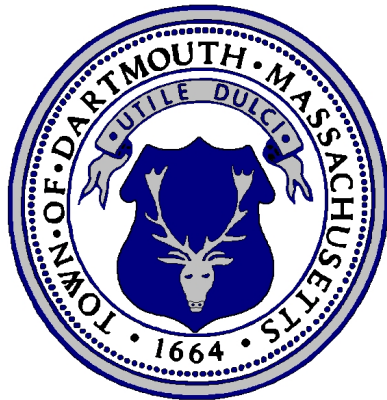


Dartmouth Planning Board Special Permit Rules & Procedures



DARTMOUTH PLANNING BOARD
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GUIDE TO SPECIAL PERMIT RULES & PROCEDURES

A copy of the Planning Board's Special Permit Rules and Procedures is essential to successfully complete the process for obtaining a special permit from the Planning Board. The Planning Board issues special permits for a number of uses in the Zoning Bylaw of the Town of Dartmouth, including, but not limited to, Bed & Breakfasts, Assisted Elderly Housing, Yacht & Beach Clubs, General Education, Golf Courses, Cemeteries, and OSRD Subdivisions. The standards for each of the special permit uses are found in the Zoning Bylaws. These Rules and Procedures should be used in conjunction with the applicable sections of the Zoning Bylaws and Subdivision Regulations.

Should there be any questions, please do not hesitate to contact the Planning Office at (508) 910-1816.

THE DARTMOUTH PLANNING BOARD

1.000 – ORGANIZATION

1.100 Purpose and Scope

These procedures are adopted by the Dartmouth Planning Board as authorized by Massachusetts General Law, Chapter 40A, Section 9, for the purpose of establishing uniform Rules and Procedures for all applications coming under its jurisdiction as a Special Permit Granting Authority by virtue of the applicable provisions of Massachusetts General Law and the Zoning Bylaw of the Town of Dartmouth.

1.200 Petitioner or Applicant

An application for a Special Permit may be filed by a property owner or designee. The application submission procedure can be found in Section 2.000 of these Rules & Procedures.

1.300 Planning Board as Special Permit Granting Authority

1.301 When the Planning Board acts as a Special Permit Granting Authority, such Special Permit Granting Authority shall consist of the five (5) elected Planning Board members. The Planning Board officers shall fill the same positions on the Special Permit Granting Authority as they do as Planning Board members.

1.302 If one of the elected members of the Board chooses to disqualify himself due to a conflict of interest or any other reason, the Alternate Planning Board Member as described in Section 39.100(b) of the Zoning Bylaw shall sit in the place of the disqualified Planning Board member. The Alternate Member shall have all the powers and duties, including voting, of a regularly elected Planning Board member for the Special Permit being considered. The Alternate Member shall begin service with the first Public Hearing, and end once a final decision has been made. The Planning Board member choosing to be disqualified from a particular Special Permit application shall notify the Planning Board and Planning staff at least one week prior to the scheduled start of the first Public Hearing.

1.400 Quorum

When acting as a Special Permit Granting Authority, the quorum for the purpose of conducting Public Hearings or other business shall be four (4) members.

1.500 Parties in Interest

Parties in Interest, for the purposes of these Special Permit Rules & Procedures, shall be as specified in M.G.L., Chapter 40A, Section 11 and shall also include the applicant and plan preparer.

1.600 Account for Consultant Review

1.601 The Planning Board's authority to impose fees to engage consultants to review plans regulated by these Rules & Procedures is derived from M.G.L., Chapter 44, Section 53G. If the applicant is of the opinion the consultant selected by the

Planning Board has a conflict of interest or does not possess either an educational degree in the field at issue or a related field, or three (3) or more years of practice in the field at issue or a related field, the applicant can file an Administrative Appeal to the Select Board questioning the choice of consultant. If the Select Board does not decide upon the Administrative Appeal within one (1) month after filing the appeal, the consultant selected by the Planning Board shall stand.

- 1.602 The required time limits for Planning Board action upon an application filed under these Rules & Procedures shall be extended by the duration of the Administrative Appeal. The applicant shall notify the Planning Board of an Administrative Appeal on the same date the appeal is filed with the Select Board.
 - 1.603 The balance of the applicant's deposit minus consultant charges shall at no time be less than half the initial deposit, and the applicant shall deposit such additional funds as are required to restore the Special Account to the amount of the initial deposit upon notice from the Board, by certified mail, that the amount on deposit has been decreased by the expenditures described herein to an amount at or near half the initial deposit. The Special Account shall be closed and the remaining funds returned to the applicant within thirty (30) days of the Planning Board's filing of the Certificate of Action for a Special Permit with the Town Clerk unless mutually extended.
 - 1.604 The failure of the applicant to make the initial deposit and/or to maintain the Special Account, in accordance with this section, shall be grounds for disapproval of the Special Permit.
 - 1.605 The Planning Board, at its discretion, may waive or refund the Special Account fee in whole or in part to the extent the Board determines that professional or other services were not required in consideration of the Special Permit. Generally, the Planning Board will consider granting a waiver of this fee for proposals where minimal construction will occur or where the applicant can show the issue does not apply to the proposal. However, the fee must be paid at the time of filing and the waiver granted in order to receive a refund.
- 1.700 Amendment, Severability, and Effective Date
- 1.701 These Special Permit Rules & Procedures may be amended by a simple majority vote of the members of the Planning Board acting as a Special Permit Granting Authority at any regularly scheduled meeting at least one week following the review of such written amendment at any regularly scheduled meeting of the Planning Board.
 - 1.702 Reference is made to M.G.L., Chapter 40A, as amended, which includes additional requirements and provisions with respect to the issuance of Special Permits. To the extent that any provision of these Special Permit Rules & Procedures is inconsistent with M.G.L., Chapter 40A, M.G.L., Chapter 40A shall control. If any provision of these Special Permit Rules & Procedures is found to be invalid or void, it shall not affect any other provision of these Special Permit Rules and Procedures.

1.703 These Special Permit Rules & Procedures were adopted at a regularly scheduled Planning Board meeting held October 23, 2017 and became effective as of that date.

2.000 – SUBMISSION PROCEDURES

2.100 Application Requirements

Any person who wishes to obtain a special permit from the Dartmouth Planning Board shall submit the following:

- 2.101 Two properly executed originals of the application for a special permit (See Appendix).
- 2.102 Two (2) full-sized sets of plans and Seven (7) 11" x 17" copies
Electronic set of plans forwarded to the Planning Director (CAD & PDF)
- 2.103 A list of all parties in interest. Parties in interest shall include the following:
 - a. Current owner of the property
 - b. Applicant
 - c. Plan preparer
 - d. All direct abutters
 - e. All abutters of direct abutters within three hundred (300) feet of the outer boundary of the property on which the proposal is to be located.
 - f. All owners of land directly opposite on any public or private way.
 - g. Planning boards of Fall River, Freetown, Gosnold, New Bedford, and Westport

The parties in interest list shall also include the following information:

- h. The current assessors plat and lot numbers
 - i. The name of the party in interest
 - j. The mailing address of the party in interest
 - k. The Dartmouth Assessor's Office shall certify that the plat and lot numbers correspond with the names and addresses shown on the list. A registered surveyor shall certify that the persons listed are the true parties in interest as defined above. Such certifications shall be dated within the two weeks prior to submittal.
 - l. The applicant shall provide two copies of self-sticking mailing address labels for each party in interest.
 - m. A plan showing the property for which the special permit is proposed and all lots appearing on the parties in interest list shall be submitted with the parties in interest list (a current assessor's tax map is acceptable).
- 2.104 Filing fee of \$250.00 payable to the Town of Dartmouth, a separate check for legal advertising, and a consultant review fee (if applicable) of \$1,000.00. In the case of an OSRD plan, the filing fee shall be in addition to all fees required by the Subdivision Regulations.

The Planning Board may waive any fee; however, all fees must be paid at the time of submittal. The Planning Board will refund any waived fees.

- 2.105 A written description of the project describing the particular type of use proposed for the land or structure, the conditions and character of operations of proposed uses

which show that it will be in harmony with the general purpose and intent of the district and the Zoning Bylaw. The written description shall also include statements, based on the particular Special Permit being requested, of why the applicant feels the proposal meets the requirements and findings the Planning Board will have to make in order to issue the Special Permit.

- 2.106 Written certification from the Town Collector that the applicant and/or recipient have paid all taxes, assessments, betterments, and other municipal charges due, pursuant to the Town Collector chapter of the Dartmouth General Bylaw, Section 3, as authorized by M.G.L., Chapter 40, Section 57 and accepted by Town Meeting on October 20, 1986.
- 2.107 Three copies of drainage calculations prepared by the applicant's engineer will be required for any project that changes the amount and/or location of impervious cover.
- 2.108 Any additional information or documentation as may be required in either the Zoning Bylaw or the Subdivision Regulations of the Town of Dartmouth or as requested by Planning staff/Planning Board necessary to review the special permit request.

2.200 Submittal

- 2.201 Before formal submission of an application, the applicant is encouraged to meet with the Planning Board or Planning staff, by appointment, to go over the application to determine if the application is in compliance and obtain opinions and suggestions on the proposal.
- 2.202 Application for a special permit shall be by delivery to the office of the Planning Board, or by registered mail to the Planning Board.
- 2.203 An application will not be deemed submitted until Planning staff determines the necessary information under Section 2.000 of the Rules & Procedures is included.
- 2.204 Upon determination by Planning staff that the necessary information under Section 2.000 of these Rules & Procedures has been provided, Planning staff shall give written notice (a copy of the application form) to the Town Clerk of the applicant's formal submission to the Planning Board. The date of the Town Clerk's stamp of receipt shall begin all legal timelines.
- 2.205 Failure to comply with Section 2.000 of these Rules & Procedures may be grounds for denial of the special permit.

2.300 Plan Contents

When plans are submitted as part of an application, plans shall meet the following requirements:

- 2.301 Sheet size shall not exceed 24" x 36", but shall be a minimum size of 8½" x 11".
- 2.302 All sheets of plans shall be the same size.

- 2.303 Contact prints shall be dark line on white background.
- 2.304 All plans shall have a title (appropriate to the Special Permit being requested), a date (when multiple sheets, all plans shall have the same date, and all revisions shall be marked on all sheets in the same manner), a scale, and North point.
- 2.305 A legend to explain any graphic representation or symbols on the plan.
- 2.306 The names and addresses of the present owner, the applicant, and the plan preparer.
- 2.307 A locus to identify the location of the site:
- a. Scale of 1" = 1000'
 - b. Title "Locus of (name of project)"
 - c. Boundaries of the proposed project.
 - d. All roads and zoning boundaries within one half mile of the site.
 - e. Location of major improvements on the site (buildings, parking, driveways, etc.)
- 2.308 To determine compliance with applicable bylaws and regulations, the following plan sheets must also be included whenever applicable or requested:
- a. Overall Site Plan
 - b. Landscape Plan
 - c. Parking Plan
 - d. Grading and Topography Plan
 - e. Utilities Plan
 - f. Street or Driveway Plan
 - g. Front, Side, and Rear Architectural Elevation Plans.
 - h. Building Floor Plans
- 2.309 If necessary, and on a separate sheet, construction details or plans for any buildings, signs, guardrails, bridges, headwalls, manholes, or other appurtenances necessary for completion of the project.
- 2.310 An Index Plan shall be included if multiple sheets of any type of plan are used. The Index Plan shall precede each set of multiple sheets and shall clearly identify the multiple sections of the plan by the use of polygons.
- 2.311 If parking will be provided on site, a parking plan satisfying the applicable parking requirements of the Dartmouth Zoning Bylaw shall be included with the plans.
- 2.312 A note referring to whether on-site or municipal water and sewer service will be provided.

- 2.313 All applicable zoning district boundaries as shown on the most current version of the following maps:
- a. Dartmouth Zoning Map – Zoning Districts
 - b. Dartmouth Zoning Map – Aquifer Protection Districts
 - c. Dartmouth Zoning Map – Flood Hazard Areas
 - d. Dartmouth Zoning Map – Faunce Corner Overlay District
- 2.314 Existing and proposed lot dimensions suitable to determine compliance with Zoning design standards, including, without limitation, frontage, lot area, upland area, and setbacks.
- 2.315 Wetland resource areas as defined in the Wetlands Protection Act, M.G.L., Chapter 31, Section 40, and the one hundred (100) foot buffer to those areas shall be shown wherever they appear. The date the Dartmouth Conservation Commission approved the delineation shall appear on the plan.
- 2.316 Existing and proposed topography of the entire site at two-foot contour intervals.
- 2.317 The names, locations, and right-of-way lines of existing streets or easements bordering, crossing, or approaching the project.
- 2.318 Location of all historic structures and archaeological sites. Identification shall be based on the Dartmouth Historic Resources Survey or information provided by the Dartmouth Historic Commission.
- 2.319 For driveways longer than fifty (50) feet, the Planning Board can require compliance with Subdivision Regulation requirements.
- 2.320 The Planning Board can require drainage facilities to comply with the Subdivision Regulations.
- 2.321 In the event a subdivision is being done in conjunction with the special permit, the subdivision plans shall comply with the Subdivision Regulations.
- 2.322 For ORSD Plans and Conventional Plans that are submitted in support of an ORSD Special Permit application, the following additional information must be provided:
- a) For any proposed streets, the width of the proposed right of way and the total centerline linear feet, and the width of the proposed improved portion thereof.
 - b) The location if existing site features; such as woodlands, fields, agricultural land, stonewalls, existing structures, specimen trees (trees with a minimum diameter of 24 inches at four feet above the ground), archeological sites, historic structures or other areas of interest. The above features shall also be shown if located on abutting property within 100 feet of the site.
 - c) Name, location, right-of-way line and width of each proposed easement.
 - d) General location and description of existing and proposed drainage systems and improvements.

e) General location and description of existing and proposed utilities.

2.323 For an OSRD Plan the following information shall be added to the ORSD Subdivision Plan or ORSD ANR Plan:

- a. The title "Open Space Residential Development entitled _____." The title shall include 'ORSD Subdivision Plan or ORSD ANR Plan' as applicable.
- b. "Subject to a Special Permit dated _____ and recorded herewith."
- c. "Subject to a Trust Document dated _____ and recorded herewith."
- d. "Approved for a maximum of _____ lots/units."
- e. "There shall be no further subdivision of this land to create additional buildable lots."
- f. Area of entire original parcel _____.
- g. Area of open space _____.
- h. Area of contiguous open space _____.

J The Director of Inspectional Services shall not issue any building permits relative to the buildable lots shown on this plan until copies of the of the properly executed and recorded Open Space Covenant/Conservation Restriction/Agricultural Preservation Restriction, the recorded plan and the recorded ORSD Special Permit have been delivered to the Director of Inspectional Services and the Planning Board.

2.324 The Planning Board can waive any of the above submittal requirements if it is determined to not be applicable or necessary to the proposal.

3.000 – The Review Process

3.100 Interdepartmental Review and Comment Period

- 3.101 Upon official submittal of a special permit application, Planning staff may send copies of the plan to other departments for comment and review. Customary reviewing departments are the Planning Department, Board of Health, Department of Public Works, Building Commissioner, Conservation Commission, the Chief of the appropriate Fire District, the Safety Officer, and any specialized reviews which may require an outside consultant.
- 3.102 Each reviewer shall have twenty-one (21) days to review the plans and forward any comments to the Planning Board Office. Failure to submit comments shall be construed as meaning the reviewer has no problems with the proposal
- 3.103 Planning staff will review the proposal for compliance with the Zoning Bylaw under which the special permit is requested and these Rules & Procedures. Planning staff will incorporate applicable comments from other reviewers into this review.
- 3.104 Revised plans can only be submitted to Planning staff for further review after the Planning Board has reviewed the plans and indicated what revisions are needed.

3.200 Public Hearing

- 3.201 Before acting upon a special permit application, a public hearing shall be held by the Planning Board acting as a Special Permit Granting Authority within sixty-five (65) days of the official submission of the application.
- 3.202 Notice of the date, time, and place of the public hearing shall be made by advertisement in a newspaper of general circulation in the Town of Dartmouth, once in each of two successive weeks, the first publication not being less than fourteen (14) days before the public hearing.
- 3.203 A copy of the notice of the public hearing shall be sent to all parties in interest before the public hearing.
- 3.204 All public hearings are open to the public and shall be conducted in accordance with Massachusetts General Law, Chapter 39, Section 23B, the Open Meeting Law.
- 3.205 An applicant must either appear on his own behalf, or be represented by an agent or attorney. In the absence of appearance, the Planning Board may, at its discretion, decide the matter using the information it has received, or dismiss the application with or without prejudice.
- 3.206 Hearings shall start at the time stated in the notice unless delayed because of prior Planning Board business, or by mutual consent of the Planning Board and the applicant. If the hearing must be delayed, the date, time, and place shall be posted or verbally stated at the start of the advertised hearing.

- 3.207 At the hearing, the Chairman may administer oaths, summon witnesses, and call for the production of papers. The Planning Board may retain any record which has been introduced in evidence for reference in consideration of the case.
- 3.208 No person shall address a hearing of the Planning Board without the permission of the Chairman, and all persons shall, at the request of the Chairman, be silent. If a person, after one warning from the Chairman, persists in disorderly behavior, the Chairman may order such person to withdraw from the hearing. If such person does not withdraw, the Chairman may order a constable or any other person to remove such person from the meeting room.
- 3.209 The Chairman may either close or suspend the public hearing if, in the Chairman's opinion, these Rules & Procedures are being violated, or the hearing becomes disorderly despite calls for order.
- 3.210 The Chairman shall open the public hearing by introducing, or causing to be introduced, each member of the Planning Board and staff. After these introductions, the Chairman shall read, or cause to be read, all written correspondence received in the Planning Board Office to date.
- 3.211 Following an introduction of the proposal by Planning staff, the applicant, or representative, shall present his case, stating fully the reasons affirmative action should be taken.
- 3.212 Once the applicant or representative has concluded the presentation, the Chairman shall ask for comments from the audience. Those who wish to speak shall rise, if able, state their names and addresses, and proceed to give comments.
- 3.213 Generally, the Planning Board members will be asked to speak after those present have had an opportunity to speak.
- 3.214 Rebuttals are allowed only at the discretion of the Chairman.
- 3.215 No cross-examination will be allowed. However, questions seeking information deemed relevant to the issue by the Chairman may be allowed at the Chairman's discretion.
- 3.216 Any member of the Planning Board hearing the case may direct appropriate questions during the hearing with the permission of the Chairman.
- 3.217 If the hearing must be continued, verbal notice shall be given of the date, time, and place the continued hearing shall occur.
- 3.218 When all facts have been presented, the Chairman shall close the public hearing. The applicant or representative, and all others present shall be notified by the Chairman when and where the Planning Board will make its decision, and state that all parties in interest shall be notified of the Planning Board's decision.
- 3.219 Once the public hearing is closed, the Planning Board shall accept no further input of fact regarding the proposal. Planning staff will be permitted to speak during the

deliberation to clarify facts given, and give professional advice, but shall not introduce new facts.

3.300 Planning Board Deliberation

- 3.301 Every application for a special permit shall be supported by all of the facts relied upon by the applicant. Information shall be provided to the Planning Board as it deems necessary for it to determine whether the proposal satisfies the requirements for a special permit.
- 3.302 Any advice, opinion, or information given to the applicant by any Planning Board member, the Planning staff, or any other official or employee of the Town prior to the public hearing shall not be binding on the Planning Board.
- 3.303 Applicants and parties in interest are hereby prohibited from personally soliciting a decision from individual members of the Planning Board or the Board as a whole prior to the public hearing.
- 3.304 The Planning Board shall deliberate on the proposal once the public hearing is closed. It will base its decision on all facts presented at the public hearing.

3.400 Action of the Planning Board

- 3.401 Final action of the Planning Board will be taken once the Planning Board has deliberated all the issues it deems relevant.
- 3.402 An application may be withdrawn without prejudice by written notice to the Chairman. There shall be no return of any fee paid with a withdrawn application, unless the Board votes otherwise.
- 3.403 The decision of the Planning Board shall be made at a scheduled meeting of the Planning Board no more than ninety (90) days after the date of the first public hearing, unless a time extension between the Planning Board and applicant is mutually agreed upon.
- 3.404 The Planning Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, setting forth clearly the reasons for its decisions and of its other official actions. Copies of this record shall be kept on file in the offices of the Town Clerk and the Planning Board.
- 3.405 A favorable vote of four (4) of five (5) members shall be necessary to grant a special permit if the Planning Board is acting as a Special Permit Granting Authority. If only four (4) members are eligible to vote, a unanimous vote of eligible members is necessary.
- 3.406 If an application for a special permit is approved by the Planning Board, all permits necessary for the prosecution of work shall be obtained and substantial use thereof shall be commenced, except for good cause, or construction commenced, except for good cause, within two (2) years from the date of the filing of the Planning Board's decision in the office of the Town Clerk, unless the Planning Board otherwise provides for a lesser period of time in the decision.

3.407 A reasonable extension of the time period described in Section 3.406 above shall be granted by the Planning Board in the case of an appeal to the Superior Court under M.G.L., Chapter 40A, Section 17, or for other good cause shown.

3.500 Applicant's Filing Responsibility

3.501 The applicant is responsible for filing the certified decision in the Bristol County (S.D.) Registry of Deeds, and for paying any and all recording fees.

3.502 A copy of the recorded decision certified by the Bristol County (S.D.) Registry of Deeds is necessary before a building permit dependent on the Planning Board's decision can be issued by the Director of Inspectional Services.

4.000 – Actions After Final Action is Taken

4.100 Repetitive Petitions

- 4.101 No appeal, application, or petition which has been unfavorably and finally acted upon by the Planning Board or Zoning Board of Appeals acting as Special Permit Granting Authority shall be acted favorable upon within two (2) years after the date such unfavorable action was filed with the Town Clerk.
- 4.102 An application may be resubmitted within two (2) years only if the Special Permit Granting Authority finds specific and material changes in the conditions upon which the unfavorable action was based. Such finding must be made by an affirmative vote of four (4) of five (5) members.
- 4.103 Findings of the Special Permit Granting Authority must be recorded in a detailed record of the proceedings of the duly posted public hearing in which the facts were presented.
- 4.104 Upon a favorable vote finding a change in conditions, the applicant may resubmit an application for a special permit in accordance with Sections 2.000 and 3.000 of these Rules & Procedures.

4.200 Appeals

- 4.201 Appeals of the actions set forth in M.G.L., Chapter 40A, Section 17 may be made by the applicant or any party in interest within twenty (20) days of the filing of the decision in the office of the Town Clerk.
- 4.202 Complaints must conform to the procedures outlined in M.G.L., Chapter 40A, Section 17.
- 4.203 Proceedings for complaints alleging procedural defects on the part of the special permit granting authority must be commenced within ninety (90) days of the filing of the decision with the Town Clerk.

4.300 Amendments to a Special Permit

- 4.301 Amendments to a special permit may be made by a favorable vote of four (4) of five (5) members of the Special Permit Granting Authority after facts pertaining to the amendment are gathered in a public hearing.
- 4.302 The review procedures and public hearing procedures as defined in Section 3.000 will apply to an application for an amendment to a special permit.

APPENDIX

Applications & Forms

**Special Permit applications and forms are available on the Town of Dartmouth's Official Website
- Planning Department**

The applications and forms were approved by the Planning Board on September 25, 2017