

ASHBURNHAM PLANNING BOARD

RULES AND REGULATIONS
FOR
PRIVATE COMMON DRIVEWAY SPECIAL PERMITS



Adopted September 2004
Revised September 14, 2006

ASHBURNHAM PLANNING BOARD

John MacMillan, Chair
Robert MacLeod
Joseph Kalagher, Vice Chair
Bruce Whitney, Clerk
Thomas Ruble

1. INTRODUCTION

In the Town of Ashburnham, up to three lots may share a single driveway. However, in order to construct a driveway which will serve more than one lot, you must obtain a Special Permit from the Planning Board. See § 5.14 of the Ashburnham 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 Ashburnham, 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.

The Applicant may request a meeting to review a conceptual common driveway plan before a formal filing of a common driveway application.

2. ORGANIZATION

2.1 When the Planning Board acts as a Special Permit Granting Authority, (SPGA) the SPGA shall consist of the five (5) Planning Board members and the officers of the Planning Board shall fill the same positions with the SPGA as they occupy as Planning Board members. The chairperson shall preside over all hearings subject to the rules as stated herein and shall decide all points of order unless overruled by a majority of the Planning Board in session at the time. The chairperson shall appoint such committees as may be deemed necessary or desirable from time-to-time. The chairperson shall handle all correspondence of the Planning Board, the sending of all notices required by law and the rules and orders of the Planning Board and shall receive and scrutinize all petitions and applications for compliance with the rules of the Planning Board.

2.2 A quorum for the purpose of conducting public hearings shall consist of four (4) members.

2.3 Hearings of the Planning Board shall be held at the time and place specified in the hearing notice.

3. COORDINATION OF SUBMISSION AND REVIEW OF OTHER PERMITS ISSUED BY THE PLANNING BOARD

3.1 SUBMISSION OF CONCURRENT APPLICATIONS

If approval under the M.G.L., c. 41, §§ 81A-81GG (Subdivision Control Law) or any other special permits are required from the Board for the proposed development project, it is strongly advised that the Applicant submit the applications for these additional permits concurrently with the Application for a Common Driveway Special Permit.

3.2 COORDINATION OF REVIEW OF SPECIAL PERMITS

If the lots served by the proposed Common driveway require the filing of an application for a Major Residential Development Special Permit pursuant to § 5.15 of the Ashburnham Zoning Bylaw, as may be amended from time to time, a number of the requirements of these Rules and Regulations may be waived in view of equivalent information required to be submitted with the Major Residential Development Special Permit application. In this case, the Applicant may combine the required information and plans for the shared driveway with the proposed Major Residential Development plans, provided that all information required as part of these Rules and Regulations is included.

The Applicant shall provide a written statement demonstrating that all the information required for a Common Driveway Special Permit is included in the Major Residential Development application. The application fee for the Common Driveway Special Permit will be as required, unless otherwise authorized by the Board.

3.3 COORDINATION OF REVIEW OF DEFINITIVE SUBDIVISION PLAN

If the lots served by the proposed Common driveway require the filing of a definitive subdivision plan under M.G.L. Chapter 41, §§ 81A-81GG (Subdivision Control Law) and the Ashburnham Subdivision Rules and Regulations, a number of the requirements of these Rules and Regulations may be waived in view of equivalent information required to be submitted with the definitive subdivision plan application. The Applicant shall provide a written statement demonstrating that all the information required for a Common Driveway Special Permit is included in the definitive subdivision plan application. The application fee for the Common Driveway Special Permit will be as required, unless otherwise authorized by the Board.

4. PROCEDURES

The following steps are required by M.G.L., c.40A, § 9 for the issuance of a special permit:

- 4.1 The Applicant must file the application with the Town Clerk (the date of such filing is hereafter referred to as the "filing date;")
- 4.2 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;
- 4.3 The Planning Board must post a Notice of Public Hearing; have the Notice published in the newspaper; and mail the Notice to Parties in Interest as defined by M.G.L., c.40A, § 11;
- 4.4 The Planning Board shall request recommendations from the Fire Department, Police Department, Historical Commission, Highway Department, Conservation Commission, and Town Engineer;
- 4.5 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;
- 4.6 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;
- 4.7 If the Permit is granted, the Applicant must record it at the Registry of Deeds. (See § 10)

5. SUBMISSION REQUIREMENTS

- 5.1 The applicant shall submit seven (7) copies of an : "Application for Common Driveway"
- 5.2 Two (2) copies – 24" x 36" and thirteen (13) copies 11" x 17") of a Site Plan prepared by a professional engineer or land surveyor, licensed in the State of Massachusetts, containing the following information:
 - a. A locus plan at a scale of 1"= 500';
 - b. The project name, north arrow, date, and scale; name of record owner and applicant; engineer name and proper seals of registration; and abutters to the proposal;
 - c. All lots to be served by the common driveway including the existing and proposed topography; the location of proposed houses, septic systems and wells; location of utilities and any proposed drainage structures;
 - d. Location of the common driveway with slope and elevation information;

- e. Location of any wetlands as defined by the Ashburnham Conservation Commission;
 - f. A driveway cross section showing construction and subsurface materials and width of shoulders;
 - g. Location of all stone walls and large trees which will be affected by the common driveway;
 - h. Sight distances which meet current AASHTO Standards for the existing speed limit of the way intersecting with the common driveway;
 - i. Location, type and drawings of all signage required by § 5.14.2.4 of the Ashburnham Zoning Bylaw shall be shown on the plan.
- 5.3 Driveway permit application per Ashburnham General Bylaws, Chapter XI § 1.
 - 5.4 A Scenic Road application if the common driveway requires the removal of stonewalls or public shade trees. See M.G.L., c. 40, § 15C and Town of Ashburnham Scenic Road Rules & Regulations.
 - 5.5 Drainage calculations certified by the engineer who prepared them.
 - 5.6 Copies of all proposed easements, covenants and agreements regarding the ownership and maintenance of the private common driveway.
 - 5.7 A certified list of names of all abutters and owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list.
 - 5.8 A letter of consent from the property owner if different from the applicant.
 - 5.9 All common driveway applications require engineering review. Engineer to be specified by the Planning Board and fees to be borne by the applicant.
 - 5.10 Common driveway shall be staked at 100 foot intervals along the centerline of the proposed common driveway.
 - 5.11 Additional information may be requested from the applicant by the Planning Board.

6. FEES AND CHARGES

All Planning Board fees are non refundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative Fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Board, at its discretion, may waive certain fees. The Fee Schedule is available in the Land Use Office.

7. PUBLIC HEARING

- 7.1 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.
- 7.2 The Planning Board must mail notices of public hearing to the Applicant and all Parties in Interest and must publish the first newspaper notice at least 14 days before the hearing.

8. DECISION

- 8.1 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 4 out of 5 votes in favor of the grant.
- 8.2 The Planning Board must:
- a. File with the Town Clerk a copy of its decision including a detailed record of its proceedings,
 - b. Promptly mail a copy of its decision to the Applicant, and
 - c. Promptly mail Notices of Decision to the Parties in Interest and to the town departments.
- 8.3 The Date of Filing of the Decision is the date when the decision of the Planning Board has been filed with the Town Clerk.
- 8.4 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 (M. G. L., c.40A, § 9).

9. APPEAL PERIOD

Any person aggrieved by the Special Permit decision may file an appeal. 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 (M. G. L., c.40A, § 17.)

10. LAPSE OF SPECIAL PERMIT

- 10.1 Failure to record the Special Permit, covenants, agreements easements 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.
- 10.2 The rights granted by the Special Permit shall lapse if they are not exercised within two years of either of the following:
- a. The expiration of the Appeals Period, or
 - b. 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.

11. CONDITIONS PRIOR TO CONSTRUCTION

Conditions necessary before the Special Permit is effective:

- 11.1 The Appeal Period has elapsed without appeal, or, if appealed, the court has dismissed or denied the appeal;
- 11.2 The Special Permit and covenants, agreements and easements must be recorded by the applicant in the Northern Worcester County Registry of Deeds ("Registry"). Proof of recording must be submitted to the Planning Board;
- 11.3 The Board may require that a performance guarantee be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized by a permit issued by the Board pursuant to these Rules and Regulations. The form of the

performance guarantee shall be generally as required in the Town of Ashburnham Subdivision Rules and Regulations, § 4.3.19, Performance Guarantee.

NOTE: 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., C.40A, § 11.) A separate certification prepared by the Town Clerk shall meet this requirement.

12. AMENDMENTS TO SPECIAL PERMIT

Submission requirements for requests to amend a Special Permit are the same as for the original Application for a Special Permit.

13. COMMON DRIVEWAY RESTRICTIVE COVENANTS/EASEMENTS

An Application for a Common Driveway Special Permit shall include a draft document providing for restrictive covenants and easements binding present and future owners of all lots served by the shared driveway, which must be reviewed and approved by the Planning Board. If the Application for a Common Driveway Special Permit is approved, the final document(s) shall be recorded at the Worcester North County Registry of Deeds and shall also be recited in and attached to every deed to every lot served by the shared driveway. Such document(s) must include the following information:

- 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 there from 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 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. A clear expression that the Town of Ashburnham, under no circumstances, shall now or in the future be held liable for construction, reconstruction, repairs or snow removal on private common driveways;
- f. A procedure for the resolution of disagreements.

14. CONSTRUCTION STANDARDS

- 14.1 All Private/Common Driveways shall meet the construction standards in § 5.14 of the Ashburnham Zoning Bylaw.
- 14.2 Drainage Requirements - Because drainage at the point of intersection between the common driveway and the public way is a concern, the Applicant should demonstrate that the proposed driveway does not exacerbate existing drainage problems or create new ones. The Board may require the installation of culverts or drains. It is recommended that the Applicant consult with the Town's Highway Department to review any proposed drainage.
- 14.3 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.

14.4 A sign with the following wording "Common Driveway Permit # _____" shall be posted at the driveway entrance prior to construction. Sign size to be no less than 18" x 18" with contrasting background.

15. INSPECTIONS

All common driveways require inspection for completeness by the Town Engineer (PB Consulting Engineer) and the Planning Board prior to issuance of occupancy permit.

16. AS-BUILT-PLANS

As-Built-Plans prepared and certified by a registered engineer shall be submitted to the Board prior to issuance of an occupancy permit.

17. ADMINISTRATION

17.1 Waivers.

A waiver of strict compliance from these Rules and Regulations may be granted if the Planning Board determines that such a waiver is in the public interest and not inconsistent with the Zoning Bylaw. All requests shall identify the provision or provisions of the regulations from which relief is sought. The request shall also include a statement explaining why the applicant thinks that granting a waiver would be in the public interest and not inconsistent with the purpose and intent of these Rules and Regulations and the Zoning Bylaw.

17.2 Amendments.

These Rules and Regulations may be amended by a majority vote of the Planning Board at a regularly scheduled meeting after a public hearing duly advertised once in a paper of general circulation no less than seven days prior to the date of the public hearing.

17.3 Validity.

The validity of any section or provision of these rules & regulations shall not invalidate any other section or provision thereof.

17.4 Effective Date.

The effective date of any amendment shall be the date such amendments are filed with the Town Clerk.