

Carlisle Planning Board

Rules and Regulations

regarding

Conservation Cluster Special Permits

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

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

Table of Contents

I.	Introduction	3
II.	The Application	3
III.	Filing the Application	4
IV.	Fees and Charges	4
V.	Review Fees	5
VI.	Public Hearing	5
VII.	Decision	6
VIII.	Appeal Period	6
IX.	Conditions Prior to Use of Special Permit	7
X.	Lapse of Special Permit	7
XI.	Withdrawal	7
XII.	Repetitive Applications	7
XIII.	Checklist	8
Appendices:	Appendix A (Conservation Cluster terminology).....	9
	Appendix B (Worksheet for Conservation Cluster)	10
	Application Form for Special Permit	11
	Form for Legal Notice of Public Hearing	12

I. Introduction

In the Town of Carlisle, a lot in Residence District B with 10 acres or more may be developed into a Conservation Cluster. To divide land into building lots which do not meet the size, frontage, and shape requirements of Section 4.1.1, 4.1.2, and 4.1.3 of the Carlisle Zoning Bylaw, you must obtain a Special Permit from the Carlisle Planning Board. See Section 5.5 of the Carlisle Zoning Bylaws.

The Planning Board's decision to grant a Special Permit depends on the circumstances and conditions peculiar to each application. The Planning Board must find that the purpose of Section 5.5.1 to preserve natural resources is met.

In preparing the Application, the Applicant is urged to review both Appendix A, Conservation Cluster Special Permit Terminology, and Appendix B, Worksheet for Conservation Cluster. Appendix A helps to reduce confusion in the use of terminology associated with the Cluster Bylaw, and Appendix B serves as a guide through the procedure required by the Bylaw. The Applicant will find these pages useful in organizing the Public Hearing presentation.

It is recommended that the Applicant discuss the 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 (M.G.L.), 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. Notice of the Public Hearing must be posted, published and mailed as stipulated in M.G.L. Ch. 40A, Sections 9 and 11. In Carlisle, the Applicant is responsible for this notice. See Section VI.B 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 Interest¹;
- F. If the Permit is granted, the Applicant must record it at the Registry of Deeds.

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).

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

- B. A plan of the land, showing division thereof pursuant to the Approval Not Required (ANR) procedures promulgated by the Planning Board under M.G.L. Ch. 41 Section 81L and 81P, which plan shall demonstrate how division of the land would be accomplished in accordance with the requirements of Sections 4.1.1, 4.1.2, and 4.1.3 of the Carlisle Zoning Bylaws without resort to Section 5.5 thereof. (Note: This plan is referred to as “the demonstration ANR plan.”)
- C. A list of Parties in Interest certified by the Board of Assessors.
- D. Proposed document(s) to convey the open space pursuant to Section 5.5.2.7 of the Carlisle Zoning Bylaw.
- E. 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 of necessary state approvals, and applicant who proposed to perpetually restrict land for open space or trail shall submit to the Planning Board and application that includes:
 - 1. the proposed perpetual Conservation Restriction with signature lines for necessary governmental approvals pursuant to M.G.L. Chapter 184, Section 32; and
 - 2. 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 a statement that such restriction is in perpetuity and shall include 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.”

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 Board of Selectmen, with the Board of Health, with the Historical Commission, and with the Conservation Commission.

IV. Fees and Charges

- A. Application Fees for an original Application, an Amendment, or Request for Extension are as stated on the Application for Special Permit.
- B. The Project Review Fee to be paid pursuant to Section V 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 Conservation Cluster 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 may require 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

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.

- A. The public hearing will be conducted according to the requirements of M.G.L. Ch. 40A, Sections 9 and 11. The Planning Board must hold a public hearing within 65 days of the Filing Date unless the Applicant and the Planning Board agree in writing to an extension. A copy of any written extension agreement must be filed with the Town Clerk.

- B. The notice of the hearing is the responsibility of the Applicant:
 - 1. Content:

The notice must, at a minimum, contain the information presented in the sample legal notice attached to these rules. The board requires the Applicant to review the content of the notice with the board's designee before the applicant posts, mails, or publishes it, as required below.
 - 2. Service of notice:

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.
 - 3. Deadlines for publication and service of notice:

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 set for 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 date set for the hearing. The applicant shall present to the Board's designee, at least one business day prior to 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 public 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.

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.

IX. Conditions Prior to Use of Special Permit

The following conditions are 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; and
- B. The Special Permit and any documents or plans must be recorded in the Middlesex North County Registry of Deeds (“Registry”).²

X. 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 automatically rescind approval of the Special Permit 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 the appeal has been taken from the decision to grant the Special Permit, the date on which the court has dismissed or denied such appeal.

XI. Withdrawal

- A. Applications shall be withdrawn in accordance with M.G.L. Chapter 40A Section 16.
- B. 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.
- C. Application fees shall not be returned upon withdrawal of an Application and refiling shall require payment of a new fee as though the application were a new application.
- D. The Planning Board shall notify the Town Clerk that an application has been withdrawn.

XII. Repetitive Applications

- A. Repetition applications shall be made in accordance with the provisions of M.G.L. Chapter 40A, Section 16.³
- 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.

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

³ M.G.L. 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.

- 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.

XIII. Checklist

- Application form
- Application and review fee
- Notice of Public Hearing form
- Certified list of Parties in Interest
- Certified Mail return receipts (green cards)
- Newspaper tear sheets
- Demonstration ANR plan
- Conveyance documents for open space

Appendix A Conservation Cluster Special Permit Terminology

To earn the bonus of one building lot for a parcel of ten Acres or more, a *natural resource* must be identified and preserved.

M.G.L. Chapter 40A, Section 9 grants authority to the Town for a bonus permit for open space.

Carlisle Zoning Bylaws

5.5 Conservation Cluster

“open space” shall mean any land within the Conservation Cluster which

- is not designated as a building lot; and
- encompasses the *natural resource* as also hereinafter defined, for which preservation would be accomplished by the grant of a special permit hereunder.

5.5.1 *natural resource* shall mean undeveloped land, agricultural land, or point of historic interest which serves one or more of the following *objectives*:

5.5.1.1 Maintain the rural or historic character of the Town.

5.5.1.1.1 Preserve the most significant woods, fields and streams.

5.5.1.1.2 Protect selected views, vistas and buffer areas.

5.5.1.1.3 Protect points of historic interest.

5.5.1.2 Maintain the shape, image and function of the Town center.

5.5.1.2.1 Preserve and enhance open space within or near the center.

5.5.1.2.2 Preserve the natural and historic backdrop around the center.

5.5.1.3 Protect natural resources, especially water supplies.

5.5.1.3.1 Protect individual well water supplies.

5.5.1.3.2 Preserve natural habitats.

5.5.1.3.3 Provide for conservation management.

5.5.1.3.4 Protect watershed areas.

5.5.1.4 Improve facilities for active and passive recreation.

5.5.1.4.1 Provide suitable areas for active sports.

5.5.1.4.2 Expand areas for passive recreation.

5.5.1.4.3 Encourage linkage of conservation land.

5.5.1.5 Encourage preservation of agriculture.

5.5.1.5.1 Protect farmland from development.

5.5.1.5.2 Encourage active farming.

Appendix B

Worksheet for Conservation Cluster

Resource shown on demo ANR plan: Serves an "objective" of 5.5.1 "Merits Preservation" (5.5.2)

Cluster Plan requirements:	yes	no		yes	no	
10 acres minimum				Open Space:		
maximum number of lots = demo ANR + 1				size approved by PB?		
all lots are ¾ acre each (non-wetlands/flood hazard)				shape approved by PB?		
all lots are 2 acres each (min.)				access approved by PB?		
				----- 30% of total		
				----- not more than ½ of 30% min. wetland/flood hazard		
				----- contains natural resource		
minimum street frontage is 20'				cluster is separate from adjacent property and other clusters by open space and adequate setbacks		
minimum width between street and dwelling site is 20'						

Form of Open Space Holding (check one): <input type="checkbox"/> conveyed to Town and accepted <input type="checkbox"/> conveyed to non-profit org for conservation of open space <input type="checkbox"/> held in corporate ownership		PB condition imposed prohibiting alt. driveways Ap restriction/covenant presented prohibiting further division		
---	--	---	--	--

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.