

Chapter 411

OPEN SPACE RESIDENTIAL DEVELOPMENT

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[HISTORY: Adopted by the Planning Board of the Town of Marshfield 5-8-2000; as amended through 8-10-2009. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 305.

Subdivision of land — See Ch. 405.

§ 411-1. General provisions.

- A. Purpose and authority. The following rules and regulations are hereby adopted by the Marshfield Planning Board as provided in MGL c. 40A for the purpose of establishing uniform procedures for the granting of special permits for the development of open space residential developments pursuant to § 305-11.04 of the Marshfield Zoning Bylaw.
- B. Adoption and amendment. These rules and regulations may be adopted and from time to time amended by majority vote, provided such adoption or amendment is submitted in writing at a meeting of the Board and action thereon taken after a public hearing.
- C. Effective date. These rules and regulations are effective when voted. A copy shall be filed with the office of the Town Clerk, with appropriate endorsements, such as date of adoption, date filed with Town Clerk, and dates of amendments.

§ 411-2. Applicant.

An application or petition for a special permit may be brought by a property owner, agent or prospective purchaser who submits certification of property interest and authority to file such application.

§ 411-3. Pre-application conference.

The Planning Board may hold a pre-application conference at any regular meeting of the Board. Concept plans may be submitted for discussion purposes and to assist in the identification of the nature of information necessary to meet the requirements of the Zoning Bylaw for the application.

§ 411-4. Application for special permit.

- A. Application form. Application for special permits shall be made on an official form, which shall be furnished by the Town Clerk or the Planning Board office upon request. All information indicated on this form and listed under § 411-4B of these rules and regulations shall be supplied by the applicant at the time of application. Failure to meet this requirement will be considered a failure to submit an application and no public hearing will be scheduled. The special permit application shall be submitted concurrently with a fully completed application under the Subdivision Control Law.¹
- B. Contents of an application. The completed application form, original plan and nine copies of all information shall be submitted to the Planning Board with an additional copy filed with the Town Clerk by the applicant. The following information shall be furnished by the applicant:
- (1) Plans meeting the requirements of the Marshfield Subdivision Rules and Regulations showing proposed ways, lots, utilities, street trees, erosion controls, etc. The plans shall also depict the proposed open space required by the Zoning Bylaw and the cover sheet shall include the open space calculations required by the Zoning Bylaw.² **[Amended 7-24-2017]**
 - (2) Drainage calculations meeting the requirements of the Subdivision Rules and Regulations.
 - (3) Proof of ownership of all property subject to the application or a notarized statement by the owner(s) of the property authorizing the applicant to file an application for the property.
 - (4) A narrative describing the method of calculation of the number of proposed building lots and a sketch plan, as necessary, to demonstrate that the number of building lots does not exceed those that would be permitted under a conventional subdivision that complies with the Marshfield Zoning Bylaw and the Subdivision Rules and Regulations and other applicable laws.
 - (5) A narrative describing any requested modifications of setback requirements as specified in § 305-11.04E(4) and noting the proposed lots for which setback reductions are being sought.
 - (6) A narrative describing the manner in which the open space will be permanently protected [from the options provided for in § 305-11.04G(1) and (2) of the Zoning Bylaw] and any uses and facilities proposed within the open space. If several uses are proposed, the plans shall specify what uses will occur in what areas. The narrative shall also address compliance of the open space with the design requirements in § 305-11.04H of the Zoning Bylaw.
 - (7) A draft copy of any proposed declaration of covenants and restrictions and/or conservation restrictions governing the land subject to the application.

1. Editor's Note: See MLG c. 41, § 81k et seq.

2. Editor's Note: See Ch. 305, Zoning, and Ch. 405, Subdivision of Land.

- (8) A draft easement for the maintenance of the open space, if applicable, as specified in § 305-11.04G(4) of the Marshfield Zoning Bylaw.
- (9) A traffic study if the land subject to the application will meet the thresholds specified in § 305-11.10 of the Marshfield Zoning Bylaw.

§ 411-5. Fees.

- A. Application fee. Applicants shall pay the administrative and consulting review fee required by the Subdivision Rules and Regulations.³ This consulting review fee may be expended as specified in the Subdivision Rules and Regulations for review of the combined subdivision/special permit application. No additional fee is associated with the special permit application.
- B. Other costs and expenses. The applicant is responsible for mailing notices to abutters by certified mail, return receipt requested. Return receipts are to be submitted to the Planning Board prior to the public hearing.
- C. Fee waiver. Fees can be waived for applications from the Town of Marshfield and religious and nonprofit organizations, at the discretion of the Planning Board, on a case-by-case basis. **[Amended 7-24-2017]**
- D. Special permit modification. The administrative fee to modify an existing special permit is established in Chapter 420, Fee Schedule. The applicant shall submit a check made out to the Town of Marshfield at the time of the request to modify the open space residential development (OSRD) special permit. **[Amended 7-24-2017]**

§ 411-6. Planning Board review.

- A. Distribution of plans. Upon filing of a complete application, the Planning Board shall distribute copies of the plans and supporting information to the following Town departments: Conservation Commission, Department of Public Works, Board of Health, Building Department, Historical Commission, Police Department and Fire Department. Such distribution shall be completed within five days of the receipt of the plans and application by the Planning Board. In addition, where the property abuts or is accessed within 100 feet of a state highway (Route 3A or Route 139), the Planning Board shall mail a copy of plans and supporting application materials, by certified mail, to the regional office of the Massachusetts Department of Transportation. **[Amended 7-24-2017]**
- B. Submittal of comments. These departments shall have 35 days to review and submit written comments to the Board. Failure of the various boards and commissions to make comment or recommendations within the thirty-five-day time frame shall be deemed by the Planning Board as lack of opposition thereto. Notwithstanding this deadline, the Planning Board reserves the right to request comments from boards that have failed to do

3. Editor's Note: See Ch. 405, Subdivision of Land.

so based on issues raised at the public hearing and to consider those comments in making its final decision.

- C. Decision report. If the special permit does not incorporate the suggestions or requirements of any reports from Town departments or is issued contrary to their recommendations, the Planning Board shall in its written decision state the reasons for not following the recommendations or requirements of said reports.

§ 411-7. Hearing and decision.

The Planning Board, acting as the special permit granting authority, shall follow all procedural requirements for special permits set forth in MGL c. 40A, § 9. In addition, the Board shall render its decision within the time frame for definitive subdivision plans specified in MGL c. 41, § 81U, whenever this time frame is shorter. Public hearings for the subdivision and special permit shall be held concurrently. Applicants are encouraged to file any necessary applications for special permits under the Water Resource Protection District Bylaw⁴ so that this hearing may also be held concurrently. Appeals of the special permit decision shall be in accordance with MGL c. 40A, § 17.

§ 411-8. Reapplication.

No application which has been unfavorably and finally acted upon by the Board shall be reconsidered for a special permit within two years after the date of such unfavorable action, unless the Board finds by a vote of four members specific and material changes in the conditions upon which the previous unfavorable action was based, and such changes are described in the record of the Board's proceedings, and after notice is given to parties in interest of the time and place of the proceedings to reconsider said application.

§ 411-9. Effective date of special permit.

No special permit shall take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the filing of the decision and no appeal has been filed is recorded in the Registry of Deeds and indexed under the name of the record owner of the land.

§ 411-10. Performance guarantee.

A performance guarantee shall be required in accordance with MGL c. 41 and the Marshfield Subdivision Rules and Regulations.⁵

4. Editor's Note: See Ch. 305, Zoning, § 305-13.03.

5. Editor's Note: See Ch. 405, Subdivision of Land.

§ 411-11. Severability.

The provisions of these rules and regulations are severable. If any provision is held invalid, the other provisions shall not be affected thereby. If the application of these rules and regulations or any of their provisions to any person or circumstances is held invalid, the application of these rules and regulations and their provisions to other persons and circumstances shall not be affected thereby.