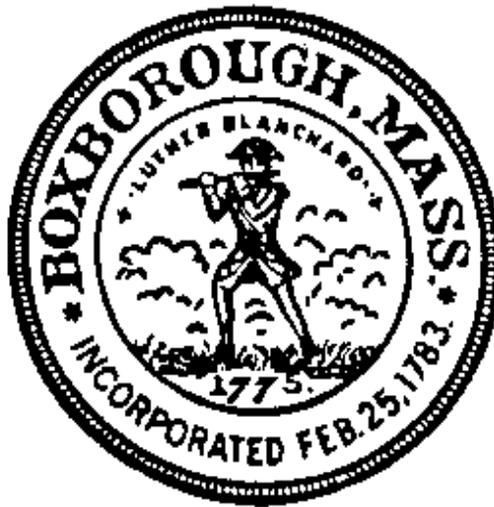


**BOXBOROUGH PLANNING BOARD**  
**RULES AND REGULATIONS**  
**FOR**  
**PRIVATE COMMON DRIVEWAY SPECIAL PERMITS**

*ADOPTED: February 12, 1996*



**Private/Common Driveways Rules and Regulations**  
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## **I. INTRODUCTION**

In the Town of Boxborough, 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 Section 3440 of the Boxborough 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 Boxborough, 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.

## **II. PROCEDURES**

The following steps are required by M.G.L. ch. 40 s.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 hereafter 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 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. ch. 40A s.11;
- 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;

F. If the Permit is granted, the Applicant must record it at the Registry of Deeds.

### **III. SUBMISSION REQUIREMENTS**

The applicant shall submit 3 copies of the Application. Each copy of the Application shall include:

A. A form entitled: “Application for Private/Common Driveway”  
(See attached Application)

B. A Site Plan prepared by a professional engineer or land surveyor, licensed in the State of Massachusetts, containing the following information:

1. A locus plan at a scale of 1”=200’.
2. 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.
3. 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.
4. Location of the common driveway with slope and elevation information.
5. Location of any wetlands as defined by the Boxborough Wetlands Bylaw. Verification of the wetlands delineation by the Conservation Commission.
6. A driveway cross section showing construction and subsurface materials and width of shoulders.
7. Location of all stone walls and large trees which will be affected by the common driveway.
8. Sight distances from the proposed common driveway intersection.

C. A Scenic Road application if the common driveway requires the removal of stonewalls or public shade trees. See Town’s Scenic Road Bylaw.

D. Drainage calculations certified by the engineer who prepared them.

E. Copies of all proposed easements, covenants and agreements regarding the ownership and maintenance of the private common driveway.

F. A certified list of abutters within 300 feet of the site boundaries as determined from the latest tax records.

G. A letter of consent from the property owner if different from the applicant.

Additional information may be requested from the applicant by the Planning Board.

#### **IV. FEES AND CHARGES**

A. The Application Fee for an original Application, a Repetitive Application, or an Amendment to the Special Permit is \$100.00.

B. The Applicant shall reimburse the Town for all expenses incurred by the Board for professional services including, but not limited to, the cost of professional services, the cost of publication of required public notices, and the cost of reviewing and/or recording 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. 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 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**

A. 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 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.

## **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 4 out of 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 copy of its decision to the Applicant, and

3. promptly mail Notices of Decision to the Parties in Interest and to the Town Departments.

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**

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 (Massachusetts General Laws Chapter 40A, Section 17.)

## **IX. LAPSE OF SPECIAL PERMIT**

A. 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.

B. The rights granted by the Special Permit shall lapse if they are not exercised within two years of either of the following:

1. The expiration of the Appeals 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 and covenants, agreements and easements must be recorded by the applicant in the Middlesex South County Registry of Deeds (“Registry”). Proof of recording must be submitted to the Planning Board;

NOTE: 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, Ch. 40A, s. 11.)

## **XI. 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.

## **XII. COMMON DRIVEWAY COVENANTS/AGREEMENTS**

At a minimum, the Covenants/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 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 Boxborough, under no circumstances, shall now or in the future be held liable for construction, reconstruction, repairs or snow removal on private common driveways.

### **XIII CONSTRUCTION STANDARDS**

A. All Private/Common Driveways shall meet the construction standards in Section 3440 of the Boxborough Zoning Bylaw.

B. Drainage Requirements

1. 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 Department of Public Works to review any proposed drainage.

C. 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.

### **XIV. ADMINISTRATION**

A. 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.

B. 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.

C. Effective Date.

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

## Appendix A

### DRIVEWAY APPROACH BYLAW

#### Section 1.

No persons shall break or dig up the ground in any street for any purpose whatever, or set or place any fence, post, tree or edge stone, or alter or change the position or direction of any fence, post or edge stone, or swing any door or gate in, upon or over, or change the grade or width of any public way without, in the case of a single house lot, a written permit of the Director of Public Works, or in all other cases, approval granted by the Planning Board.

#### Section 2.

When meeting the edge of the present traveled way of a street with driveways, walks, etc., the construction of the same shall be as shown above. This type of construction permits the storm water run-off to be contained within the limits of the street and to run properly in the gutters. It also eliminates damage to driveways, walks, etc. during the clearing and plowing necessary for maintenance. Driveways not installed properly shall be corrected by the Highway Department at the expense of the owner.

Adopted: April 17, 1964

Approved by Attorney General: June 29, 1964

Amended: February 3, 1975

Approved by Attorney General: May 20, 1975

Amended: May 14, 1985

Amendment Approved by Attorney General: August 5, 1985

Amended: May 8, 2000

Approved by Attorney General: August 21, 2000

PRIVATE COMMON DRIVEWAY APPLICATION

Boxborough, Massachusetts  
\_\_\_\_\_, 20\_\_

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Name of Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Location and description of property: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Zoning District(s): \_\_\_\_\_

Number of Lots accessed by the Common Driveway: \_\_\_\_\_

Length of Driveway: \_\_\_\_\_

Width of Driveway: \_\_\_\_\_

Slope of Driveway: \_\_\_\_\_

Turning Area Provided: \_\_\_\_\_

Distance from abutting lots: \_\_\_\_\_

Signature of Owner: \_\_\_\_\_

The application shall be accompanied by a filing fee of \$100.00.

The applicant shall request an abutters list from the Assessor’s office and submit a copy with this application. The applicant shall be billed for the legal advertisement.