

**Planning Department**  
COHASSET TOWN HALL  
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COHASSET, MA 02025



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**NOTICE OF PUBLIC HEARING COHASSET PLANNING BOARD**

Pursuant to MGL, Chapter 41 S. 81Q, the Cohasset Planning Board will hold a virtual Public Hearing on the Zoom platform, Webinar 879 2585 4802, Password: 186714, on Wednesday, **December 15, 2021, at 7:00 P.M.** for **proposed amendments to the Planning Board Rules & Regulations for Common Driveway Minimum Standards.** The proposal is to rescind the existing Common Driveway Minimum Standards to be replaced with new language titled "Residential Property Access Regulations of the Planning Board for Non-Subdivision Control Ways"

A copy of proposed amendments is on file in the Town Clerk's Office at Cohasset Town Hall, 41 Highland Avenue, with office hours of Monday/Wednesday/Thursday 8:30 A.M. - 4:30 P.M.; Tuesday, 8:30 A.M. - 7:00 P.M.; and Friday, 8:30 A.M. - 1:00 P.M. Electronic copies of said documentation can be obtained by visiting the Town of Cohasset Planning Board website (Link: <https://www.cohassetma.org/214/Planninu-Board>) or by contacting Planning Director Lauren Lind via email [at LLind@cohassetma.org](mailto:LLind@cohassetma.org).

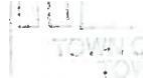
Any person interested or wishing to be heard on the application should access the virtual meeting at the time designated.

Signed,  
Amy Glasmeier  
Chair, Planning Board

NOV 19 2021

CM 11/26/21 & 12/3/21

NOV 19 20121



DRAFT FOR PLANNING BOARD REVIEW November 16, 2021

RESIDENTIAL PROPERTY ACCESS REGULATIONS OF THE PLANNING BOARD  
FOR NON-SUBDIVISION CONTROL WAYS

1. Background & Purpose:

The 1975 Zoning Act gives cities and towns the authority to adopt ordinances and bylaws to regulate the use of land, buildings and structures in order to lessen congestion in the streets and to conserve health & safety of the community. The high number of private roadways throughout the Town of Cohasset has created unique challenges. Because private ways are ~~not owned by residents and not the Town, owners of property abutting the Town of Cohasset only offers snow plowing due to safety considerations (for private ways with three or more houses). Residents living along a private roadway are responsible for funding the maintenance repaving or reconstruction of these roads. In February 2018, the Board of Selectmen adopted a policy to clarify procedures for repairing private roads.~~

~~However, As~~ the Town of Cohasset continues to address land use and development issues, it has become clear that regulations related to adequacy of private ways subject to additional development pressures has become increasingly important. These Residential Property Access Regulations are ~~regulations are~~ intended to:

- Clarify the approved means of access to more than 1 residential Lot.
- To promote the public welfare, protect public safety, and provide for adequate durability of the roadway;
- To provide for uniform and equitable procedure to administer review of adequacy of private ways;
- To provide for adequate access to a Lot hereafter proposed as the site of new Dwellings or other habitable Structures; and
- To respect and preserve insofar as possible in balancing the foregoing purpose the unique characteristics of existing ways within the different neighborhoods in Town.

2. These Residential Property Access Regulations apply to ~~any application to add a new dwelling along a street/way or common driveway that is accessed to multiple (more than one) residential properties in the Town of Cohasset achieved by one of the following means of access; These regulations shall not apply to an application for a building permit or zoning relief to replace an existing dwelling on a lot along such a street/way or common driveway, each of which have a progression of design and construction requirements, such as minimum width and maximum length.~~

- Street/Way (as defined in the Zoning Bylaw) that is privately owned but not created pursuant to the state Subdivision Control Law and Chapter 325 of the Town Bylaws.
- Common Driveway (as defined in the Zoning Bylaw)
- A way in existence before the Subdivision Control Law took effect in Cohasset (February 25, 1954) certified by the Planning Board as having, sufficient width, suitable grades, and construction to provide for the needs of vehicular traffic in relation to the present and

**Commented [CMM1]:** Suggest: Private ways are not owned by the Town, and therefore, owners of property abutting private ways are responsible for funding the maintenance and reconstruction of these roads.

**Commented [TC1]:** Subdivision roads still governed by the Subdivision Control Law and Chapter 325 of the Town Bylaws.

proposed use of abutting lots.

3. Dimensional Criteria:

The dimensional criteria apply to Streets/Ways described in Section 2 above. Important, additional permitting issues associated with these types of Streets/Ways is discussed in Section 5 of these Rules & Regulations.

Means of Access	Minimum Easement/ Minimum Layout	Minimum Pavement Width	Minimum Shoulder Width	Maximum Length	Maximum Number of Lots
Non Subdivision Street/Way	40 ft Easement / 26 ft Layout	20 ft	3 ft (each side)	750 feet	N/A
Common Driveway	40 Easement / 24 ft Layout	18 ft	3 ft (each side)	350 feet	3

4. Design/Construction Requirements: Applicable to Both Non-Subdivision Street/Way & Common Driveway:

Construction:

- Maximum grade of no more than 6%.
- Minimum 3-foot wide shoulder and with a crown of 2 1/2 inches, sufficient to serve the existing and proposed Uses.
- Shall have a turn-around or back-up area satisfactory to the Fire Chief and Department of Public Works with minimum radius for a circular turnaround not less than (50) feet.
- "T-shape" back-up strips and alternate layouts may be permitted if designed to accommodate a vehicle of thirty (30) feet length, eight (8) feet width, and having an outside turning radius of forty-seven (47) feet. Where a "T-shape" back-up strip is used, the minimum width shall be fifteen (15) feet to a depth of forty-five (45) feet on either side of the center line of the common driveway.
- The corners onto the Street/Way or Common Driveway shall have a radius of not less than fifteen (15) feet.
- The Street/Way or Common Driveway shall be sufficient throughout to serve the existing and proposed Use, and shall be paved to a thickness as specified herein with two courses of

**Commented CS1:** Bituminous Concrete Pavement, Type I-1. The aggregate shall be composed, under the subdivision control, of mixed, and laid out in two courses as specified in Section 460 of the MHD Standard Specifications for Highways and Bridges, latest edition. No bituminous concrete pavement

**Commented CS1:** The aggregate shall be placed when the temperature falls below 40°F. Common driveways shall be provided with an aggregate base course, binder course, and a surface course.

The aggregate base course shall consist of gravel meeting the following specifications, recommendation to ZWG to pick just one measure. The aggregate shall be compacted and impacted with appropriate equipment to 95% maximum number of lots served.

density based upon AASHTO Test Designation T-99, Method C, to a total depth of twelve (12) inches. The materials are to be compacted in four (4) inch layers.

Specifications are:	Sieve	Percent Passing
	1/2 inch	50 - 85
	No. 4	40 - 75
	No. 50	8 - 28
	No. 200	0 - 8

Maximum size stone in gravel shall be 3 inches largest dimension.

- The binder course of MHD, Class I Bituminous Concrete Pavement, Type I -1 (course graded 1/2 inch minimum size aggregate) shall be applied and rolled to a thickness of 1 1/2 inches with a "three-to-five" ton tandem roller or other method satisfactory to the Highway Supervisor.
- Before the surface course is applied, the surface of the binder course shall be clean and dry. The surface course shall consist of MHD Class I Bituminous Concrete Pavement, Type 1-1 (fine graded). It shall be applied on the binder course and shall be rolled to a thickness of 1 1/2 inches with a "three-to-five" ton tandem roller or other method satisfactory to the Highway Surveyor.
- Any new Common Driveway constructed after the effective date of this amendment shall include a maintenance and snow removal plan that shall comply with the Town's snowplowing policy, as in effect and amended from time to time, which shall become a binding covenant on all properties served by the driveway, recorded in the Registry of Deeds, to be approved by the Planning Board.

Drainage:

- Adequate drainage for protection of travel and abutting property and in compliance with National Pollutant Discharge Elimination System (NPDES) and Municipal Separate Storm Sewer System (MS4) standards, where applicable.
- Ensure based on historical documentation or inspection, the Common Driveway is not subject to periodic flooding so as to
- The method of drainage from a Street/Way or Common Driveway shall be approved by the Planning Board, Department of Public Works and, if necessary, the Planning Commission, the latter pursuant to Chapter 223 of the Town of...
- The entire area of the Street/Way or Common Driveway, including the area to be cleared of all top soil, peat, and any other unsuitable materials, shall be inspected and approved by the Department of Public Works .
- Where new bituminous paving is feathered into existing pavement, it shall be done under the supervision of the Department of Public Works.
- Where banking is necessary, there shall be a 3H:1V slope, subject to the recommendation of the Department of Public Works, and shall be foamed to a minimum of three (3) inches and seeded.
- In general, all construction of Streets/Way and Common Driveways shall be done as directed by the Department of Public Works, and inspections of road construction at various stages of completion shall be required, where and as directed by the Department of Public Works, or other designee of the Planning Board. Any owner who progresses beyond an inspection

**Commented [TC4]:** Requested by Brian Joyce early on in the drafting process.

**Commented [CMM2]:** Determined by who? Suggest: If the Director of Public Works or the Conservation Agent determine, based on historical documentation or inspection, that the street/way or common driveway has been subject to periodic flooding so as to become impassable, the Applicant shall be required to make drainage improvements to address the flooding, which improvements shall be subject to the review and approval of the Department of Public Works.

stage without the approval of the Department of Public Works may be required to return his construction to the stage required to perform the necessary inspection.

5. Permitting Issues:

A) No zoning relief may be granted nor Building Permit shall be issued for a new Dwelling on a lot not presently containing a Dwelling on a Street/Way or Common Driveway until a determination of the adequacy of the Street/Way or Common Driveway has been made.

B) Presumptions: Adequacy of access of a proposed or pre-existing Street/Way or Common Driveway is presumed if the design and construction standards of Sections 3 and 4 above and the applicable definitions within the Zoning Bylaw are met. That presumption may be overcome if public safety or public works departments assert an objection to adequacy and such is so found by the Planning Board, or if an upgrade is determined to be necessary.

Inadequacy of access of a proposed or pre-existing Street/Way or Common Driveway is presumed if the design and construction standards of Sections 3 and 4 above or the applicable definitions within the Zoning Bylaw are not met. Such Streets/Ways or Common Driveways will either continue as grandfathered, be required to be upgraded or

C) Adequacy of a Street/Way or a Common Driveway is determined by the following methods:

- With respect to a Street/Way existing at the time of (prior to?) promulgation of this regulation dated January 1, 2022, by the Planning Board, as part of its duty to maintain a list of streets in the Town, making a predetermination of adequacy (subject to Subsection (B) above). Such determination shall be made at a public hearing held no sooner than 21 days after publication of a notice of such proposed designation in a local newspaper of general circulation, with notice to all abutters of the Street/Way and to the public safety and public works departments. Such determination once made shall presume adequacy of the given Street/Way unless and until a need for upgrade is determined. OR
- In the context of an ANR application made to the Planning Board, by the Planning Board. OR
- ~~In other than the ANR process (OR When an application for a building permit or zoning relief for a new dwelling is filed), by the Building Inspector (subject to the presumptions above) shall issue a pre-determination as to the adequacy of the way providing frontage to the property that is the subject of the building permit or zoning relief application. unless challenged by the public safety or public works departments or the Planning Board. The Building Inspector shall report all such pre-determinations made with 72 hours to the Planning Board and the public safety and public works departments. The public safety and public works departments shall have 10 days to voice any objection (in writing?) to the Building Inspector's pre-determination. an affirmative determination to the Planning Board. The Planning Board will have until its next scheduled meeting beyond 10 days to voice any objection to an affirmative the Building Inspector's pre-determination. If no objections are made, the Building Inspector's pre-determination of adequacy shall be deemed a final determination held. OR~~
- Where there is a) an objection to the Building Inspector's pre-determination, b) a challenged finding of adequacy by the Building Inspector, or c) a finding of inadequacy by the Building Inspector, then adequacy will be determined by the Planning Board by way of a Determination

Commented [TCS]: We added the highlighted phrase to exclude tear down-rebuilds, since that is not adding a house to a way but merely replacing an existing one. We changed from "undeveloped lot" to avoid argument about a lot with an old non-house structure being replaced by a new house. The issue of adequacy is triggered only by adding a new Dwelling.

Commented [TC6]: These provide an objective base point for determining adequacy that is not present now.

Commented [TC7]: This pre-determination process was

Commented [CMM3]: Courts are discouraging the use of this term. Consider replacing with "will either remain as is".

on, a new review of adequacy would logically be necessary. Remains here, however, for discussion.

Commented [TC8]: To summarize the determination of adequacy process set out here, which is triggered only by new house construction on an empty lot:

- 1) By pre-determination by PB if we choose that tool.
- 2) By PB where statutorily required (ANRs)
- 3) In all other instances, by BI subject to objection by public safety, public works or PB. Where BI finds inadequacy or a finding of adequacy is challenged, then PB holds a hearing.

Commented [TC9]: The idea of an Adequacy Determination process comes from Wellesley. We discussed the appeal process for this, and by applying a site plan review standard, appeal by the Applicant from any determination disagreed with would be to court.

We discussed that it is unlikely that an abutter is involved in this process, insofar the determination of adequacy is a process between the BI, public safety & works depts., the PB and the Applicant. If any abutter were to challenge a determination, however, he/she would go thru the usual zoning challenge process — request for action by BI, decision by BI, appeal to ZBA, appeal to court.

Based on data on recent new home construction and where such construction has been located, it is believed that adding this Determination of Adequacy process would not unreasonably increase PB workload, insofar as only a minority of projects would be on ways that might have a question of adequacy.

of Adequacy process. Such determination, decided upon the standards of Site Plan Review, shall be made by the Planning Board Applicant of the subject permit and decided upon at a public hearing held no sooner than 21 days after publication of a notice of such proposed determination/signation in a local newspaper of

**Commented [CMM4]:** Why SPR and not these standards?

general circulation, and with notice to all abutters of the Street/Way or Common Driveway and to the public safety and public works departments.

D) (i) Any increase in the number of Dwellings to be served by a Street/Way or Common Driveway, shall require an upgrade to the design and construction standards set forth in Section 3 and 4 above relating to construction, drainage and flood hazards or, if determined, to Subdivision Control standards pursuant to Chapter 325 of the Zoning Bylaw. Compliance with Section 3 and 4 requirements shall be to the maximum extent feasible, but strict compliance may be waived by the Planning Board. In the case of a Common Driveway that exceeds the number of Dwellings that can be served per Section 3 above, the upgrade required shall be to the standards of a Non-Subdivision Street/Way. Any upgrade so ordered shall be responsibility of the Applicant for the subject zoning relief or Building Permit triggering the need for an upgrade.

(ii) With respect to Subsection (B) above, if the zoning relief or Building Permit sought does not add Dwellings to the existing number served by a Street/Way or Common Driveway, upgrade will not be required and the Street/Way or Common Driveway is grandfathered as to its existing design and construction unless and until some future addition of Dwellings or intensification of use occurs.

(iii) A request for a waiver from the design and construction standards of Section 4 shall include an estimate of the savings in initial cost and an explanation of any public interest served or public benefit derived if the waiver is granted. The Planning Board may grant waivers, whether or not requested by the Applicant, if it deems it is in the public interest to do so.

Public safety and public welfare concerns are of primary importance in determining whether or not waiver requests shall be granted. The Planning Board shall also consider the characteristics of the neighborhood, including: existing trees and landscaping; materials, type and specifications of curbing, sidewalk and roadway paving; the presence or absence of curbing, sidewalks, lighting and landscaping; as well as the views of the residents concerning these items. The Planning Board may seek advice and comment from other boards, commissions and agencies, as it deems appropriate, on the advisability of granting waiver requests.

When an upgrade is ordered, the Planning Board may require a performance guarantee for all construction by means of a Surety Agreement with the surety in the amount and of a type satisfactory to the Board. The conditions imposed and the surety may be varied from time to time by the Planning Board, provided however, that the Planning Board shall not approve the reduction of surety by or to an amount of less than Five Thousand Dollars (\$5,000.00) until the entire Street/Way or Common Driveway is completed. All documents used as performance guarantee shall be subject to approval by the Town Counsel as to form and legality. The surety agreement shall state that the work covered by the agreement must be completed within a one year period, but may be reviewed and extended at the Planning Board's discretion.

6. Zoning, Issues:

A) All Lots served by the Non-Subdivision Street/Way or Common Driveway shall satisfy the Frontage requirements for the zoning district in which the Lots are located. Without limiting the foregoing, access over the Frontage must be Adequate and not Illusory (as such terms are defined in the Zoning Bylaw) and Board further finds that the use of such a Street/Way or of a

Commented [CMM5]: Suggest "may retain its existing design and construction" in lieu of "grandfathered".

Formatted: Highlight

Commented [CMM6]: Too subjective. What else qualifies as an intensification and who decides what intensifies the use? I thought this was only going to apply to new dwellings?



Common Driveway does not circumvent the intent of the Subdivision Control Law. The Planning Board may find Frontage to be Illusory if the Frontage would fail to provide acceptable physical access as contemplated by MGL Chapter 41, Section 81M, or if it constitutes a Paper Way as defined by the Zoning Bylaw. Such failure may include, but is not limited to, the inability of the applicant to obtain an Order of Conditions under applicable state or local wetlands regulations for construction of the access, the presence of distinct physical impediments to threshold access, or extreme lot configurations. Where the proposed development constitutes a subdivision under the Subdivision Control Law, these regulations shall not apply.

- B) Connection of a private Street/Way or Common Driveway to another private Street/Way or Common Driveway is prohibited, for the former unless part of an approved subdivision.
- C) The existence of a Street or Way prior to the Town's acceptance of the Subdivision Control Law on February 25, 1954, or its categorization as a so-called "ancient way", nor its existence on an Approval Not Required plan, does not pre-determine its adequacy for access for the uses intended, and does not excuse the Street/Way from compliance with the regulations.

**Commented [CMM7]:** I think this belongs in the ZBL rather than a reg.

**Commented [CMM8]:** But endorsement of an ANR plan does indicate the Planning Board has determined the adequacy of the way providing frontage, at least at the time of endorsement and the lots shown on the plan. Otherwise, the PL BD would have to deny an ANR and require a subdivision plan be filed. Plus, in Section 5.C above, the regulations address adequacy of the way determined through the ANR process. I think this paragraph is confusing and recommend deleting.

7. Application: Fee and Deposit Schedule:

When a Determination of Adequacy is required, the Applicant shall submit a plan showing all dimensional, design and construction details of the subject Street/Way or Common Driveway, and its layout and location at the subject site. The Applicant will further be responsible for all engineering and legal fees and expenses of the Board incurred by the Board in connection with review of the proposed plan. Engineering and legal fees shall be brought up to the initial required amount when the balance goes below 50% of the initial required amount so as to be sufficient at all times to cover these costs in accordance with the most recent Planning Board Fee Schedule, which Fee Schedule is a part of these Regulations and which is on file in the Planning Board Office and the Town Clerk's Office.

The minimum required balance shall be maintained until the Street/Way or Common Driveway and all required inspections have been completed and approved and, until As-Builts are submitted to the Planning Board Office.

8. The Planning Board may from time to time amend these rules and regulations.

Public Hearing on XXX, 2021

Adopted by Planning Board — Vote of XX to J0( on XXX, 2021



**RESIDENTIAL PROPERTY ACCESS REGULATIONS OF THE PLANNING BOARD  
FOR NON-SUBDIVISION CONTROL WAYS**

1. Background & Purpose:

The 1975 Zoning Act gives cities and towns the authority to adopt ordinances and bylaws to regulate the use of land, buildings and structures in order to lessen congestion in the streets and to conserve health & safety of the community. The high number of private roadways throughout the Town of Cohasset has created unique challenges. Because private ways are owned by residents and not the Town, the Town of Cohasset only offers snow plowing due to safety considerations (for private ways with three or more houses). Residents living along a private roadway are responsible for funding the repaving or reconstruction of these roads. In February 2018, the Board of Selectmen adopted a policy to clarify procedures for repairing private road.

However, as the Town of Cohasset continues to address land use and development issues, it has become clear that regulations related to adequacy of private ways subject to additional development pressures has become increasingly important. These Residential Property Access Regulations are regulations are intended to:

- Clarify the approved means of access to more than 1 residential Lot.
- To promote the public welfare, protect public safety, and provide for adequate durability of the roadway;
- To provide for uniform and equitable procedure to administer review of adequacy of private ways;
- To provide for adequate access to a Lot hereafter proposed as the site of new Dwellings or other habitable Structures; and
- To respect and preserve insofar as possible in balancing the foregoing purpose the unique characteristics of existing ways within the different neighborhoods in Town.

2. These Residential Property Access Regulations apply to access to multiple (more than one) residential properties in the Town of Cohasset achieved by the following means of access, each of which have a progression of design and construction requirements, such as minimum width and maximum length.

- Street/Way (as defined in the Zoning Bylaw) that is privately owned but not created pursuant to the state Subdivision Control Law and Chapter 325 of the Town Bylaws.
- Common Driveway (as defined in the Zoning Bylaw)
- A way in existence before the Subdivision Control Law took effect in Cohasset (February 25, 1954) certified by the Planning Board as having, sufficient width, suitable grades, and construction to provide for the needs of vehicular traffic in relation to the present and proposed use of abutting lots.

3. Dimensional Criteria:

The dimensional criteria apply to Streets/Ways described in Section 2 above. Important, additional permitting issues associated with these types of Streets/Ways is discussion in Section 5 of these Rules & Regulations.

Means of Access	Minimum Easement/ Minimum Layout	Minimum Pavement Width	Minimum Shoulder Width	Maximum Length	Maximum Number of Lots
Non Subdivision Street/Way	40 ft Easement / 26 ft Layout	20 ft	3 ft (each side)	750 feet	N/A
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4. Design/Construction Requirements: Applicable to Both Non-Subdivision Street/Way & Common Driveway:

Construction:

- Maximum grade of no more than 6%.
- Minimum 3-foot wide shoulder and with a crown of 2<sup>1</sup>/<sub>2</sub> inches, sufficient to serve the existing and proposed Uses.
- Shall have a turn-around or back-up area satisfactory to the Fire Chief and Department of Public Works with minimum radius for a circular turnaround not less than (50) feet.
- "T-shape" back-up strips and alternate layouts may be permitted if designed to accommodate a vehicle of thirty (30) feet length, eight (8) feet width, and having an outside turning radius of forty-seven (47) feet. Where a "T-shape" back-up strip is used, the minimum width shall be fifteen (15) feet to a depth of forty-five (45) feet on either side of the center line of the common driveway.
- The corners onto the Street/Way or Common Driveway shall have a radius of not less than fifteen (15) feet.
- The Street/Way or Common Driveway shall be sufficient throughout to serve the existing and proposed Use, and shall be paved to a thickness as specified herein with two courses of Class 1 Bituminous Concrete Pavement, Type I-1. The aggregate shall be composed, mixed,

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(Comments turned off)

and laid out in two courses as specified in Section 460 of the MHD Standard Specifications for Highways and Bridges, latest edition. No bituminous concrete pavement shall be placed when the temperature falls below 40°F. Common driveways shall be provided with an aggregate base course, binder course, and a surface course.

- The aggregate base course shall consist of gravel meeting the following specifications, spread over the subgrade and compacted with appropriate equipment to 95% maximum density based upon AASHTO Test Designation T-99, Method C, to a total depth of twelve (12) inches. The materials are to **be** compacted in four (4) inch layers.

Specifications are:	Sieve	Percent Passing
	% inch	50 - 85
	No. 4	40 - 75
	No. 50	8 — 28
	No. 200	0 - 8

Maximum size stone in gravel shall be 3 inches largest dimension.

- The binder course of MHD, Class I Bituminous Concrete Pavement, Type I -1 (course graded — 1/2 inch minimum size aggregate) shall be applied and rolled to a thickness of 1 1/2 inches with a "three-to-five" ton tandem roller or other method satisfactory to the Highway Supervisor.
- Before the surface course is applied, the surface of the binder course shall be clean and dry. The surface course shall consist of MHD Class I Bituminous Concrete Pavement, Type 1-1 (fine graded). It shall be applied on the binder course and shall be rolled to a thickness of 1 1/2 inches with a "three-to-five" ton tandem roller or other method satisfactory to the Highway Surveyor.
- Any new Common Driveway constructed after the effective date of this amendment shall include a maintenance and snow removal plan that shall comply with the Town's snowplowing policy, as in effect and amended from time to time, which shall become a binding covenant on all properties served by the driveway, recorded in the Registry of Deeds, to be approved by the Planning Board.

Drainage:

- Adequate drainage for protection of travel and abutting property and in compliance with National Pollutant Discharge Elimination System (NPDES) and Municipal Separate Storm Sewer System (MS4) standards, where applicable.
- Ensure based on historical documentation or inspection, the Street/Way or Common Driveway is not subject to periodic flooding so as to become impassable.
- The method of drainage from a Street/Way or Common Driveway shall be approved by the Planning Board, Department of Public Works and, if necessary, by the Conservation Commission, the latter pursuant to Chapter 223 of the Town Bylaws.
- The entire area of the Street/Way or Common Driveway, including shoulders, shall be cleared of all top soil, peat, and any other unsuitable material, all stumps, brush, roots, boulders, and all trees not intended for preservation. The subgrade shall be inspected and approved by the Department of Public Works .

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(Comments turned off)

- Where new bituminous paving is feathered into existing pavement, it shall be done under the supervision of the Department of Public Works.
- Where banking is necessary, there shall be a 3H:1V slope, subject to the recommendation of the Department of Public Works, and shall be loamed to a minimum of three (3) inches and seeded.
- In general, all construction of Streets/Way and Common Driveways shall be done as directed by the Department of Public Works, and inspections of road construction at various stages of completion shall be required, where and as directed by the Department of Public Works, or other designee of the Planning Board. Any owner who progresses beyond an inspection stage without the approval of the Department of Public Works may be required to return his construction to the stage required to perform the necessary inspection.

5. Permitting Issues:

A) No zoning relief may be granted nor Building Permit shall be issued for a new Dwelling on a lot not presently containing a Dwelling on a Street/Way or Common Driveway until a determination of the adequacy of the Street/Way or Common Driveway has been made.

B) Presumptions: Adequacy of access of a proposed or pre-existing Street/Way or Common Driveway is presumed if the design and construction standards of Sections 3 and 4 above and the applicable definitions within the Zoning Bylaw are met. That presumption may be overcome if public safety or public works departments assert an objection to adequacy and such is so found by the Planning Board, or if an upgrade is determined to be necessary.

Inadequacy of access of a proposed or pre-existing Street/Way or Common Driveway is presumed if the design and construction standards of Sections 3 and 4 above or the applicable definitions within the Zoning Bylaw are not met. Such Streets/Ways or Common Driveways will either continue as grandfathered, be required to be upgraded or may be subject to a waiver.

C) Adequacy of a Street/Way or a Common Driveway is determined by one of the following methods:

- With respect to a Street/Way existing at the **time** of promulgation of this regulation, by the Planning Board, as part of its duty to maintain a list of streets in the Town, making a pre-determination of adequacy (subject to Subsection (B) above). Such determination shall be made at a public hearing held no sooner than 21 days after publication of a notice of such proposed designation in a local newspaper of general circulation, with notice to all abutters of the Street/Way and to the public safety and public works departments. Such determination once made shall presume adequacy of the given Street/Way unless and until a need for upgrade is determined. OR
- In the context of an ANR application made to the Planning Board, by the Planning Board. OR
- In other than the ANR process, by the Building Inspector (subject to the presumptions above), unless challenged by the public safety or public works departments or the Planning

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(Comment redacted)

Board. The Building Inspector shall report all such determinations made with 72 hrs. to the Planning Board and the public safety and public works departments. The public safety and public works departments shall have 10 days to voice any objection to an affirmative determination to the Planning Board. The Planning Board will have until its next scheduled meeting beyond 10 days to voice any objection to an affirmative determination. If no objections are made, the determination of adequacy shall hold. OR

- Where there is a) no pre-determination, b) a challenged finding of adequacy by the Building Inspector, or c) a finding of inadequacy by the Building Inspector, then adequacy will be determined by the Planning Board by way of a Determination of Adequacy process. Such determination, decided upon the standards of Site Plan Review, shall be made by the Applicant of the subject permit and decided upon at a public hearing held no sooner than 21 days after publication of a notice of such proposed designation in a local newspaper of general circulation, and with notice to all abutters of the Street/Way or Common Driveway and to the public safety and public works departments.

D) (i) Any increase in the number of Dwellings to be served by a Street/Way or Common Driveway, shall require an upgrade to the design and construction standards set forth in Section 3 and 4 above relating to construction, drainage and flood hazards or, if determined, to Subdivision Control standards pursuant to Chapter 325 of the Zoning Bylaw. Compliance with Section 3 and 4 requirements shall be to the maximum extent feasible, but strict compliance may be waived. In the case of a Common Driveway that exceeds the number of Dwellings that can be served per Section 3 above, the upgrade required shall be to the standards of a Non-Subdivision Street/Way. Any upgrade so ordered shall be responsibility of the Applicant for the subject zoning relief or Building Permit triggering the need for an upgrade.

(ii) With respect to Subsection (B) above, if the zoning relief or Building Permit sought does not add Dwellings to the existing number served by a Street/Way or Common Driveway, upgrade will not be required and the Street/Way or Common Driveway is grandfathered as to its existing design and construction unless and until some future addition of Dwellings or intensification of use occurs.

(iii) A request for a waiver from the design and construction standards of Section 4 shall include an estimate of the savings in initial cost and an explanation of any public interest served or public benefit derived if the waiver is granted. The Planning Board may grant waivers not requested by the Applicant, if it deems it is in the public interest to do so.

Public safety and public welfare concerns are of primary importance in determining whether or not waiver requests shall be granted. The Planning Board shall also consider the characteristics of the neighborhood, including: existing trees and landscaping; materials, type and specifications of curbing, sidewalk and roadway paving; the presence or absence of curbing, sidewalks, lighting and landscaping; as well as the views of the residents concerning these items. The Planning Board may seek advice and comment from other boards, commissions and agencies, as it deems appropriate, on the advisability of granting waiver requests.

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When an upgrade is ordered, the Planning Board may require a performance guarantee for all construction by means of a Surety Agreement with the surety in the amount and of a type satisfactory to the Board. The conditions imposed and the surety may be varied from time to time by the Planning Board, provided however, that the Planning Board shall not approve the reduction of surety by or to an amount of less than Five Thousand Dollars (\$5,000.00) until the entire Street/Way or Common Driveway is completed. All documents used as performance guarantee shall be subject to approval by the Town Counsel as to form and legality. The surety agreement shall state that the work covered by the agreement must be completed within a one year period, but may be reviewed and extended at the Planning Board's discretion.

**6. Zoning Issues:**

- A) All Lots served by the Non-Subdivision Street/Way or Common Driveway shall satisfy the Frontage requirements for the zoning district in which the Lots are located. Without limiting the foregoing, access over the Frontage must be Adequate and not Illusory (as such terms are defined in the Zoning Bylaw) and Board further finds that the use of such a Street/Way or of a Common Driveway does not circumvent the intent of the Subdivision Control Law. The Planning Board may find Frontage to be Illusory if the Frontage would fail to provide acceptable physical access as contemplated by MGL Chapter 41, Section 81M, or if it constitutes a Paper Way as defined by the Zoning Bylaw. Such failure may include, but is not limited to, the inability of the applicant to obtain an Order of Conditions under applicable state or local wetlands regulations for construction of the access, the presence of distinct physical impediments to threshold access, or extreme lot configurations. Where the proposed development constitutes a subdivision under the Subdivision Control Law, these regulations shall not apply.
- B) Connection of a private Street/Way or Common Driveway to another private Street/Way or Common Driveway is prohibited, for the former unless part of an approved subdivision.
- C) The existence of a Street or Way prior to the Town's acceptance of the Subdivision Control Law on February 25, 1954, or its categorization as a so-called "ancient way", nor its existence on an Approval Not Required plan, does not pre-determine its adequacy for access for the uses intended, and **does not excuse the Street/Way from compliance with the regulations.**

**7. Application: Fee and Deposit Schedule:**

When a Determination of Adequacy is required, the Applicant shall submit a plan showing all dimensional, design **and construction details of the subject Street/Way or Common Driveway, and its** layout and location at the subject site. The Applicant will further be responsible for all engineering and legal fees and expenses of the Board incurred by the Board in connection with review of the proposed plan. Engineering and legal fees shall be brought up to the initial required amount **when the** balance goes below 50% of the initial required amount so as to be sufficient at all times to cover these costs in accordance **with the most recent Planning Board Fee Schedule, which Fee Schedule is a part of these** Regulations and which is on file in the Planning Board Office and the Town Clerk's Office.

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**The minimum required balance shall be maintained until the Street/Way or Common Driveway and all required inspections have been completed and approved and, until As-Builts are submitted to the Planning Board Office.**

**8. The Planning Board may from time to time amend these rules and regulations.**

**Public Hearing on XXX, 2021**

**Adopted by Planning Board —Vote of XX to XX on XXX, 2021**