

Carlisle Planning Board

Rules and Regulations

regarding

Special Permits for Common Driveways

**Revised: October 30, 1989
 July 8, 1991
 March 27, 1995**

**Carlisle Planning Board
Rules and Regulations for Conservation Clusters**

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I. Introduction

In the Town of Carlisle, up to six lots may share a single driveway. However, in order to construct a driveway that will serve more than one lot, you must obtain a Special Permit from the Carlisle Planning Board. See Section 5.4.4. of the Carlisle Zoning Bylaw.

The Planning Board's decision to grant a Special Permit depends on the circumstances and conditions peculiar to each application. Since the construction and maintenance of a common driveway is not an obligation of the Town of Carlisle, but rather a private matter among those served by the driveway, the Planning Board, by means of the Special Permit granting process, attempts to see that all lots served by the driveway are provided both with safe and convenient access so as to secure safety in case of fire, flood, panic and other emergencies and with a legally enforceable vehicle by which such access may be maintained by the private parties thereto in the future. The decision of the Planning Board will be based upon what it considers to be the best interests of the neighborhood and the Town in general. To this end, it shall be incumbent upon the Petitioner to show that the construction and use of the common driveway represent the best plan for the provision of adequate access for emergency vehicles, safety of the approach to the public way, development of the land, preservation of the natural environment, drainage, and maintenance of neighborhood character.

It is recommended that the Applicant discuss Application at a regular Planning Board meeting before the formal filing. This will help the Applicant to identify potential problems and find sources for needed information. A well-prepared Application, in turn, may speed up the schedule for Planning Board action. Appointments to meet with the Board must be made through the Planning Board office.

The following steps are required by Massachusetts General Laws Chapter 40A, Section 9 for the issuance of a Special Permit:

- A. The Applicant must file the Application with the Town Clerk (the date of such filing is hereinafter referred to as the "Filing Date").
- B. The Applicant must file a copy of the Application (showing the date and time of filing as certified by the Town Clerk) with the Planning Board.
- C. The Applicant must post a Notice of Public Hearing with the Town Clerk after it has been approved by the planning board or its designee; have the Notice published in the Newspaper; and mail the Notice to Parties in Interest. The Applicant will prove such mailing by presenting to the planning board the return receipts for such mailings along with the list of Parties in Interest from the Assessors' office. Please refer to Section VI for details.
- D. The Planning Board must hold a Public Hearing within 65 days from the date of filing of the Application with the Town Clerk, unless the Applicant and the Planning Board agree in writing to an extension.
- E. Within 90 days after the close of the Public Hearing, the Planning Board must make a Decision, file it with the Town Clerk, and notify the Parties in Interest.¹
- F. If the Permit is granted, the Applicant must record at the Registry of Deeds.

¹ The term "Parties in Interest" as used throughout these rules and regulations is defined in Massachusetts General Chapter 40A, Section 11.

II. The Application

Each copy of the Application shall include:

- A. Forms entitled “Application for Special Permit” and “Notice of Public Hearing” (attached to these rules).
- B. A property map at scale of 1" = 200' showing:
 1. all lots to be served by common driveway;
 2. contiguous lots, and lots across the street, within 300' of lots so served;
 3. zoning districts including Wetland and Flood Hazard districts;
 4. the location, if any, within the lots which will share the common driveway, to be used for the disposal of wood wastes, tree stumps, or wood debris generated by the clearing of land in connection with the common driveway.
- C. Suitably scaled maps, plans, drawings (including a cross-section of the proposed driveway that specifies construction and subsurface materials, width, shoulders and grading on shoulders, and slopes and contours) as needed to fully explain the proposed layout grades, drainage and construction of the common driveway and its intersection with the frontage way, including sight lines and drainage at this point, said material to be prepared by a qualified Professional.
- D. A plan showing driveway layouts if a common driveway were not used to show that the proposed common driveway meets the purposes set out in *Section I. Introduction* of these Rules and Regulations.
- E. Where the frontage way is a Scenic Road, an indication of stone walls and trees within the frontage way that will be affected by the common driveway.
- F. A form of agreement binding all present and future owners of lots served by the common driveway to maintain said way and its drainage in good condition and open to provide sufficient access for fire, police, ambulance/rescue and other vehicles at all seasons (hereinafter “maintenance agreement”). See the section below entitled “Maintenance Agreement.”

BECAUSE THE DETAILS OF THE MAINTENANCE AGREEMENT ARE THE PETITIONER’S RESPONSIBILITY, THE PLANNING BOARD STRONGLY URGES THAT THE MAINTENANCE AGREEMENT BE PREPARED BY AN ATTORNEY.

G. Additional Information

1. A location plan of the proposed common driveway, at a scale of 200 feet to the inch, showing:
 - a. the exterior lines of the driveway and their location in relation to one or more existing streets, or portions thereof;
 - b. soil types as determined by the Soil Conservation Service.
2. A key to the soil types shown on the location plan.
3. All drainage system design calculations.
4. The *Layout Plan*
 - a. A *layout plan* on a separate sheet showing sidelines, centerline, points of tangency, length of tangents, length of curves, intersection angles and radii of curves for the proposed common driveway, together with all buildings, walks, drives and other existing fixtures within forty (40) feet of the sidelines of such proposed common

driveway, including trees of major size and shrubbery that impairs sightlines and visibility at corners and intersections. The layout plan shall also show the size, location and elevation of all storm drains and the appurtenances existing in or proposed for the proposed common driveway.

- b. Directly above or below the layout plan of the proposed common driveway, a *profile* showing existing and proposed grades along the centerline and sidelines of the driveway, together with *figures of elevation* at the top and bottom of all even grades and at twenty-five (25) foot intervals along all vertical curves. The *horizontal scale* of the profiles shall be forty (40) feet to one inch, the *vertical scale* shall be four (4) feet to one inch.
5. To ensure that the intent of a proposed perpetual Conservation Restriction pursuant to M.G.L. Chapter 184, Sections 31-33 is carried out during the period required to obtain necessary state approvals, an applicant who proposes to perpetually restrict land for open space or trail shall submit to the Planning Board an application that includes:
- a. the proposed perpetual Conservation Restriction with signature lines for necessary governmental approvals pursuant to M.G.L. Chapter 184, Section 32, and;
 - b. a form of recordable interim restriction in favor of the Town of Carlisle, acting by and through its Planning Board, which restriction complies with the provisions of M.G.L. Chapter 184, Section 26, which shall include both a statement that such restriction is in perpetuity and the following language:

“In the event that a conservation restriction approved by the Planning Board of the Town of Carlisle and by the Secretary of the Environment, Commonwealth of Massachusetts, pursuant to M.G.L. Chapter 184, Section 32 is hereafter recorded, the terms of such conservation restriction approved pursuant to M.G.L. Chapter 184, Section 32 shall control over any inconsistent provisions herein.”

“The restrictions herein set forth may be released in whole or in part in accordance with the provisions of M.G.L. Chapter 184, Section 32.”

- H. The proposed name of the common driveway. The Planning Board recommends that the common driveway name be appropriate to the site, such as, but not limited to, names of Native Americans, early settlers, or natural features associated with the site. A chosen name may be unacceptable to the Planning Board or may conflict with an existing street or driveway name. Applicants are invited to consult the Planning Board for names associated with the Town’s history. A common driveway shall have a single name throughout.
- I. A list of Parties in Interest certified by the Board of Assessors.
- J. The receipt specified in Section III(c).

Note: Additional data may be requested from the Applicant by the Planning Board.

III. Filing the Application

- A. The Applicant must file the Application with the Town Clerk;
- B. The Applicant must file a copy of the Application (showing the date and time of filing as certified by the Town Clerk) with the Planning Board through the Planning Board office;
- C. The Applicant must file a copy of the Application with the Conservation Commission and receive a receipt therefor.

IV. Fees and Charges

- A. The Application Fees for common driveways are to be found on the sheet called Application for Special Permit, attached to these regulations.
- B. The Project Review Fee to be paid pursuant to *Section V. Review Fees* is \$1,000.
- C. The Applicant shall reimburse the Town for all expenses incurred by the Board for professional services in excess of the initial amount paid pursuant to *Section V. Review Fees*, including, but not limited to, the cost of professional services in excess of the initial amount paid pursuant to *Section IV. B. (Project Review Fee)*, and the cost of recording and/or verifying the recording of any documents and plans associated with the Special Permit application.

V. Review Fees

- A. When reviewing an application for a Common Driveway Special Permit, the Planning Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project because of a project's potential impacts, or because the Town of Carlisle lacks the necessary expertise to perform the work related to the approval. The Board requires that Applicants pay a "project review fee" consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of a proposed project or inspection of an approved project.
- B. In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.
- C. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the Applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for disapproving a project or rescission of an approval of a project.
- D. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
- E. Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Planning Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the

duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

VI. Public Hearing

The public hearing will be conducted according to the requirements of M.G.L. Chapter 40A, Sections 9 and 11. The terms set forth herein shall have the same definitions as they have in M.G.L. Chapter 40A, except as otherwise defined herein. The board shall set the time, date and place of the hearing, which shall be held within sixty-five (65) days of the application filing date, unless the applicant and the board agree in writing to an extension. A copy of any written extension agreement must be filed with the Town Clerk. **Failure to follow the requirements of Section VI may render the special permit process invalid, and could cause serious delays in the processing of the application.**

The Public Hearing Notice

A. Content

The notice of the hearing is the applicant's responsibility and must, at a minimum, contain the information presented in the sample legal notice that is attached to these rules. The board requires that the applicant review the content of the notice with the board's designee before the applicant mails or publishes it as required below.

B. Service of Notice

The Applicant must publish the notice in a newspaper of general circulation in Carlisle, file it with the Town Clerk, and mail it by certified mail to all Parties in Interest.

C. Deadlines for Publication and Service of Notice

The applicant must publish the notice in a newspaper of general circulation in Carlisle once in each of two consecutive weeks, with the first publication occurring no fewer than fourteen (14) days before the date of the hearing, calculated by excluding the date set for the hearing. The applicant must also file the notice with the Town Clerk, and mail it by certified mail to all Parties in Interest no fewer than fourteen (14) days before the hearing, calculated by excluding the date set for the hearing. The applicant shall present to the board's designee, at least one business day before the date of the public hearing, the certified mail return receipts as evidence that all Parties in Interest have been notified as required by law, a copy of the notice date stamped by the Town Clerk, and one set of newspaper tear sheets containing the published notice.

VII. Decision

A. The Planning Board must make its decision on the Special Permit within 90 days of the close of the Public Hearing or within such extension of time as may have been agreed in writing between the Applicant and the Board. A decision to grant a Special Permit requires 5 votes in favor of the grant.

B. The Planning Board must

1. file with the Town Clerk a copy of its decision including a detailed record of its proceedings,
2. promptly mail a certified copy of its decision to the Applicant, and
3. promptly mail Notices of Decision to the Parties in Interest and to the Town Departments listed in Section III herein.

C. The Date of Filing of the Decision is the date when the decision of the Planning Board has been filed with the Town Clerk.

- D. If the Planning Board fails to make a decision within 90 days of the close of the Public Hearing or within such extension of time as may have been agreed upon in writing between the Applicant and the Board, the Special Permit shall be deemed to have been granted (Massachusetts General Laws Chapter 40A, Section 9.)

VIII. Appeal Period

The Appeal Period lasts 20 days from the Date of Filing of the Decision. Notices of any appeal made to the Superior Court or Land Court must be received by the Town Clerk within those 20 days (Massachusetts General Laws Chapter 40A, Section 17).

IX. Lapse of Special Permit

- A. Failure to record the plan and all documents associated with the approval within 60 days of the completion of the appeal period shall cause the Special Permit to lapse unless approval has been extended by the Board and said extension filed in the Town Clerk's office.
- B. The rights granted by the Special Permit shall lapse if they are not exercised within one (1) year of
 - 1. the expiration of the Appeal Period, or
 - 2. if appeal has been taken from the decision to grant the Special Permit, the date on which the court has dismissed or denied such appeal.

X. Conditions Prior to Construction

Conditions necessary before the Special Permit is effective:

- A. The Appeal Period has elapsed without appeal, or, if appealed, the court has dismissed or denied the appeal;
- B. The Special Permit, the maintenance agreement, a map on an 8½" x 11" sheet(s) to show the properties and easements affected, and the construction specifications of the common driveway, must be recorded in the Middlesex North County Registry of Deeds ("Registry")².

XI. Withdrawal Without Prejudice

- A. An Application may be withdrawn at any time before the first publication of the Notice of the Public Hearing (First Notice) in the newspaper. Such withdrawal shall be without prejudice to the Applicant to refile at any time.
- B. After publication of the First Notice, withdrawal without prejudice to refile requires a vote of at least 4 in favor.
- C. Withdrawal of Application after the First Notice and without consent of the Board shall be deemed a decision to deny the Special Permit. The Planning Board shall file the denial decision and give notice in accordance with Paragraph B of Section VI Decision herein.
- D. Filing fees shall not be returned upon withdrawal of an Application and refiling shall require payment of a new fee as though the filing were a new application.
- E. The Planning Board must notify the Town Clerk that an application has been withdrawn.

² The copy of the Special Permit to be recorded must bear the certification of the Town Clerk that the Appeal Period has elapsed (Massachusetts General Laws, Chapter 40A, Section 11).

XII. Repetitive Application

- A. No application which has been denied or deemed denied shall be reheard within 2 years of the Date of Filing of the Decision, or, in the case of an appeal from the decision, within 2 years of the date of final court action, except with consent of the Planning Board after a public hearing.
- B. The Planning Board may schedule public hearings to consider admission of a Repetitive Application and the merits of the Repetitive Application on the same date.
- C. The Applicant shall file a Repetitive Application as though it were a new Application and, in addition, shall furnish evidence of what specific and material changes have occurred since the original Application.
- D. The Applicant is advised, but not required, to explain the changed conditions to the Planning Board at a regular meeting before filing a Repetitive Application. Appointments to meet with the Board must be made through the Planning Board office.
- E. Admission of a Repetitive Application requires six votes in favor.³
- F. Subsequent steps are as for an original Application Special Permit.

XIII. Amendments to Special Permit

- A. Submission requirements for requests to amend a Special Permit are the same as for the original Application for a Special Permit.
- B. Where the planning board finds insignificant changes to the special permit granted under this section are necessary (such as in the correction of typographical errors), such corrections may be made without the requirement of an amended special permit.

XIV. Maintenance Agreements

At a minimum, the Maintenance Agreement shall contain Provisions for:

- A. The right to use in common the driveway for all purposes for which private driveways are customarily used, including the right to install, maintain and repair drains, culvert and underground utilities in, along, under and across the driveway;
- B. The obligation of repair, maintenance and snow removal so as to cause the driveway (including the drains and culverts) to be repaired and maintained and snow to be removed therefrom in such a manner as to insure continuous year-round access to each lot by fire, police, ambulance/rescue and other vehicles. In appropriate cases, the maintenance agreement might provide for the clearing of brush and foliage that obstructs vision;
- C. The right of each and every owner of the lots served by a common driveway to enforce the obligations to repair and maintain the common driveway so as to provide to all lots safe and

³ Massachusetts General Laws Chapter 40A, Section 16 requires consent of all but one member of the Planning Board for admission of repetitive applications to be submitted to any Special Permit Granting Authority (“SPGA”). When the SPGA is not the Planning Board, the consent of both the SPGA and the Planning Board is required for admission of the repetitive application. The required SPGA vote is specified in said statute.

convenient access by fire, police, ambulance/rescue, moving, construction and maintenance vehicles;

- D. A clear expression of construction specifications so that the initial condition and intended maintained condition of the common driveway are understood by all present and future owners of the lots served;
- E. Installation and maintenance of permanent marker where the common driveway enters the public way, which marker shall identify the common driveway by name and shall include the words "Private Way"⁴;
- F. Installation and maintenance of a permanent marker wherever a common driveway branches to identify the house numbers served by each branch.

XV. Additional Information

- A. **Design standards to be considered by the board.** The following items are considered by the planning board to be desirable in the design and construction of any common driveway.
 - 1. Utilities serving any lots should be either buried or substantially concealed by mature woods.
 - 2. The common driveway shall have a traveled way at least 12 feet wide that can be maintained as such throughout the year. In addition, there shall be two shoulders, each at least two feet wide, for a total drive width of at least 16 feet.
 - 3. The common driveway shall be at least 40 feet from the outer lot lines of the land being divided.
 - 4. Where the common driveway exceeds 300 feet in length, turnouts shall be installed and maintained (e.g. gravel and/or snow storage shall be prohibited) at reasonable intervals along the driveway, but at least every 300 feet, in order to allow vehicles to pass. Where the common driveway exceeds 300 feet in length, it shall end in a circle with a radius of no less than 25 feet.
 - 5. The common driveway should not be longer than 1,000 feet.
 - 6. The surface of the driveway should be a material that will allow all season access, but macadam is not necessarily required and, in some circumstances, may be discouraged because of drainage conditions.
- B. **Drainage.** Because drainage at the point of intersection between the common driveway and the public way is a concern, the Applicant should be prepared to show that the proposed driveway does not exacerbate existing drainage problems or create new ones. The Board may require the installation of culverts or drains, and the Applicant is advised that consultation with the Town's Department of Public Works may assist the effort to obtain the Special Permit.
- C. **Name of Common Driveway.** When the Common Driveway is named, both the Planning Board and the Applicant shall notify the Town Clerk, the Fire Chief, and the Police Chief. Every common driveway shall be named, and the entrance from the public way shall be clearly marked with the driveway name, the house numbers, and the words "Private Way," so as to enable emergency vehicles to find the driveway easily. For the same reason, should the

⁴ House numbers shall be assigned by the Building Inspector before granting a building permit for any lot served by a common driveway.

common driveway fork, each fork shall be marked with house numbers. No common driveway shall be approved without the identification described herein.

- D. **As-built plan.** At the completion of work under the special permit, the Applicant shall submit an as-built plan demonstrating compliance with the approved special permit. Failure to construct the common driveway in accordance with the plan approved by the Planning Board and with the conditions of the Special Permit, if any, may result in revocation of the Special Permit and the imposition of fines for continuing violation of the zoning bylaw.

XVI. Extension of Special Permits

Any and all extensions of special permits shall be at the board's discretion, and granted only when in the best interest of the town.

XVII. Amendment of These Rules and Regulations

In general, it is expected that from time to time these rules and regulations shall be amended.

These rules and regulations may be amended at or following a public hearing that has been posted in a local newspaper once in each of two consecutive weeks with the first publication occurring at least fourteen days before the hearing. Notice shall also be posted with the Town Clerk at least fourteen days prior to the hearing. These rules may be altered by the vote of a simple majority of the planning board members present at the hearing.

XVIII. Checklist

- Application form
- Application and review fee
- Notice of Public Hearing form
- Certified list of Parties in Interest
- Certified Mail return receipts (green cards)
- Property map
- Contour maps, plans, etc. including construction specifications
- Maintenance agreement
- Name of common driveway
- Town Clerk, Fire Department, and Police Department notified of name of common driveway by both the Planning Board and the Applicant when the name is accepted by the Planning Board.

Carlisle Planning Board
66 Westford Street, Carlisle, MA 01741
Tel: 978-369-9702 Fax: 978-369-4521

Application for Special Permit

(Adopted 3/5/90, revised 7/8/91, 3/27/95 and 1/26/98)

Applicant's name, address and telephone number: _____

Applicant is: Owner _____ Agent _____ Purchaser _____ Tenant _____

If applicant not the owner, the owner's name, address and telephone number: _____

Location of property _____ Total area _____ Total Frontage _____

Assessors' Map: Sheet(s) # _____ Lot(s) # _____

Recorded at North Middlesex Registry of Deeds in Book # _____ and Page # _____

Application is for a special permit for:

Fee:

_____ Common Driveway, new	\$500
_____ Common Driveway, amendment	\$250
_____ Common Driveway, extension	\$200
_____ Accessory Apartment, new, amendment	\$250
_____ Accessory Apartment, extension	\$200
_____ Conservation Cluster, new	\$1,000
_____ Conservation Cluster, amendment	\$300
_____ Conservation Cluster, extension	\$200
_____ Wetland/Flood Hazard, Underlying District, new, amendment	\$250
_____ Wetland/Flood Hazard, extension	\$200

Note: The application form for the Senior Residential Open Space Community special permit is found in the SROSC rules and regulations.

Signature of applicant _____ **Date** _____

Signature of owner _____ **Date** _____

Signature of Town Clerk _____ **Date** _____

Received from _____ a copy of this form with the Town Clerk's signature, dated, with application fee of \$ _____ on (date) _____.

Planning Board Signature _____

Title _____ **Date** _____

If special permit is granted, please return a copy of the recorded decision to the above address within 60 days.

**Town of Carlisle
Planning Board**

Legal Notice of Public Hearing

In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 9, the Carlisle Planning Board will hold a public hearing on (date) _____ at _____ p.m.

at the Carlisle Town Hall, 66 Westford Street, Carlisle, MA on the petition of

for approval of a(n) _____ Special Permit under

Section _____ of the Carlisle Zoning Bylaw for the parcel located at

_____ and shown on

Town Atlas Map _____, parcel(s) _____.

Plans may be reviewed at the Town Clerk's office, 66 Westford St., Carlisle, MA, from 9:00 a.m. to 3:00 p.m., Monday through Friday.