these By-laws may be issued.

6. Notwithstanding any other provision of these By-laws, no lot lawfully in existence on March 20, 1978 shall become an unlawful lot under any provision of this Section solely because said lot has thereafter been conveyed to an abutting landowner. The preceding sentence shall not be effective, however, if any boundary line of any applicable lot that does not conform to this Section has been changed to reduce either the length of the boundary line or the size of the nonconforming lot after the conveyance to said abutting landowner.

B. LOT AREA: Soil, drainage and topographical conditions, the lack of any public water or sewer systems and other factors prevalent throughout the Town make necessary the following requirements:

1. No lot shall be created or altered to contain less than 87,120 square feet (two acres) of area, except by Special Permit as provided in this Section or as provided in Section 6.E.1.

2. A second Accessory Dwelling Unit (ADU) beyond the first by-right ADU is allowed by Special Permit on lots that include at least two acres of buildable land, except a lesser amount is allowed under the provisions of Section 6.E.1, Conservation Development. No more than two ADUs are allowed on a lot.

C. LOT FRONTAGE AND ACCESS: Soil, drainage and topographical conditions, the lack of any public water or sewer systems and other factors prevalent throughout the Town make necessary the following requirements

1. No lot shall be created or altered to have less than 300 feet of frontage, measured along the front lot line as defined in these By-laws, except by Special Permit as provided in this Section or as provided in Section 6.E.

2. The Building Inspector shall issue no building permit for the construction of a new dwelling or dwelling unit unless and until the Building Inspector determines that the roads necessary for access to the beginning of the driveway at the boundary of the lot on which construction of a new dwelling or dwelling unit is intended to be performed are either (a) public ways maintained by the Town at the time of application for the permit that provide year-round access to the lot for fire, police and emergency motor vehicles and Town maintenance and snow removal vehicles or (b) private ways approved by the Planning Board under the provisions of the Warwick Subdivision Control By-laws that provide year-round access to the lot for fire, police and emergency motor vehicles and Town maintenance and snow removal vehicles.

D. SETBACK REQUIREMENTS: No lot shall have less than the following front, side and rear yard distances, except for Conservation Development lots as provided in Sections 6.D.8. and 6.E.2.

1. Front Yard: Thirty-five (35) feet between any building and the front lot line.

2. Side Yard: Thirty (30) feet between any building and the side lot line.

3. Rear Yard: Thirty-five (35) feet between any principal building and the rear lot line

E. MAXIMUM BUILDING HEIGHT: No building shall rise more than two and one-half stories above the mean level of the ground surrounding it and no building shall exceed thirty-five (35) feet in building height.

F. SPECIAL PERMITS: The Zoning Board of Appeals may, in its discretion, permit the creation of a lot having less than the required area or frontage as follows:

1. To receive such a Special Permit, the applicant must show that the lot falls within one of the following two classifications:

    (a) If the lot has no less than 50,000 square feet of area and no less than 225 feet of frontage measured along the front lot line as defined in these By-laws, then the Zoning Board of Appeals may approve the creation of the lot and approve its use for no more than one single-family dwelling unit. Upon approving the creation

of any such lot, the Zoning Board of Appeals shall cause a notice specifying the restriction of the lot to only one dwelling or dwelling unit to be recorded at the expense of the applicant in the Franklin County Registry of Deeds and shall provide a copy of said notice to the Board of Assessors of the Town, who shall cause the information contained in said notice to be recorded on the official map and records of the Town.

(b) Without requiring that the lot have any minimum area or frontage, the Zoning Board of Appeals may approve the creation of the lot as a special lot upon which no new dwelling or dwelling unit shall be constructed or otherwise established. Upon approving the creation of any such special lot, the Zoning Board of Appeals shall cause a notice specifying the number of existing dwellings or dwelling units on the lot and setting forth the prohibition of new dwellings or dwelling units on the lot to be recorded at the expense of the applicant in the Franklin County Registry of Deeds and shall provide a copy of said notice to the Board of Assessors of the Town, who shall cause the information contained in said notice to be recorded on the Town Assessors' map and in the official records of the Town.

2. The applicant shall provide all relevant data and information requested by the Zoning Board of Appeals to determine whether it should grant a Special Permit under the provisions of this Section, including but not limited to a sketch or plan showing, if applicable, the proposed boundaries of the lot, the existing and proposed topography of the lot and the proposed location of any present or proposed building, water supply and sewage disposal system.

3. Before issuing such a Special Permit, the Zoning Board of Appeals must find that the lot satisfies the Special Permit criteria set forth in these By-laws and must further determine that the use of the lot by Special Permit is unlikely to result in soil erosion or any unhealthy or unsafe condition. In making such determination, the Board shall consider the following:

   (a) The slope and soil type at the location of any present or proposed principal building and sewage disposal system;

   (b) The results of percolation tests of the soils within the area of any present or proposed sewage disposal system;

   (c) The depth of the water table during the season when such water table is highest and the depth to bedrock or impermeable soils in the vicinity of any present or proposed sewage disposal system;

   (d) The ground slope and horizontal distance between any present or proposed sewage disposal system and any water supply or surface water within the boundaries of both the proposed lot and abutting properties.

4. The Zoning Board of Appeals may then issue a Special Permit under the provisions of this Section. Such Special Permit shall state the classification of the lot under either Section 4(F)(l)(a) or Section 4(F)(1)(b) and may set forth any limitation of use and any other condition or restriction that the Board considers appropriate.

G. A single Accessory Dwelling Unit (ADU) is allowed by-right on any lot. “Accessory Dwelling Unit” is defined in Section Eleven. The size of the ADU shall not exceed 900 square feet. Use of all dwelling units (the main dwelling unit and all ADUs) for simultaneous short-term rentals (as defined in M.G.L. c. 64G) is prohibited. ADUs must have a separate entrance, either directly outside or through a shared hall. ADUs must include sleeping, cooking, and sanitary facilities. Adequate off-street parking shall be provided. The setback and height requirements for ADUs are the same as for other dwelling units (see FOUR.D). Nothing in this bylaw is intended to supersede state health and safety laws and regulations, such as, but not limited to the Building Code, Fire Code, M.G.L. c. 111, § 189A: Massachusetts Lead Law, or any federal laws.

SECTION FIVE: MOBILE HOMES AND TEMPORARY LIVING FACILITIES

A. MOBILE HOMES: No mobile homes shall be permitted on any land for any purpose, including but not limited to use as a dwelling or accessory thereto, use as an occasional or temporary residence, use as an office or place of business or use as a storage facility.

1. All replacements of existing mobile homes permitted under Section 3 of these By-laws must have installed, within thirty days after the home has been placed in location, a skirting which shall extend from the lower edge of the home's siding to grade level, and around the entire periphery of the home, so that the space under the home is completely enclosed.

2. The owner and occupier of a residence which has been destroyed by fire or other natural holocaust may place a mobile home on the site of such residence and reside in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the state sanitary code.

3. The owner of a lot containing a proposed permanent dwelling under construction pursuant to a valid building permit may, if granted a Special Permit at the discretion of the Zoning Board of Appeals, place a nonconforming dwelling, mobile home or temporary living facility on said lot and reside in that nonconforming dwelling, mobile home or temporary living facility for a period not to exceed six months, subject to any conditions that the Zoning Board of Appeals considers appropriate and subject to such extensions that the Zoning Board of Appeals may grant, with or without further conditions, for periods not to exceed six months per extension. Any such nonconforming dwelling, mobile home or temporary living facility shall be subject to the provisions of the state sanitary code.

B. TEMPORARY LIVING FACILITIES: No temporary living facility shall be used as a dwelling or residence for more than fourteen days in a calendar year in any location other than a lawfully licensed campground without a Special Permit which shall be subject to any conditions that the Zoning Board of Appeals considers appropriate. Except as provided in Section 5(A)(3) of these By-laws, no such Special Permit shall allow the use of a temporary living facility as a dwelling or residence for more than six months in a calendar year.

SECTION SIX: CONSERVATION DEVELOPMENT

A. GENERAL PROVISIONS:

1. Definition: A Conservation Development shall mean a development consisting of single and/or two family dwellings in which the houses are clustered into one or more groups within the development, and separated from adjacent properties and other groups by undeveloped land. This type of development may be utilized for new subdivisions and access to the Conservation Development shall be from a new road constructed for the subdivision. This optional bylaw provides residents and developers of land in Town with an alternative to a standard subdivision development that is often incompatible with agricultural and forested land use and operations. The building lots are of a reduced size and concentrated together, taking up only a portion of the parcel of land. A permanent conservation restriction preventing future development is placed on the open space to be preserved.

2. Purpose: The purpose of a Conservation Development is to encourage the preservation of common land for conservation, agriculture, open space, forestry and recreational use; to preserve historical or archaeological resources; to protect existing or potential municipal water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the purposes of these By-laws through a greater flexibility in design; and to allow more efficient provision of municipal services.

3. Reviewing Authority: The Planning Board may approve a Site Plan for a Conservation Development as provided in this Section and Section Ten Site Plan Review.

4. Common Open Land: For the purposes of Section Six, Common Open Land is defined as Protected Open Space and Environmentaly Sensitive Areas. Protected Open Space is defined as the land area which is at least 35% of the total parcel area that is set aside as permanently protected open space pursuant to Section Six F. The area designated as Protected Open Space will be in addition to any portion of the parcel identified as Environmentally Sensitive Areas, such as wetlands, waterbodies, floodplains, slopes greater than twenty-five percent (25%), and other land prohibited from development by legally enforceable restrictions, easements or covenants, and other constraints dictated by these By-laws, applicable regulations of the Department of Environmental Protection, applicable requirements of the Board of Health, and the provisions of the Wetlands Protection Act.

B. PROCEDURES: A Conservation Development shall follow the application procedures set forth in this Section and those set forth in Section Ten Site Plan Review. The Planning Board may approve a Site Plan for the construction of a Conservation Development in any district, subject to the regulations and conditions set forth under this section, Section Ten Site Plan Review, and Warwick's Regulations Governing the Subdivision of Land.

1. Filing of Application: Each application for a Conservation Development shall follow the Procedures and Required Contents as identified in this Section and Section Ten Site Plan Review. Applicants are encouraged to meet with the Planning Board prior to submitting a formal application to promote better communication. Applicants are also encouraged to submit a Conceptual Plan for review by the Planning Board prior to the application for Site Plan Review. Materials and information to be submitted with the Conceptual Plan shall be agreed upon by the applicant and the Board.

2. Contents of Application: Applicants for Site Plan approval for a Conservation Development shall submit nine (9) copies of a Site Plan and the narrative required to meet the requirements of this Conservation Development Bylaw, Section Ten Site Plan Review, and the requirements of Warwick's Subdivision Rules and Regulations for a Preliminary Plan. The Preliminary Plan shall show locations of proposed streets, building envelopes, Environmentally Sensitive Areas, and Protected Open Space. The plan shall be prepared by a professional engineer, registered architect, registered landscape architect, or registered land surveyor. In addition, the applicant shall provide the following information:

    a. The number of dwellings which could be constructed under this By-law according to Section 6 D.2

    b. A map and analysis of the site, including wetlands, a Forest Type Map prepared by a Licensed Professional Forester, water bodies, slopes greater than twenty-five percent (25%), soil types, areas within the 100 year flood zone as shown on the Federal Insurance Administration (FIA) Flood Hazard Boundary Maps for Warwick dated January 24, 1975, prevailing winds, solar aspect diagram, land prohibited from development by legally enforceable restrictions, easements or covenants, and such other natural features as the Planning Board may request.

    c. A summary of the environmental concerns relating to the proposed plan.

    d. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan on them.

    e. The proposed use (e.g. farming, forestry, etc.), size, shape, location, and natural resource value of the land to be permanently protected within the Conservation Development, and accessibility by residents of the Town or of the Conservation Development.

    f. Materials indicating the landowner's interest in the land to be developed, the form of organization proposed to own and maintain the common land, the substance of covenants and grants of easements to be imposed upon the use of land and structures and a development schedule.

    g. A preliminary septic system design;

    h. Measures to prevent soil erosion, increased runoff, and flooding;

    i. Preliminary drainage calculations (definitive calculations to be included with definitive subdivision plan);

    j. Projected traffic flow patterns and the total number of building lots;

k. Proposed design features intended to integrate the proposed development into the existing landscape;

l. Preliminary location(s) of the public water supply;

m. Fire protection provisions;

n. If necessary to determine compliance with the requirements or intent of this provision or evaluate complex site conditions, the Planning Board may require further reasonable engineering or environmental analysis to be prepared at the expense of the applicant

o. A “metes and bounds” desciption of the land to be set aside as protected space.

p. A copy of a draft application filed either simultaneously with or prior to the conservation development application, for a conservation restricition on the common land as described in Section 2.C.14, meeting the requirements of MGL Chapter 184 Sections 31 through 33; which application may be contingent upon approval of the conservation development and site plan reviw.

3. Review of Other Boards: Upon receipt of the application, the Town Clerk shall transmit copies of the application to the Planning Board, Conservation Commission, the Board of Health, the Historical Commission, the Open Space Committee, the Highway Superintendent, the Fire Chief, the Police Chief, and the Building Inspector. Town Boards and municipal officials other than the Planning Board shall have 45 days from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations. The Fire and Police Chief will review the application to ensure that the proposal provides adequate emergency vehicle access to all lots. If necessary to ensure compliance with this section, the Planning Board may require further reasonable engineering or environmental analysis to be conducted at the expense of the applicant.

4. Public Hearing: After the opportunity for a 45 day review by other boards has taken place, the Planning Board shall hold a hearing under this section, in conformity with the provisions of Chapter 40A, Section 11, of the Massachusetts General Laws, the provisions of these By-laws, Section Ten Site Plan Review and the regulations of the Planning Board.

5. Relation to Subdivision Control Act: Planning Board approval of a Site Plan shall not substitute for compliance with the subdivision control act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under that law. However, in order to facilitate processing, the Planning Board may, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the board's regulations under the subdivision control act. In addition, to the extent permitted by law, the Planning Board shall coordinate the public hearing requirement for a Conservation Development with the Public Hearing required for a Definitive Subdivision Plan.

C. CRITERIA: Approval of a Conservation Development Site Plan shall be granted only if the Planning Board determines that the requirements of the Conservation Development and Site Plan Review bylaws have been complied with.

D. MINIMUM REQUIREMENTS:

1. The minimum area of land required for a Conservation Development shall be ten (10) acres and the parcel shall be held in single ownership or control at the time of application.

2. The maximum density of a Conservation Development shall not exceed the allowed density for a conventional subdivision in any zoning district except as described in Section 6 H. Bonus Incentives. In a Conservation Development, the maximum number of building lots will be determined by one of the following methods at the Applicants option:

    a. Method 1 - The maximum density for the Conservation Development under Method 1 shall be calculated by taking the parcel area and subtracting out any acreage that is wetlands, floodplains, existing permanently protected open space, land with slopes greater than 25%, other land prohibited from development by legally enforceable restrictions, easements or covenants, and other constraints dictated by these By-laws with 10% of the total parcel area subtracted for roads and drainage to find the Net Parcel Area. The Net Parcel Area shall be divided by the Minimum Lot Area of the zoning district in which the parcel is located to determine the maximum number of lots allowed. All wetlands shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

    b. Method 2 - A preliminary plan for a conventional (non-Conservation Development) subdivision for the site shall be submitted illustrating the number of lots that could be created under a conventional subdivision (2 acre lots and 300 feet of frontage) and the results of deep hole and perc tests indicating how many of these lots would be buildable. The proposed road grade(s) shown on the preliminary plan must meet the standards of Warwick's Subdivision Rules and Regulations. The perc tests shall be conducted under the supervision of the Board of Health, and in conformance with Title 5, percolation tests. The number of buildable lots will equal the maximum density of the Conservation Development.

3. The development shall include single and/or two-family dwellings only. Only one principal structure is permitted on each building lot.

4. Each lot shall have adequate access on an approved private way. The Planning Board shall determine that each lot shown on the plan has practical access from the way upon which the lot fronts, in that there are no legal or physical impediments which will prevent access particularly for emergency vehicles such as fire engines and ambulances. The road serving the Conservation Development shall be a new road that complies with the Design Standards of Warwick's Subdivision Regulations unless such

compliance is waived by the Planning Board pursuant to Section 3.5 of the Subdivision Regulations.

5. Each lot shall comply with the minimum dimensions required in Section Six.

6. Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.

7. At least thirty-five percent (35%) of the total parcel of land shall be set aside as Protected Open Space. To the extent possible the preserved land shall form a contiguous tract to maintain or enhance wildlife habitat or enable continued farming or forestry operations. The minimum required Protected Open Space will be in addition to existing permanently protected open space, roadways, accessory uses, Environmentally Sensitive Areas such as wetlands, floodplains, and land with slopes greater than 25%, other land prohibited from development by legally enforceable restrictions, easements or covenants, and other constraints dictated by these By-laws, applicable regulations of the Department of Environmental Protection, applicable requirements of the Board of Health, and the provisions of the Wetlands Protection Act, or the 50 foot buffer required under Section 6. D. 8. except that the portion of the 50 foot buffer which is contiguous to the Protected Open Space may be counted.

8. All residential structures and accessory uses within the development shall be set back from the parcel boundaries by a buffer strip of at least fifty (50) feet in width to be kept in a natural or landscaped condition.

9. There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, facilities, roadways, driveways, and parking. There shall be no parking in the buffer strip.

10. Design of roads, utilities, and drainage shall be functionally equivalent to the standards contained in the Planning Board's Subdivision Control Regulations insofar as reasonably applicable, but the Board may vary those standards to meet the particular needs of the Conservation Development.

11. All structures which require plumbing that may be connected to a public sanitary sewer, if available, or to a communal septic system serving the development or a portion thereof shall be in compliance with Title 5 of the Massachusetts Environmental Code. With the Definitive Subdivision Plan, the applicant shall submit a septic system design for the Conservation Development prepared by a Registered Professional Engineer and approved by the Board of Health, in conformance with Title 5 of the State Environmental Code, and a plan illustrating the location of water supply wells. A Conservation Development may utilize shared septic systems designed, installed and maintained in accordance with the State Environmental Code Title 5, 310 CMR. Septic systems shared or otherwise should be located outside of all agricultural land supporting farming operations to the maximum extent possible.

12. Every Conservation Development shall include a condition that the approved and recorded Definitive Subdivision Plan of said Conservation Development shall have

endorsed upon it a statement that the subdivision is an approved Conservation Development and that no land within the subdivision may be further subdivided so as to increase the number of building lots, and shall contain a reference to the approved Site Plan for the Conservation Development.

E. DIMENSIONAL AND DENSITY REQUIREMENTS:

1. Building lot sizes shall not be less than one-half acre for a single dwelling unit in a principal structure or 1 acre for two dwelling units in a principal structure.

2. In no instance shall a building lot have less than 100 feet of frontage on an approved public or private way.

3. The minimum Setbacks for Yard Dimensions for each building lot shall be as follows:

    a. Not less than 25 feet for the Front setback;

    b. Not less than 10 feet for the Rear setback; and

    c. Not less than 10 feet for the Side setback except that two single family dwelling units may be attached on one side having no Side Yard setback (zero setback). The other Side Yard of an attached single family unit (the nonattached side) shall be at least 10 feet. Nonattached single family units shall have a minimum Side Yard setback of 10 feet.

4. The maximum height of dwelling units and structures shall be 35 feet.

F. REQUIRED CONSERVATION LAND:

1. Common Open Land may be used for passive recreation, forestry, conservation, or agricultural uses which preserve the land in essentially its natural condition. In general, natural resource land such as wetlands, or land that is suitable for extensive public recreational use, should be conveyed to the town or to a qualified conservation organization; whereas land which will be principally used by the residents of the Conservation Development should be conveyed to a home owners association. The area to be preserved as Common Open Land shall be made subject to a perpetual restriction of the type described in M.G.L. c.184 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town of Warwick. To ensure this, a Conservation Restriction in accordance with M.G.L. Chapter 184 Sections 31 to 33 shall be imposed on the Common Open Land and recorded in the Registry of Deeds by the applicant at the time the approved Definitive Plan is submitted to the Registry of Deeds for recording. The applicant shall notify the Planning Board in writing within ten (10) days after the Conservation Restriction and the Definitive Plan, as approved and endorsed, have been recorded at the Franklin County Registry of Deeds and, in the case of registered land, with the recorder of the Land Court, of such recording, noting book, page number and date of recording. The purpose of the Conservation Restriction will be to clearly identify the uses and restrictions which apply to the Common Open Land in order to protect the value of the property within the development. Approval of a Conservation Development will be

contingent upon final adoption of the Conservation Restriction, and no building permit shall be granted under the the conservation development until such final adoption.

2. Further subdivision of the Common Open Land or its use for other than the above listed uses, except for easements for underground utilities and septic systems, shall be prohibited. Structures or buildings accessory to recreation, conservation, or agricultural uses may be erected but shall not exceed 5 % coverage of the Protected Open Space or 10,000 square feet, whichever is less.

3. Such Common Open Land shall be conveyed to one or more of the following entities:

    a. A corporation or trust owned or to be owned by the owners of lots within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;

    b. A nonprofit organization, the principal purpose of which is the conservation or preservation of open space;

    c. The Town, at no cost, provided that the Town accepts the land for a park or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.

    d. The Planning Board, at the request of Applicant, may consider granting a Special Permit to have the Protected Open Space or Environmentally Sensitive Areas retained by a private individual or a trust owned by private individuals provided that the interests of the residents of the Conservation Development will be protected as 5utlined in the requirements of the Conservation Restriction. Such Special Permit shall meet the requirements of Section Two Permitted and Prohibited Uses, paragraphs C.13 and D., of the Zoning Bylaws and other requirements to be determined by the Planning Board.

4. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land and/or frontage 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. Such restrictions shall further provide for maintenance of the Common Open Land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.

5. If the Common Open Land is to be conveyed to the lot owners within the development, ownership and maintenance of such land shall be permanently assured through an incorporated nonprofit homeowner's association, covenant, or other land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. Such land agreement documents shall be submitted with the Site Plan and shall be subject to approval by the Planning Board and Town Counsel. These covenants shall also include provisions for the maintenance of all common facilities and utilities.

6. Such covenants shall specify how the organization will be governed and how costs will be assessed and that the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.

7. Such covenants shall provide that in the event that the organization established to own and maintain the Common Open Land or any other commonly owned facilities or utilities or any successor organization fails to maintain the Common Open Land or any other commonly owned facilities or utilities in reasonable order and condition in accordance with the Site Plan, the Town may, after notice to the organization and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the Common Open Land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed proportionately against the properties within the development and shall become a charge on said properties enforceable as a real estate tax and that such charge shall be paid by the property owners within thirty (30) days after receipt of a statement therefor.

8. If land subject to the Conservation Restriction is contiguous to other land which is or might become similarily restricted, or to publicly owned land, or if beneficial for maintenance of town options for future trail development, the Planning Board may request that public easements for hiking or equestrian trails be granted by the applicant within the protected open space for access to existing or potential trails on such adjacent lands, and the applicant shall be awarded 10 bonus points for the grant of such easements.

G. FURTHER REQUIREMENTS:

1. There shall be no amendments or changes to an approved Site Plan without review and approval from the Planning Board.

2. No lot within an approved Conservation Development may be further subdivided so as to increase the number of lots, and a notation to this effect shall be shown on any Definitive Plan of a subdivision and on the approved Site Plan if not a subdivision under the Subdivision Control Law.

3. No use other than residential, agricultural, forestry or passive recreation shall be permitted.

4. The Board may approve a Site Plan hereunder for Conservation Development even if the proposed development is not subject to the Subdivision Control Law.

5. Upon approving the creation of a Conservation Development, the Planning Board shall provide a copy of the Definitive Plan and notice required in Section Six F.1. to the Board of Assessors of the Town, who shall cause the information contained in said notice to be recorded on the Town Assessors' map and in the official records of the Town.

6. Wherever it is feasible, all residential buildings shall be located away from agricultural soils that are classified by the U. S. Natural Resources Conservation Service as prime farmland and soils of state and local importance and placed on soils the least suitable for production of crops and livestock. This provision does not apply to the location of on-site septic disposal systems that must by placed on soils meeting the Massachusetts Environmental Code Title 5.

7. The layout and construction of utilities, drainage systems, and roads shall be located to have the least possible impact on agricultural lands and uses or mature forest stands.

8. To minimize conflict with agricultural operations, all residential lot lines shall be located at least one hundred (100) feet from agricultural activities. This area shall be made up of a buffer strip of trees or open space

9. To the maximum extent possible, residential units should be integrated into the landscape to avoid interrupting the view of agricultural or scenic landscapes from adjacent public ways. Structures should be sited within any woodland contained on the parcel, along the edges of fields, or in locations where structures can be visually screened or absorbed into natural vegetative or topographic features. Vegetative and structural screening, landscaping, grading, and building placement on the lot should be used to minimize visual interference with pre-existing landscape features.

10. Residential units shall, to the maximum extent feasible, have a solar and wind orientation which encourages energy conservation. If all dwelling units are Enegry Star Homes 10 bonus points will be earned.

11. Either modification of the site plan as described or approved deviation from the site plan by the definitive plan shall be approved under the same criteria and with the same required finds as approval of the site plan itself.

H. BONUS INCENTIVES AND DISINCENTIVES: Creating a subdivision development using the Conservation approach is often less expensive for the developer as roads are shorter and utilities are grouped together. Thus, Warwick's provision of a Conservation Development option should be considered an incentive unto itself. However, to further encourage Conservation Development the following "point incentive system" has been developed. A Site Plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the Site Plan, the bonus point total.

A Site Plan that earns at least 40 points will earn a 10% building lot bonus above the basic number of building lots allowed under Section Six D. A Site Plan that earns 60 points or more earns a 20% building lot bonus above the basic number of building lots allowed under Section Six D. If the point total results in a building lot bonus of a fractional number, the bonus building lot total will be rounded down to the next lower whole number. The total number of bonus lots cannot exceed 20% of the maximum number of building lots allowed under Section 6.D. before the addition of bonus lots (e.g., 2 bonus lots for a 10 lot subdivision for a total of 12 lots).

1. Any development that increases the amount of land permanently preserved by 5% above the 35% requirement for Protected Open Space earns 10 points. Each additional 5% increase in preserved land results in an additional 10 points. The bonus points will only be awarded for additional Protected Open Space that is contiguous to the Common Open Land. For example, if a developer permanently protects 40% of the total parcel area as Protected Open Space and the acreage that comprises the additional 5% is contiguous to the 35% required Protected Open Space or other Common Open Land, 10 points would be earned.

2. If a minimum of 5 acres of protected agricultural land is set aside with an Agricultural Management Plan acceptable to the Planning Board that ensures sustainable agricultural production for a 10-year term, 10 points would be earned.

3. If a minimum of 10 acres of protected forestland is set aside with a sustainable Forest Management Plan for a 10-year term that is prepared by a Licensed Professional Forester, 10 points would be earned.

4. A Conservation Development plan that permanently protects land in a tract that is at least 10 acres in size and contiguous to an already protected area so as to increase the area of forestland, wildlife habitat, working agricultural land, or other land approved by the Planning Board as meeting the purposes of Section Six. A. 2. of this bylaw, earns 10 points.

5. A development plan that permanently screens structures from view from a public way as evidenced by cross sections of the definitive plan at a scale of 1 inch = 10 feet earns 10 points.

6. Architectural designs for the single-family or two-family structures that match the historic character of the area earn 10 points. Architectural elevation drawings of the single-family or two-family homes must accompany the site plan to be eligible to receive points in this category.

7. If all houses are certified as Energy Star Homes, 10 points will be earned.

8. If a minimum of 20% of the housing units will be certified to meet MGL Chapter 40B (Affordable Housing) requirements, 10 points will be earned.

9. If the Planning Board requests an easement for hiking or equestrian trails and such an easement is included in the Conservation Restriction as described in Section 6.F.8., 10 bonus points will be earned.

10. Development in prime agricultural land as described in Section 6.G.6 or failure to comply with Section 6.G.8 will result in **subtracting** 10 bonus points.

11. If residential units are not integrated into the landscape to avoid interrupting the view of the agricultural or scenic landscapes from adjacent public ways as described in Section Six G.9., then 10 bonus points will be **subtracted**.

SECTION SEVEN: RATIONAL GROWTH

A. PURPOSES:

- To promote orderly growth consistent with the rate of growth in the Town of Warwick over the previous ten calendar years;
- to avoid straining the community's ability to provide the town, its boards, and its agencies with information, time, and capacity to incorporate such growth in its plans and the regulation of the community;
- to encourage housing accessible to under-served and lower-income residents and potential residents;
- to allow time for the Zoning Task Force and the Planning Board to rewrite the Zoning By-laws and Subdivision Regulations;
- and to further the general purposes set forth in Section 1(A) of these By-Laws.

B. GENERAL PROVISIONS:

1. Issuing Building Permits: The Building Inspector shall issue building permits for construction of new dwellings and for conversion of and/or additions to existing dwellings only if the application complies with the provisions of Section 7 of the Warwick Zoning By-Laws.

2. Applicability: The regulations of this section shall apply to all existing lots except as provided for in MGL Chapter 40A Section 6, definitive subdivision plans, and Special Permits that would result in the creation of a new dwelling unit or units. Dwelling units shall be considered as part of a single development for purposes of Rational Growth if located on either a single parcel or on contiguous parcels of land in the same beneficial ownership or under the same contract for development or that appear to be related at the time an application is submitted. *The Building Inspector shall determine beneficial ownership and relationship.*

3. Time Limit: A building permit expires 6 months from the date of initial issuance unless construction is initiated before the expiration date or an extension is granted as specified in State Building Code Paragraph 780 CMR 111.8. **Amending the permit does not extend the expiration date.** An applicant may, however, apply for a new permit.

4. Protection Against Zoning Changes: Protection against zoning changes granted to land in a subdivision under Chapter 40A, Section 7, of the Massachusetts General Laws subsequent to granting an initial permit shall, in the case of development whose completion has been impeded by Town actions taken under this section shall be extended ten years from the date of initial issuance.

5. Termination Date: Section 7 of these By-Laws, entitled "RATIONAL GROWTH," shall expire five years from May 14, 2007

6. Duplexes: A building permit for two dwelling units in one principal structure shall count as one (1) Building Permit for purposes of the town-wide total; in a development, however, each unit of a duplex will count as one (1) dwelling unit toward the town-wide total.

C. RESIDENTIAL LIMITATION:

1. Town-Wide Limit: Except as provided below, a town-wide total of not more than six (6) new dwelling units shall be authorized by the Town within any one calendar year.

2. General Applicants: Not more than two (2) dwelling units shall be authorized via Building Permit for any one applicant within any calendar year, except as provided below.

3. Conservation Development Projects (see Section 6, above): Permits for up to four (4) dwelling units may be issued to an applicant of an approved Conservation Development Project. The four (4) dwelling units or any fraction thereof will count as one (1) unit toward the town-wide limit.

4. Affordable Housing Subdivision: Building permits for up to four (4) dwelling units may be obtained by the same applicant upon receiving final approval for a subdivision project that includes at least twenty percent (20%) affordable housing as defined in Massachusetts General Laws Chapter 40B. Every four (4) such permits, or any fraction thereof, will count as one (1) toward the town-wide limit.

5. Affordable Housing Conservation Development: (See Section 6 of these Zoning By-laws): Building permits for up to twelve (12) dwelling units may be obtained by an applicant of an approved Conservation Development Project that includes a minimum of twenty percent (20%) affordable housing as defined in Massachusetts General Laws Chapter 40B. Every six (6) dwelling units or fraction thereof, will count as one (1) unit toward the town-wide limit.

D. EXEMPTIONS:

1. Family Lot: A single permit for construction of one dwelling unit or principal structure by and for a family member related by birth, marriage, civil union, or adoption (a child, parent, grandparent, sibling, or spouse) on a lot created when a resident divides land and transfers it to said family member is exempt from the town-wide limit provided for in Section 7.C.1 for ten years from the date of transfer, and the Building Permit will not count against the town wide limit. The grantee may only exercise this option once in a lifetime.

2. Family Conversion: Conversion of a resident-owner's principal structure to provide living quarters for a family member, whether or not the footprint of the structure is altered, is exempt from the town-wide limit, Section 7.C.1, and the Building Permit will not count against the town wide limit.

3. Small-Unit Conversion Exemption: Conversion of a principal structure to contain a dwelling unit of 800 square feet or less, where the footprint of the structure is not changed, is exempt from the town-wide limit, Section 7.C.1, and the Building Permit will not count against the town wide limit.

4. Affordability Exemption: Any individual dwelling unit that meets the affordability criteria of Massachusetts General Laws Chapter 40B, and is not part of a larger project, is exempt from the town-wide limit, Section 7.C.1, and the Building Permit will not count against the town wide limit.

5. Conservation Lot Exemption: A permit for a dwelling unit to be constructed on a lot conforming to the provisions of Section 4 of these By-laws which has been carved out of the unrestricted portion of a parcel of which at least eighty percent (80%) is covered by a Conservation Restriction conforming to the provisions of Massachusetts General Law Chapter 184, Sections 31-33, is exempt from the provisions of Section 7 for a period of ten (10) years from the date the Conservation Restriction is recorded in the Franklin County Registry of Deeds, provided that no more than three such permits may be associated with any one so-restricted parcel. The Building Permit will not count against the town wide limit.

E. ADMINISTRATION

1. Rules and Regulations: The Planning Board may adopt rules and regulations relative to the administration of this Section, and amend them from time to time. Copies of the rules and regulations shall be on file and available for review at the office of the Town Clerk.

2. Affordability Determination: The Planning Board shall be responsible for making affordability determinations as required by Massachusetts General Law 40B.

3. Order of Processing Applications for Building Permits: The Building Inspector shall not record an application as complete and received without verification that the applicant has complied with required development related reviews and approvals by the Conservation Commission, the Zoning Board of Appeals, the Board of Health, the Planning Board, the Highway Superintendent, and others as required by the General Laws of the Commonwealth of Massachusetts and the Bylaws of the Town of Warwick. As each complete application is received, the Building Inspector shall assign it a number in chronological order according to the date the completed application is received and shall grant a Building Permit in accordance with the provisions of this section.

4. Carryover of Applications from the Previous Year: Beginning January 1 of each year, the Building Inspector shall hold over from the previous year, and place at the head of the chronological list only those completed applications that were received previously but for which no building permit was issued. All other applicants, including those who received building permits for part of a proposed development, shall be assigned a place in chronological order upon submitting a completed application.

SECTION EIGHT: PARTICULAR USES

A. EROSION CONTROL: The Building Inspector may require for any proposed construction or any proposed alteration of the surface features or contours of any land that site design, building design and construction procedures shall be modified so as to protect the site, the neighborhood and the Town against erosion, soil instability, uncontrolled surface water runoff, environmental degradation and other permanent or temporary damage caused by conditions which may exist either during operations or after operations are completed. In cases where the proposed construction or alteration involves the construction of a new driveway, the Highway Supervisor shall have concurrent jurisdiction with the Building Inspector to require that the site design or construction procedures of the driveway shall be so modified.

1. Excessive Slopes: No such construction or alteration of surface features or contours shall take place on slopes in excess of 25% except pursuant to a Special Permit issued by the Zoning Board of Appeals. The Board shall issue such a Special Permit only if it is satisfied that adequate provisions have been made to protect the site, the neighborhood and the Town against erosion, soil instability, uncontrolled surface water runoff, environmental degradation and other permanent or temporary damage caused by conditions which may exist either during operations or after operations are completed.

2. Topographic Data: The Building Inspector or the Zoning Board of Appeals may request a permit applicant or affected landowner to provide reasonable topographic data.

B. EARTH REMOVAL: No removal or relocation of sod, loam, clay, sand or gravel shall take place, except when incidental to and in connection with the construction of a structure, or except when incidental to the grading or developing of contiguous property, or except when pursuant to a Special Permit issued by the Zoning Board of Appeals. The Board may issue such a Special Permit only if it is satisfied that adequate provisions have been made to protect the site, the neighborhood and the Town against erosion, soil instability, uncontrolled surface water runoff, environmental degradation and other permanent or temporary damage caused by conditions which may exist either during operations or after operations are completed, or caused by methods of handling such materials at the site or transporting such materials in the Town.

1. Procedures: Any person removing or relocating sod, loam, clay, sand or gravel, even if permitted by one or more of the exceptions stated above, shall follow appropriate procedures to protect the site, the neighborhood and the Town against erosion, soil instability, uncontrolled surface water runoff, environmental degradation and other permanent or temporary damage caused by conditions which may exist either during operations or after operations are completed..

2. Top Soil: Any top soil removed during any operations must be replaced, regraded and seeded wherever possible upon the completion of operations.

3. Violations: Violators of any of these earth removal provisions shall forthwith correct all violations and, if so ordered, shall restore the land to its original state as it existed prior to their violations.

C. DRIVEWAYS: A new driveway requires a permit issued by the Highway Superintendent. A driveway is defined as motor vehicle access onto a town-maintained public way or a private way approved by the Planning Board. A new driveway is defined as a newly created access onto the public way or onto a private way approved by the Planning Board, or an existing driveway serving a new dwelling unit, or a modification of any access determined by the Highway Superintendent (such as an upgrade in use of the driveway, for example a driveway to a camp upgraded to handle heavy equipment associated with a logging job). A new driveway may be temporary or permanent.

A temporary driveway is access to the public way for a limited time which shall not exceed 3 years, but the permit may be extended for cause in increments not exceeding one year by the Highway Superintendent. A cash bond of $300 shall be posted by the owner or the owner's agent to assure compliance. The Highway Superintendent may waive driveway requirements of this bylaw for temporary driveways. Upon expiration of the permit or completion of the project, the access shall be blocked, any culvert removed, any damage to the road or its edges shall be repaired and any drainage ditch adjacent to the public way restored to the satisfaction of the Highway Superintendent. When the temporary access is no longer needed or the temporary driveway permit has expired the Highway Superintendent shall notify the owner of actions required to restore the site. If four weeks elapse and no action has been taken to restore the site, or no plan has been agreed to with the Highway Superintendent, the Town of Warwick may restore the site and all associated costs shall be paid from the bond. If the bond does not cover all costs, any additional costs shall be billed to the owner and failure to pay these costs shall result in a lien on the property for the amount owed plus town costs associated with the lien. The owner shall also be responsible for, and take measures to prevent, and shall clean up any water and mud coming onto the way from the driveway, and shall be responsible for town costs of cleanup from the date of issuance of the permit until the bond is released.

A permanent driveway shall meet all the requirements of this bylaw, except the requirements of this by-law specifically applicable to temporary driveways, unless relief is granted by a special permit issued by the Zoning Board of Appeals.

1. Procedure: The Highway Superintendent shall approve or disapprove new driveway applications in accordance with the following procedures, may require changes in the design or construction of new driveways in accordance with the following provisions and may develop an appropriate form for new temporary or permanent driveway applications. All new dwellings require a new driveway permit from the Highway Superintendent before issuance of any applicable building permit and before any driveway construction.

2. Turnarounds: All new driveways shall be provided with adequate space for reversing the direction of a standard-sized automobile, so that the automobile may enter the traveled road from the driveway facing forward.

3. Sight Distances: No new driveway may be located where the minimum sight distance at four feet above the traveled road surface in each direction along the public or private road from which it is accessed is less than the following:

    a. Minimum 100 feet in a zone where the speed limit is less than 30 miles per hour;

    b. Minimum 150 feet in a zone where the speed limit is 30 miles per hour or a zone where there is no posted speed limit;

    c. Minimum 200 feet in a zone where the speed limit is greater than 30 miles per hour.

4. Obstructions: No wall or other obstruction shall be maintained at the intersection of any driveway with a traveled road which causes danger to traffic on the road or to users of the driveway by unreasonably obscuring a view.

5. Gradients: The first six feet of any new driveway, measured from the edge of the traveled road surface, must have a minimum gradient of 2%, or 1/4 inches per foot, downgrade from the road and a maximum gradient of 8%, or one inch per foot, downgrade from the road. The next fourteen feet of the driveway must have a maximum gradient of 8%, or one inch per foot, downgrade or upgrade. The remaining length of the driveway must have a maximum gradient of 20%, or 2 1/2 inches per foot, downgrade or upgrade.

6. Entrances: The first 20 feet of any new driveway, measured from the edge of the traveled road surface, shall be at least 12 feet wide. The angle of entrance to the traveled road surface must be between 60° and 120° The radius of entrance to the traveled road surface must be at least ten feet.

7. Surfaces: Within the first six feet of the entrance to the traveled road surface of any new driveway, the driveway material shall at least match that of the existing road. On slopes of between 10% and 20% within 35 feet upgrade of the edge of the road, the driveway shall be adequately constructed and stabilized to prevent surface water or loose driveway material from washing out onto the road.

8. Culverts and Drainage: Existing drainage ditches parallel to public or private roads shall not be obstructed by any driveway. Upon a determination of need by the Highway Supervisor or by a licensed professional engineer hired by the lot owner, culverts of appropriate size and a durable material (such as asphalt-coated galvanized steel) shall be installed at no expense to the Town. Culvert diameter shall be at least 12 inches. Where appropriate in the judgment of the Highway Supervisor, driveways shall be provided with parallel drainage swales and with culverts allowing storm water to cross the driveway without creating erosion or washouts.

9. Special Permits: The Zoning Board of Appeals may issue a Special Permit granting relief at a particular site from one or more of the foregoing provisions regarding driveways. Before it issues such a Special Permit, the Board shall consider any recommendation submitted at the Special Permit hearing by the Highway Supervisor, Chief of Police or any other interested Town official and shall determine that adequate

provisions have been made for the safety of traffic on the road and users of the driveway and for the drainage and structural integrity of the driveway.

D. SIGNS:

1. No sign shall project over or into any pedestrian or vehicular way customarily used by the public.

2. No sign shall incorporate, or be illuminated by, flashing or blinking lights, nor shall any sign be designed to attract attention by a change in light intensity or by repeated motion, nor shall any sign be illuminated at any time of day when the business or other use advertised is not operating.

3. No sign shall constitute a nuisance or hazard to pedestrian or vehicular traffic by intensity or direction of illumination, by placement or by any other reason.

4. No billboard or other sign shall be erected or maintained on which the principal product or service advertised is not regularly produced or available on the premises where the billboard or other sign is located, except that political "lawn signs" that comply with Sections 8(D)(1), 8(D)(2) and 8(D)(3) may be erected and maintained for a reasonable time before any election or caucus.

5. In the case of a use allowed by these By-laws or by a Special Permit obtained under the provisions of these By-laws, or in the case of a proposed sale or lease of the premises upon which a sign is located, signs pertaining to such use, sale or lease are allowed, provided that such signs comply with Sections 8(D)(1) through 8(D)(4) and provided that the number of signs clearly visible from any point not on the premises shall not exceed two and the total area of all such signs shall not exceed eight square feet unless a Special Permit allowing more signs or more square feet has been issued by the Zoning Board of Appeals.

6. Signs legally existing on May 15, 1978 (the date of adoption of these provisions) may continue as preexisting nonconforming uses. Any nonconforming sign which has not been maintained for 12 consecutive months shall be removed within 60 days after notice from the Building Inspector.

7. A directional or identification sign not allowed under the provisions of 8(D)(5) or 8(D)(6) may be erected and maintained with a Special Permit issued by the Zoning Board of Appeals upon a finding by that Board that the sign for which a permit is requested will serve the public convenience, will not endanger the public safety and will be of such size, location, and design as will not be detrimental to the site, the neighborhood or the Town.

8. Nothing in these provisions shall affect signs required by law to be posted, signs which only direct traffic or indicate parking areas, or signs posted by or under the lawful authority of the Town.

E. INCOMPLETE MOTOR VEHICLES: No accumulation of two or more inoperable motor vehicles shall be permitted to accumulate at any outdoor location unless that location is completely screened from all public ways and all land or buildings owned by others.

The 1st offense shall be a ticketed warning. The 2nd offense shall be a fine of $25 per vehicle in excess of the one allowed. The 3rd and subsequent offenses shall be $100 per vehicle in excess of the one allowed. Following ticketing a month will be allowed for removal before follow up ticketing. No follow up ticketing will be done during periods when access is significantly impaired, such as deep snow or during mud season. This bylaw shall be enforced by the Planning Board, Building Inspector or any Police Officer.

SECTION NINE: ZONING BOARD OF APPEALS.

A. MEMBERSHIP: The Board of Selectmen shall appoint a Zoning Board of Appeals of three members, at least two of whom shall be real property owners in the Town of Warwick, and two associate members, at least one of whom shall be a real property owner in the Town of Warwick, and all five shall be residents of the Town of Warwick.

B. OPERATION: The Zoning Board of Appeals shall be the Special Permit granting authority, except in situations where these By-laws designate another Special Permit granting authority, and shall act on all matters within its jurisdiction under these By-laws in the manner prescribed in Chapter 40A of the General Laws. The members of the Board shall serve without remuneration.

C. POWERS: The Zoning Board of Appeals may grant special permits and variances to these By-laws, may set appropriate conditions or limitations before granting such special permits and variances and shall decide appeals brought under this By-law. The Board may charge reasonable fees to applicants for such special permits, variances and appeals. The Board may require the applicant to pay for, or reimburse the Town for, all costs incurred, without limitation for professional assistance in reviewing an application, including, but not limited to engineering, planning, legal and technical services. The board may require performance bonds or escrow accounts as part of the application approval. (As amended by the vote of Annual Town Meeting, May 17, 2004, and approved by the Attorney General.)

D. NOTICES BEFORE HEARINGS: In addition to any other notice required by applicable law, the Zoning Board of Appeals shall provide written notice of any hearing held on any application for a Special Permit, variance or appeal to the Chairmen of the Board of Selectmen, Planning Board, Board of Health and Conservation Commission and to the Highway Supervisor, Chief of Police and Tree Warden no later than three (3) days after the date of publication of the official notice of such hearing, but such notice may be waived in writing at any time before or after the hearing by a majority vote of the Board or Commission to whom such notice should have been sent.

E. NOTICES AFTER HEARINGS: Within a reasonable time after it grants a Special Permit or Variance, the Zoning Board of Appeals shall cause a notice of the Special Permit or Variance that it granted to be recorded at the expense of the applicant in the Franklin County Registry of Deeds.

SECTION TEN: SITE PLAN REVIEW

A. PURPOSE: The purpose of Site Plan Review is to ensure that new development is designed in a manner which protects the environmental and scenic qualities of the neighborhood and the Town and is consistent with Section One A. 4, 5, 6, and 7.

B. SITE PLAN REVIEW PROCESS: The Site Plan Review process will be conducted by the Planning Board.

C. APPLICABILITY: Site Plan Review shall be required for:

1. Conservation Developments (see Section Six).

2. By-right ground-mounted solar energy systems on 53 acre lot described on Assessors' Map 405 Parcel 33.

D. PROCEDURES: An applicant for Site Plan Review shall file a completed application meeting all requirements of the application process, in paper and electronic format, with the Town Clerk. The Town Clerk shall acknowledge receipt of the plans by signing and dating the application form. The application submitted to the Town Clerk shall include nine (9) copies each of an application form, Site Plan and any narrative documents as outlined in the submittal requirements. The Town Clerk shall transmit copies of the application to the Planning Board, the Conservation Commission, the Board of Health, the Historical Commission, the Open Space Committee, the Highway Superintendent, the Fire Chief, the Police Chief, and the Building Inspector. These Town Boards and municipal officials shall have 45 days from the date the completed application is received by the Town Clerk to report to the Planning Board their findings and recommendations, and failure to respond or provide comments within 45 days shall be deemed to constitute no objection to the application No building permits for projects requiring Site Plan Review shall be issued until the Planning Board has approved the Site Plan or unless the required time period for taking action on a Site Plan has lapsed without action from the Planning Board.

The concurring vote of a majority of the membership of the approving board shall be required for any decision pursuant to Section Ten G. on a use requiring Site Plan Review only. Conditions or modifications that may be imposed include, but are not limited to the following:

1. Controls on location and type of access to the site.
2. Requirements to screen or relocate buildings and parking/loading areas and provide buffers to protect adjoining property.
3. Requirements to reduce the traffic impact of the proposed project.
4. Requirements to minimize impacts on the capacity of infrastructure serving the site.
5. Requirements to minimize environmental degradation during construction.
6. Modifications to the proposed size and scale of the project.

7. Other reasonable conditions designed to mitigate a project's impacts and ensure compliance with applicable review criteria, including the installation of on-site and off-site improvements.

For the purpose of securing the installation of required site improvements, including landscaping and on-site and off-site improvements, the approving board may require a performance bond, deposit of money, letter of credit, or other security in an amount determined by the board to be sufficient to cover the cost of all or any part of improvements required in a form acceptable to Town Counsel and consistent with the Town of Warwick's Regulations Governing the Subdivision of Land.

Any site plan approved under this bylaw shall lapse in two years if construction has not begun, or is not carried forward to completion as continuously and expeditiously as is reasonable.

Decisions of the approving board regarding Site Plan Approval may be appealed as set forth in M.G.L., Chapter 40A, Section 17.

E. PUBLIC HEARING: The Planning Board shall hold a recorded (videotaped and/or audiotaped) public hearing within 65 days after the filing of a completed application and shall take final action on an application for Site Plan approval within 90 days of the close of the public hearing. Notice and posting of the public hearing shall comply with the provisions of M.G.L. Chapter 40A, Section 11, regarding notice for public hearings. To the extent permitted by law, the public hearing should be coordinated with any other public hearing required for a Definitive Subdivision Plan.

F. REQUIRED CONTENTS OF A SITE PLAN: All Site Plans shall be prepared by a registered architect, registered land surveyor, registered landscape architect, or professional engineer. The Site Plans shall be consistent with the map requirements from Section Six, B.2. A locus map at a scale of 1" = 100 feet shall be provided showing parcels and roads within 300 feet of the property line. The Site Plans shall be on standard sheets of 24 inches by 36 inches and prepared at a scale of 1"=40 feet or finer. Each sheet shall be signed and stamped by a registered architect, registered land surveyor, registered landscape architect,and/or professional engineer, as applicable. The Site Plan and accompanying narrative shall contain the following:

1. Name of project, boundaries, locus map(s) showing the site's location in Town, date, north arrow and scale of plan;

2. Name(s) and address(es) of the owner(s) of the land, the developer (if applicable), and/or their designee;

3. Name, title, and address of person(s) who prepared the plan;

4. Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;

5. All existing lot lines, easements and rights of way;

6. A plan of existing site conditions that shows all site features, including topography, existing natural drainage and stormwater flow paths, wetland resource areas, forested areas, and agricultural areas.

7. Location and use of buildings, structures, and roads within 300 feet of the site;

8. Location and use of all existing and proposed buildings and structures, including approximate height and floor area;

9. Location of wetlands on site and within 300 feet of the property line;

10. Location and a description of all proposed septic systems, sewer connections, water supplies, storm drainage systems, utilities and other waste-disposal methods;

11. Location of water sources, cisterns, hydrants, drinking water pipes, and pipes for fire protection;

12. Location and date of all registered "perc" tests on the site;

13. Location of all proposed new lot lines;

14. Existing and proposed topography at a two-foot contour interval for the proposed grading and landscape plan;

15. Location of proposed public and private ways on the site;

16. Location and size of proposed parking and loading areas, driveways, walkways, pedestrian safety measures, and access and egress points;

17. Location and a description of proposed open space or recreation areas;

18. Location of areas with slopes greater than or equal to 25%, the 50-foot buffer area, and the boundaries of the land to be protected by the Conservation Restriction.

19. Size and location of existing and proposed sign(s);

20. Surface drainage strategy that prevents increased drainage off-site or pollution;

21. Existing vegetation that will be left undisturbed and proposed landscape features, including the location and a description of screening, fencing and plantings using non-invasive species;

22. Design features which will integrate the proposed development into the existing landscape, maintain neighborhood character, and screen objectionable features from neighbors and roadways;

23. A complete list of chemicals, pesticides, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

24. Provisions to protect against the discharge of hazardous materials or wastes to the environmentdue to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and cleanup procedures;

25. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

26. Estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for both vehicles and pedestrians, showing adequate access to and from the site, adequate circulation within the site, and pedestrian safety measures.

27. Information necessary to determine compliance with paragraphs 4, 5, 6, and 7 of the Purpose Section (Section One. A.) of this bylaw.

28. Information necessary to review the plan under Section Ten, paragraph J.

29. For ground-mounted solar energy systems on Assessors' Map 405, parcel 33, in addition to the applicable requirements above, the following apply:

    a. Location and design of mandatory fencing around the solar array;

    b. Blueprints or drawings of the solar energy system signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system, any potential shading from nearby structures or trees, the distance between the fence around the solar collector and all property lines, and existing on-site buildings and structures, and the tallest finished height of the solar collector;

    c. Distances of the nearest portion of the fence around the solar collector from the setbacks from the boundaries of the property (Map 405,Parcel 33) of 100 feet on the West and South side, 25 feet on the East side and 10 feet on the North side;

    d. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;

    e. Documentation of the major system components to be used, including the panels, mounting system, and inverter;

    f. Name, address, phone number and contact information for proposed system installer, and system operator;

    g. Name, address, phone number, contact information and signature of the project proponent, as well as all co-proponents or property owners, if any;

    h. The name, address, phone number, contact information, and signature of any agents representing the project proponent;

    i. An operation and maintenance plan;

    j. Proof of liability insurance;

k. A cash escrow account deposited with the Town Treasurer adequate to cover the cost of decommissioning and removal in the event the town must remove the installation and remediate the site, in an amount determined to be reasonable by the Planning Board in consultation with the project proponent, but in no case shall the cost exceed 125% of the cost of removal, compliance and remediation. The project proponent shall pay for a fully inclusive estimate of the costs associated with decommissioning and removal, prepared by a qualified engineer of the Planning Board's choosing, which shall include a mechanism for calculating increased removal costs due to inflation. When the site is remediated any balance including interest in the escrow account shall be returned to whomever the bond specifies.

l. Site access on the property and to the nearest public way both before and after construction shall be maintained at proponent's expense to a level satisfactory to the Building Inspector, Conservation Commission and Emergency Management Director and shall include snow plowing adequate to allow access by maintenance and emergency vehicles;

m. Material modifications to the project as described after issuance of the required building permit shall require prior approval of the Building Inspector and the Planning Board;

n. The following statement shall appear on the plan, "The owner of the solar array and appurtenances or operator agrees to physically decommission and remove the installation no more than 150 days after the date of discontinued operation or abandonment; the owner of the solar array or operator shall within 30 days following abandonment or discontinued use notify the Planning Board, Operating at 10% or less of capacity for one (1) or more years without notifying the Planning Board shall constitute abandonment. If a dispute arises as to the date of the operation ceasing it shall be arbitrated by a three person group made up of a representative of the owner/operator, a representative of the Planning Board and a representative chosen by the two appointed representatives. If the system is not removed within the l50 day period the town reserves the right, after receiving an appropriate court order, to enter and decommission the installation with the costs paid from the escrow account, and as a condition of approval, all parties agree to allow the town entry for this purpose.

Decommissioning shall consist of:

(1) Physical removal of solar energy systems, structures, equipment, security barriers and transmission lines from the site;
(2) Disposal of all solid, liquid and hazardous waste in accordance with local, state and federal waste disposal laws and regulations;
(3) Stabilization and re-vegetation of the site to minimize erosion and restore it to the extent possible to its original condition. The responsible party may be allowed to forego landscaping and leave designated below-grade foundations in order to minimize erosion and disruption to the site and to the vegetation."

G. DECISION: The Planning Board's action shall consist of one of the following:

1. Approval of the site plan based upon the determination that the proposed project is in compliance and consistent with the criteria set forth in this By-law;

2. Approval of the site plan subject to conditions, modifications, and restrictions as the Planning Board may deem necessary; or

3. Denial of the site plan based upon specific findings such as a determination that there was insufficient information submitted with the proposal to allow for adequate review it or that the project is inconsistent with the purposes or requirements of these Zoning By-laws.

The decision of the Planning Board shall be filed with the Town Clerk within 90 days of the close of the Public Hearing and the written record of the decision including any approved Site Plan shall be filed wih the Town Clerk within 14 days of the final vote or sooner to meet the 90 day maximum time frame. A copy of any approved Site Plan and the decision of the Planning Board shall be sent by the Town Clerk to the Building Inspector and to the Registry of Deeds. The subsequent Definitive Plan submitted under Warwick's Subdivision Rules and Regulations must be in complete accordance with the approved Site Plan. Any deviation from the approved Site Plan will require approval from the Planning Board. Any modifications to the Site Plan approved by the Planning Board during the Definitive Plan process must also be sent to the Town Clerk, the Building Inspector and to the Registry of Deeds.

H. ADMINISTRATION AND WAIVERS. The Planning Board may adopt and from time to time amend regulations for the submission and approval of site plans. The Planning Board may waive any of the requirements for site plan submittal and approval if the simplicity or scale of the project warrants such action. The Planning Board may also request any additional information it should need to render a decision. For large or complex projects, the Planning Board shall have the right to retain a registered professional engineer, planner, designer or other professional to advise the Board regarding any or all aspects of the Site Plan. The applicant shall be responsible for the costs of such advice.

I. COMPLIANCE WITH OTHER BYLAWS: The site plan shall comply with any zoning by-laws for parking, loading, dimensions, environmental controls and all other provisions of the Zoning By-law. Before approval of a site plan, the Planning Board may request that the applicant make modifications in the proposed design of the project to ensure that the above criteria are met.

J. REVIEW CRITERIA: The Planning Board's evaluation of the proposed Site Plan shall include, when applicable, the following critera:

1. Compliance with all applicable provisions and requirements of these bylaws.
2. Avoidance of excessive noice, dust, odors, solid waste, glare, electrical interference, or any other nuisances.
3. Screening or location of unsightly features so as to be unobtrusive from neighboring properties and public roadways.

4. Adequacy, arrangement, and safety of vehicular traffic access and circulation, and accessibility for fire, police, and emergency vehicles, including intersections, road widths, pavement surfaces, dividers and traffic controls.
5. Adequacy and arrangement of pedestrian traffic access and circulation, pedestrian walkways, control of intersections with vehicular traffic and overall pedestrian safety and convenience.
6. Protection of the supply and quality of groundwater and surface water and natural resources and ecosystems.
7. Provision of open spaces and pedestrian amenities available to the public.
8. Avoidance of erosion or sedimentation.
9. Integration of the project into the existing terrain and surrounding landscape by minimizing impacts on wetlands, steep slopes, and hilltops; protecting visual amenities and scenic views; preserving unique natural or historical features; minimizing tree, vegetation and soil removal; minimizing grade changes, and integrating development with the surrounding neighborhood in a manner that is consistent with the prevailing pattern, design, and scale of development and that protects historic structures and features.
10. Provision of underground utilities or conduits where feasible.
11. Location, arrangement, appearance and sufficiency of off-street parking and loading.
12. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs in relation to the terrain and to the use, scale, and proportions of existing and proposed buildings in the vicinity.
13. Provision of open spaces and pedestrian amenities available to the public.
14. Location of buildings to provide a solar and wind orientation which encourages energy conservation.
15. Adequacy of stormwater and drainage facilities, including avoidance of adverse impacts of stormwater runoff from the site. Drainage shall recharge groundwater to the extent practical, and surface waters flowing off-site shall not adversely affect drainage on adjacent properties or roads.

SECTION ELEVEN: DEFINITIONS

ACCESSORY DWELLING UNIT (ADU): An additional dwelling unit in an existing dwelling or in a new or existing structure accessory to a dwelling.

ALTERATION: A change in external form, shape or size of a building or structure.

BUILDING: Any roofed structure permanently located on land, used or usable for housing or enclosing persons, animals or materials.

BUILDING INSPECTOR: The Inspector of Buildings or Building Commissioner appointed by the Selectmen pursuant to the Massachusetts Building Code, or his or her duly appointed agent.

BUILDING HEIGHT: The vertical measurement of a building from the mean level above the ground surrounding it to the highest point of the roof, excluding chimneys, antennae, etc.

BUILDABLE LAND: considering the whole parcel, all land exclusive of areas jurisdictionally under the Massachusetts Wetlands Protection Act and regulations, slopes greater than twenty-five percent (25%), and land prohibited from development by legally enforceable restrictions, easements, or covenants, and other constraints dictated by these by-laws, applicable regulations of the Massachusetts Department of Environmental Protection, applicable requirements of The Board of Health, and all other applicable laws, Town bylaws, regulations or requirements.

DRIVE-IN MOTION PICTURE THEATER: Premises designed to be used for the outdoor commercial display of motion pictures while customers remain in their automobiles.

DRIVEWAY: A portion of land permanently used or intended to be used by motor vehicles as an access to or egress from a street. A newly created driveway, or a driveway, whenever created, serving a new dwelling unit, shall be considered a new driveway.

DWELLING: A building or structure or portion thereof used or intended to be used by one or more persons as a permanent, seasonal or occasional residence.

DWELLING UNIT: The living quarters for a single family with cooking, living, sanitary and sleeping facilities substantially independent of those of any other unit. Each two guest units in a motel or hotel, every four beds in a hospital, nursing home or convalescent home, or accommodations for four persons in a boarding house, rooming house, guest house, dormitory or other group living arrangement, shall be considered equivalent to a dwelling unit.

FAMILY: One or more persons, all of whom are related by birth, marriage or adoption, living as a unit, or no more than six individuals living together.

FRONTAGE: The length of the front lot line.

INOPERABLE MOTOR VEHICLE: Any motor vehicle that either (a) is not capable of motion under its own power or (b) does not display a license plate with an unexpired motor vehicle registration tag.

JUNK YARD: Land or structures used commercially for the collection, storage or sale of wastepaper, rags, scrap metal, or discarded materials, or for collecting, dismantling, storing, salvaging, or selling inoperative machinery, vehicles, or parts thereof.

LOT: All contiguous land in the same ownership. Land touching other land on any boundary and land separated from other land only by a public or private way shall be considered to be contiguous.

LOT LINE: A division line between adjoining lots, or a division line between a lot and a street, or a division line between individual lots established by a plan approved by the Planning Board under the provisions of the Warwick Subdivision Control Bylaws.

LOT LINE (FRONT): The lot line fronting on one side of one public way not discontinued or abandoned that is not a private way and that is maintained by the Town, or on one side of one private way shown on a plan approved by the Planning Board under the provisions of the Warwick Subdivision Control Bylaws, measured continuously between the intersection of the side lines with the front lot line.

LOT LINE (REAR): The lot line opposite and most distant from the front lot line.

LOT LINE (SIDE): Any lot line not a front or rear lot line.

MOBILE HOME: A structure built on a chassis, usually containing electrical, plumbing and sanitary facilities, designed to be installed on a temporary or a permanent foundation for use as a dwelling or for any other permanent purpose.

MOBILE HOME PARK: A lot, or a series of adjoining and connected lots, upon which more than two mobile homes are located, regardless of whether or not a charge is made for such accommodations.

MOTOR VEHICLE JUNK YARD: Any business or place of collection, storage or deposit, whether in connection with another business or not, where four or more inoperable motor vehicles or substantial parts thereof are displayed for sale.

NON-CONFORMING USE OR STRUCTURE: A lawfully existing use or structure which does not conform to the requirements of these By-laws.

PRINCIPAL USE OR STRUCTURE: The primary purpose for which land or a building is designed, arranged, maintained or occupied.

SIGN: Any permanent or temporary structure, device, object, symbol, letter, word, display, pennant, insignia or trade flat, which is used as an announcement, direction, or

advertisement for any person, premises or activity and which is visible from any public way or from any abutting property.

SPECIAL PERMIT: An authorization that the permit granting authority identified in these By-laws may issue in its discretion, subject to whatever conditions it considers appropriate.

STREET: A public way not discontinued or abandoned that is not a private way and that is maintained by the Town, or a private way shown on a plan approved by the Planning Board under the provisions of the Warwick Subdivision Control By-laws.

STRUCTURE: A combination of materials constructed or erected at a fixed location. Included are buildings, frameworks, sheds, platforms, towers and fences. An underground well, transmission line or sewerage disposal system shall not be considered a structure.

TEMPORARY LIVING FACILITY: Any structure other than a permanent and immobile building or a mobile home, or any motor vehicle, or any portion of such a structure or motor vehicle, used by one or more persons for sleeping and/or other residential purposes for any period of time.

VARIANCE: An authorization that the Zoning Board of Appeals may issue in its discretion under the provisions of Chapter 40A, Section 10 of the Massachusetts General Laws.

SECTION TWELVE: FLOOD PLAIN OVERLAY DISTRICT

A. STATEMENT OF PURPOSE

The purposes of the Floodplain Overlay District are to:

1. Ensure public safety through reducing the threats to life and personal injury;

2. Eliminate new hazards to emergency response officials;

3. Prevent the occurrence of public emergencies resulting from a reduction in water quality, contamination, and/or pollution due to flooding;

4. Avoid the loss of utility services which if damaged by flooding could disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;

5. Reduce costs associated with the response and cleanup of flooding conditions;

6. Reduce damage to public and private property resulting from flooding waters.

B. FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION AND FLOODWAY DATA

1. The Floodplain District is herein established as an overlay district. The Floodplain District includes all special flood hazard areas designated on the Warwick Flood Hazard Boundary Map (FHBP; an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated January 24, 1975 as Zone A, which indicates the 100-year regulatory floodplain. The FHBP is incorporated herein by reference and is on file with the Town Clerk, Zoning Board of Appeals, Planning Board, Building Inspector, and Conservation Commission.

2. Floodway Data: In Zone A, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used as outlined in the State Building Code to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

3. Base Flood Elevation Data: Base flood elevation data is required for subdivision proposals or other developments greater than 3 lots or 5 acres, where a portion of the development activity would be located within Zone A.

4. High and Significant Hazard Potential Dam Inundation Areas: Mapping of High and Significant Hazard Dam Inundation Areas is required for subdivision proposals or other

developments greater than 3 lots or 5 acres, where a portion of the development activity would be located within Zone A.

C. DEFINITIONS: The purpose of these definitions is to clarify the intent of the bylaw, but shall be subservient to the Definition Section of Massachusetts Dam Safety Regulations at 302 CMR 10.03.

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year (also known as the "100-year flood"). The area is designated as Zone A.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year (also known as the "100-year flood").

BASE FLOOD ELEVATION (BFE) means the topographical contour line showing the water surface elevation (in whole feet) of the base or 100-year flood.

DAM BREACH INUNDATION AREA means the area that may be inundated if a dam would be breached or would fail.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

HIGH HAZARD POTENTIAL DAM refers to dams located where failure will likely cause loss of life and serious damage to home(s), industrial or commercial facilities, important public utilities, main highway(s) or railroad(s).

MOBILE HOME means a structure built on a chassis, usually containing electrical, plumbing and sanitary facilities, designed to be installed on a temporary or a permanent foundation for use as a dwelling or for any other permanent purpose, and **MOBILE HOME PARK** means a lot, or a series of adjoining and connected lots, upon which more than two mobile homes are located, regardless of whether or not a charge is made for such accommodations.

NEW CONSTRUCTION means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, **new construction** means structures for which the "start of construction"

commenced on or after the effective date of an initial FIRM (Flood Insurance Rate Map; an official map of a community on which FEMA has delineated both the Areas of Special Flood Hazard and the Risk Premium Zones applicable to the community) or after December 31, 1974, whichever is later.

RIVER means a natural flowing body of water that empties to any ocean, lake, or other river.

SIGNIFICANT HAZARD POTENTIAL DAM refers to dams located where failure may cause loss of life and damage home(s), industrial or commercial facilities, secondary highway(s) or railroad(s) or cause interruption of use or service of relatively important facilities.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home. **Structure**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a mobile home on foundation. For the latter purpose, the term includes a building in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data as outlined in the State Building Code.

D. NOTIFICATION OF WATERCOURSE ALTERATION

The Warwick Building Inspector shall notify the following of any alteration or relocation of a river, due to other than natural causes:

- Adjacent Communities
- Bordering States
- NFIP State Coordinator
- Massachusetts Department of Conservation and Recreation, 251 Causeway Street, Suite 600-700, Boston, MA 02114-2104, NFIP Program Specialist
- Federal Emergency Management Agency, Region I, 99 High Street, 6th Floor, Boston, MA 02110

E. USE REGULATIONS

1. Reference To Existing Regulations

   All development in the Floodplain District, including structural and non-structural activities, whether permitted by right or by special permit, must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws (the Wetlands Protection Act) and with the following:

   - Section of the Massachusetts State Building Code which addresses floodplain hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction");
   - Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
   - Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); and
   - Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5).

   Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

2. Permitted Uses

   The following uses with low flood damage potential and causing no obstructions to flood flows are allowed provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

   a. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
   b. Forestry and nursery uses.
   c. Outdoor recreational uses, including fishing, boating, play areas, etc.
   d. Conservation of water, plants, wildlife.
   e. Wildlife management areas, foot, bicycle, and/or horse paths.
   f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
   g. Buildings lawfully existing prior to the adoption of these provisions.

   Subsection E.2.a, b and f shall be applied in a manner consistent with the protections accorded to agriculture by MGL Chap. 40A, Section 3 and MGL Chap 128, Section 1A.

3. Prohibited Uses

   a. Commercial or industrial uses are prohibited in the Floodplain District.

b. Mobile homes placed on a site for longer than 6 months and mobile home parks are prohibited in the Floodplain District, except as provided in Section 5 of the Zoning Bylaws.

c. Storage of vehicles or equipment within the floodway is prohibited. The Zoning Board of Appeals may consider whether a variance from this prohibition is warranted, where a hardship exists due to lot size or configuration.

d. Dumping of trash, garbage or other materials in the floodway is prohibited.

e. Construction of any kind on slopes of greater than 25% within the Floodplain District is prohibited.

f. Storage or processing of hazardous materials (Hazardous materials are products, wastes, or combination of substances which because of their quantity, concentration, or physical, chemical, toxic, radioactive, or infectious characteristics may reasonably pose a significant, actual, or potential hazard to human health, safety, welfare, or the environment when improperly treated, stored, transported, used, disposed or otherwise managed, and may include acids and alkalis, solvents, thinners and pesticides. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as "toxic" or "hazardous under M.G.L. Chapters 21C and 21E, using the Massachusetts Oil and Hazardous Substance List (310 CMR 40.0000)) is prohibited.

g. Residential subdivision structures, except drinking water supply structures and appurtenances, are prohibited.

4. Restricted Uses

a. Any eligible forest management cutting of more than 10 cords or 5 thousand board feet in a floodplain shall require a Forest Cutting Plan pursuant to the requirements of the Forest Cutting Practices Act and Regulations (M.G.L. Chapter 132, Sections 40 to 46 and 304 CMR) without exception. The provisions of 304 CMR 11.05 that the cut shall not exceed 50% of the basal area uniformly distributed over the area and the area shall not be cut again for at least 5 years shall apply to any cutting done in the floodplain as applicable. Skid roads in any cutting done in the floodplain shall be laid out perpendicular to the stream whenever possible to reduce channelization of flood waters and to slow down the flow of flood waters. Nothing in this subsection relieves the applicant of complying with the Wetlands Protection Act.

b. Fenced animal grazing areas must be located at least fifty (50) feet from the floodway, with a naturally vegetated fifty-foot (50-foot) buffer strip to reduce runoff, and a fence to prevent animals from encroaching on the buffer strip. This provision is subject to a waiver by the Agricultural Commission where the grazing activity will be low density with minimal runoff potential.

5. Uses by Special Permit

a. No structure or building in the Floodplain District shall be erected, constructed, substantially improved, reconstructed, or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a Special Permit is granted by the Zoning Board of Appeals.

b. The following uses may be allowed by Special Permit in accordance with the Special Permit regulations of this Zoning Bylaw, and additional restriction and criteria contained herein:

   i. A single family residence, duplex, or apartment Residential accessory uses including garages, driveways, private roads, utility rights-of-way and on-site waste-water disposal systems.

   ii. Mobile homes for not more than six months in a calendar year.

   iii. Animal feedlots (confined, fenced areas designed for intensive feeding of livestock), in conformance with Best Management Practices established by the Natural Resource Conservation Service (NRCS).

   iv. Aquaculture, in conformance with Best Management Practices established by the Natural Resource Conservation Service (NRCS).

   v. v. Altering, dumping, filling, or removal of riverine (relating to or resembling a river, or located beside a river) materials or dredging.

   vi. vi, New impoundments, dams, or other water obstructions constructed within the Floodplain District.

   Subsection iii and iv shall be applied in a manner consistent with the protection given to agriculture by MGL Chap 40A, Section 3 and subsection vi shall be applied in a manner consistent with MGL Chap 253.

6. Special Permit Regulations and Procedures

   a. The following Special Permit Regulations apply in the Floodplain District:

      i. Within Zone A, where base flood elevation is not provided on the FHBM, the applicant shall obtain any existing base flood elevation data as outlined in the State Building Code.

      ii. No encroachments (including fill, new construction, substantial improvements to existing structures, or other development) shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulation for the National Flood Insurance Program.

      iii. Construction on slopes of 10-25% within the Floodplain District shall require the preparation and submittal of an erosion and sediment control plan describing best management practices which will be employed to prevent construction-related impacts to water quality.

iv. Utilities and facilities shall be so located and constructed as to minimize or eliminate flood damage.

v. Adequate methods shall be provided for the periodic disposal of sewage, refuse and other wastes resulting from the uses permitted on the site.

vi. The proposed use shall comply in all respects to the provisions of the underlying district in which the land is located.

vii. The Zoning Board of Appeals may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

viii. There shall be established a "routing procedure" such that within 10 days of the receipt of five (5) copies of the application by the Town Clerk the Zoning Board of Appeals shall transmit one copy of the development plan to the Conservation Commission, one to the Board of Health, one to the Planning Board, and one to the Building Inspector. Final action shall not be taken by the Zoning Board of Appeals until reports have been received from the above Boards or until thirty-five (35) days have elapsed from the date of transmission from the Town Clerk. Failure to respond or provide comments within 35 days shall be deemed to constitute no objection to the application.

ix. Existing and proposed contour intervals of site and elevations of existing and proposed structures must be included on a plan proposal prepared by a registered professional engineer as defined in 302 CMR Section 10,03. To the maximum extent feasible, structures shall be located outside of the Floodplain District and Dam Breach Inundation Areas.

x. All plans submitted for development in the Floodplain District and Dam Breach Inundation Areas must be prepared by a registered professional engineer.

b. In addition to complying with the provisions of Section 2D of the Warwick Zoning Bylaws, in order to issue a Special Permit, the Zoning Board of Appeals shall find that the proposed use and any associated public utilities or facilities in the Floodplain District must:

i. Not create flood hazards which are detrimental to the public health, safety and welfare.

ii. Comply in all respects to the provisions of the underlying District within which the land is located.

iii. Comply with all applicable State and Federal laws, including the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Sec. 40).

iv. Be situated in a portion of the site that will most likely conserve wetland vegetation.

v. Be integrated into the existing landscape through features such as vegetative buffers.

vi. Be located outside of the Floodplain District to the maximum extent feasible.

vii. Be located outside of the Inundation Areas of any High and Significant Hazard Potential Dams in the region.

viii. Not result in erosion or sedimentation.

ix. Not result in water pollution.

x. Not result in increased runoff on site or onto abutting properties.

7. Nonconforming Uses

a. Any lawful use, building, structures, premises, land or parts thereof existing at the effective date of this Bylaw/Ordinance or amendments thereof and not in conformance with the provisions of this bylaw/ordinance shall be considered to be a nonconforming use. Any existing use or structure may continue and may be maintained, repaired, and improved.

b. Preexisting nonconforming structures or uses may be changed, extended or altered, provided that no such change, extension or alteration shall be permitted unless the Zoning Board of Appeals finds that such a change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use and provided that all applicable requirements of Section 6 of Chapter 40A of the Massachusetts General Laws are satisfied.

F. ENFORCEMENT AND PENALTIES

1. Violations

Any development activity that has commenced or is conducted contrary to this bylaw may be restrained by injunction or otherwise abated in a manner provided by law.

2. Notice of Violation

When the Building Inspector determines that an activity is not being carried out in accordance with the requirements of this bylaw, the Building Inspector shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

a. the name and address of the owner, applicant; and violator,

b. the address when available or the description of the building, structure, or land upon which the violation is occurring;

c. a statement specifying the nature of the violation;

d. a description of the remedial measures necessary to bring the activity into compliance with this bylaw and a time schedule for the completion of such remedial action;

e. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

f. a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

3. Stop Work Orders

Persons receiving a notice of violation from the Building Inspector will be required to halt all construction activities. This "stop work order" will be in effect until the Building Inspector confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this bylaw.

4. Criminal and Civil Penalties

Any person who violates any provision of this ordinance, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed $100 for each day such violation occurs or continues or subject to a civil penalty of up to $100 per day for each violation, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

5. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Warwick may elect to utilize the non-criminal disposition procedure set forth in the town bylaws. The Building Inspector shall be the enforcing entity. The penalty for each violation shall be $75. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6. Restoration of Lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Warwick may take necessary corrective action and place a lien on the property for the cost pursuant to MGL Chap 40, Section 58.

G. SEVERABILITY

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