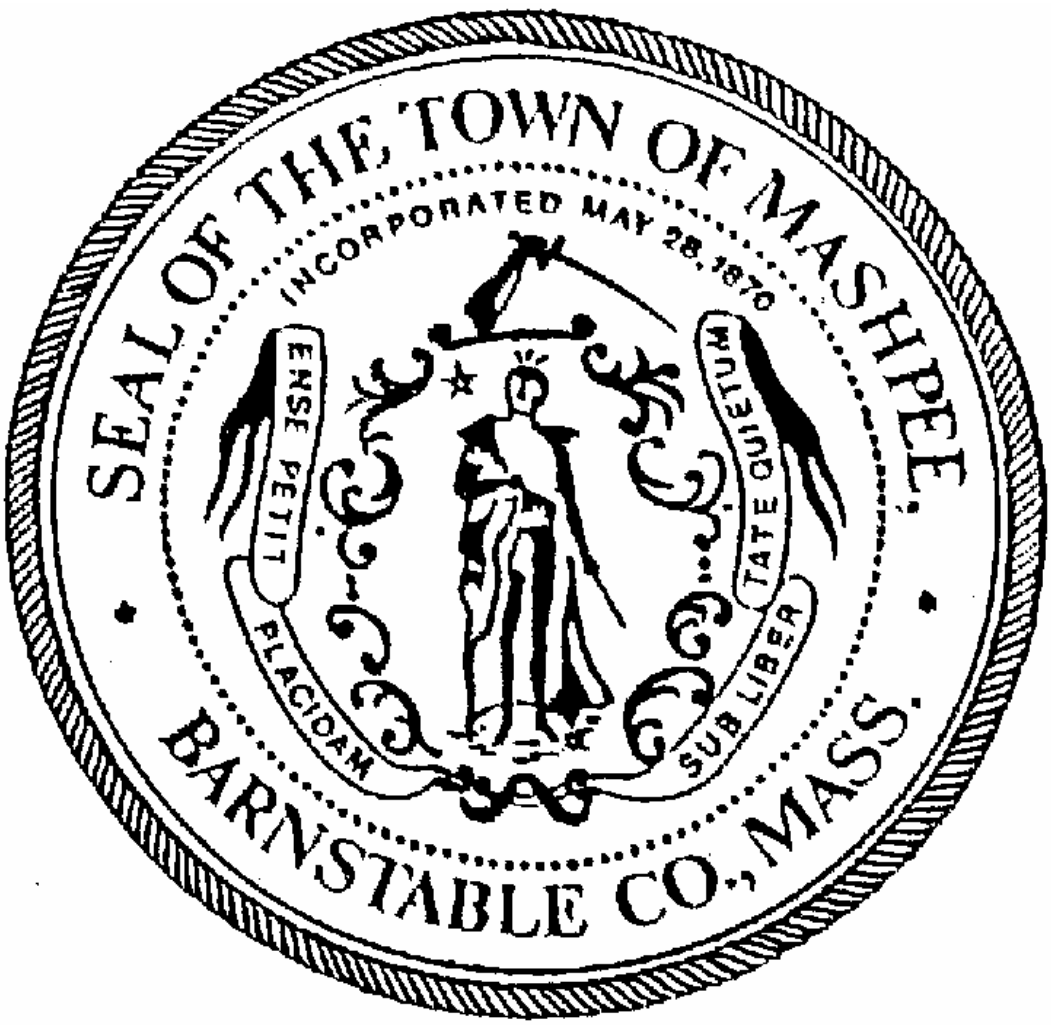
ZONING BYLAWS OF THE TOWN OF MASHPEE 2015



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CHAPTER 174
ZONING

History: Amended 5-7-1979 ATM, Article 14, approved by Attorney General 9-27-1979.
History: Amended 5-9-1988 ATM, Article 19 approved by Attorney General 7-28-1988.
Subsequent amendments noted where applicable.

GENERAL REFERENCES

Earth removal -- See Ch. 82
Trailers and mobile homes -- See Ch. 163.
Wetlands -- See Ch. 172.

ARTICLE I - Purpose and Validity

§174-1 Purpose; Establishment of Districts:

For the purposes set forth in MGL C 40A, and all acts in amendment thereof and in addition thereto, under the authority thereof, the height, area, location and use of buildings and structures and the use of land throughout the Town of Mashpee are hereby regulated as provided herein, and the town is hereby divided into districts hereinafter designated, defined and described and shown on an official copy of the Zoning Map, dated October 2001, as amended, on file with the Town Clerk, which map is hereby made a part of this chapter.
History: Amended 10-7-2002 ATM, Article 22, approved by Attorney General on 11-27-2002.

§174-2 Conflict with other Laws; Severability:

A. In general, this chapter is supplementary to other town bylaws affecting the use, height, area and location of buildings and use of premises, but where this chapter imposes a greater restriction in any respect than is imposed by other town bylaws, the provisions of this chapter shall prevail.

B. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision.

ARTICLE II - Definitions

§174-3 Terms Defined:

All present tenses shall include past and future tenses and all past tenses the present. All singular terms shall include the plural, and the plural the singular.

A. For the purpose of this chapter, the following words and phrases shall have the meanings or limitations of meanings herein defined.
History: Added 5-4-1998 ATM, Article 32, approved by Attorney General 8-12-1998

Accessory Building - A building devoted exclusively to a use accessory to the principal use of the lot on which it is located.

Accessory Use - A use incident and subordinate to and on the same lot as a principal use.

Adult Entertainment Uses - Shall include the following uses.

1. Adult Bookstore - As defined in MGL C 40A, §9A.

3. **Adult Paraphernalia Store** - As defined in MGL C 40A, §9A.

4. **Adult Video Store** - As defined in MGL C 40A, §9A.

5. **Establishment Which Displays Live Nudity for its Patrons -** As defined in MGL C 40A, §9A.

Aisle, Handicapped Access - An accessible pedestrian space between handicapped parking spaces.
History: Amended 10-18-2004 ATM, Article 38, approved by Attorney General 12-16-2004.

Aisle Parking – A traveled path through a parking facility, providing access to the parking spaces
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Alley - A public or private way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is otherwise on a street. Not to be considered as a principal means of access to abutting property and not to be considered in determining adequate frontage or access for purposes of lot division.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Apartment

1. **Apartment** - Any room or suite of rooms forming a habitable unit for one (1) family, with its own cooking and food-storage equipment and its own bathing and toilet facilities and its own living, sleeping and eating areas wholly within such room or suite of rooms.
   History: Amended 5-8-1989 STM, Article 1, approved by Attorney General 8-10-1989.

2. **Apartment Building** - A building containing four (4) or more apartments.
   History: Amended 5-8-1989 STM, Article 1, approved by Attorney General 8-10-1989.

3. **Garden Apartment** - An apartment building containing four (4) or more apartments with no portion of the building below the first story or above the second story used for dwelling purposes.
   History: Amended 5-8-1989 STM, Article 1, approved by Attorney General 8-10-1989.

4. **Townhouse Apartment** - A group of attached one-family dwellings.

5. **Accessory Apartment -** An apartment created within a single-family residential structure under the provisions of §174-45.4
   History: Added 10-17-2005 ATM Article 19, approved by Attorney General 3-7-2006.

Applicant - The person who submits an application for a permit or variance approval and his administrators, executors, heirs, devisees, successors and assigns. The applicant must be owner of all land included in the submitted plan or proposal or any person who shows specific written and notarized authorization by the owner to submit the application and to speak for and bind the owner with regard to any representations regarding the property or the owner's intent, with regard to any agreements made with Town Boards as part of the permit or variance review and approval process and with regard to the owner's understanding of any conditions imposed upon the project as part of the Board's decision. Proof of ownership shall include a copy of the latest recorded deed or Land Court certificate as well as a copy of the Mashpee Board of Assessors' current listing for the property. The applicant is considered a "party in interest" with regard to required public hearing and decision notices.
History: Added 10-7-2002 ATM, Article 15, approved by Attorney General 11-27-2002.

Assisted Living Facility - Similar to Congregate Care Facility, but also includes assistance with daily activities such as dressing, grooming, bathing etc. Also referred to as board and care, lifecare, continuing care establishments.
History: Added 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

Bed-and Breakfast Establishment - A private, owner-occupied house with four (4) or more guest rooms that includes a breakfast in the room rate and conforms to any requirements of the Massachusetts Department of Public Health and the Mashpee Board of Health.
History: Added 5-3-1993 ATM, Article 11, approved by Attorney General 7-19-1993.

Bed and Breakfast Home - A private, owner-occupied house with three (3) or fewer guest rooms that include a breakfast in the room rate and conforms to any requirements of the Massachusetts Department of Public Health and the Mashpee Board of Health.
History: Added 5-3-1993 ATM, Article 11, approved by Attorney General 7-19-1993.

Build - Includes the words "erect," "construct," "alter," "enlarge," "move," "modify," "excavate," "fill" and any others of like significance.

Building - Includes the word "structure" unless the context unequivocally indicates otherwise. "Building" shall also mean any three-dimensional enclosure by any building material of any space for use or occupancy, temporary or permanent, and shall include foundations in the ground; also all parts of any kind of structure aboveground except fences and field or garden walls or embankment retaining walls.

Caliper - American Association of Nurserymen standard for measurement of trunk size of nursery stock. Caliper of the trunk shall be taken six (6") inches above the ground for trees up to four (4") inches in diameter and twelve (12) inches above ground level for trees over four (4") inches in diameter.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Commercial Center - A group of commercial, office and similar establishments involving one (1), or more than one (1) principle structure, with said structure or structures containing more than ten thousand (10,000') square feet of gross floor area, located on a site which has been planned, developed and managed as an operating unit and including parking, highway access, signage and other facilities shared by said establishments.
History: Added 10-1-1990 ATM, Article 4, approved by Attorney General 12-18-1990.

Congregate Care Facility - A facility for long-term residence, exclusively by persons sixty (60) years of age or older, which shall include, without limitation, living and sleeping facilities, common dining and social and recreational features, special safety and convenience features designed for the needs of the elderly such as emergency call systems, grab bars and handrails, special door hardware, cabinets, appliances, passageways and doorways designed to accommodate wheelchairs and the provision of social services for residents which must include at least three of the following: meal services, transportation, counseling, housekeeping, linen and organized social activities.
History: Added 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

Contractor – A person or entity that agrees to furnish materials or professional services for a price in any of the building, other construction, building maintenance, landscaping or similar trades, including, but not limited to, those subject to the Home Improvement Contractor's Law, M.G.L. Chapter 142A, and including subcontractors engaged in said trades.
History: Added 10-19-2009 ATM, Article 14 approved by Attorney General 1-26-2010

Contractor Yard – Premises used by a contractor or subcontractor for outdoor storage of construction equipment and supplies, fabrication of subassemblies, and parking of wheeled or tracked equipment customarily used in the trade carried on by the contractor. Storage within an enclosed building shall not be considered a contractor's yard. For the purpose of this By-law, a single vehicle used by the owner for the storage of small items or material or equipment that are used on a day by day basis in carrying out his trade, and/or used by the owner for transportation purposes shall not be classified as construction equipment, and parking such a vehicle, within the weight limit specified by Section 174-25 I(2) shall not be deemed to constitute a contractor yard.
History: Added 10-19-2009 ATM, Article 14 approved by Attorney General 1-26-2010

Contractor Bay – Premises in an enclosed building used by a contractor or subcontractor for storage equipment and supplies, fabrication of subassemblies, and parking of wheeled or tracked equipment customarily used in the trade carried on by the contractor.
History: Added 10-19-2009 ATM, Article 14 approved by Attorney General 1-26-2010

Convalescent Home - A facility, other than a hospital, wherein for compensation, lodging, custodial care and nursing services are provided on a twenty four (24)-hour basis for persons suffering from physical infirmity or illness, other than mental or contagious, which is not of sufficient severity to require hospitalization, or persons requiring further institutional care after being discharged from a hospital other than a mental hospital. Occupancy in a convalescent home by any patient shall not exceed thirty (30) days within any calendar year.
History: Added 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

Curb - A vertical or sloping edge of a roadway designed to control vehicle movement or drainage and stabilize the pavement edge. Includes vertical barrier curbs, mountable curbs, "Cape Cod berms" and similar structures.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Diameter/Diameter at Breast Height (dbh) - As regards trees, the diameter of any tree trunk, measured at four and one half (4.5') feet above existing grade.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Drainage - The control of surface water within the tract of land to be developed by any means of collecting, diverting, handling, dispersing or disposal of surface runoff due to storm flowage, rainfall or natural means which has been designed by a registered professional engineer.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Dripline - An area encircling the base of a tree which is delineated by a vertical line extending from the outer limit of a tree's branch tips down to the ground.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Driveway - A path for motor vehicles, leading from a street or road to a garage, house, parking lot, loading area, etc. or between two parking areas.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Dwelling

1. **Dwelling, Attached** - A building designed for or occupied as a residence and separated from another attached dwelling on one (1) or both sides by a vertical party wall.

2. **Dwelling, Detached** - A building designed for or occupied as a residence and separated from any other building, except accessory buildings, by side yards.

3. **Unit** - Same as "apartment."
   History: Amended 5-8-1989 STM, Article 1, approved by Attorney General 8-10-1989.

4. **One-Family Dwelling** - A building designed for or occupied by one (1) family.

5. **Two-Family Dwelling** - A freestanding building, designed or intended exclusively for residential use, containing two (2) dwelling units. (This can be two (2) attached dwelling units).

6. **Mixed Residential Use** – Dwellings built above the ground floor in buildings which contain retail or office uses on the ground floor.

7. **Dwelling Accessory** - A residence created under the provisions of Section 174-46B(1), containing no more than one (1) bedroom, which may have kitchen and bathroom facilities and other rooms which are not bedrooms, either attached to or detached from a principle residence on the same lot and not owned separately from the lot or principle residence. Such dwellings may not be occupied by more than two (2) persons.
   History: Added 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.
   History: Amended 10-17-2005 ATM, Article 19, approved by Attorney General 3-7-2006

Family - Any number of individuals, including domestic employees, living together in a dwelling unit and living as a single nonprofit housekeeping unit, provided that a group of five (5) or more persons who are not within the second degree of kinship to each other, as defined by civil law, shall not be deemed to constitute a "family."

Farm - A parcel of land containing at least five (5) acres used for the primary purpose of agriculture, horticulture, floriculture or viticulture, including facilities for the sale of produce, wine and dairy products, insofar as the majority of such products for sale have been produced or grown by the owner of the land on which the facility is located.
History: Added 10-7-1991 ATM, Article 25, approved by Attorney General 2-3-1992.

Gutter - A shallow channel usually set along a curb or the pavement edge of a roadway for purposes of catching and carrying off runoff water. May be included in the width of parking lanes, but not of travel, acceleration or deceleration lanes or of bicycle lanes.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Half Story - A story next beneath a sloping roof with a minimum pitch of four (4) in twelve (12), whose area having a height greater than four (4') feet vertically, measured between the top of the floor and the intersection of the bottoms of the rafters with the interior faces of the wall, does not exceed two-thirds (2/3) of the floor area of the story immediately below it. Any exterior wall of said half-story shall be stepped back a minimum of two (2') feet from the wall plane of the story immediately below it and the total horizontal dimension of said exterior walls shall not exceed two-thirds that of the story immediately below it.
History: Amended 10-18-2004 ATM, Article 37, approved by Attorney General 12-16-2004

Home Occupation - An activity customarily carried on by the permanent residents of a dwelling unit, inside the dwelling unit, requiring only customary home equipment. "Home occupations" do not include barbershops, beauty shops or commercial offices such as real estate or insurance, nor do they involve the sale of articles produced outside the dwelling unit nor the raising or producing of products involving odor, vibration, smoke, dust, heat or other objectionable effects.

Hospital - An institution licensed by the Commonwealth to provide primary health services and medical or surgical care to persons, primarily in-patients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions. Includes, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.
History: Added 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

Hotel/Motel - A structure containing fifteen (15) or more sleeping rooms, with or without a common eating facility, each room having its own private toilet facilities and each room let for compensation.

Island, Traffic or Parking Lot - A raised area in a roadway, driveway or parking facility, usually curbed unless otherwise permitted, placed to guide traffic and separate travel or parking lanes, or used for landscaping, signing or lighting.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Kennel
History: Added 5-7-2007, Article 26, approved by Attorney General October 19, 2007

1. **Commercial Boarding or Training Kennel -** a kennel or establishment, other than an animal shelter or animal control facility, used for boarding, holding, day care, overnight stays or training, for a fee or consideration. This does not include dogs owned by the operator, grooming facilities holding dogs solely for the purpose of grooming and not overnight boarding, hobby breeders who board intact males or females for a period of time for the sole purpose of breeding, individuals who temporarily, and not in the normal course of business, board or care for animals owned by others, or a licensed pet shop.

2. **Commercial Breeder Kennel -** an establishment, other than a hobby breeder, engaged in the business of breeding animals for sale or for exchange to wholesalers, brokers or pet shops in return for consideration.

3. **Domestic Charitable Corporation Kennel -** a facility operated, owned, or maintained by a domestic charitable corporation registered with the Department of Agricultural Resources, or an animal welfare society or other non-profit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals. A domestic charitable corporation kennel includes a veterinary hospital or clinic operated by a licensed veterinarian, which operates for the above purpose in addition to providing medical treatment and care.

4. **Veterinary Kennel -** a veterinary hospital or clinic that boards dogs for reasons in addition to medical treatment or care. This shall not apply to a hospital or clinic used solely to house dogs that have undergone veterinary treatment, observation, or will do so, only for the period of time needed to accomplish the needed veterinary care.

5. **Personal Kennel -** one pack or collection of five (5) to nine (9) dogs aged three (3) months old or over, owned or kept by a person on a single premise, under one (1) ownership, for private personal use. Breeding of personally owned dogs may take place for the purpose of improving the breed, exhibiting, showing, use in sporting activity or other personal reasons, provided that selling, trading, bartering or the distribution of such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops. Kennels in this category shall not sell, trade, barter or distribute any dogs not bred from their personally owned dogs. However, dogs temporarily housed at a personal kennel in conjunction with an animal shelter or rescue registered with the department may be sold, traded, bartered or distributed as long as it is not for profit.
History: Amended 10-15-2007 ATM, Article 18, approved by Attorney General on 1-28-2008.

Loading Zone - A specially marked area for the short-term use of delivery vehicles.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Lot - The whole area of a single parcel of land undivided by a street, under one (1) ownership, with ascertainable boundaries established by a deed or deeds or record, or a segment of land ownership defined by lot boundary lines on a land division plan duly approved by the Planning Board under the Subdivision Control Statute.

Lot Area - The area of a lot exclusive of any area in a public or private way open to public use and any body of water.

Lot Coverage - The amount of area on a lot covered by the horizontal cross section of structures.

Lot Frontage - Measured along a straight line connecting the points of intersection of the side lot lines with the front lot line.

Lot Line, Front - A line dividing a lot from a laid-out public or private way. On any lot bounded on more than one (1) side by such a way, the layout line that is to be a lot front shall be so designated in any application for a permit to build on such lot.
History: Amended 10-20-2008- ATM, Article 16, approved by Attorney General 2-11-2009

Lot Line Rear - Except for a triangular lot, the lot line opposite the front lot line.

Lot Line Side - Any lot line not a front or rear lot line.

Lot Width - Measured wholly within such lot as the shortest distance between side lot lines at the required front yard depth.

Manufactured Home - A structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. (See Definition of "trailer.")

Manufactured Home Park or Subdivision - A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Marina - An area for the storage or mooring of boats with frontage on a navigable body of water and with facilities for the landing of boats if the storage is on land. If storage is to be on land and of a transient nature requiring frequent launchings and landings, it shall be inside a building.

Microbrewery – A facility for the production and packaging of malt beverages for distribution retail or wholesale, on or off the premise, with a capacity of not more than fifteen thousand (15,000) barrels, (a barrel being equivalent to thirty one (31) gallons per year) and which may include a tap room where beverages produced on the premises may be sold and consumed. May include other uses such as a restaurant, including outdoor dining, or live entertainment if otherwise permitted in the zoning district.
History: Added 5-4-2015 ATM, Article 19, approved by Attorney General 8-11-2015

Noncommercial Sign - A sign that does not direct attention to a business or to a service or commodity for sale, and is of a political, religious and/or ideological nature.

Nonconforming Lot - A lot that does not conform to a dimensional regulation prescribed by this chapter for the district in which it is located.

Nonconforming Structure - A lawfully existing structure that does not conform to the dimensional requirements prescribed by this chapter for the district in which it is located, but which was lawfully in existence at the time the dimensional requirement with which it does not conform became effective.
History: Added 10-4-1993 ATM, Article 24, approved by Attorney General 10-18-1993.

Nonconforming Use - A use of a building or lot that does not conform to a use regularly permitted by this chapter for the district in which it is located but was in existence at the time of the adoption of this chapter and was lawful at the time it was established.

Nursing Home - A non-profit or for-profit home licensed by the Commonwealth for the aged or chronically or incurably ill persons in which five or more of such persons, not of the same immediate family, are provided with sleeping accommodations, meals, nursing services, medical care and personal care, such as the provision of aid to residents in walking or climbing or descending stairs, in getting in or out of bed, in feeding, dressing, bathing or in other matters of personal hygiene, the preparation of special diets, the provision of tray service for meals, the supervision of medication and other similar types of personal assistance. Does not include a maternity boarding house, a facility providing surgical or emergency medical services, or a facility providing care for alcoholism, drug addiction, mental disease or communicable disease.
History: Added 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

Occupied - Includes the words "designed, arranged or intended to be occupied."

Parcel - An area of land in one (1) ownership, with definite boundaries, which may or may not constitute a lot or group of lots available for use as the site of one or more buildings.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Parking Angle - The angle formed by a parking stall and the driving aisle centerline of a parking facility, ranging from ninety (90°) degrees (right-angle or perpendicular parking) to thirty (30°) degrees.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.
Parking Bay - A parking facility unit that has two (2) rows of parking stalls and a central driving aisle (i.e. double-loaded aisle, aisle with vehicles on both sides).
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Parking Lane - An auxiliary lane primarily for the parking of vehicles.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Parking Module - A driving aisle with cars parked on (1) one or both sides of the aisle.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Parking Space - An area containing not less than three hundred (300') square feet, to be used exclusively as a parking stall for one (1) motor vehicle.

Parking Stall - The area, usually marked with distinguishing lines, in which one (1) vehicle is to be parked; a parking space.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Pub Brewery or Brew Pub – A plant or premise licensed under sections 12 and 19D of MGL C 138 where malt beverages are authorized to be produced and sold and where alcoholic beverages or wine or malt beverages only are authorized to be sold on the premises according to Massachusetts Alcoholic Beverages Control Commission regulations. The area used for brewing shall not exceed thirty (30%) percent of the gross floor area of the premise and production capacity shall be limited to not more than five thousand (5,000) barrels (a barrel being equivalent to thirty one (31) gallons per year. Such establishment may also include a restaurant.
History: Added 5-4-2015 ATM, Article 19, approved by Attorney General 8-11-2015

Shade Tree - A tree with a caliper over four (4") inches in a public place, street, special easement or right-of-way adjoining a street, including, but not limited to, public shade trees as defined by MGL C. 87,§1.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Sign - Includes any permanent or temporary structure, device, letter, word, model, banner pennant, insignia, trade flag or representation used as or which is in the nature or an advertisement, announcement or direction or is designed to attract the eye by intermittent or rapid motions or illumination.

Site - the entire tract on which a proposed use or development is located.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General on 11-14-2003.

Space Habitable - Those areas within the exterior walls of a dwelling which have head room of not less than seven (7') feet measured vertically upward from the top of the finished floor, but excluding basement areas and excluding areas in any accessory structure attached to any dwelling.

Special Permit Granting Authority - The Planning Board or Board of Appeals as designated in Article VI or any other applicable sections of this chapter.
History: Amended 10-1-1990 ATM, Article 4, approved by Attorney General 12-18-1990.

Story - That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half (1/2) of such portion vertically is below the average natural grade of the ground adjoining such building.

Street - A public way laid out by the Town under MGL C. 82, §21, or other authority or laid out by the state or county, which is open to travel by the general public and is on record at the Registry of Deeds, or a public or private way duly approved by the Planning Board under the Subdivision Control Statute, or a way on record at the Registry of Deeds which is approved by the Planning Board as a principal means of adequate access to abutting property.

Structure - A combination of material assembled at a fixed location to give support or shelter, such as a building, tower framework, platform, bin, sign or the like.
Tract - A continuous area of land, which may be subdivided or unsubdivided, may be crossed by roadways or streams and may be in single or multiple ownership, which is proposed for development under these by-laws.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Trailer - The following shall be considered a "trailer":

1. **Travel Trailer** - A vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation, having a body width not exceeding eight (8') feet and a body length not exceeding thirty-two (32') feet.

2. **Pickup Coach** - A structure to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.

3. **Motor Home** - A portable temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.
4. **Camping Trailer** - A folding structure mounted on wheels and designed for travel, recreation and vacation use.

Tree - Any woody plant having a caliper of two (2") inches or larger.
History: Added 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

Use - The purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

Yard

1. **Front Yard** - An open space extending the entire width of a lot from lot side line to lot side line between the front lot line or lines and the nearest point of a building.

2. **Rear Yard** - An open space extending the entire width of a lot line from side line to side line between the rear lot line or the corner of a triangular lot farthest from the front lot line or the corner of a triangular lot farthest from the front lot line and the nearest point of the building.

3. **Side Yard** - An open space extending along a side line of a lot (between the front yard and the rear yard on such lot) and extending between the side line of such lot to the nearest point of the building.

B. Other words and phrases. Words and phrases not defined in this section but defined in the Building Code of the Town of Mashpee will have the meaning given in said Building Code unless a contrary intention clearly appears.

ARTICLE III - Establishment of Zoning Districts

§174-4 Enumeration of Districts:

The Town of Mashpee is hereby divided into Zoning Districts designated as follows:
History: Amended 5-3-1993 ATM, Article 12, approved by Attorney General 7-19-1993.

Residence Districts
- R-3
- R-5

Commercial Districts
- C-1
- C-2
- C-3 Limited Commercial Zone

History: Amended 10-7-2002 ATM, Art. 22, approved by Attorney General 11-27-2002.

Industrial Districts

I-1
Floodplain Districts
F
Mashpee River and Quashnet River Protective Districts
Primary Conservation Areas
Secondary Conservation Areas
Groundwater Protection Districts
Areas of Critical Environmental Concern
Otis A.N.G.B. Accident Prevention Zone
Popponesset Overlay District
Wireless Facility Overlay District
History: Added 10-5-1998 ATM, Article 35, approved by Attorney General 1-4-1999.
IC Overlay District
History: Deleted 10-19-2009 ATM Article 12, approved by Attorney General 1-26-2010.

Mashpee Center Overlay District
History: Added 10-4-1999, ATM, Article 29, approved by Attorney General 1-11-2000.

§174-5 Establishment of Zoning Map:

A. Except for Floodplain, Mashpee and Quashnet River Protective Districts, Primary and Secondary Conservation Areas as shown on the Open Space Incentive Plan, Groundwater Protective Districts, Areas of Critical Environmental Concern and the Otis A.N.G. B. Accident Prevention Zone, the location and boundaries of these districts are hereby established as shown on the most recently dated version of a map entitled "Zoning Map of the Town of Mashpee," bearing the signatures of the members of the Planning Board and on file in the office of the Town Clerk, which map, with all explanatory matter thereon, in declared to be a part of this chapter.

B. The boundaries of the Popponesset Overlay District shall be as follows:

Beginning at the northwest corner of Map 123, Block 162, as shown on the 1992 Mashpee Assessors' Maps, thence southeasterly to the shoreline of Nantucket Sound; thence following said shoreline northeasterly to the northeastern corner of Map 118, Block 14; thence northwesterly and northeasterly along the eastern property line of said parcel and of Map 112, Block 59B to the shoreline of Popponesset Creek; thence following the shoreline of Popponesset Creek to the southeastern corner of Map 112, Block 44; thence westerly along the southern property line of said lot to Shore Drive; thence northerly along Shore Drive and westerly along Strawberry Lane to the southeastern corner of Map 112, Block 100; thence northwesterly to the northeastern corner of said lot; thence southwesterly to the southwestern corner of Map 111, Block 139; thence northwesterly along the property line of said lot to Spoondrift Way; thence southwesterly along Spoondrift Way, northwesterly along Wading Place Road and southwesterly along Alma Road to the northern corner of Map 111, Block 187; thence southwesterly along a straight line to the western corner of Map 117, Block 236; thence, southeasterly along Nicks Trail and southwesterly along Uncle Percy's Road to the northeastern corner of Map 123, Block 187; thence generally southerly and easterly along the eastern property line of said parcel to the northern shoreline of Dean's Pond; thence following said shoreline northeasterly to the northeastern corner of Map 123, Block 54; thence following a straight line to the point of beginning.
History: Added 5-3-1993 ATM, Article 12, approved by Attorney General 7-19-1993.
History: Amended 5-6-1997, ATM, Article 46, approved by Attorney General 9-25-1997.

C. The Wireless Facility Overlay District shall include:

1. the area within the two hundred ten (210') foot wide Commonwealth Electric Company transmission line easement running generally east-west between the Falmouth town line and the Barnstable town line, except that portion within the boundaries of the Otis A.N.G.B. Accident Prevention Zone;

2. all other lands in the Town which are not located within the boundaries of the Mashpee National Wildlife Refuge, within one thousand (1000') feet of the mean high water line of a Great Pond or a tidal water body, within Historic Districts, within one thousand (1000') feet of a Historic District or of structures or places listed in the Massachusetts State Register of Historic Places, within the Otis A.N.G.B. Accident Prevention Zone R-3 or R-5 Zoning Districts or within three hundred (300') feet of the right of way of any designated scenic roadway.
History: Added 10-5-1998 ATM, Article 35, approved by Attorney General 1-5-1999.
History: Amended 10-16-2006 ATM, Article 30, approved by Attorney General 2-13-2007.

D. The Mashpee Center Overlay District shall include those parcels shown on the 1998 Mashpee Assessors' Maps as Map 27, Block 46, Map 28, Blocks 3 through 12, Map 35, Blocks 30 and 31, and Map 36, Blocks 1 through 20, 5A, 5B, 41 through 45, 47 and 49 through 52.
History: Added 10-4-1999 ATM, Article 29, approved by Attorney General 1-11-2000.

E. The IC Overlay District shall include those parcels shown on the 1999 Mashpee Assessors' Maps as Map 81, Blocks 18 and 21, and Map 88, Blocks 2, 19, 20, 23, 34, 36, 37, 41, 42, 80, 81, 82 and 89, as well as those portions of May 81, Blocks 17 and 19 which are located in the I-1 Industrial Zone and that portion of Map 54, Block 5 lying within six hundred twenty five (625') feet of the center line of Route 28.
History: Added 10-4-1999 ATM, Article 27, approved by Attorney General 1-11-2000.
History: Amended 5-1-2000 ATM, Article 34, approved by Attorney General 8-7-2000.
History: Amended 10-2-2000 ATM, Article 32, approved by Attorney General 1-12-2001.
History: Amended 10-1-2001 ATM, Article 14, approved by Attorney General 1-16-2002.

F. The Floodplain District includes all special flood hazard areas within the Town of Mashpee Designated as Zone EA or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Mashpee are panel numbers 25001C0517J, 25001C051, 25001C0519J, 25001C0536J, 25001C0537J, 25001C0538J, 25001C0539J, 25001C1731J, 25001C0732J, 25001C0734J, 25001C0742J, 25001751J, 25001C0752J, 25001C0753J, 25001C0754J, and 25001C0761J dated July 16, 2104. The exact boundaries of the District may be defined by the one hundred (100) year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Building Inspector.
History: Added 5-5-2014 ATM, Article 14, approved by Attorney General 6-11-2014

§174-6 Amendments to Zoning Map:

Any changes or amendments shall be indicated by the alteration of such map, and the map thus altered is declared to be a part of this chapter thus amended.

§174-7 Construal of Boundaries:

Where a district boundary is indicated as within or parallel to a street, highway, railroad right-of-way, watercourse or town municipal boundary, such district boundary shall be construed as the center line or as being parallel to the center line of such street, highway, railroad right-of-way, watercourse or town municipal boundary.

§174-8 Determination of Boundaries by Building:

Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined from the scale of the map by the Building Inspector.

ARTICLE IV - Application of Regulations

§174-9 Compliance Required:

No buildings shall be erected or used and no land shall be used or divided unless in conformity with the regulations of this chapter. All other buildings and all other uses of land or of buildings are hereby expressly prohibited, except those already lawfully existing which by the provisions of this chapter become lawfully nonconforming.

§174-10 Lot lines in Adjoining Municipalities:

When a lot lies in part within the Town of Mashpee and in part in the adjacent municipality, the provisions of this chapter shall be applied to the portion of such lot in the Town of Mashpee in the same manner as if the entire lot were situated in Mashpee.

§174-11 Lots Located in Multiple Zoning Districts:

When a lot is transected by a zoning district boundary, the regulations of this chapter which shall be applicable to each portion of the lot shall be those applicable to the zoning district in which it lies, provided that such portion shall have a land area sufficient to meet the minimum lot size requirement within said district. Where such portion or portions of said lot do not meet the applicable minimum lot size requirement, they shall be governed by the zoning applicable to the adjacent portion of the lot, if any, which complies with the minimum lot size requirement applicable to the district in which it lies. If no portion of the lot meets the minimum lot size requirement of the district in which it lies, the entire lot shall governed by those regulations which apply to the largest portion of the lot. No new lot may be created which extends more than thirty (30') feet into a zoning district (excepting overlay districts) other than that in which the majority of said lot is located.

History: Amended 10-2-2000 ATM, Article 29, approved by Attorney General 1-12-2001.
History: Amended 10-15-2007 ATM, Article 17, approved by Attorney General 1-28-2008.

§174-12 Location of Building on Lots; Street Layout:

No building shall be erected except on a lot fronting on a street, and there shall be not more than one (1) principle building on any residential lot, except as allowed under this chapter. For the purpose of adequate access to a parcel of land proposed for subdivision or division, there shall be required direct access from the parcel or lot to a paved town, county or state road or a street for which a road covenant has been released by the Planning Board or a street having a right-of-way layout and construction meeting at least the minimum layout width, pavement, drainage and other street requirements of the Mashpee Subdivision Regulations and Planning Board for subdivision streets.

§174-13 Land within Street Lines:

Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this chapter even though the fee to such land may be in the owners of abutting lots.

§174-14 Land Taken by Eminent Domain:

Any land taken by eminent domain or conveyed for a public purpose for which the land could have been taken by eminent domain shall not be deemed to be transferred in violation of the land area, width and space provisions of this chapter.

§174-15 Permit Operations to Conform to Subsequent Amendments:

Construction or operations under a Building Permit or Special Permit shall conform to any subsequent amendment of the Zoning Bylaw unless the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

§174-16 Reserved:
History: Deleted 10-7-2002 ATM, Article 22, approved by Attorney General 11-27-2002.

ARTICLE V - Nonconforming Buildings and Uses

§174-17 Continuance; Extensions; Alterations:

Lawfully created structures or uses may be continued, although not conforming with the provisions of this chapter. Nonconforming single- or two-family dwelling structures may be changed, extended or altered if such change, extension or alteration complies with the dimensional requirements applicable to the lot under current provisions of §174-31 or, for lots which have been developed pursuant to §174-21, complies with such requirements as were applicable to initial construction of the dwelling under provisions of §174-21. Changes, extensions or alterations of nonconforming single- or two-family dwelling structures which do not meet the applicable dimensional requirements as set forth above, and changes, extensions or alterations of all other nonconforming structures, or nonconforming uses, may not be made unless there is a written finding by the Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming structure or use to the neighborhood and that there is adequate land area to provide sufficient parking and setbacks as may be required. Although said finding shall not constitute a Special Permit as defined by the general laws and this by-law, the Board of Appeals shall follow the procedures specified in the general laws for Special Permits in processing requests for such findings.. For the purposes hereof, compliance with dimensional requirements shall be determined by the Inspector of Buildings.
History: Amended 10-4-1993 ATM, Article 24, approved by Attorney General 10-18-1993.
History: Amended 10-17-2005 ATM, Article 22, approved by Attorney General 3-7-2006.

§174-18 Change of Nonconforming Use to Conforming Use:

If any nonconforming use of any structure or land, or both, is changed to a conforming use, it shall not thereafter be put into any nonconforming use.

§174-19 Abandonment of Nonconforming Use:

If any nonconforming development or use of land or of a building is discontinued for a period of not less than twenty-four (24) consecutive months, which, in the terms of this chapter, shall be evidence of abandonment of a nonconforming usage, such land or building shall thereafter be used or developed only in accordance with the terms of this Zoning Bylaw for the zoning district in which such property is located.

§174-20 Rebuilding of Destroyed or Damaged Nonconforming Structure:

Any nonconforming building or structure destroyed or damaged by fire, flood lightning, wind or otherwise may be rebuilt, subject to approval of the Board of Appeals subject to the same conditions as set forth in §174-24 of this chapter.

§174-20.1 Rebuilding Historic Structures:

Notwithstanding any provisions of this Chapter, within the Mashpee Center Overlay District any structure built prior to 1945 and subsequently demolished may be reconstructed in its original location, or within fifty (50') feet of said location, provided its exterior design and appearance is essentially the same as the original structure and it is determined by majority vote of the Planning Board, at a public hearing, for which notice has been given in conformance with the provisions of M.G.L. Chapter 40A, Section 11, that it is historically appropriate. The Planning Board shall transmit copies of any proposed plans to the Mashpee Historical Commission, as well as to any Historic District Commission established to review projects in the area including the Mashpee Center Overlay District, for review and comment regarding the historical appropriateness of the project and whether the proposed exterior design and appearance is essentially the same as that of the original structure.
History: Added 10-2-2000 ATM, Article 31, approved by Attorney General 1-12-2001.

§174-21 Nonconforming lots:
History: Amended 5-7-1990 STM, Article 7, approved by Attorney General 11-19-1990.

A. Nonconforming lots may be developed as allowed by MGL C. 40A, §6, as amended. In addition, building lots created by a subdivision plan endorsed by the Planning Board under the provisions of MGL C. 41, §81U may be developed pursuant to the lot size, frontage and setback regulations applicable to the original approval of said subdivision if, within eight (8) years of the date of said endorsement, the performance guarantee required by said §81U was released regarding said lot and said lot became separately owned from all adjacent land.
History: Amended 10-16-2006, ATM, Article 22, approved by Attorney General 2-13-2007.

B. No lot may be changed in size or shape so that a violation is created, except by a public taking of a portion of the lot.

C. If a lot obtains its legal frontage on or requires access via a road shown on a subdivision plan as defined in MGL C. 41, §81, which plan has been approved by the Planning Board, no building may be constructed on said lot unless the roads shown on such plan have been installed in accordance with Planning Board requirements, if any, in effect at the time the plan was submitted to the Planning Board where a release of the road covenant or release of other security has been obtained from the Board or, in accordance with current Planning Board requirements, where no road covenant or security has been so released.

D. Building lots in cluster subdivisions created under previous provisions of the Mashpee Zoning By-Law not requiring a Special Permit may be developed pursuant to the lot size,

frontage and setback regulations applicable to the original approval of said subdivision, but subject to any other currently applicable provisions of this by-law.
History: Amended 10-16-2006, ATM, Article 23, approved by Attorney General 2-13-2007.

ARTICLE VI - Land Use Regulations

§174-22 Compliance of Use Required:

Except as provided by law or in this chapter, in each district no building, structure or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use Regulations, §174-25.

§174-23 Performance Bond:

Prior to the authorization of any new building, the Building Inspector shall require a performance bond of not less than four dollars ($4) per foot of lot frontage against possible costs due to erosion or damage within street rights-of-way, and a bond or cash security may be required by the Building Inspector for other construction, such bond or cash security to be held by the Town Treasurer until an occupancy permit is granted in the case of a building or a release of the security is executed by the Building Inspector. In the event of erosion or damage within street rights-of-way caused by the construction, the owner of the land shall make repairs to restore the road layout not later than ten (10) days after being directed to do so by the Building Inspector or the security posted will be forfeited and applied to the cost of said repairs and the owner will be responsible for any cost in excess of the security. The Building Inspector shall have the right, for cause, to extend the ten (10) day time limit imposed hereunder for additional ten (10) day periods.

§174-24 Explanation of symbols used in Table of Use Regulations:

A. **Explanations.**

1. A use listed in §174-25 is permitted as of right in any district under which it is denoted by the letter "Y," subject to such requirements as may be specified elsewhere in this chapter.

2. A use or change of use which is denoted in §174-25 by the letters "PR" may be permitted as of right subject to the provisions of Subsection B and to such other requirements as may be specified elsewhere in this chapter.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004

3. A use which is denoted in §174-25 by the "SP" is permitted as a special exception only if a Special Permit is granted by the Planning Board or Board of Appeals, as applicable, pursuant to the provisions of Subsection C and is furthermore subject to such other requirements as may be specified elsewhere in this chapter.

4. A use or change of use which is denoted in §174-25 by the letters "PR/SP" shall be permitted as a special exception only if a Special Permit is granted by the Planning Board or Board of Appeals, as applicable, pursuant to the provisions of Subsection C, except that if such use or change of use does not involve construction of a building or addition containing more than one thousand (1,000') square feet of gross floor area, it shall be permitted as of right subject to the provisions of Subsection B and such other requirements as may be specified by this chapter. However, construction, additions or land alteration involving a nonconforming use may be allowed only as a special exception by the Board of Appeals
History: Amended 10-1-1990 ATM, Article 4, approved by Attorney General 2-18-1990.

History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

5. Absence of any designation on the table in §174-25 means that the use listed is not permitted, except as provided under §174-24.J.
History: Amended 10-17-2005 ATM, Article 22, approved by Attorney General 3-7-2006.

B. Where a use is denoted in §174-25 by the letters "PR," it shall be subject to a plan review as follows or, at the choice of the applicant, it shall otherwise require a Special Permit subject to the procedures of Subsection C.

1. The applicant shall submit a request for a plan review to the Building Inspector on an application form determined by the Building Inspector, along with sufficient plans and documentation to fully describe the proposed use and/or structure and its site. A minimum of eight (8) copies of such plans and documentation shall be submitted, along with any fees that may be established by the Board of Selectmen for such plan review. Upon submission of an application he determines to be complete, the Building Inspector shall file a notice of the date of said complete filing with the Town Clerk. Unless the proposal is the subject of a Special Permit application for which a public hearing has been advertised, the applicant shall also transmit, by registered or certified mail, a notice of said application to any direct abutters (as they appear on the most recent applicable tax assessment list) and to the owners of any residence or non-residential structure any portion of which lies within three hundred (300) feet of that portion of the structure or site which is the subject of the plan review and shall provide receipts for said mailings to the Building Inspector.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

2. The Building Inspector shall forthwith transmit copies of such application, plans and documentation to the members of the Plan Review Committee established under Section 174-48.1
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

3. The Plan Review Committee shall review said plans with regard to those items related to the fields of expertise of its members and to determine whether they are consistent with applicable state and town regulations, bylaws and plans and will not adversely affect public health or safety, will not significantly decrease surface or groundwater quality or air quality, will not have a significant adverse impact on wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties and will not destroy or disrupt any species listed as rare endangered or threatened by the Massachusetts Natural Heritage Program or any known historic or archaeological site. A determination shall be made by the Committee that the application may be approved, that the application may be approved subject to certain specified conditions or changes, that the application shall be denied for certain specified reasons or that additional specific information is required. Unless an extended review period is agreed to in writing by the applicant failure to make said determination within 21 days shall be considered an approval with no conditions or changes. Any decision of the Committee shall be filed thereafter with the Building Inspector and recorded with the Town Clerk. In those cases where the Committee is acting in an advisory capacity to the Planning Board or Zoning Board of Appeals regarding a Special Permit application, the Committee shall forward its determination forthwith to said Board. The determination of the Committee will not substitute for, or otherwise eliminate the need for, any permits required under other provisions of the chapter or required from the departments or Boards represented by the members of the Committee.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

4. Where it is determined that additional specific information is required, the Building Inspector shall forthwith notify the applicant that said information is required. The applicant shall submit such information to the Building Inspector, who shall transmit it to the Committee. The Committee shall review said information and again make its determination within twenty one (21) days of the submission of all of the required information or be deemed to have recommended approval of the application with no further conditions or changes. The applicant is encouraged to confer directly with any of the Committee members requiring additional information to ensure the sufficiency of any response thereto.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

5. Any Building Permit, Occupancy Permit or other applicable permit for the use, structure or site which is the subject of the plan review application may be approved by the Building Inspector only if it is consistent with this Zoning Bylaw, the Building Code and other applicable codes and regulations and if the Committee recommends approval of the plan review application without conditions or changes or approves by default. Where conditions, changes or denial are recommended, the applicant shall be provided an opportunity to amend application to comply. When any application is amended, it shall again be transmitted for review by the Committee following the procedures of Subsection B(3) above, and no application may be approved and no permits may be issued until the Committee recommends approval of the amended application.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

6. Should an application be denied or should the applicant choose not to comply with any recommended conditions or changes, the applicant may choose to apply instead for a Special Permit from the Board of Appeals subject to the procedures of Subsection C.

C. **Special Permit use.**

1. Uses and developments allowed under the provisions of Article IX shall be permitted as a special exception only if the Planning Board so determines and grants a Special Permit therefor. Any other uses denoted in §174-25 by the letters "SP," or by the letters "PR/SP" where construction of a building or addition containing more than one thousand (1,000') square feet of gross floor area is involved, shall be permitted as a special exception only if the Planning Board so determines and grants a Special Permit therefor, except that for nonresidential uses not involving new structures containing more than ten thousand (10,000') square feet of gross floor area not located in the C-3 district or Mashpee Center Overlay District and not involving a site greater than five (5) acres in area, or expansions which do not result in a total of more than ten thousand (10,000') square feet of gross floor area on a site or residential conversions under §174-25A(8) or for other uses specified by the General Laws for review by the Board of Appeals, such use shall be permitted as a special exception only if the Board of Appeals so determines and grants a Special Permit therefor.
History: Amended 10-1-1990 ATM, Art. 4, approved by Attorney General 12-18-1990.
History: Amended 10-7-2002 ATM, Art. 22, approved by Attorney General 11-27-2002.

2. A Special Permit may be issued only following the procedures specified by the General Laws and may be approved only if it is determined that the proposed use or development is consistent with applicable state and town regulations, statutes, bylaws and plans, will not adversely affect public health or safety, will not cause excessive demand on community facilities, will not significantly decrease surface or groundwater quality or air quality, will not have a significant adverse impact on

wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties, will not cause excessive levels of noise, vibrations, electrical disturbance, radioactivity or glare, will not destroy or disrupt any species listed as rare, endangered or threatened by the Massachusetts Natural Heritage Program or any known historic or archaeologic site, will not produce amounts of trash, refuse or debris in excess of the town's landfill and waste disposal capacities, will properly dispose of stumps, construction debris, hazardous materials and other waste, will provide adequate off-street parking, will not cause excessive erosion or cause increased runoff onto neighboring properties or into any natural river, stream, pond or water body and will not otherwise be detrimental to the town or the area.

3. In all cases involving a Special Permit, the application shall include a site plan showing at least the location of buildings on the site (meaning the entire lot on which the proposed use or development is located) and within one hundred (100') feet of the site, existing and proposed wells and septic systems, existing roadways, wetlands, water-courses and significant slope or other natural features, proposed parking, drainage utilities and landscaping and other proposed features. In addition, the application shall indicate any portions of the site which lie within the areas mapped as High Sensitivity or Moderate Sensitivity on the maps of Pre-Contact and Post-Contact Archaeological Sensitivity included in the Final Technical Report of the Archaeological Reconnaissance Survey prepared for the Town of Mashpee be The Public Archaeological Laboratory, Inc. and dated December 2011. For applications to the Planning Board, a plan showing topography at a maximum of two-foot contour interval shall also be required. In addition, traffic studies, water-quality impact reports, environmental impact reports, fiscal impact reports and similar items may be required along with those other specific items required by §174-46 and §174-47.
History: Amended 10-20-2014 ATM, Article 14, approved by Attorney General 1-22-2015

4. For applications to the Board of Appeals, at least eleven (11) copies of all application materials shall be submitted, of which one (1) shall be transmitted to the Design Review Committee and eight (8) shall be transmitted to the members of the Plan Review Committee. Where the application involves structures proposed to be located in tidal areas or waterways, copies shall also be submitted for review by the Shellfish Commission, Harbormaster and Waterways Commission. The Board of Appeals shall consider any comments of the Design Review Committee, Plan Review Committee, Conservation Commission, Shellfish Commission, Harbormaster and other town officials and boards in making its decision, provided that such comments are received at or before the required public hearing.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004.

5. For applications to the Planning Board, at least fourteen (14**)** copies of all application materials shall be submitted, unless additional copies are required elsewhere in this chapter. Where additional copies are not otherwise required by Article IX to be submitted by an applicant to town officials, the Board shall transmit copies to the, Mashpee Water District Commission, Sewer Commission, Design Review Committee, and each of the members of the Plan Review Committee, where the application involves tidal areas or waterways, shall also notify the Shellfish Constable and Harbormaster of the application and that copies may be viewed at the office of the Town Planner. The Planning Board shall consider any comments received from the above-named officials and boards in making its decision, provided that such comments are received at or prior to the required public hearing.

History: Amended 5-8-1989 STM, Article 13, approved by Attorney General 8-10-1989.
History: Amended 10-7-2002- ATM, Article 17, approved by Attorney General 11-30-2002.
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004

6. Special Permits shall only be issued following a public hearing held within sixty five (65) days, but not less than twenty one (21) days, after the filing of an application which conforms in form and content to the requirements of this section, including all required plans, supporting documents and abutters' lists and any other application requirements established by the Special Permit granting authority, with the Town Clerk. The required number of copies of such application, including the date and time of filing certified by the Town Clerk and including the required plans, documents and abutters' lists noted above, shall be then filed forthwith by the petitioner with the Special Permit granting authority.
History: Amended 5-8-1989 STM, Article 2, approved by Attorney General 8-10-1989.
History: Amended 5-3-1993 ATM, Article 8, approved by Attorney General 7-19-1993.

7. An application for a Special Permit may be approved, approved with conditions or denied. Conditions may include, but are not limited to, requirements for traffic or pedestrian improvements required to mitigate or accommodate the impacts of the proposed use, housing for persons of low or moderate income, open space buffers or screening to mitigate off-site impacts, reduced lawn or paving areas, water quality monitoring programs and other measures to prevent water quality impacts, water or sewer lines in anticipation of connection to public systems within a reasonable period of time, landscaping, development phasing requirements, requirements for surety bonding to insure compliance and completion of proposed improvements and other items deemed necessary to protect the public health and safety or minimize impacts on community facilities, services and character or on neighboring properties and their occupants.
History: Amended 5-7-1990 STM, Article 8, approved by Attorney General 11-19-1990.

8. Any Special Permit hereinafter granted shall lapse within two (2) years from the grant thereof, or within a shorter period of time if specified in the decision of the approval granting authority, which shall not include such time required to pursue or await the determination of an appeal under MGL C. 40A, §17, if a substantial use thereof has not sooner commenced except for good cause or in the case of a permit for construction, if construction has not begun buy such date except for good cause.

9. Special Permits which have not lapsed under the provisions of Subsection (8) above may be modified by the original Special Permit granting authority, with any vote requiring approval of four (4) of five (5) Planning Board Members or Zoning Board of Appeals as follows:
History: Added 5-1-2000 ATM, Article 36, approved by Attorney General 8-7-2000.
History: Amended 5-2-2005 ATM, Article 18, approved by Attorney General 10-14-2005.

   (a) Minor changes to the site plan of the permitted project, such as landscaping, signage, shape location of buildings, architectural details, lot lines or roadway facilities, may be approved by the Special Permit granting authority under the terms of the zoning bylaw as it applied to the grant of the original Special Permit, provided that said changes do not violate the terms of said zoning bylaw, the terms or conditions of the original Special Permit decision or the provisions of Subsection (2) above and that they do not require approval under the process described in (b) or (c).

(b) Any proposed change to the site plan of a project which, in combination with previous modifications, if any, increases the square footage of residential or non-residential structures by more than five percent (5%), increases the land area occupied by any use by more than five percent (5%), or which the Special Permit granting authority believes may potentially impact abutting land owners, may be approved by vote of the Special Permit granting authority only after a public hearing following the requirements of Subsections (2) through (7) above, provided that it otherwise conforms with the provisions of this subsection.

(c) Any proposed change to the text of a Special Permit decision, except references to a dated site plan amended under the provisions of (a) above, may be approved by vote of the Special Permit granting authority only after a public hearing following the requirements of Subsections (2) through (7) above, provided that it otherwise conforms with the provisions of this subsection.

(d) Any modification under (b) above which involves only modifications to the site plan of the permitted project, such as landscaping, signage, shape and location of buildings, architectural details, lot lines or roadway facilities but which, in combination with previous modifications, if any, does not increase the square footage of residential or non-residential structures by more than ten percent (10%) or increase the land area occupied by any use by more than ten percent (10%), may be approved only if it continues to conform with the zoning bylaw applicable to the land at the time of the original Special Permit approval.

(e) Any other modification under (b) or (c) above may only be approved if the proposed modification is in conformance with the applicable provisions of the zoning bylaw as it applies to the land involved at the time of approval of said modification. For the purposes of this subsection, the portion or portions of the project to be modified, may be separated from the remainder of the originally permitted project, provided that the portion not modified continues to conform, as a separate entity, with the zoning bylaw applicable to the land at the time of the original approval and that the portion or portions to be modified conform, as a separate entity, with the terms of the zoning bylaw as it applies to the land at the time of approval of said modification, except that any requirement for a perimeter buffer area contained in the applicable zoning for either portion need not be required between said portions.

(f) No modification may increase the number of dwelling units in a project or increase the maximum rate of development allowed by the original Special Permit.

(g) A modification under (b) or (c) above may expand the land area covered by said Special Permit; provided that all uses, dimensions and other aspects of proposed development within the expanded area are in conformance with the provisions of the zoning bylaw applicable to the land at the time of approval of said modification, and provided that the original Special Permit granting authority has authority to approve said proposed uses and development under the provisions of the zoning bylaw applicable to the expanded land area at the time of approval of said modification, except that, for a cluster subdivision or multi-family

development previously approved by the Planning Board, the Board may approve a modification expanding the land area of the project under the provisions of the zoning by-law applicable to the original Special Permit approval, provided that there is no increase in the number of dwelling units allowed by said Special Permit nor any decrease in the area of protected open space.
History: Amended 10-17-2005 ATM, Article 23, approved by Attorney General 3-7-2006.

D. Any use, whether or not in the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit, provided that the Planning Board or Board of Appeals, as applicable, pursuant to the provisions of §174-24C or §174-45.1, finds that the proposed accessory use does not substantially derogate from the public good.
History: Amended 10-1-1990 ATM, Article 4, approved by Attorney General 12-18-1990.

E. Plan review approvals issued under Subsection B shall not expire until such time as the project is altered or, if zoning is changed before a Building Permit is issued, for one (1) year from the date of the zoning change.

F. Changes in plans approved under Subsection B may be authorized by the Building Inspector without refiling, provided that they do not include a change of use and provided that deviations do not include building footprint increases or increases in impervious cover of more than ten percent (10%) or one hundred (100') square feet, whichever is less, and provided that, in the opinion of the Building Inspector, they are in substantial conformance with the originally approved proposal.

G. Notwithstanding any other provisions of this chapter, no new school, hospital, theater or place of public assembly shall be erected or permitted within the Otis A.N.G.B. Accident Prevention Zone as shown on a map entitled "Otis A.N.G. B. Accident Prevention Zone" and dated January 1987, which map is on file in the office of the Town Clerk and which shall be considered part of this Zoning Bylaw. In addition, no portion of any structure located within said zone may exceed thirty-five (35') feet in height, measured from the highest natural grade of the site at the foundation line.

H. In addition to the uses specified in the Table of Use Regulations for I-1 Industrial zones, the following additional uses may be allowed, subject to issuance of a Special Permit by the Planning Board, within said zones, providing that there shall be no direct driveway access from the parcel on which said use is located, or from said parcel across any other parcel, to Route 28 which was not in existence on January 1, 2001.
History: Amended 10-1-2001 ATM, Article 14, approved by Attorney General 1-16-2002.
History: Amended 10-19-2009 ATM Article 12, approved by Attorney General 1-26-2010.

1. Those uses listed in the Table of Use Regulations in Subsections A(6), B(7), B(8), B(14), B(18), B(20), F(2) and F(5), and I(13);
History: Amended 5-5-2003 ATM, Article 25, approved by Attorney General 8-27-2003.
History: Amended 10-19-2009 ATM Article 12, approved by Attorney General 1-26-2010.

2. Places for retail or wholesale sales of furniture, major household appliances, carpeting, stone and masonry supplies, plumbing supplies, doors and windows, lumber, glass and mirrors and electrical supplies (but not including televisions and similar electronic products, and not including "home improvement" centers or other large retail establishments with over forty thousand (40,000') square feet of gross floor area),
History: Amended 10-1-2001 ATM, Article 14, approved by Attorney General 1-16-2002.

3. Automatic teller machines;

4. Other retail establishments which will not generate greater than three hundred (300) annual average vehicle trip ends on any day of the week per acre of total site area, (when considered in combination with all other uses on the property) based on trip generation rates published by the Institute of Transportation Engineers or other evidence determined to be conclusive by the Planning Board.
History: Added 10-4-1999 ATM, Article 27, approved by Attorney General 1-11-2000.
History: Amended 10-1-2001 ATM, Article 14, approved by Attorney General 1-16-2002.

I. Notwithstanding the uses specified in § 174-25 Table of Use Regulations or the provisions of any other section of this Chapter, the following uses are prohibited within the Mashpee Center Overlay District:

1. Parking facilities located at the front of any lot facing Main Street (Route 130) or Great Neck Road North. Parking shall only be allowed to the side or rear of the principal structure on such lots.

2. Those uses specified in §174-25 Subsections D(5), E(7), E(8), F(1), F(2), F(6) and F(7).

3. Any drive-in or drive-through window or similar facility associated with a restaurant or any other business establishment.
History: Added 10-4-1999 ATM, Article 29, approved by Attorney General 1-11-2000.

J. Medical Marijuana Treatment Centers/Registered Marijuana Dispensary

By vote at the State Election on November 6, 2012, the voters of the Commonwealth approved Ballot Question 3 authorizing legislation regulating the cultivation, distribution, possession and use of marijuana for medical purposes and the establishment of Medical Marijuana Treatment Centers. Said law became effective on January 1, 2013.

The Commonwealth has adopted regulations implementing said law under 105 CMR 725.000. Subsection 725.004 defines Medical Marijuana Treatment Center as "a not-for-profit entity registered under 105 CMR 725.000, to be known as a registered marijuana dispensary (RMD) that acquires, cultivates, possesses (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), processes, transfers, transports, sells, distributes, dispenses, or administers marijuana products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana." An MIP as defined by Subsection 725.004 is a "Marijuana-Infused Product" meaning 'a product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils and tinctures." 105 CMR 725.100(A)(4) also provides that an RMD may have two (2) locations if marijuana will be cultivated or MIPs will be prepared at any location other than the dispensing location of the proposed RMD.

105 CMR 725.000 contains additional definitions and regulations relative to the registration, establishment, operations and regulations of such Centers/Dispensaries, as well as "hardship cultivation registration" by the Massachusetts Department of Public Health. Nothing in this Chapter is intended to regulate or prohibit uses or activities under a "hardship cultivation registration".

105 CMR 725.600 provides that a RMD shall comply with all local rules, regulations, ordinances, and bylaws and that nothing in 105 CMR 725.000 shall be construed so as

to prohibit lawful oversight and regulations including fee requirements, that does not conflict or interfere with the operation of 105 CMR 725.000. Pursuant to those provisions, the following standards shall apply to Medical Marijuana Treatment Centers/Registered Marijuana Dispensaries proposed for approval under this Zoning Bylaw.

1. Any such Center/Dispensary shall require approval of a Special Permit for said use, pursuant to the provisions of §174-24. Any application for such Special Permit shall include all plans and other materials required under §174-24 and under Special Permit regulations adopted by the applicable Special Permit granting authority, including a detailed floor plan of the premises that identifies the square footage available and describes the functional area of the Center/Dispensary and, if applicable, such information for the single allowable off-premises location, if located in Mashpee, where marijuana will be cultivated of MIPs will be prepared. If two (2) locations are involved, both shall be located in an I-1 Industrial Zoning District and each shall require a separate Special Permit. The Special Permit granting authority for a second location where marijuana will be cultivated or MIPs will be prepared shall be based on the size of the facility, as provided in §174-24 C.1.

2. If the Center/Dispensary is proposed to be located in an existing building or commercial center, a separate Special Permit shall be required for said Center/Dispensary, in addition to that previously approved for the building or commercial center, which may also serve as a modification of the previously-approved Special Permit. In such situations, the Special Permit granting authority which approved the most recent Special Permit, if any, for the existing building or commercial center, shall be the Special Permit granting authority for the proposed Center/Dispensary.

3. Any such Center/Dispensary shall not be located within five hundred (500') feet of a public or private kindergarten, primary or secondary school, a place of worship, a day nursery, nursery school, etc. as listed in §174-25 B.(10) or a public park or playground. No other specific separation requirements will apply.

4. Any such Center/Dispensary shall be compliant with requirements of the Americans with Disabilities Act (ADA) Accessibility Guidelines and the regulations of the Massachusetts Architectural Access Board.

5. No such Center/Dispensary may be approved for operation, or remain in operation, without a certificate of registration issued by the Massachusetts Department of Public Health. Should said certificate not be renewed, or be revoked, the Special Permit shall lapse and the Center/Dispensary shall be closed forthwith. The certificate of registration shall be posted in a conspicuous location inside the premises at each approved location.

6. Any such Center/Dispensary shall be compliant at all times with the security measures required by 105 CMR 725.000. A description of such measures, including any updates, shall be provided to the Mashpee Police Department, along with after-hours contact information. Security measures shall be implemented to deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana, and to protect the premises, registered qualifying patients, persona caregivers, and dispensary agents of the Center/Dispensary. Security measures shall include sufficient lighting of the outside perimeter of the Center/Dispensary to facilitate surveillance. In addition, notwithstanding any other provisions of the

Chapter regarding required landscaping or vegetated buffers, trees, bushes and other foliage located on the site outside the Center/Dispensary shall be located (or removed) so they do not allow for a person or persons to conceal themselves from sight within fifty (50') feet of any entrance or any parking spaces designated to be utilized by registered qualifying patients, personal caregivers, and dispensary agents of the Center/Dispensary.

7. Storage of marijuana shall be in compliance with 105 CMR 725.105(D) and cultivation, production, preparation, transport or analysis shall be done in a manner to prevent diversion, theft or loss. All phases of the cultivation of marijuana shall take place in designated, locked, limited access areas that are monitored by a surveillance camera system in accordance with 105 CMR 725.110(D)(1)(d)-(i). Inside the Center/Dispensary, all marijuana and MIPs shall be kept in a limited access area inaccessible to any persons other than dispensary agents, with the exception of displays allowable under 105 CMR 725.105(L)(10). Inside the Center/Dispensary, all marijuana shall be stored in a locked, access-controlled space in a limited access area during non-business hours.

8. Any such Center/Dispensary shall adopt emergency procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies, copies of which shall be filed with the Mashpee Police and Fire Departments.

9. External signage shall not be limited except for a period of thirty (30) minutes before sundown until closing, and shall comply with the provisions of Article X of this bylaw, except that only one (1) building sign and one (1) freestanding sign shall be allowed, neither of which may exceed ten (10') square feet in signboard area (freestanding sign may be two (2) sided, with each side limited to ten (10') square feet, or may be included in a ladder sign or similar sign identifying the business within a multi-tenant property). Neon or other internally-lit signage is prohibited at all times. Pursuant to 105 CMR 725.000, signage may only identify the Center/Dispensary by its Massachusetts DPH registered name and there shall be no display on the exterior of the facility of any advertisements for marijuana or any brand name, nor any graphics related to marijuana or paraphernalia.

10. Marijuana, MIPs and associated products shall not be displayed or clearly visible to a person from the exterior of the Center/Dispensary. No more than one (1) sample of each product offered for sale may be displayed in secure, locked cases, which may be transparent, in the interior of the Center/Dispensary.

11. Parking requirements for a Center/Dispensary shall be those applicable to retail establishments for that portion of the floor designated for sales, and to manufacturing or other industrial buildings for floor area designated for storage or for cultivation of marijuana or preparation of MIPs.

History: Added 5-6-2013 ATM, Article 18, approved by Attorney General 10-28-2013.
History: Amended 10-21-2013 ATM, Article 22, approved by Attorney General 12-16-2013.

K. Where a use is not specifically listed in the §174-25 Table of Use Regulations, said use may be allowed if a finding is made by the Zoning Board of Appeals that said use may be allowed in a specific district on the basis that it is substantially similar in its construction, operation, traffic and environmental impact to a specific use allowed as of right or by Special Permit in said district and it is substantially dissimilar in those respects from any uses prohibited in the district. Where the Zoning Board of Appeals cannot make a clear determination, such uses shall be considered prohibited. No use specifically listed in the Table of Use Regulations shall be allowed by the Zoning Board of Appeals in any district where it is prohibited. In reviewing an application for a finding under this

subsection, the procedure applicable for a Special Permit shall be followed by the applicant and the Zoning Board of Appeals, although the finding itself shall not constitute a Special Permit as defined by the general laws and this by-law. Where the use to which he Board determines the proposed use is similar requires a Special Permit or approval under the Plan Review process, any development including said use shall then require approval from the board specified under the provisions of §174-24 C or by the Plan Review Committee under the provisions of §174-24 B, as appropriate.

History: Added 10-17-2005 ATM, Article 22, approved by Attorney General 3-7-2006.
History: Amended 5-6-2013 ATM, Article 18, approved by Attorney General 10-28-2013

§ 174-25 Table of Use Regulations

Table of Use Regulations

§ 174-25 Following is the Table of Use Regulations:

History: Amended 10-7-2002 ATM, Article 22, approved by Attorney General 11-27-2002.

Type of Use		Residential		Commercial			Industrial
		R-3	R-5	C-1	C2	C-3	I-1
A. Principle residential uses.							
(1)	Detached dwelling on a separate lot occupied by not more than one (1) family	Y	Y	--	--	--	--
(2)	Two-family or duplex dwelling (allowed under §174-46, Open Space incentive Development, and under Sub-section A (8) below). **Amended 3-23-1987 STM, Article 15 approved by Attorney General 1-25-2010.**	SP	SP	SP	SP	SP	SP
(3)	Attached dwelling or townhouse (allowed only under §174-46, Open Space incentive development) **Amended 3-23-1987 STM, Article 15 approved by Attorney General 1-25-2010.**	SP	SP	SP	SP	SP	SP
(4)	Mixed residential use (allowed only under §174-46 Open Space incentive development). **Amended 3-23-1987 STM, Article 15 approved by Attorney General 1-25-2010.**	--	--	SP	SP	SP	SP
(5)	Apartment building or garden apartments (allowed only under §174-46, Open Space incentive development). **Amended 3-23-1987 STM, Article 15 approved by Attorney General 1-25-2010.**	SP	SP	SP	SP	SP	SP
(6)	Motels and hotels. (See §174-45) **History: Amended 5-7-90 STM, Article 9, approved by Attorney General 11-19-2000.**	--	--	SP	SP	SP	--
(7)	Renting of not more than two (2) rooms in an existing dwelling to not more than four (4) Persons, provided that there are not separate cooking facilities	Y	Y	Y	Y	SP	--
(8)	Accessory apartment, subject to the provisions of §174-45.4.	SP	SP	--	--	--	--
(9)	The storage of one (1) travel trailer or camping trailer, provided that it not be used for human habitation while so stored, and further provided that the location of such storage shall not be within any setback requirements.	PR	PR	--	--	--	--
(10)	Manufactured home park or subdivision	--	--	--	--	--	--
(11)	Manufactured home on a lot of land for residence only by the owner and occupier of a residence destroyed by fire situated on said lot for a period not to exceed twelve (12) months from the date of the fire while the residence is being built.	Y	Y	--	--	--	--
(12)	Accessory dwelling (allowed under §174-46, Open Space Incentive Development). **History: Amended 10-1-1990 ATM, Article, approved by Attorney General 12-18-1990.**	SP	SP	SP	SP	SP	SP

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C-2**	**C-3**	**I-1**
(13)	Bed-and breakfast home with up to three (3) guest rooms in addition to the owner's residence; may be combined with other uses allowed in the district **History: Added 5-3-1993 ATM, Article II, approved by Attorney General 7-19-1993; History: Amended 10-4-1993 ATM, Article 29, approved by Attorney General 10-18-1993.**	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	--
(14)	Bed-and-breakfast establishment with up to nine (9) guest rooms in addition to the owner's residence; may be combined with other uses allowed in the district. **History: Added 5-3-1993 ATM, Article II, approved by Attorney General 7-19-1993; Amended 10-4-1993 ATM, Article 29, approved by Attorney General 10-18-1993.**	--	--	PR/SP	PR/SP	PR/SP	--
(15)	Congregate care or assisted living facilities, subject to the issuance of a Special Permit under the provisions of §174-45. History: **History: Added 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001. History: Amended 10-15-2007 ATM, Article 19, approved by Attorney General 1-28-2008.**	--	--	SP	SP	SP--	--
(16)	Personal kennel**.** **History: Added 10-15-2007 ATM, Article 18, approved by Attorney General 1-28-2008.**	--PR	PR	PR	PR	PR	PR
B. Principle institutional and educational uses							
(1)	Place of worship	Y	Y	Y	Y	Y	Y
(2)	Religious, sectarian and nonsectarian denominational, private or public school not conducted as a private business for gain	Y	Y	Y	Y	Y	Y
(3)	Governmental buildings and related or supporting facilities and uses.	Y	Y	Y	Y	Y	Y
(4)	Cemeteries	PR	PR	PR	PR	--	PR
(5)	Public park or playground, public recreational building or facility	PR	PR	PR	PR	--	PR
(6)	Public utilities, subject to Special Permit approval except for services to individual lots except when located within a road layout. **History: Amended 10-5-1998 ATM, Article 34, approved by Attorney General 1-4-1999.**	SP	SP	SP	SP	--	SP
(7)	Private nonprofit libraries or museums	PR	PR	PR	PR	--	--
(8)	Private nonprofit community center building, settlement house, adult education or similar facility, provided that indoor or outdoor noisy activities shall be not less than one hundred (100) feet from any lot line and shall not be detrimental to the neighborhood by reason of noise in any season	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	--
(9)	Hospital, infirmary, nursing home, convalescent home. (see §174-45) **History: Amended 5-7-199- TM, Article 9, approved by Attorney General 11-19-1990.**	--	--	SP	SP	SP	--

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(10)	Day nursery, nursery school, kindergarten or other agency giving day care to children, provided that any outdoor play area is screened by fence, wall or planting line from any neighboring residential structure and is not detrimental to the neighborhood by reasons of noise. **History: Amended 5-11-1987 ATM, Article. 8, approved by Attorney General 10-13-1987. History: Amended 10-4-1993 ATM, Article. 25, approved by Attorney General 10-18-1993.**	PR	PR	PR	PR	--	PR
(11)	Trade, professional or other school conducted as a private business for gain	--	--	SP	SP	PR/SP	Y
(12)	Private nonprofit membership or social club or lodge	SP	--	SP	SP	SP	Y
(13)	Miniature golf, swimming, tennis or another recreational facility of a similar nature not operated as a business gain. **History: Amended 10-4-1999, ATM, Article 26, approved by Attorney General 1-11-2000.**	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	--
(14)	Outdoor recreation facilities such as driving range, practice greens, pitch and putt golf course, miniature golf course, baseball or softball batting cages, tennis courts, basketball courts, softball fields and similar facilities operated as part of a business for gain, but not including water slide parks, go-cart tracks or similar amusement facilities which would generate traffic, noise, or other impacts which would have a significant adverse effect on adjacent roadways or properties. **History: Amended 10-7-2002 ATM, Article 22, approved by Attorney General 11-27-2002.**	--	--	SP	SP	SP	--
(15)	Golf driving range operated as a business for gain, with access only from Main Street (Route 130) if located in an I-1 industrial zoning district. **History: Added 5-4-1998 ATM, Article 33, approved Attorney General 8-12-1998.**	--	--	SP	SP	SP	SP
(16)	Expansion of commercial camp ground in existence on October 5, 1998, by not more than 33% in area **History: Added 10-5-1998 ATM, Article 26, approved by Attorney General 1-4-1999.**	--	PR	--	--	--	--
(17)	Golf course subject to the provisions of §174-47.1. **History: Added 10-4-1999 ATM, Article 26, approved Attorney General 1-11-2000.**	SP	SP	SP	SP	SP	SP

Type of Use		Residential		Commercial			Industrial
		R-3	R-5	C-1	C2	C-3	I-1
(18)	Indoor recreation facilities such as bowling alleys, miniature golf, batting cages, computerized golf or similar simulated sports, video games, billiards, aerobics, health clubs, dance or gymnastics studios, skating rinks, indoor go kart facilities, swimming pools, tennis or racquet clubs etc. by Special Permit from the Planning Board. **History: Added 10-7-2002 ATM, Article. 22, approved by Attorney General 11-17-2002. History: Amended 10-19-2009 ATM Article 13, approved by Attorney General 1-26-2010**	---	---	SP	SP	SP	---
(19)	Live theatre or concert hall and related facilities, by Special Permit from the Planning Board. **History: Added 10-7-2002 ATM, Article 22, approved by Attorney General 11-17-2002.**	---	---	SP	SP	SP	---
(20)	Limited concession, clubhouse, function room and similar facilities related and secondary to the outdoor and indoor recreation and entertainment facilities allowed under subsections 14, 15, 18, 19 above, but not operated as a full service or separate restaurant and/or function facility. **History: Added 10-7-2002 ATM, Article 22, approved by Attorney General 11-17-2002.**	---	---	SP	SP	SP	--
(21)	Movie theatres. **History: Added 10-7-2002 ATM, Article. 22, approved by Attorney General 11-17-2002.**	---	---	SP	SP	---	---
C. Principle agricultural uses.							
(1)	Farms: agricultural, or horticultural or silvicultural	Y	Y	Y	Y	Y	Y
(2)	Farms: livestock or poultry, but not swine, provided that any building housing livestock or poultry is not less than one hundred fifty (150) feet from the property boundary.	Y	Y	Y	Y	Y	Y
(3)	One (1) roadside stand per farm for the sale of agricultural, floricultural, viticultural or horticultural products, the major portion of which are grown or produced on the premises. **History: Amended 10-7-1991 ATM, Article 25, approved by Attorney General 2-3-1992.**	Y	Y	Y	Y	Y	Y
(4)	Agricultural activities other than the raising or housing of livestock, swine or of poultry where more than twenty four (24) birds are kept. **History: Added 10-7-1991 ATM, Article 25, approved by Attorney General 2-3-1992.**	Y	Y	Y	Y	Y	Y

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(5)	The raising or housing of livestock for sale or profit, but not swine, or of poultry where more than twenty-four (24) birds are kept on a parcel of land containing less than five (5) acres, provided that any building housing livestock or poultry is not less than fifty (50) feet from the property boundary. **History: Added 10-7-1991 ATM, Article 25, approved by Attorney General 2-3-1992.**	SP	SP	SP	SP	SP	SP
D. Principle office and laboratories							
(1)	Business, financial, professional or governmental offices, but no retail business, no manufacturing and no processing.	--	--	PR/SP	PR/SP	PR/SP	PR/SP
(2)	Offices and clinics for medical, psychiatric or other health services for the examination or treatment or persons as out-patients, including laboratories that are part of such offices or clinics.	--	--	PR/SP	PR/SP	PR/SP	PR/SP
(3)	Laboratory, research or software development facility, including limited assembly and packaging of items such as software, hand-held monitoring instruments or laboratory equipment, with shipping and receiving only by postal or package delivery service. **History: Amended 10-16-2006 ATM, Article 25, approved by Attorney General 2-13-2007.**	--	--	PR/SP	PR/SP	PR/SP	PR/SP
(4)	Radio or television studio	--	--	PR/SP	PR/SP	PR/SP	PR/SP
(5)	Radio or television transmission facility, but not studios	--	--	SP	SP	--	SP
(6)	Renewable or alternative energy research and development (R&D) facilities, provided that no hazardous materials are stored in quantities greater than permitted by other sections of this bylaw, subject to approval by the Plan Review Committee and Design Review Committee. **History: Added 10-19-2009 ATM Article 15, approved by Attorney General 1-26-2010**	--	--	--	--		PR
E. Principle retail business and consumer service establishments.							
(1)	Store for retail sale of merchandise, provided that all display, storage and sales of materials are conducted within a building and there is no manufacturing or assembly on the premises.	--	--	PR/SP	PR/SP	--	--
(2)	Eating places serving food and beverages to be consumed within the building.	--	--	PR/SP	PR/SP	SP	--
(3)	Stores for sales of marine supplies and associated items, including boats and trailers.	--	--	PR/SP	PR/SP	PR/SP	--

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(4)	Service business serving local needs, such as barbershops, beauty shops, shoe repair, self-service laundry or dry cleaning or pickup agency.	--	--	PR/SP	PR/SP	PR/SP	--
(5)	Marinas, including sales and repair of boats and related supplies.	SP	SP	--	SP	--	--
(6)	Mortuary, undertaking or funeral establishments.	--	--	PR/SP	PR/SP	PR/SP	--
(7)	Veterinary establishment, commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, veterinary kennel, animal day care or similar establishment, provided that animals are housed wholly indoors, except for exercise runs or yards approved by the Special Permit granting authority. **History: Amended 10-16-2006 ATM, Article 26, approved by Attorney General 2-13-2007. History: Amended 10-15-2007 ATM, Article 18, approved by Attorney General 1-28-2008.**	--	--	SP	SP	SP	SP
(8)	Store for retail sale of merchandise such as, but not limited to, lumberyards and building supply yards, wherein merchandise is stored in the open, provided that all merchandise so stored is screened from ground level view from any abutting street or abutting property at the property line where such materials are stored.	--	--	SP	SP	--	--
(9)	Outdoor flea market	--	--	SP	SP	--	--
(10)	Commercial center. (Subject to the provisions of §174-45.1) **History: Added 10-1-1990 ATM, Article 4, approved by Attorney General 12-18-1990.**	--	--	SP	SP	SP	SP
(11)	Adult entertainment uses (subject to the provisions of §174-45) shall be allowed only in C-1 and C-2 zones subject to the following setback requirements: 500 feet from the boundary of any residential zoning district 1,000 feet from any school buildings, and 1,500 feet from any other existing adult entertainment use as defined by this zoning by-law. The distances specified shall be measured by a straight line of the premises of the proposed adult entertainment use to be located to: the nearest boundary line of a residential zoning district, building line of any school, or the nearest property line of an existing adult entertainment use. **History: Added 5-4-1998 ATM, Article 32, approved by Attorney General 8-12-1998. History: Amended 10-7-2002 ATM, Article 22, approved by Attorney General 11-30-2002.**	--	--	SP	SP	--	--

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(12)	Retail establishments which will not generate greater than 300 peak daily trips per acre of total site area, per day, (When considered in combination with all other uses on the property) bases on trip generation rates published by the Institute of Transportation Engineers or other evidence determined to be conclusive by the Planning Board. **History: Added 10-7-2002 ATM, Article 22, approved by Attorney General 11-17-2002.**	---	---	SP	SP	SP	---
(13)	Places for retail or wholesale sales of furniture, carpeting, stone and masonry supplies, plumbing supplies, doors and windows, lumber, glass and mirrors and electrical supplies (but not including televisions and similar electronic products, and not including "home improvement" centers or other large retail establishments with over 40,000 square feet of gross floor area). **History: [Added 10-7-2002 ATM, Article 22, approved by Attorney General 11-17-2002.**	---	---	SP	SP	SP	---
(14)	Automatic teller machines. **History: Added 10-7-2002 ATM, Article 22, approved by Attorney General 11-17-2002.**	---	---	PR	PR	PR	PR
(15)	Pub Brewery or Brew Pub. **History: Added 5-4-2015 ATM, Article 19, approved by Attorney General 8-11-2015**			SP	SP	SP	
F. Principle automotive service and open-air drive-in retail service							
(1)	Gasoline service stations	--	--	SP	SP	--	--
(2)	Sale or rental of automobiles, boats and other motor vehicles and accessory storage.	--	--	SP	SP	SP	--
(3)	Automobile repair shops, provided that work is carried out within the building. **History: Amended 5-3-2004 ATM Article. 12, approved by Attorney General 8-23-2004.**	--	--	SP	SP	SP	SP
(4)	Car washing establishments	--	--	SP	--	--	--
(5)	Sales places for flowers, garden supplies, agricultural produces partly or wholly outdoors, including commercial greenhouses.	--	--	PR/SP	PR/SP	PR/SP	--
(6)	Drive-in banks	--	--	SP	SP	--	--
(7)	Drive-in eating places and other consumer service establishments where the motorist does not have to leave his car or where food is normally consumed outside the building.	--	--	SP	--	--	--
(8)	Place for exhibition, lettering or sale of gravestones	--	--	PR/SP	PR/SP	PR/SP	--
G. Principle industrial, wholesale and transportation uses							
(1)	Laundries and dry-cleaning plant	--	--	--	--	--	SP
(2)	Printing, binding, publishing and related arts and trade	--	--	--	--	--	SP
(3)	Bottling of beverages	--	--	--	--	--	SP

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(4)	Plumbing, electrical or carpentry shop or other similar service or repair establishment. **History: Amended 10-7-2002 ATM Article 22, approved by Attorney General 11-30-2002.**	--	--	SP	SP	SP	PR/SP
(5)	Place for manufacturing, assembly or packaging goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor is effectively confined to the premises or is disposed of in a manner that does not create a nuisance or hazard to safety or health.	--	--	--	--	--	SP
(6)	Wholesale business and storage in a roofed structure.	--	--	SP	SP	SP	SP
(7)	Trucking terminals	--	--	--	--	--	SP
(8)	Extractive industries	--	--	--	--	--	SP
(9)	Wholesale business and storage	--	--	--	--	--	SP
(10)	Processing and packaging coffee	--	--	--	SP	SP	SP
(11)	Screen printing, embroidery and other crafts related to the embellishment of garments produced elsewhere. **History: Added 10-4-1999 ATM, Article 31, approved by Attorney General 1-11-2000.**	--	--	SP	SP	SP	SP
(12)	Self-storage warehouses, including one residence for an on-site caretaker. No out-side storage shall be allowed. Except for permitted signs and one (1) access driveway involving clearance of a path of no more than forty (40) feet in width, any land within one hundred (100) feet of any roadway layout shall be left as wooded buffer area in its natural state. Where such area is not naturally wooded, it shall be suitably planted with sufficient trees and understory vegetation, of a type common in natural areas of Mashpee, to replicate a naturally wooded area and to constitute a visual barrier between the proposed development and the roadway. **History: Added 10-2-2000 ATM, Article 34, approved by Attorney General 1-12-2001. History: Amended 12-9-2002 STM, Article 12, approved by Attorney General 2-19-2003.**	--	--	--	--	SP?	SP
(13)	Contractor Yard. Storage, PODS and the like are not permitted. **History: Added 10-19-2009 ATM Article 14, approved by Attorney General 1-26-2010**	--	--	--	--		SP
(14)	Contractor Bay **History: Added 10-19-2009 ATM Article 14, approved by Attorney General 1-26-2010**	--	--	--	--		SP
(15)	Microbrewery. **History: Added 5-4-2015 ATM, Article 19, approved by Attorney General 8-11-2015**			SP	SP	SP	SP

Type of Use		Residential		Commercial			Industrial
		R-3	R-5	C-1	C2	C-3	I-1
H. Other principal uses.							
(1)	Any trade, industry or other use that is noxious, offensive or hazardous by reason of vibration or noise or the emission of odors, dust, gas, fumes, smoke, cinders, flashing of excessively bright light, refuse matter or electromagnetic radiations.	--	--	--	--	--	--
(2)	Signs or advertising devices, except as permitted by this chapter.	--	--	--	--	--	--
(3)	Open lot storage or sale of junk or salvaged materials.	--	--	--	--	--	--
(4)	Any use hazardous to health because of danger of flooding, inadequacy of drainage or inaccessibility to firefighting apparatus or other protective service.	--	--	--	--	--	--
(5)	Sand or gravel pit, where sand or gravel are mined or excavated specifically for sale or off site use and not in conjunction with permitted construction on the site. No such operation may remove all said materials to a depth closer than 7 feet to the average groundwater table. Any such operation shall be revegetated to essentially recreate its original natural state upon completion of operations. The permitting authority may place a time limit on the completion of said operation and on required revegetation and may require that sufficient security be deposited to ensure completion of said revegetation. **History: Added 10-2-2000 ATM, Article 30, approved by Attorney General 1-12-2001.**	--	--	--	--	--	SP
(6)	**§174-25.H.(6) History: Deleted 10-17-2005 ATM, Article 22, approved by Attorney General 3-7-2006.**	---	---	---	---	---	---
(7)	Private one or two-car garage, greenhouse, or dock as a principle use where the lot cannot be developed with a principle residential use, provided that there be no commercial use or storage, no sanitary facilities, no storage outside of buildings, that no structure exceed fifteen (15) feet in height and that all applicable setbacks and lot coverage requirements are met and approved, that a Special Permit for such use is approved by the Board of Appeals. **History: Added 10-4-1993 ATM, Article 27, approved by Attorney General 10-18-1993.**	SP	SP	--	--	--	--
(8)	Parking lot which is not accessory to another principle use on the same lot, subject to Special Permit approval by the Planning Board. **History: Added 5-4-1998 ATM, Article 39, approved by Attorney General 8-12-1998.**	--	--	SP	SP	--	SP

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(9)	Personal wireless services facilities, subject to the provisions of §174-45.3. **History: Added 10-5-1998 ATM, Article 35, approved by Attorney General 1-4-1999.**	SP	SP	SP	SP	--	SP
(10)	Parking or storing for more than 30 days of tracked/tired material handling and earth moving vehicles and other construction equipment and any other vehicles not eligible for unrestricted travel over public roads, or of over-the-road trailers, storage/shipping containers, temporary free-standing buildings or construction trailers or similar construction –related equipment, on any residentially-zoned parcel for which a Building Permit has not been received or has lapsed, or on a non-residential property on which a Building Permit has not been received or has lapsed or on which said or storage has not been specifically permitted by the Town, or parking or storage for more than 30 days of said vehicles or equipment within a public or private street layout which is not actively under construction pursuant to a subdivision approval or other valid permit issued by the Town or the Commonwealth. **History: Added 10-17-2005, ATM, Article 16, approved by Attorney General 3-7-2006.**	---	---	---	---	---	---
(11)	Land-based wind energy conversion facilities, subject to approval of a Special Permit by the Planning Board under provisions of Section 174-45.5 **History: Added 10-5-2007 ATM, Article 22, approved by Attorney General 1-28-2008.**	SP	SP	SP	SP	SP	SP
(12)	Ground-mounted Solar Photovoltaic systems, including, but not limited to, systems of two hundred fifty (250) kW or above, provided that neighboring properties are effectively protected from any significant adverse impacts from glare, that any such systems are properly fenced or otherwise secured, and that no hazardous materials are stored in quantities greater than permitted by other sections of this bylaw, subject to approval by the Plan Review Committee and Design Review Committee. **History: Added 10-19-2009 ATM Article 16, approved by Attorney General 1-26-2010**	--	--	--	--		PR
(13)	Medical Marijuana Treatment Center, also known as Registered Marijuana Dispensary, subject to the provisions of 105 CMR 725.000 and the provisions of §174-24 J. and other relevant sections of this bylaw. **History Added 10-21-2013 ATM, Article 22, approved by Attorney General 12-16-2013+**						SP

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
I. Accessory uses							
(1)	Private garage for use of the residents. **History: Amended 10-7-1996 ATM, Article 31, approved by Attorney General 2-9-1996.**	Y	Y	Y	Y	Y	Y
(2)	Not more than one (1) commercial vehicle per lot, not to exceed two (2) tons capacity. **History: Amended 10-7-1996 ATM, Article 31, approved by Attorney General 12-9-1996.**	Y	Y	Y	Y	Y	Y
(3)	Private greenhouse, stable, tennis court, swimming pool or other similar building or structure for domestic use. **History: Amended 10-7-1996 ATM, Article 31, approved by Attorney General 12-9-1996.**	Y	Y	Y	Y	Y	Y
(4)	The raising or keeping of animals, livestock or poultry, but not swine, as pets or for use by residents of the premises, provided that no building or enclosure for any animal may be less than forty (40) feet from side or rear lot line nor nearer than fifty (50) feet to any front lot line. **History: Amended 10-7-1996 ATM, Article 31, approved by Attorney General 12-9-1996.**	Y	Y	Y	Y	Y	Y
(5)	Customary home occupation or the office of a resident physician, dentist, attorney at law, architect, engineer, or member of other recognized profession similar to the aforementioned, or the studio of a painter, sculptor or similar professional artist, provided that not more than three (3) persons shall practice or be employed on the premises at any one (1) time. **History: Revised 10-7-1996 ATM, Article 31, approved by Attorney General 12-12-1996.**	PR	PR	PR	PR	--	PR
(6)	The use of a portion of a dwelling or accessory building hereto by a resident builder, carpenter, painter, plumber, mason or other artisan or by a resident tree surgeon or land-space gardener for incidental work and storage in connection with his off-premises occupation, provided that there is no external change which alters the residential appearance of the building **History: Revised 10-7-1996 ATM, Article 31, approved by Attorney General 2-12-1996.**	PR	PR	PR	PR	--	PR
(7)	Restaurant, beauty shop, barbershop or newsstand inside a building for the use of the primary occupants of the building, provided that there is no exterior evidence of same and further provided that an apartment complex contain not fewer than fifty (50) rental units, or, in the case of a condominium, not fewer than fifty (50) units.	SP	SP	Y	Y	--	Y
(8)	Private ways for access through Commercial District C-2 or C-3 to Industrial District I-1 subject to compliance with applicable laws and regulations. **History: Amended 10-7-2002 ATM, Article 22, approved by Attorney General 11-27-2002.**	--	-	--	SP	SP	--

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(9)	Fixed and floating piers, wharves, docks, boardwalk, both seasonal and year-round, subject to the securing of all necessary permits from the town, state and federal government agencies having jurisdiction over inland and /or coastal waterways and wetlands. Any dock proposed to extend across a total of more than seventy (70) feet of coastal beach, coastal bank, salt marsh or bordering vegetated wetlands, all as defined in 310 CMR, and/or coastal wetlands, freshwater wetlands, swamps or marshes, all as defined in MGL Chapter 131, §40, shall require a Special Permit from the Zoning Board of Appeals. All other docks will be permitted as of right. When a Special Permit is required, the applicant shall, at the time of filing a plan with the Board of Appeals, submit copies of said plan to the Conservation Commission, the Shellfish Commission, the Waterways Commission and the Harbormaster. Prior to the granting of any such Special Permit, the Board of Appeals shall consider comments and recommendations from the Conservation Commission, the Shellfish Commission, the Waterways Commission and the Harbormaster. Failure by any of the aforementioned to comment may be interpreted as approval of the proposal. The Board shall not grant the Special Permit if the structure will unduly interfere with free passage of travel by water or land or cause or contribute to the substantial disruption or degradation, through direct or indirect impacts, including uses allowed by said structure, on the marine or coastal environment. The applicant shall bear the burden of proof when questions exist about the proposal's contribution to environmental damage. **History: Amended 5-4-1987 STM, Article 12, approved by Attorney General 8-17-1987. History: Amended 10-20-2008 ATM, Article 18, approved by Attorney General 2-11-2009.**	SP/Y	SP/Y	SP/Y	SP/Y	SP/Y	SP/Y
(10)	Outdoor dining shall be allowed in commercial districts as an accessory use to an allowed eating place serving food and beverage, provided that visual screening shall be required in any area abutting a residential zone. Such screening shall consist of a solid fence, wall or mature hedge or other screen type planting of such height as to screen any diners from view from the said residential zone.	--	--	PR	PR	--	--

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(11)	Premises within nonresidential zones may be used for parades, carnivals, fairs or festivals, provided that such uses shall not be conducted for any period in excess of ten (10) consecutive days and all necessary licenses and permits are obtained from the Board of Selectmen and other applicable government officials in accordance with town, state and federal law.	--	--	Y	Y	Y	--
(12)	Manufactured home as construction office. Upon issuance of a Special Permit, a manufactured home or trailer may be used a construction site for a period of not more than six (6) months, except that the Building Inspector may extend the permission for addition six-month successive periods while construction is continuing. The manufactured home or trailer may be used and occupied by a resident guard or caretaker, provided that it is connected to a septic system and water supply as approved by the Board of Health.		PR	PR	PR	--	PR
(13)	Temporary sales of Christmas trees, provided the sales shall not be conducted before Thanksgiving or after December 31, and all trees, signs and temporary structures shall be set back a minimum of forty (40) feet from all streets and shall be removed within ten (10) days after the close of the sale. **History: Amended 10-19-2009 ATM Article 13, approved by Attorney General 1-26-2010**		--	PR	PR	--	--
(14)	Common driveways. The Planning Board may issue a Special Permit for a driveway to be used by two (2) or more primary structures or lots, including structures in attached residential developments, provided that no more than four (4) lots may be accessed by such common driveway, that no common driveway may be used to, or considered to, satisfy zoning frontage requirements where usable practical access is not available across the approved or proposed street frontage of said lots or is otherwise not permitted, that no common driveway to separate lots may exceed two hundred (200) feet in length or such greater length as may be approved by the Planning Board, that no common driveway may be less than fourteen (14) feet in width and that it otherwise conforms to all of the standards established for streets in the Subdivision Rules and Regulations adopted by the Planning Board, unless waived by said Board. The length, width and other construction standards specified above shall apply only to that portion of a driveway which is used in common by more than one (1) lot, primary structure or residential unit.	SP	SP	SP	SP	SP	SP

Type of Use		Residential		Commercial			Industrial
		R-3	**R-5**	**C-1**	**C2**	**C-3**	**I-1**
(15)	Factory outlet store as part of a manufacturing or assembly facility where the major portion of items for sale have been produced on the site or by the firm occupying the facility and where gross floor area of the store does not exceed forty (40%) of gross floor area of the manufacturing or assembly facility with which it is associated. **History: Added 10-7-1991 ATM, Article 17, approved by Attorney General 2-3-1992. History: Amended 10-4-199- ATM, Article 24, approved by Attorney General 1-11-2000.**	--	--	--	--		SP

§174-25.1 Standards for Development in C-3 Districts:

History: Added 10-7-2002 ATM, Article 22, approved by Attorney General 11-27-2002.

1. A minimum of forty percent (40%) of the site shall be left in its undisturbed natural state.

2. No building shall exceed twenty thousand (20,000') square feet of gross floor area, except that a Congregate Care of Assisted Living Facility of less two (2) stories or less shall not exceed fifty thousand (50,000') square feet of gross first floor area.
History: Amended 10-21-2013 Article 20, amended by Attorney General 12-16-2013.

3. No more than one (1) driveway access may be permitted onto any parcel from an adjacent Town or state roadway. Unless prohibited by topographic, wetland or traffic safety conditions which, in the opinion of the Planning Board, it is not feasible to overcome any driveway access to the site shall be located where the side line of the property intersects such roadway in order to facilitate shared driveway access with existing or future development on the adjacent property. Where a parcel has access available from a paved public or private way other than Routes 28, 151, or 130 or from Great Neck Road, or where it would be feasible to obtain an access easement from such other way, no direct driveway access will be permitted from Routes 28, 151 or 130 or from Great Neck Road North or South.

4. Except for driveway access to the site approved by the Planning Board and notwithstanding any other provisions of this chapter, any structures, clearing or other development on the site shall be located at least one hundred (100') feet from any residentially zoned parcel outside of the District and there shall be a one hundred (100') foot buffer area left in its undisturbed natural state adjacent to any residentially zoned parcel outside this District. Depth of said buffer or building setback may be reduced to fifty (50') feet for lots of less than two (2) acres in area upon a favorable vote of the Planning Board after review and recommendation to the Board by the Design Review Committee. The owners of such residentially zoned parcel shall be notified by certified mail at least fourteen (14) days in advance of any meeting which the Planning Board is to consider such a reduction in the buffer area or building setback.

5. Signage, lighting and any noisy or odorous activities shall be located so as not to have any significant adverse impact on adjacent or nearby residentially zoned parcels.

6. Off-street parking facilities shall only be allowed to the side or rear of the principal building on any lot. Where the lot fronts on Route 28, 151, or 130 or Great Neck Road North or South, shall be considered the front for the purposes of this subsection. Where more than one (1) building is to be located on a lot, the Planning Board shall determine which is to be considered the principal building. For sites which front on more than one of the roads named above, the Planning board shall determine which road or roads will constitute the front of the purposes of this subsection.

§174-26 Growth management:

A. **Development phasing -** Within any year, Building Permits may be issued for new dwellings on no more than twenty percent (20%) of the lots in any subdivision approved by the Mashpee Planning Board under the Massachusetts Subdivision Control Law (the most recent such plan applicable to the lot shall apply), or twenty percent (20%) of the lots shown on a plan of land not requiring subdivision approval recorded after May 11, 1987 (but at least one (1) such lot for any contiguous land which was in common ownership on said date and subsequently divided), or twenty percent (20%) of the approved dwelling units in any other type of residential or mixed-use development under

a Special Permit. Such limit shall not apply to any other preexisting and otherwise buildable lot. In the case of fractional numbers greater than one-half (1/2), the number of permits issued may be rounded upward.
History: Amended 10-4-1999 ATM, Article 25, approved by Attorney General 1-11-2000.

B. **Building Permit limits.**

1. Notwithstanding the provisions of Subsection A, within any year the number of new dwelling units for which Building Permits may be issued shall not exceed ninety (90). Said total shall not include any dwelling units exempted from the provisions of this section by Subsection C. below.
History: Amended 10-4-1999 ATM, Article 23, approved by Attorney General 1-11-2000.

2. Within any calendar month, Building Permits for new dwelling units may be issued for not more than ten percent (10%) of the number of new dwelling units allowed during that year under Subsection B(1). Within said limit, the actual number of permits issued shall be at the discretion of the Building Inspector, provided that the annual limit specified by Subsection B(1) is not exceeded.

C. **Exemptions.**

1. The provisions of this section shall not apply to open space incentive developments approved under §174-46, developments approved prior to May 11, 1987, under an unexpired Special Permit which included a specific annual phasing schedule, dwellings legally restricted to occupancy by persons aged fifty five (55) or over in conformance with Massachusetts General Laws and applicable regulations, public housing developed by the Mashpee Housing Authority or low- or moderate-income housing units as defined by the Massachusetts Department of Communities and Development (or a successor agency) for this area, provided that sufficient written documentation is submitted as part of the Building Permit application showing that said units are to be restricted, by a recorded document, to sale, lease or rental as such low- or moderate-income rates (as updated by the above agency) for a period of not less than twenty (20) years, and except that this section shall also not apply to Special Permits protected, or lots in subdivisions temporarily protected, from the provisions of this section by MGL C. 40A, §6.
History: Amended 10-4-1999 Article 23, approved by Attorney General 1-11-2000.

2. The provisions of this section shall not apply to nonresidential structures or foundations, accessory structures or alterations, reconstruction or additions which do not create a new dwelling unit, but shall apply to residential foundation permits.

D. **Administration.**

1. The Building Inspector shall compile and keep up-to-date a listing of all subdivisions, Special Permit projects and other lands which are exempt or protected temporarily from the provisions of this section, either under Subsection C or under any applicable provisions of Massachusetts General Laws, and the date on which any temporary protection will expire.

2. The Building Inspector shall determine prior to January 15 of any calendar year the number of existing dwelling units in the town on, plus any dwelling units for which Building Permits were issued by, December 31 of the previous year which have not expired. On the basis of that information and the provisions of Subsection B (1) he shall determine the number of dwelling units not exempted by Subsection C which may be issued permits during said calendar year.

3. Applications for Building Permits for new dwelling units may be filed only during the first fifteen (15) days of any month. However, no such permits will be approved until after the fifteenth (15th) day of the month to allow proper review and determination of the order of priority in which they may be issued. Permits which are exempted by Subsection C or temporarily protected by Massachusetts General Laws from the provisions of this section or permits for those persons described in Subsection D(4)(a) below may be applied for or issued at any time.
History: Amended 5-3-1993 ATM, Article 9, approved by Attorney General 7-19-1993.

4. In issuing Building Permits, the Building Inspector shall first determine that the application and proposed structure conforms to the rules and regulations of the Board of Health, with any applicable building codes and with this Zoning Bylaw, including the provisions of this section. For those applications which are in conformance and may otherwise be issued, Building Permits shall be issued, within the monthly limit, in the following order of priority:

   (a) **First**. Provided that the annual limit has not been exceeded, in the order of their receipt by the Building Inspector, applications for individual single-family dwellings by the legal owner of any lot on January 1 of the previous year who has not received a permit for a new residence in Mashpee during the previous twenty-four (24) months and who has documented, in writing to the Building Inspector his intention to be the exclusive resident on the premises for at least one (1) year "residence" being defined as occupation by the members of one (1) family for at least thirty (30) days in said year with no occupation or rental by other persons during that period.]

   (b) **Second.** Provided that monthly and annual limits have not been exceeded, in the order of their receipt by the Building Inspector, one (1) application in any month for a single-family dwelling by a licensed construction supervisor who has received no more than five (5) Building Permits for new residences in Mashpee in the previous twelve-month (12) period, except that, among such applications, structures not located within a Primary or Secondary Conservation Area shown on the most recently adopted first, then any others may be approved.

   (c) **Third.** Provided that the monthly and annual limits have not been exceeded, permits for any dwelling units for which permits were applied for in previous months but were not approved based on the provisions of this section may be approved, in the order of their receipt by the Building Inspector, up to the monthly and annual limits, except that among such applications, structures not located within a Primary or Secondary Conservation Area shown on the most recently adopted open space incentive plan shall be approved first, then any others may be approved.

   (d) **Fourth.** If after permits have been issued to all applicants in the first through third categories and the monthly and annual limits have not been reached, Building Permits may be issued to other applicants up the limits, in the order of their receipt by the Building Inspector, except that structures not located within a Primary or Secondary Conservation Area shown on the most recently adopted open space incentive plan shall be approved first, then any others may be approved.

5. An application shall be considered received by the Building Inspector only if it is complete it all aspects, conforms to all applicable building codes and this Zoning Bylaw and has received all necessary approvals from the Board of Health and, where necessary, the Board of Appeals and/or Conservation Commission. Upon receipt of any application, it shall be marked with the date and time of receipt.

6. If in any month Building Permits for fewer dwelling units are issued than are allowed by the limits of Subsection B(2), the difference between the limit and the actual number of dwelling units for which permits were issued may be added to the limit for the following month, except at the end of the calendar year.

7. Where a Building Permit is to expire, no more than one (1) six-month extension may be granted by the Building Inspector before an applicant shall be required to file for a new permit following the rules and procedures of this Article and other applicable laws and regulations.

§174-27 Water Quality Report:

A. As a part of any application for approval of a definitive subdivision plan [excluding plans which would divide any parcel shown on the 1985 Mashpee Assessors' Maps into five (5) or fewer lots or where proposed density of residential development would be less than one (1) unit per two (2) acres] or of a Special Permit requiring approval by the Planning Board, the applicant shall submit ten (10) copies of a water quality report regarding the proposed development. Said report shall be completed by a qualified firm, experienced in groundwater and surface water quality evaluation and in determining the impacts of land uses on receiving waters. One (1) copy of the report shall be transmitted for review and comment to the Board of Health.

B. The water quality report shall contain, at a minimum, the following information:

1. Whether or not the development lies
History: Amended -10-16-2006 ATM, Article 27, approved by Attorney General 2-13-2007.

(a) within a Groundwater Protection District (see Art. XIII),

(b) within a previously defined Zone II recharge area of an existing or proposed public water supply well,

(c) within three hundred (300') feet of the Santuit, Mashpee, Quashnet or Childs River, Quaker Run south of Route 28, Red Brook or any pond, bay or other surface water body or of any adjacent wetlands as defined by MGL C. 131, §40, or

(d) within the groundwater recharge zone of any great pond or bay or other surface water body over one (1) acre. (With regard to the groundwater recharge zones of surface water bodies, reference shall be made to the watershed and subwatershed delineations prepared by the U.S. Geological Survey and Cape Cod Commission for the Massachusetts Estuaries Project final reports entitled "Linked Watershed-Embayment Model to Determine Critical Nitrogen Loading Thresholds for Popponesset Bay, Mashpee and Barnstable, Massachusetts", dated September 2004, and Linked Watershed-Embayment Model to Determine Critical Nitrogen Loading Thresholds for the Quashnet River, Hamblin Pond, and Jehu Pond, in the Waquoit Bay System of the Towns of Mashpee and Falmouth, MA", dated January 2005. For other great ponds or bays, and surface water bodies

over one (1) acre, a map of the groundwater recharge zone shall be produced as part of the water quality report if it appears that the development may lie within the recharge zone of said water body, with said map to be based on the U.S. Geological Survey's regional groundwater model of the Sagamore flow cell, or more detailed modeling based on that model.

2. Whether or not the development will produce any hazardous or toxic materials [as defined in 314 CMR Section 3.02(21), (22) and (48)] or if such materials will be stored (upon completion of the development) on the site. If so, the report shall specify how such materials will be handled, stored or disposed and a determination of whether or not such materials will have any impact on public health or safety.
History: Amended -10-16-2006 ATM, Article 27, approved by Attorney General 2-13-2007.

3. Whether or not the development will cause any runoff of roadway drainage or runoff of sediment due to erosion into any surface water body, watercourse or wetland and if it will adversely affect any fishery, shellfish bed or other wildlife or aquatic vegetative resources.

4. A determination of the levels, in total pounds and in pounds per acre, of nitrogen and phosphorus that could be generated by the development. In making such determination, the following standards shall be used unless the applicant demonstrates to the satisfaction of the Board that other standards are applicable:
History: Amended 10-16-2006 ATM, Article 27, approved by Attorney General 2-13-2007.

   (a) **Residential wastewater loading:** 525 liters (139 gallons) per day (gbd) per residence (assumes 154 gpd water use and ninety per cent (90%) return flow as wastewater); total nitrogen 26.25 milligrams per liter (assumes Title 5 septic system and leach field); phosphorus one (1) pound per year per residence. Or loading per person: five (5) pounds nitrogen per person per year; four-tenths (0.4) pound phosphorus per person per year, assuming two and one-half (2.5) persons per dwelling unit.

   (b) **Non-residential wastewater loading**: For commercial and industrial developments, nitrogen and phosphorus calculations shall be derived from expected wastewater generation as specified by Title V of MGL C. 21A, §13.

   (c) **Loading from lawn fertilizer:** 1.08 pounds nitrogen and 0.0069 pound phosphorous per one thousand (1,000') square feet per year, with five thousand (5000') sq. ft. average lawn size assumed per lot in a single-family subdivision.

   (d) **Loading from stormwater:** 1.5 mg/l nitrogen for road runoff 0.75 mg/l for roof runoff and 0.072 mg/l for natural areas; or alternately, nine-hundredths (0.09) pound nitrogen per road mile per day. Phosphorous 0.00048 pound per road mile per day.

5. The existing condition of the receiving water body or water supply (existing or proposed), including physical characteristics and water chemistry. Data may be derived from the Massachusetts Estuaries Project final reports referenced in Section B(1)d. above and associated reports, or on more recent data acceptable to the Planning Board. Any new measurement of existing surface water quality must include sampling during summer (peak population) conditions. Measurements shall specifically include concentrations of nitrate and sodium in public water

supply wells, phosphorus in freshwater bodies and total nitrogen in saltwater bodies.
History: Amended 10-16-2006 ATM, Article 27, approved by Attorney General 2-13-2007.

6. The expected change in the condition of the water body or water supply as a result of the proposed development.

7. The comparison, on a total kilograms and a kilograms per-acre basis, of the total nitrogen loading from the proposed development with the TMDL (total maximum daily load) target nitrogen loading established for the sub-watershed in which the project is located by the Massachusetts Department of Environmental Protection.
History: Amended 10-16-2006 ATM, Article 27, approved by Attorney General 2-13-2007.

8. Test well completion reports and logs, including elevation of top of casing and static groundwater elevation based on United States Geological Survey datum, surveyed location based on the Massachusetts Coordinate Plane or true North and tied to an established roadway or property bound, water quality reports on levels of sodium, iron, manganese, chloroform, benzene, phosphorous, total chloroform bacteria, pH, conductivity, nitrate-nitrogen, carbon tetrachloride, lead, phenolics, PCB (1254), PCB(1260), Trichloroethylene, tetrachloroethylene and 1,1,1,-trichloroethane and depth ranges of the various soils and sediment layers found in development of each well. Unless the Board of Health recommends otherwise, such information shall be provided for at least two (2) pairs of test wells per ten (10) proposed lots or units or per ten (10) acres of commercial or industrial land to be developed [with one (1) well installed to a depth of six (6') feet below the groundwater table and one (1) installed to a depth of one hundred (100') feet below the ground surface], with such wells to be installed using PVC or other casing approved by the Board of Health with a protective locking cover grouted in place. No wells will be required for fewer than ten (10) lots or units or ten (10) acres of commercial or industrial land unless the Board of Health determines that there is sufficient cause to believe that there may be significant groundwater contamination present at the site. Such walls shall be installed at locations approved by the Board of Health and shall be left permanently in place for future water quality monitoring.
History: Amended 10-16-2006 ATM, Article 27, approved by Attorney General 2-13-2007.

C. No definitive subdivision plan or Special Permit subject to the provisions of this section may be approved by the Planning Board unless it has determined, after reviewing the water quality report and any comments from the Board of Health, that the proposed project will not have a significant adverse effect on public health or safety, aquatic vegetative resources, any fisheries or shellfish beds or other wildlife due to hazardous or toxic materials, roadway drainage or sedimentation or excessive nutrient levels. Where feasible, the Board shall ensure that the nutrient contribution of the proposed development, when added to the existing and potential nutrient level of other development and acreage within the specific recharge area, will not result in nutrient levels that exceed the receiving surface waters' critical eutrophic level or, in the case of well-recharge areas, nitrate-nitrogen concentrations in the well in excess of five (5) parts per million. It shall be the responsibility of the applicant to demonstrate that any proposed mitigating measures required to produce a negative determination regarding the above items will work as designed, and the Planning Board may require, as a condition of any approval, that the applicant or his successor demonstrate on an annual basis that said mitigating measures are operating satisfactorily. The Board may also require the submission of an appropriate performance bond to guarantee satisfactory operation of said mitigating measures, the development, implementation and funding of an appropriate water quality monitoring program to measure any impacts of the development or to safeguard the health of the development's occupants, or any other

measures they deem necessary to ensure no significant adverse impact on the items noted above.
History: Amended 5-7-1990 STM, Article 8, approved by Attorney General 11-19-1990.

§174-27.1 Development Agreements:

History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

A. **Purpose and Intent** - This bylaw enables the Town to enter into Development Agreements consistent with the provisions of the Cape Cod Commission Act and Chapter D - Code of Cape Cod Commission Regulations of General Application. The Act provides that such Development Agreements may be entered into so long as the Town's Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan and said certification has not been revoked.

B. In addition to the definitions contained in §174-3, the following shall apply to this section:

Development Agreement – a voluntary binding contract entered into among the Town and/or the Cape Cod Commission, and/or another municipality or municipalities within a development is proposed, a state agency or agencies and a holder of majority legal or equitable interest in the subject property or their authorized agent (Qualified Applicant). The principal purpose of the contract is to define the scope and substance of the proposed development.
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

Lead Community – Where the Commission is not a party, the Town or, where more than one (1) municipality is a signatory on a Development Agreement, the municipality that the involved municipalities agree shall be the Lead Community, or where the involved municipalities cannot agree on a Lead Community, the municipality having the largest area encompassed by the proposed development. The Commission, municipality(ies), state agency(ies), and Qualified Applicants may enter into a Development Agreement.
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

Qualified Applicant - A person who has a majority legal or equitable interest in the real property which is the subject of the Development Agreement. A Qualified Applicant may be represented by an authorized agent.

Participating Parties – Those entities who have been selected by a Qualified Applicant to consider a particular Development Agreement, including the Qualified Applicant, and a municipality(ies), and/or a state agency(ies).

C. **Who May Participate in a Development Agreement -** A Development Agreement may be executed by and between the Town, a Qualified Applicant and

1. the Cape Cod Commission; or

2. the Cape Cod Commission and another municipality or municipalities within which the development is proposed; or

3. the Cape Cod Commission and another municipality or municipalities within which the development is proposed and with a state agency or agencies; or

4. another municipality or municipalities within which the development is proposed; or

5. another municipality or municipalities within which the development is located and a state agency or agencies.

Those parties selected to participate are referred to within the Section as "Participating Parties.

D. **Negotiation and Execution of Development Agreements by the Town**
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

Development Agreements involving the Cape Cod Commission shall be negotiated and executed in accordance with Section 5 of Chapter D of the Code of the Cape Cod Commission Regulations of General Applications.
History: Added 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

1. Negotiation of the elements of a Development Agreement between Participating Parties (Subsection C.) and a Qualified Applicant shall follow all pertinent rules of due process currently required for public meetings, public hearings, and ratification of board decisions.

2. Negotiation of the elements of a Development Agreement between Participating Parties (Subsection C.) and a Qualified Applicant shall be led by the Planning Board or its designee, and may include representatives from other municipal boards, departments and commissions where said joint participation will assist the negotiation process. Upon completion of such negotiations, the Planning Board shall prepare a proposed Development Agreement and vote to recommend it to the Board of Selectmen for execution.

3. The Board of Selectmen may execute the Development Agreement or propose amendments and refer the Development Agreement back to the Planning Board for further action.

4. The Board of Selectmen or their designee shall be authorized to execute, on behalf of the Town, a Development Agreement. Prior to executing said Development Agreement, the Board of Selectmen shall, at a public meeting, vote to authorize said execution. The Board of Selectmen shall, within seven (7) days of the vote authorizing the execution of the Development Agreement, cause said Development Agreement to be so executed and forward the same to the Qualified Applicant by certified, return receipt mail. Within twenty-one (21) days of the date said Development Agreement has been mailed by the Board of Selectmen, the Qualified Applicant shall execute the agreement and return either by certified mail or hand delivery, the fully executed Development Agreement.

E. **Elements of Development Agreements.**
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

1. **Proffers by a Qualified Applicant**: A Development Agreement may include, but is not limited to, provisions whereby a Qualified Applicant agrees to provide certain benefits which contribute to one or more of the following: infrastructure; public capital facilities; land dedication and/or preservation; fair affordable housing, either on or off-site; employment opportunities; community facilities; recreational uses and/or any other benefit intended to serve the proposed development, the Town, another municipality or the county, including site design standards to ensure preservation of community character and natural resources.

2. **Proffers by a Lead Community:** A Development Agreement may include provisions whereby a Lead Community and/or an abutting municipality agree to provide certain protection from future changes in applicable local regulations and assistance in streamlining the local regulatory approval process. Streamlining may include, where not in conflict with existing local, state or federal law, holding of joint hearings, coordination of permit applications and, where possible, accelerated review of permit approvals. A Development Agreement may also provide for extensions of time within which development approvals under state, regional and local laws may be extended to coincide with the expiration of the Development Agreement established in Subsection G below. A Development Agreement shall vest land used development rights as described in Section 14(a) of the Cape Cod Commission Act and Section 7 of Chapter D of the Cape Cod Commission Regulations and General Application, as revised, for a period or periods specified in the Agreement. When the Town is not a party to a Development Agreement, then land use development rights shall not vest with regard to the Town's development bylaws and regulations. When the Commission is not a party to the Development Agreement, no land use development rights shall vest with respect to the Regional Police Plan, Commission regulations and decision and the property shall be subject to subsequent changes in the Commission regulations and decisions.

F. **Procedural requirements for Development Agreements where the Cape Cod Commission is a party to the Agreement.**
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

Where the Cape Cod Commission is to be a party to a Development Agreement, the procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Applications, as revised shall be followed and no such Development Agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.

G. **Procedural requirements for Development Agreements where the Cape Cod Commission is not a Party to the Agreement.**
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

1. Where the Cape Cod Commission is not to be a party to a Development Agreement, a Qualified Applicant shall complete a Development Agreement Application Form. The Development Agreement Application Form shall include:

   (a) A fully completed Cape Cod Commission Development Agreement Application Form, including a certified list of abutters prepared by the Assessors in the town or towns where the abutters are located;

   (b) A legal description and survey of the land subject to the agreement, along with the names of its legal and equitable owners;

   (c) The proposed duration of the agreement;

   (d) The development uses currently permitted on the land, and development uses proposed on the land including residential population densities, and building densities and height;

   (e) A description of public facilities that will service the development, including who shall provide such facilities, the date any new facilities will be constructed, and a schedule to assure public facilities adequate to serve

the development are available concurrent with the impacts of the development;

(f) A description of any reservation or dedication of land for public recreation, conservation, agricultural or historic purposes;

(g) A description of all local development permits needed for the development of the land;

(h) A statement acknowledging that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Qualified Applicant or Participating Parties of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;

(i) A Final Environmental Impact Report, certified as adequate by the Secretary of Environmental Affairs, if required under MGL Ch.30 §61-§62h.

(j) Additional data and analysis necessary to assess the impact of the proposed development as determined by the Planning Board, or where the Town is not the Lead Community, the appropriate body in said Lead Community.

2. All Qualified Applicants seeking to enter into a Development Agreement without the Cape Cod Commission as a party shall submit the proposed development to the Cape Cod Commission for a Jurisdictional Determination. If the Cape Cod Commission determines that the proposed development is not a Development of Regional Impact, then the Qualified Applicant may pursue a Development Agreement without the Cape Cod Commission as a party pursuant to Subsection G above. If the Cape Cod Commission determines that the proposed development is a Development of Regional Impact, then the Cape Cod Commission must be a party to the Development Agreement, in which case, the provisions of Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall apply. If the Commission determines that the proposed development is not a Development of Regional Impact, then the provisions of Subsections (3) through (10) below shall apply.

3. The Town, or when more than one (1) municipality is a party to the agreement, then the Lead Community, shall oversee the Development Agreement process as specified in this section. The Town/Lead Community shall hold a public hearing after receipt of a fully completed application from a Qualified Applicant for consideration of a proposed Development Agreement. At least one public hearing shall be held in (at least one of) the municipality(ies) in which the proposed development is located. The public hearing regarding review of a Development Agreement shall not exceed ninety (90) days, unless extended by mutual agreement of the parties. Failure to close the public hearing within ninety (90) days shall not result in a constructive grant of the proposed development.

4. When more than one (1) municipality is a party to the Agreement, the Lead Community shall oversee the Development Agreement process as specified in this section. Any conflicts between the Lead Community and other municipality(ies) which are a party to the Agreement shall be resolved through negotiation by the relevant parties. Because a Development Agreement is a voluntary process,

unresolved disputes may result in one or more parties making a determination not to remain a party to the proposed Development Agreement.

5. The Town/Lead Community shall provide notice of the public hearing to consider a Development Agreement by publication as required by Sections 5(d)(1-3) of the Cape Cod Commission Act and shall also provide notice to the Cape Cod Commission at least fourteen (14) days prior to such hearing.

6. The Qualified Applicant shall pay the cost of providing notice of the public hearing to consider the proposed Development Agreement.

7. The Town/Lead Community shall review proposed Development Agreements for their consistency with Local Comprehensive Plans. A Development Agreement that is inconsistent with local zoning shall require either a zoning amendment or shall be subject to the grant of such zoning relief as may be needed under the Zoning Bylaws of the Town as may be needed to resolve the inconsistency, unless the Development Agreement is approved by the same entity and the same quantum of votes as would be required to amend the Zoning Bylaw of the Town. Thereupon, any departure from zoning expressly and specifically authorized by the Development Agreement shall be deemed effective.

8. The Town/Lead Community shall file its Development Agreement with the Clerk of the Cape Cod Commission and with the town clerk(s) of the municipality(ies) in which the development is located. Notices of Development Agreements shall be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the contents of the Development Agreement and a statement that copies of the Development Agreement are available for public inspection at the Town Clerk's office during normal business hours of any municipality which is a party to the agreement. In addition, the Lead Community shall provide the Cape Cod Commission with a summary of the Development Agreement, which the Commission shall publish in its official publication pursuant to section 5(i) of the Cape Cod Commission Act.

9. The Town Clerks of the contracting Town or Town shall issue a certificate which certifies the effective date of the Development Agreement. The effective date of the Development Agreement shall be the date of recording at the Barnstable County Registry of Deeds. The certificate shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The Town or Lead Community shall record the certificate, to which the Development Agreement shall be attached as an exhibit, in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Clerk of the Cape Cod Commission within fourteen (14) days of such recording. The Qualified Applicant shall bear the expense of recording.

10. The Board of Selectmen, or the appropriate body in the Lead Community if it is not Mashpee, may establish the fees or charges imposed for filing and processing each application or document provided for or required under this section. Any other municipality or state agency which is also a party to the Development Agreement may establish additional fees and charges to be imposed for the filing and processing of each application and document provided for under Chapter D of the Code of Cape Cod Commission Regulations of General Applications.

H. **Limitations on, and duration of, Development Agreements.**

1. Nothing in this section may be construed to permit the Town to require a Qualified Applicant to enter into a Development Agreement.

2. A Development Agreement will commence upon the date of recording of the certificate(s) by the Clerk of the Cape Cod Commission or by the Town Clerk(s), as appropriate, and terminate as agreed by the parties, in writing, except as otherwise provided in this subsection and section 5(q) of Chapter D of the Cape Cod Commission Regulations of General Applications, as revised. Where the Cape Cod Commission is not a party, a Development Agreement shall not exceed ten (10) years. However, provisions in the Development Agreement pertaining to the preservation of open space and park areas, or agreement to pay for maintenance of utilities and other infrastructure, may exceed such ten-year limitation. Where the Cape Cod Commission is a party, a Development Agreement may extend for a longer period of time than that noted above, as set forth in Section 7 Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised.

3. A Development Agreement may not be used to prevent a Lead Community or other governmental agency from requiring a Qualified Applicant or Participating Party to comply with any laws, rules, regulations and policies enacted after the date of the Development Agreement, if the Lead Community or governmental agency determines that the imposition of, and compliance with, the newly effective laws and regulations is essential to ensure the public health, safety or welfare of the residents of all or part of its jurisdiction.

I. **Amendments and Rescission.**
History: Amended 10-17-2011 ATM, Article 19, approved by Attorney General 2-21-2012

A Development Agreement may be amended or rescinded by petition of a Participating Party as provided below. Requirements for hearings, notice, costs and filing and recording of the amendments and rescissions of Development Agreements shall be followed as provided in Sections 5 and 6 of Chapter D of the Cape Cod Commission Regulations of General Application, as revised.

1. **Minor Modification -** Amendments that are de minimis changes or technical corrections, as determined by both the Cape Cod Commission and/or the Planning Board (or the appropriate body in the Lead Community if it is not Mashpee) may be made without following the notice and public hearing requirements provided in Section F and G above. Where the Cape Cod Commission is a Participating Party, such changes may be authorized by the Regulatory Committee of the Cape Cod Commission and a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement.

2. **Major Modification -** When the Cape Cod Commission is a party to the Development Agreement, any party to the Development Agreement may petition to amend or rescind the Development Agreement. The Participating Parties may petition to rescind the Development Agreement; the Cape Cod Commission may petition to rescind the Development Agreement only in the event of failure of consideration. Such petition shall be made in writing, and shall state in detail the petitioner's reasons for amendment or rescission. The Petitioning Party shall provide notice to all parties to the Development Agreement.

When the Cape Cod Commission is not a party to the Development Agreement, any other party to the Development Agreement may petition the Town or Lead Community to amend or rescind the Development Agreement. The petitioning party shall provide notice to all parties to the Development Agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Cape Cod Commission with a copy of the petition seeking such amendment or rescission. When the Town or Lead Community initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the Agreement.

Where the Cape Cod Commission is a Participating Party, such changes may be authorized by the Cape Cod Commission and a majority vote of the Board of Selectmen, after review and favorable recommendation by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement. Where the Cape Cod Commission is not a Participating Party, such changes may be authorized by a majority vote of the Board of Selectmen, after review and favorable recommendations by the Planning Board, as well as by the appropriate vote or approval of all other parties to the original Development Agreement.

3. Any Development Agreement may contain provisions further regulating its amendment or recession.

J. **Enforcement -** A Development Agreement is a binding contract that is enforceable in law or equity by a Massachusetts court of competent jurisdiction. If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Town's zoning bylaw.
History: Amended 5-3-1999 ATM, Article 31, approved by Attorney General July 29, 1999.

§174-27.2 Stormwater Management

History: Added -5-3-1999, ATM, Article 45, approved by Attorney General 7-29-1999.

A. For any new residential or non-residential development requiring either subdivision approval, a Special Permit, plan review under the provisions of §174-24.B., or a Building Permit for a building over one thousand (1000') square feet in area a system of stormwater management and artificial recharge of precipitation shall be required which is designed to achieve the following purposes: prevent untreated discharges to wetlands and surface waters, preserve hydrologic conditions that closely resemble pre-development conditions, reduce or prevent flooding by managing the peak discharges and volumes of runoff, minimize erosion and sedimentation, not result in significant degradation of groundwater, reduce suspended solids, nitrogen, volatile organics and other pollutants to improve water quality and provide increased protection of sensitive natural resources.
History: Amended 10-4-1999, ATM, Article 32, approved by Attorney General 1-11-2000.

B. These standards may be met using the following or similar best management practices:

1. For new single or two-family residences, recharge shall be attained through site design that incorporates natural drainage patterns and vegetation in order to maintain pre-development stormwater patterns and water quality to the greatest extent possible. Stormwater runoff from rooftops, driveways and other impervious surfaces shall be routed through vegetated water quality swales, as sheet flow over

lawn areas or to constructed stormwater wetlands, sand filters, organic filters and/or similar systems capable of removing nitrogen from stormwater.
History: Amended 10-4-1999, ATM, Article 32, approved by Attorney General 1-11-2000.

2. For new subdivision roadways or for lots occupied or proposed to be occupied by uses other than single or two-family homes, a stormwater management plan which;

   (a) utilizes site planning and building techniques, such as minimizing impervious surfaces and disturbance of existing natural areas, pervious reserve or overflow parking areas, multi-level buildings, parking structures, "green roofs" and storage and re-use of roof runoff, to minimize runoff volumes and the level treatment required to reduce contaminants,

   (b) minimizes erosion and runoff from disturbed areas during construction and

   (c) provides for artificial recharge or precipitation to groundwater through site design that incorporates natural drainage patterns and vegetation and through the use of constructed (stormwater) wetlands, bioretention facilities, vegetated filter strips, rain gardens, wet (retention) ponds, water quality swales, organic filters or similar-site-appropriate current best management practices capable of removing significant amounts of nitrogen and other contaminants from stormwater. Said stormwater treatment facilities shall be designed and sized to retain up to the first inch of rainfall from their catchment area within the area designed for nitrogen treatment, before any overflow to subsurface leaching facilities and otherwise meet the Stormwater Management Standards and technical guidance contained in the Massachusetts Department of Environmental Protection's *Stormwater Management Handbook,* Volumes 1 and 2, dated March 1997, for the type of use proposed and the soil types present on the site. Such runoff shall not be discharged directly to rivers, streams, other surface water bodies, wetlands or vernal pools. Except for overflow from stormwater treatment facilities as described above and when there are no other feasible alternatives, dry wells shall be prohibited. Except when used for roof runoff from non-galvanized roofs and for runoff from minor residential streets, all such wetlands, ponds, swales or other infiltration facilities shall be preceded by oil, grease and sediment traps or forebays or other best management practices to facilitate control of hazardous materials spills and removal of contamination and to avoid sedimentation of treatment and leaching facilities. All such artificial recharge systems shall be maintained in full working order by the owner(s) under the provisions of an operations and maintenance plan approved by the permitting authority to assure that systems function as designed. Infiltration systems shall be located so that no part of any leaching system is located less than one hundred (100) feet from drinking water wells. Any infiltration basins or trenches shall be constructed with a three (3') foot minimum separation between the bottom of the leaching system and maximum groundwater elevation.
   History: Amended 10-4-1999, ATM, Article 32, approved by Attorney General 1-11-2000.
   History: Amended 10-16-2006. ATM, Article 24, approved by Attorney General 2-13-2007.

C. The Building Inspector shall require the submission of sufficient plans and specifications to demonstrate the location and nature of proposed stormwater facilities for development

under subsection B(1) and shall require their implementation. For development under subsection B(2), the permitting authority shall require the submission of sufficient plans and specifications to demonstrate the location, nature, operation and effectiveness of the proposed stormwater management facilities and practices and shall require their implementation and maintenance, including provisions for deed restrictions and other implementing provisions, as a condition of approval of the proposed development. No permit may be approved for a development unless the permitting authority determines in writing that the proposed system of stormwater management and artificial recharge will achieve the purposes described in Subsection A.

History: Amended 5-3-1999 ATM, Article 45, approved by Attorney General 7-29-1999.
History: Amended 10-4-1999, ATM, Article 32, approved by Attorney General 1-11-2000.

ARTICLE VII - Land Space Requirements

§174-28 Conformance Required:

A. No building or structure shall be built, nor shall any existing building or structure be enlarged or altered except in conformance with the regulations of this Zoning Bylaw as to lot coverage, lot area, land area per dwelling unit, lot width, front, side and rear yards and maximum height of structures in the several districts as set forth below except as may otherwise be provided elsewhere in this Zoning Bylaw.

B. Prior to proceeding with any new construction above the foundation, a registered land surveyor shall certify to the Building Inspector that the structure has been located on the lot in compliance with all land space requirements.

C. Where the fee ownership of a portion of a lot or parcel of land is acquired by the Town or Commonwealth of Massachusetts for roadway or utility purposes, whether by eminent domain taking or by other means (except trade of lands or purchase at full market value), the remainder of the land not acquired shall be treated, in calculating the land space requirements contained in this Article, as though that portion acquired by the Town were still included, except that maximum lot coverage may not be more than twice that allowed in the district and minimum front building setback from the new property line shall be twenty-five (25') feet unless a reduced setback is determined to be appropriate by the Planning Board in the case of construction requiring a Special Permit from the Board or by the Board of Appeals in the case of construction requiring a Special Permit from that Board or construction not requiring a Special Permit. Said determination shall be made as part of the Special Permit. Said determination shall be made as part of the Special Permit review process to permit said construction, or following the procedures required for a variance where no Special Permit is required. Before granting approval for such reduced setback, said Boards shall be required to determine that the grant thereof will not adversely affect public health or safety or the use of the land acquired by the town for its intended purposes. These provisions shall not apply where the Town has taken or accepted land for roadway or other purposes as the result of a petition or request of the owner(s) of the land.

History: Added 5-7-1990 STM, Article 24, approved by Attorney General 11-19-1990.
History: Amended 10-5-1998 ATM Article 37, approved by Attorney General 1-4-1999.

§174-29 Use of Land Required by other Uses:

The land and yard spaces required for any new building or use shall not include any land or area required by any other building or use to fulfill zoning requirements, nor shall it include any water or wetlands as defined by MGL C. 131, §40.

§174-30 Distance between Accessory Structures:

If more than one (1) building (other than a one (1), two (2)- or three (3) car garage, a tool shed, a greenhouse or a cabana) may lawfully be placed on any lot in a single or common ownership, the distance between the nearest parts of such buildings shall be not less than twenty (20’) feet.

§174-31 Land Space Requirements Table

History: Amended 5-8-1989, STM, Article 4, approved by Attorney General 8-10-1989.
History: Amended 10-7-1991 ATM, Articles 13 and 24, approved by Attorney General 2-3-1992.

Town of Mashpee - Land Space Requirements Table [9,10]

			Minimum Building Setback to Lot Lines [22]			Maximum Building Height[4,17,18,21]		
Zoning District	**Minimum Lot Size[12] (square feet)**	**Minimum Lot Frontage[1,2,13] (feet)**	**Front[3,5,6,19, 20,] (feet)**	**Rear[3,5, 19,23] (feet)**	**Side[3,5,19, 23] (feet)**	**(Stories)**	**(feet)**	**Maximum of Lot Coverage[16] (percent)**
Residence Districts								
R-3	40,000	150	40	15	15	2 1/2	35	20[5]
R-5	80,000	150	40	25	25	2 1/2	35	20[5]
Commercial Districts								
C-1	40,000	200	40[14]	40[8]	20[8]	2	35	25[5]
C-2	40,000	200	75[14]	20[5,8]	20[8]	2	35	20[5]
C-3[20]	40,000	200	75	20	20	2 ½	35	20
Industrial Districts								
I-1	40,000	200	75[11,15]	50	30[8]	2	35	25

Land Space Requirements Table Footnotes

1 For lots where any part of the front lot line is on an arc of a curve with a radius of three hundred (300) feet or less, lot frontage may be measured along a straight line connecting the points of intersection of the side lot lines with the minimum building setback line applicable to the lot under this bylaw.
History: Amended 10-7-1996, ATM, Article 29, approved by Attorney General 12-9-1996.

2 Not less than the frontage requirements shall be maintained throughout the front yard depth, except as provided for in Note 1 above.

3 On lots abutting streets or public ways on more than one (1) side, the front setback requirements shall apply to each of the abutting street and public ways. In the case of undefined ways, the measurements shall be taken from the center of the road and an additional twenty (20) feet shall be required.
History: Amended 10-2-2000 ATM, Article 33, approved by Attorney General 1-12-2001.

4 These height restrictions shall not apply to chimneys, water towers, skylights and other necessary features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy nor to wireless or broadcasting towers and other like unenclosed structures, except that when any structure or portion of a structure is proposed to exceed forty (40) feet in height, construction shall require a Federal Aviation Administration (FAA) Determination of No Hazard or evidence of exemption for the determination process. Other than for those items excepted above, height shall be measured from the average original grade of the land adjacent to the foundation line of any proposed structure (prior to the clearance of the natural vegetation from said site) to any applicable point on a structure. Except for a traditional widow's walk of up to one hundred (100) square feet in area, roof decks will be permitted only if located directly on top of the first or second story of any building.
History: Amended 10-16-2006 ATM, Article 30, approved by Attorney General 2-13-2007.

5 See Article IX regarding motels, attached dwellings and apartments.
History: Amended 12-9-2002 STM, Article 11, approved by Attorney General 2-19-2003.

6 A dwelling need not be set back more than the average of the setbacks of dwellings on the lots adjacent to either side. If a vacant lot exists on one (1) side, it shall be considered as a dwelling set back the depth of the required front yard.

[7] Except no requirement when the side of a building abuts another building.

[8] Except fifty (50) feet when abutting a residential zone (except residentially zoned land which is a part of the same parcel on which the industrial or commercial use lies and which cannot be later separated or developed for residential use).
History: Amended 5-8-1989 ATM, Article 4, approved by Attorney General 8-10-1989.

[9] Floodplain restrictions are set forth in Article XI.

[10.] All land space requirements shall apply to accessory uses.

[11.] Except that no building in any industrial district may be located within 150 feet of Routes 28 or 151.
History: Amended 5-5-2003 ATM, Article 26, approved by Attorney General 8-27-2003.

[12.] Any water or wetland as defined under MGL C. 131, §40, any existing or proposed street, any roadway right-of-way or easement twenty (20) feet or more in width or any overhead utility right-of-way or easement twenty (20) feet or more in width may not be counted toward minimum lot size requirements.
History: Amended 10-7-1991 ATM, Article 24, approved by Attorney General 2-3-1992.

[13.] Minimum lot frontage for lots fronting only on Routes 28 and 151 shall be six hundred (600) feet.

[14] No building may be located within 75 feet of Routes 28 and 151, Great Neck Road South and North or Route 130 west of Great Neck Road (except within the Mashpee Center Overlay District) and, except for permitted signs and one (1) access driveway involving clearance of a path no more than forty (40') feet in width, any land within fifty (50') feet of said roads shall be left as a wooded buffer area in its natural state, except that said area may be reduced by the Planning Board as part of its decision on a Special Permit approved under §174-45, §174-45.1 or §174-46. Where such area is not naturally wooded, it shall be suitably planted with sufficient trees and under story vegetation, of a type common in natural areas of Mashpee, to replicate a naturally wooded area and to constitute a visual barrier between the proposed development and the roadway. Under no circumstances will parking, retention ponds, or any other development involving natural vegetation be permitted within said area. Limited, appropriate tree surgery or similar limited maintenance required to protect the health of vegetation in this area may be allowed with the approval of the Special Permit authority which originally authorized the project which included said area or, if no Special Permit was required, with the approval of a majority of the Planning Board. In Commercial and Industrial Districts, any land within the side and rear lot lines shall have at a minimum a ten (10) foot vegetated buffer, either in its natural state or in accordance with a landscape plan approved by the Design Review Committee, with the recommendation made to the Zoning Board of Appeals or the Planning Board. Said buffer may be waived, as part of a Special Permit decision, where the Special Permit granting authority determines that such buffer would be inappropriate for the area and where there is a written agreement to said waiver by the abutting property owner.
History: Amended 5-1-2000 ATM, Article 32, approved by Attorney General 8-7-2000.
History: Amended 10-2-2000 ATM, Article 33, approved by Attorney General 1-12-2001.
History: Amended 10-20-2003 ATM, Article 15, approved by Attorney General 11-14-2003.
History: Amended 10-16-2006 ATM, Article 28, approved by Attorney General 2-13-2007.
History: Amended 10-19-2015 ATM, Article 21, approved by Attorney General 1-19-2016

[15] Where a lot in any industrial districts fronts on Routes 28, 151 or 130, except for permitted signs and one (1) access driveway involving clearance of a path no more than forty (40) feet in width, the first one hundred (100) feet of the front setback area shall be left wooded and in its natural state. Where such area is not naturally wooded, it shall be suitable landscaped with a sufficient number of trees or a type common in Mashpee to constitute a visual barrier between the proposed development and the roadway. Under no circumstances will parking, retention ponds or any other development involving clearance of natural vegetation be permitted within said area. Nothing herein is intended to prohibit appropriate tree surgery or similar maintenance of vegetation in this buffer area.

[16] Any water or wetland, as defined under MGL C.131, §40, any existing or proposed street or any roadway, right-of-way or easement twenty (20) feet or more in width may not be counted toward lot size for the purpose of calculating maximum lot coverage. For lots in any cluster subdivision, maximum lot coverage shall be thirty (30) percent.
History: Added 10-7-1991 ATM, Article 24, approved by Attorney General 2-3-1992.
History: Amended 10-7-1996, ATM Article 28, approved by Attorney General 12-9-1996.

[17] Except as otherwise allowed under §174-46, Open space incentive development.
History: Added 10-7-1991 ATM, Article 24, approved by Attorney General on 2-3-1992.

[18] Maximum height within the Popponesset Overly District shall be thirty (30) feet, subject to the provisions of Footnote 4 of this table. Minimum lot size shall be 6000 square feet, minimum frontage sixty (60) feet, minimum building setbacks 25 feet front, 15 feet rear and 15 feet side and maximum of lot coverage twenty (20) percent.
History: Added 5-3-1993 ATM, Article 12, approved by Attorney General 7-19-1993.
History: Amended 5-6-1997, ATM, Article 46, approved by Attorney General 9-25-1997.

[19] These setback requirements shall not apply to the following building projections provided they do not exceed the sizes specified, as measured from the foundation line along a line perpendicular to the nearest property line: chimney projecting no more than three (3) feet, house overhang projecting no more than two (2) feet, roof overhang projecting no more than three and one-half (3 1/2) feet, and open decks or platforms used for egress projecting no more than four (4) feet. These setback requirements shall also not apply to stairs required as a means of egress, basement bulkhead of the hatch door type or handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in MGL C. 22, §13A.
History: Added 10-4-1993 ATM, Article 26, approved by Attorney General 10-18-1993.

[20] Minimum front building setback within the Mashpee Overlay District shall be twenty (20) feet and maximum allowed building setback for the principal structure on a lot shall be forty (40) feet.
Except as required by §174-25.1.
History: Added 10-4-1999 ATM, Article 29, approved by Attorney General 1-11-2000.
History: Amended 10-7-2002 ATM, Article 22, approved by Attorney General 11-27-2002

[21] Except that hotels and motels (and not other uses) approved by the Planning Board under the provisions of §174-45 may be increased to three (3) stories and forty five (45) feet, if approved by the Board, provided that there is adequate access for Fire Department vehicles and equipment and that all Fire Protection Construction Documents required by 780 CMR Subsection 903.1.1 of the Massachusetts State Building Code, have been submitted to the Planning Board and Fire Department as part of the Special Permit application and the Board is satisfied that the standards of said Subsection will be met.
History: Amended 10-18-2004 ATM, Article 40, approved by Attorney General 12-16-2004

[22] Minimum front building setback within the Mashpee Center Overlay District shall be twenty (20) feet and maximum allowed building setback for the principal structure on a lot shall be forty (40) feet.
History: Added 10-17-2005 ATM, Article 18, approved by Attorney General 3-7-2006

[23] Minimum required setback from rear or side property lines shall be five (5) feet for sheds or similarly non-inhabitable structures not exceeding 120 square feet in floor area or twelve (12) feet in height.
History: Added 10-17-2005 ATM, Article 13, approved by Attorney General 3-7-2006

§174-32 Fire protection:

To ensure that all buildings shall be accessible to Fire Department apparatus by way of access roadways capable of supporting firefighting apparatus with an all-weather surface roadway, there shall be an unobstructed, paved access roadway of not less than twenty (20') feet with a vertical clearance of not less than thirteen (13') feet six (6") inches with all corners having a minimum inside radius of not less than twenty-eight (28') feet and a minimum outside radius of not less than forty-six (46') feet. Said access roadway shall be constructed to a point not less than one hundred fifty (150') feet from the furthest point of any building on the lot. Where there is a lot with only a one-family dwelling and/or a residential accessory building, such access, where it lies within the lot, may be by a maintained all-weather surface driveway, constructed by any combination and manipulation of soils, with or without admixtures, which produce a firm mass capable of supporting fire apparatus in all weather conditions and having an improved surface width of twelve (12') feet and a cleared width of sixteen (16') feet.
History: Added 5-6-1985, ATM, Article 22, approved by Attorney General 9-12-1985.
History: Amended 10-3-1994, ATM, Article 18, approved by Attorney General 1-18-1995.

§174-33 Setback from water and wetlands:

Any building or structure, exclusive of fixed or floating piers, wharves, docks, bridges or boardwalks, shall be set back at least fifty (50') feet from any water or wetland as defined by MGL C. 131, §40.

§174-34 Setback from cranberry bogs or meadows:

Any habitable building or structure shall be set back at least one hundred fifty (150') feet from any active [within the previous five (5) years] cranberry bog or cranberry meadow.

ARTICLE VIII - Parking Facilities

History: Amended 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

§174-35 Requirements to be Met:

No land shall be used and no building or structure shall be erected, enlarged or used unless the parking facilities are provided as specified in this Article. For the purpose of this Article, an enlargement of any building shall require the provision of off-street parking for the existing building as if it were newly constructed. Handicapped parking shall also be required in conformance with all applicable Town, State and Federal laws.

History: Amended 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.
History: Amended 10-18-2004 ATM, Article 38, approved by Attorney General 12-16-2004

§174-36 Fractional Parking Spaces:

Where the computation of required parking space results in a fractional number, only the fraction of one-half (1/2) or more shall be counted as one (1).

§174-37 Location of Facilities:

Required parking facilities shall be provided on the same lot or parcel as the principal use they are designed to serve, unless otherwise permitted by a Special Permit issued by the Planning Board. Parking facilities shall be located to the side or rear of the principal structure(s) on a lot or parcel, unless the permitting authority determines that an alternative location will improve the project aesthetically, substantially reduce impacts on natural or historic resources or improve public safety.

History: Amended 10-20-2003 ATM, Article 12, approved by Attorney General on 11-14-2003.

§174-38 Parking Facility dimensions

Except for handicapped parking spaces and handicapped access aisles designed and maintained in accordance with applicable Town, State and Federal laws, the following parking space width requirements shall apply. Any other required parking stalls may be nine (9) feet in width, if approved by the permitting authority, where it is demonstrated that the use served will not involve high parking turnover, the use of shopping carts, or frequent use by large vehicles such as pickup trucks, vans or commercial vehicles, except that on-street parking spaces may be eight (8) feet in width (not including any portion of travel lanes, gutters, curbs or berms) when adjacent to travel lanes of at least ten (10) feet in width. Each required parking stall for restaurants, banks, pharmacies or similar establishments with drive-through windows, supermarkets, convenience markets, hardware stores, discount department stores, home improvement centers, medical or dental offices and other establishments involving high parking turnover, or the use of shopping carts, shall be nine and one-half (91/2) feet in width. Any other required parking stalls may be nine (9) feet in width, if approved by the permitting authority, where it is demonstrated that the use served will not involve high parking turnover,

the use of shopping carts, or frequent use by large vehicles such as pickup trucks, vans or commercial vehicles, except that on-street parallel parking spaces may be eight (8) feet in width when adjacent to travel lanes of at least ten (10) feet in width.

History: Amended 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004
History: Amended 10-17-2005 ATM, Article 20, approved by Attorney General 3-7-2006

Except when part of a parking module sized as indicated below, each required parking stall shall be not less than twenty (20) feet in length, exclusive of aisles, drives and maneuvering space. Otherwise, minimum parking lot aisle width, and one (1) bay and two (2) bay parking module widths (from curb to curb or edge of pavement to edge of pavement) shall be as follows:

Parking Angle	Aisle Width*	1 Bay Module Width	2 Bay Module Width
90 degree	24’	43’4”	62’
75 degree	20’	39’9”	59’6”
70 degree	18’4”	38’2”	58’
65 degree	17’	36’9”	56’6”
60 degree	16’	35’6”	55’
55 degree	14’8”	33’10”	53’
Parking Angle	**Aisle Width***	**1 Bay Module Width**	**2 Bay Module Width**
50 degree	13’8”	32’4”	51’
45 degree	13’	31’	49’

*Aisles for ninety (90°) degree parking may be permitted for two-way traffic. All other parking aisles may allow only one-way traffic, heading in to angle parking spaces.

Parallel parking spaces shall be a minimum of twenty four (24’) feet in length, except that they may be reduced, if approved by the permitting authority, to twenty three (23’) feet in length where it is demonstrated that the use served will not involve high parking turnover or a large proportion of large vehicles.

History: Amended 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

§174-39 Required Number of Spaces:

Except as provided in §174-43, parking spaces shall be provided for various uses as follows. Where one (1) building is used for more than one (1) use, parking requirements shall be computed for each use unless it can be demonstrated to the satisfaction of the permitting authority by means of data and studies from similar projects, that shared parking, staggered hours of operation or peak parking use and multi-purpose trips justify a reduced number of required spaces. Parking in excess of these requirements shall be prohibited unless specific evidence justifying additional parking is provided and the permitting authority approves such excess parking. Where required spaces for any use are not specified here, they shall be determined by the permitting authority based on similarity of the proposed use to those listed here, on the most recent edition of *Parking Generation* by the Institute of Transportation Engineers, on studies and surveys done by qualified persons regarding parking usage for similar facilities, on parking requirements and use for similar facilities on Cape Cod or on other appropriate information.

Principal Use	Number of Spaces
Residence (single- or multi-family)	2 per dwelling unit*
Bed & breakfast home or establishment	3, plus 1 space for each rental unit over 2
Congregate Care or assisted living facility	1 per dwelling unit plus 1 per employee
Hospital, infirmary, nursing home, convalescent home	1 for each 2 beds
Motels, hotels and inns without restaurant, lounge or meeting/function facilities	1 1/2 for each rental unit **History: Amended 10-18-2004 ATM, Article 41, approved by Attorney General 12-16-2004**
Motels, hotels and inns with restaurant, lounge or meeting/function facilities in the same building	2 ½ for each rental unit **History: Amended 10-18-2004 ATM, Article 41, approved by Attorney General 12-16-2004**
Day care or nursery school	1 per 4 students, in addition to any other parking requirement applicable to the site
Restaurant, without drive-through window, or private membership or social club	1 per 2 seats or 12 per 1000 sq. ft. of gross leasable area, whichever is greater
Principal Use	**Number of Spaces**
Restaurant, with drive-through window	1 per 2 seats or 14 per 1000 sq. ft. of gross leasable area, whichever is greater
Sports club, health spa, skating rink	1 per 200 square feet of gross floor area
Tennis / racquetball courts / club	1 per 1500 square feet of gross floor area
Discount / department store, hardware/paint/ home improvement store	1 per 300 square feet of gross floor area
Supermarket	1 per 250 square feet of gross floor area
Convenience market	1 per 150 square feet of gross floor area
Furniture / carpet store	1 per 800 square feet of gross floor area
Bank	1 per 200 square feet of gross floor area
Other retail store	1 per 150 square feet of gross floor area
Outdoor flea market	1 per 100 sq. ft. of ground in the display area
Marina	1 for each 2 boat storage and mooring and docking spaces, whether such boat spaces are to be provided on land or water
Service businesses	1 per 150 square feet of gross floor area
Theater or similar place of assembly	1 for each 4 seats or 1 for each 4 persons as shown on the certificate of occupancy issued by the Building Inspector for the premises at the time of maximum use, whichever is greater
Church, synagogue etc.	1 for each 3 seats or 1 for each 3 persons shown on the certificate of occupancy issued by the Building Inspector for the premises at the time of maximum use, whichever is greater
Bowling alley	4 for each alley
Medical or dental office	1 for each 200 square feet of gross floor area
Government office	1 for each 250 square feet of gross floor area

General office	1 for each 300 square feet of gross floor area
Self-storage warehouse	1 per 2000 square feet of gross floor area
Commercial warehouse	1 per 900 square feet of gross floor area
Manufacturing or other industrial buildings	1 1/2 per 1000 square feet of gross floor area, or 1 for each 900 square feet of gross floor area plus 1 for each 2 employed persons on the larger shift plus 1 for each company-owned and operated vehicle, whichever is greater. The gross floor area shall not include corridors and restrooms

*NOTE: For any home occupations permitted which are not covered in this section, adequate off-street parking shall be provided in addition to required residential parking. The permitting authority may also require additional visitor parking within multi-family projects, particularly where parking spaces are in garages or are assigned to particular residential units."

History: Amended 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

§174-40 Accessways in Non-Residential Districts:

In the C-1, C-2, C-3 and I-1 zoning districts, there shall be required a minimum separation of two hundred (200') feet between the centerline of any accessway to Routes 28, 151 or 130 or to Great Neck Road North and any other such accessway or to the sideline of any street intersecting said roadways. Said minimum separation shall also be maintained between any accessway to a street intersecting said roadways and the sideline of said roadways. Where a lot in existence on October 7, 1996 has inadequate frontage to meet these separation requirements, the maximum feasible separation shall be maintained and only one (1) accessway shall be allowed to the lot. Where a lot has frontage on said roadways as well as on a street or streets intersecting said roadways, accessways shall be allowed only onto said intersecting streets, except where a right-turn-only entrance is approved by the Massachusetts Highway Department or Mashpee Director of Public Works, as appropriate. No accessway for parking may enter into a main road leading into Mashpee Circle (Pine Tree Corner) at a point closer than six hundred (600') feet from the center of Mashpee Circle, provided that all existing uses and accessways may be maintained in their current conditions.

History: Amended 10-7-1996, ATM, Article 27, approved by Attorney General 12-9-1996.
History: Amended 10-18-2004 ATM, Article 38, approved by Attorney General 12-16-2004

§174-41 Parking Lot Design

History: Amended 10-20-2003 ATM, Article 12, approved by Attorney General 11-14-2003.

A. Where drive-through window facilities are proposed, stacking lanes of an appropriate length shall be provided separately from any parking aisle or emergency access lane.

B. Access for Fire Department vehicles to all structures shall be provided as recommended by the Fire Department and shall provide sufficient inside and outside radius to accommodate the Department's ladder truck, including truck overhangs.

C. Interconnection between parking areas on adjacent commercial properties shall be required where appropriate.

D. All parking stalls shall be provided with adequate space for backing out, including turnarounds or Ts at the end of dead-end parking aisles.

E. Driveways and parking aisles shall be laid out so as to intersect as nearly as possible at right angles. No driveways or aisles shall intersect at less than sixty (60°) degrees.

F. Unless alternate paving is approved by the permitting authority, all parking areas and driveways shall be constructed on a base of not less than eight (8") inches of good binding gravel or other suitable road base material, properly shaped and compacted. Where the subsoil consists of peat or similar spongy material, it shall be excavated and replaced with solid fill as necessary to support the finished surface. All parking areas and driveways required to meet the minimum parking space requirements of §174-39 shall be paved with a minimum of two and one half (2½") inches of bituminous concrete, type I, consisting of one and one-half (1½") inches of binder course and one (1") inch of surface course, both properly compacted by a ten-ton roller. Where additional overflow parking areas are proposed, the base shall be constructed as above, but alternate materials or grass may be used as a finished surface if approved by the permitting authority.

G. The perimeter of any parking area over ten (10) spaces and any driveway or parking lot islands shall have curbs and gutters of granite, cast-in-place concrete or other edge treatment, not including bituminous concrete, suitable to control parking lot drainage, prevent erosion and maintain the pavement edge in good condition. A minimum five (5') foot radius shall be required for all vertical barrier curbs adjacent to parking lot driveways, islands and planting areas, with a fifteen (15') foot radius preferred along major driveways or those expected to be used by significant numbers of trucks or large vehicles.

H. Parking facilities shall be sloped a minimum of three quarter (¾%) percent to drainage grate inlets, catch basins or curb inlets and in all cases shall be constructed so that ponding of drainage within the paved surface shall not occur. Stormwater from parking areas shall be treated to minimize the amount of nitrogen reaching groundwater to the greatest extent feasible.

I. No structure, fence, post or other solid object other than curbing shall be allowed within three (3') feet of the paved surface of any parking area or driveway, except for shopping cart storage areas and handicapped access or preferred parking signs authorized by the permitting authority.

J. Sidewalks shall be provided where appropriate along the perimeter of the parking area and within parking lot islands to facilitate safe movement of pedestrians.

K. No parking area will be allowed within ten (10') feet of the property line of abutting property owners, or such larger buffer area distance as may be required by the Zoning By-law. The minimum buffer area may be reduced by the permitting authority if written endorsement of such reduction is received from the owner of the abutting property. Such setback area shall be left in its natural state, or revegetated in conformance with the requirements of the Zoning By-law in accordance with plans approved by the permitting authority. Larger buffer areas may be required where the parking area abuts residential property, publicly-owned parcels, water bodies or wetlands or where such buffer is required to maintain existing scenic or historic vistas from public ways or public lands.

L. In addition to any undisturbed buffer areas required by the permitting authority or the Zoning By-law, the use of landscaped berms or additional plantings to screen parking areas from view from abutting properties or public roadways is encouraged.

M. For projects involving more than ten (10) parking spaces, any parking area (i.e. the area within any proposed parking field) shall have a minimum ratio of 1:5 of landscaping or natural area to paved area unless the permitting authority determines that, due to the shape or configuration of the parking area such landscaping would be impractical. Natural vegetation shall be retained in any such landscaped area to the greatest extent possible.

N. Site and parking lot design should preserve any large or outstanding trees, specimen trees or groves of trees to the greatest extent possible. No trees over ten (10) inches in diameter at breast height may be removed without approval of the permitting authority for the project. Large parking lot islands are encouraged to help accomplish such preservation, to provide opportunities for denitrification of stormwater runoff and to improve the visual character of the parking area.

O. Plantings shall not be located within three (3') feet of the curb or pavement edge, to allow for car overhangs, unless low-lying ground cover is used.

P. Plantings shall be installed in exact accordance with planned dimensions to avoid any adverse change in parking due to improper location.

Q. Irrigation facilities shall be installed, unless the permitting authority determines that it is infeasible or unnecessary, to ensure proper maintenance of parking lot landscaping. Water for in-ground irrigation shall be provided from private wells unless the Mashpee Water District specifically authorizes connection to the municipal water system for irrigation use.

R. No more than forty (40%) percent of the area within the drip line of any tree to be planted or retained within or adjacent to a parking area, when fully grown, may be made impervious, unless a certified arborist or landscape architect can demonstrate that the long-term health of such tree will not be adversely affected.

§174-42 Loading facilities:

Appropriately sized and designed off-street truck loading/unloading and parking spaces shall be provided for all retail and industrial projects, for any "dumpster" location and for other development as required. Loading docks shall be constructed with eight (8') inches of suitable road base material and a three (3') inch bituminous concrete surface or twelve (12') inches of suitable road base material and six (6") inches of reinforced cement concrete as appropriate to the use. Loading docks should be sloped, and may be required to incorporate a stormwater capture structure capable of capturing and holding hazardous materials spills, with sizing dependent upon use. Loading facilities shall not interfere with use of, or circulation within, roadways, driveways or parking areas. If approved by the Planning Board as part of a Commercial Center, OSID or other mixed-use project, appropriately sized on-street loading zones may be used

§174-43 Spaces for commercial centers:

For commercial centers with less than fifty thousand (50,000') square feet of gross leasable floor area, parking shall be provided as required for the individual uses under §174-39. For Commercial centers containing at least fifty thousand (50,000') square feet of gross leasable floor area, parking requirements shall be computed as follows unless it can be demonstrated to the satisfaction of the permitting authority by means of data and studies from similar projects, that shared parking, staggered hours of operation or peak parking use and multi-purpose trips justify a reduced number of required spaces.

History: Amended 10-1-1990 ATM, Article 4, approved by Attorney General 12-18-1990.
History: Amended 10-18-2004 ATM, Article 38, approved by Attorney General 12-16-2004.

Type	Use	Required Spaces
Commercial centers with More than 50,000 square feet but less than 100,000 square feet.	Retail	5 for every 1,000 square feet of gross leasable floor area
	Food service	10 for every 1,000 square feet of gross leasable floor area
	Office	4 for every 1,000 square feet of gross leasable floor area
	Theater	3 for every 100 seats
	Residential	2 per unit
Commercial centers in Excess of 100,000 square Feet	Retail	4 for every 1,000 square feet of gross leasable floor area
	Food service	6 for every 1,000 square feet of gross leasable floor area
	Office	3 for every 1,000 square feet of gross leasable floor area
	Theater	0 of every 450 seats, plus 3 for every 100 over 450
	Residential	2 per unit

ARTICLE IX - Special Provisions

§174-44 Uses Permitted:

The following uses may be permitted as designated in §174-25, Table of Use Regulations, provided that they meet the following requirements in addition to any other requirements.

§174-45 Motels, Hotels, Hospitals, Infirmaries, Nursing Homes, Convalescent Homes, Congregate Care or Assisted Living Facilities and Similar Uses:
History: Amended 5-7-1990 STM, Article 9, approved by Attorney General 11-19-1990.
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

A. Any such use shall require the issuance of a Special Permit by the Planning Board, except that such uses may be included in a Special Permit, approved under Section 174-46.H.
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

B. Unless such facility will be serviced by a public sewer system or by some other wastewater treatment system approved by the Planning Board and Board of Health which is designed to achieve total nitrogen of 5 mg/l or less in system effluent, the following land area shall be required for such facilities:
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.
History: Amended 10-21-2013 ATM, Article 19, approved by Attorney General 12-16-2013.

1. **Motel or Hotel:** ten thousand (10,000') square feet per room plus ten thousand (10,000') square feet for each one hundred ten (110) gallons of sewage flow, calculated under the provisions of 314 CMR 7.15, as amended, generated by any of the associated or combined uses allowed under Subsection H.

2. **Hospital or infirmary:** twenty thousand (20,000') square feet per bed.

3. **Nursing Home:** convalescent home: ten thousand (10,000') per square feet.

4. **Congregate Care or Assisted Living Facility:** twenty thousand (20,000') square feet per dwelling unit plus ten thousand (10,000') square feet for each one hundred

ten (110) gallons of sewage flow calculated under the provisions of 314 CMR 7.15, as amended, generated by any other uses on the site.
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

C. Unless located in the Mashpee Center Overlay District or approved as part of a mixed-use development under §174-46H, there shall be required front, rear and side building setbacks of not less than fifty (50') feet in depth, except that front setback shall be seventy-five (75') feet along Routes 28 and 151.
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

D. Unless located within the Mashpee Center Overlay District, a space not less than fifty (50) feet in depth shall be maintained as a wooded buffer area in its natural state along each side, rear and front lot line, except for permitted signs and up to two (2) access driveways involving clearance of a path no more than forty (40') feet in width and except that said area may be reduced by a four fifths(4/5th) vote of the Planning Board as part of its Special Permit decision for such projects when located in the C-1 Commercial District. Where such area is not naturally wooded, it shall be suitably planted with sufficient trees and understory vegetation, of a type common in natural areas of Mashpee, to replicate a naturally wooded area and to constitute a visual barrier between the proposed development and the roadway. Under no circumstances will parking, retention ponds, or any other development involving clearance of natural vegetation be permitted within said area. Limited, appropriate tree surgery or similar limited maintenance required to protect the health of vegetation in this area may be allowed with the approval of a majority of the Planning Board. Additional area, plantings, fencing or other items may also be required by the Planning Board to protect adjacent property owners from adverse impacts of the project or to protect the character of the neighborhood.
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

E. No space within the required front setback area may be used for parking, unless approved by the Planning Board.

F. No site for such use may have more than one (1) driveway access to Routes 28 and 151 or more than two (2) driveway accesses to any other abutting street, and such driveways shall intersect the abutting street at a ninety-degree (90°) angle, unless the Planning Board approves a different intersection angle.

G. In motels and hotels, each rental unit shall contain not less than two hundred sixteen (216') square feet of habitable floor area.

H. Motel and hotel facilities may include meeting rooms, restaurants, convention facilities and other uses typically associated with such facilities or may be combined with other uses allowed within the zoning district, provided that parking and land space requirements for each use are met and that the Planning Board determines, based on its review of the required water quality report, that the project will not have a significant adverse effect on any of the items specified in §174-27C, and makes the other favorable determinations required by §174-24C(2).

I. Except within the C-1 zoning district, a minimum of fifty percent (50%) of any site, which may include the buffer areas required by Subsection D., shall be left as undisturbed open space in its natural state.
History: Amended 10-2-2000 ATM, Article 28, approved by Attorney General 1-12-2001.

§174-45.1 Commercial Centers:

History: Added 10-1-1990 ATM, Article 4, approved by Attorney General 12-18-1990.

A. Any such use shall require the issuance of a Special Permit by the Planning Board. In issuing such Special Permit, the Board shall ensure that the design of approved projects is in keeping with the character of the town and of Cape Cod.
History: Added 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.

B. Unless an alternate schedule of dimensional requirements is approved by the Planning Board under subsection I. below, there shall be required front, rear, and side building setbacks at the perimeter of the site at least as great as those normally required within the zoning district, and at least ten feet greater than the depth of any open space buffer required under subsection C below, except that the front setback shall be seventy-five (75') feet along Routes 28 and 151. No structure within a commercial center may be located, and no clearance of natural vegetation may occur, within three hundred (300') feet of any fresh or salt water body of more than ten (10) acres, or within three hundred (300') feet of the Mashpee, Santuit, Quashnet or Childs Rivers or Red Brook, or within one hundred (100') feet of any active or recently active (within 10 years) cranberry bog, pond under ten (10) acres, or any wetlands as defined by MGL Chapter 131, Section 40 or the Mashpee Wetlands Bylaw. The provisions of this section regarding building setbacks or clearance of vegetation shall not apply to any artificial water body or watercourse created (i.e. as an entirely new water body, not by dredging or enlargement of an existing water body, watercourse or wetland) in conformance with any applicable local, state or federal regulations.
History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.
History: Amended 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.

C. Unless an alternate schedule of dimensional requirements is approved by the Planning Board under subsection I. below, space not less than fifty (50') feet in depth along Routes 28 and 151 and twenty (20') feet in depth along other streets and property lines shall be maintained as an open space buffer with natural vegetation or landscaping along each side, rear and front lot line, except for entrance and exit driveways, and such open space buffer shall not be built on, paved or used for parking. Additional area, plantings, fencing or other items may also be required by the Planning Board to protect adjacent property owners from adverse impacts of the project or to protect the character of the neighborhood. The Planning Board may waive or reduce the requirement for an open space buffer (except along a public way outside the C-1 district) where the legal owners of the abutting property have certified, in writing, that they have no objection to the elimination or reduction of said buffer strip.
History: Amended 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.
History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.

D. No space within the required front setback area may be used for parking unless approved by the Planning Board. Where a commercial center will be divided into lots under section I. below, parking requirements may be met in one (1) of two (2) ways. Either each lot will be required to provide off-street parking based on the requirements for individual uses contained in Article VIII, or an overall shared parking scheme may be developed which conforms with parking space requirements for commercial centers specified by Section 174-43. In the latter case, the applicant shall specify how shared parking areas are to be owned, constructed, operated and maintained and provide the Board with proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms for ensuring the same. On-street parking spaces shall be at least twenty-three (23') feet in length. Parking structures may be permitted provided that the Planning Board determines that their design, placement and operation will not adversely impact public health or safety or the character of the area and that their design will be compatible with the existing and proposed architectural character of the area. Said structures will

not be counted toward maximum developable area and may not exceed thirty (30') feet in height.
History: Added 10-1998 ATM, Article 29, approved by Attorney General 1-4-1999.
History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.

E. Any commercial center shall provide for appropriate bicycle racks or similar facilities unless waived by the Planning Board.

F. No site for such use may have more than one (1) direct vehicle access way to Routes 28 or 151 or more than two (2) direct vehicle accesses to any other abutting street not created as part of the commercial center, and such access ways shall intersect the abutting street at a ninety (90°) degree angle, unless the Planning Board approves a different intersection angle. Additional access ways may be approved by the Planning Board, where they are found to be necessary for reasons of safety or proper traffic flow. Where the commercial center will be subdivided into multiple lots, there shall be no separate vehicle access from any individual lot within the development onto Route 28, Route 151 or Great Neck Road North.

A traffic impact report, indicating projected traffic flows from the project at its build out, projected traffic flows and levels of service on nearby roadways in five (5) years and at build out of the development, current traffic flows, levels of service and accident records for said roadways, projected capacity, service level and safety problems anticipated in five (5) years and at project build out, proposed mitigation measures and approximate costs in current dollars and other relevant information shall be submitted as part of the application and explained to the Board at a public meeting by a competent professional traffic engineer or transportation planner. The Planning Board may require traffic signals, traffic or turn lanes, sidewalks, bikeways or any other mitigation measures that it believes necessary to protect public safety and maintain proper traffic flow on roadways within or impacted by the development.

Streets and drives within the development shall be constructed in accordance with the Planning Board's subdivision and Special Permit regulations, except that the Board may require additional sidewalks, traffic lanes, turn lanes, traffic signals or other items as necessary. Projected traffic may be calculated on the basis of firm projections of uses and floor areas when available, on the basis of one hundred sixty six (166) average weekday trip ends per one thousand (1000') square feet of gross leasable floor area, or on shopping center vehicle trip generation rates contained in the latest edition of *Trip Generation* by the Institute of Transportation Engineers. In performing such calculations where there is no firm estimate of gross leasable floor area, estimated area shall be calculated based on twice the maximum lot coverage allowed for the project.
History: Amended 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.
History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.

G. The applicant shall submit a list of proposed uses within the commercial center as part of his application. These may include any uses allowed within the zoning district, as well as any bedrooms, including the ten (10%) per cent permanently deed-restricted affordable bedrooms and any resulting bonus bedrooms, transferred under the provisions of §174-46H.3. However, only those uses will be permitted which are approved by the Planning Board as part of its Special Permit decision. Once said list of uses has been approved, no further Special Permit shall be required to occupy any space within the commercial center, but each such occupancy shall require review under the plan review process described in §174-24B, to ensure compliance with the Special Permit and other bylaws and regulations.
History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.
History: Amended 10-21-2013 ATM, Article 21, approved by Attorney General 12-16-2013.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

H. A commercial center may be approved as a single-phase project or may be approved as a master plan involving multiple phases. Prior to construction or installation of structures, signage and landscaping plans shall be submitted to the Design Review Committee for its review at a public meeting. Upon receiving the recommendations of the Design Review Committee, the Planning Board may approve said plans, approve with modifications or deny approval and require resubmission to the Design Review Committee. Until the Planning Board has finally approved said plans, no Building Permits may be issued nor shall any of the proposed work be begun. The Planning Board shall require that a schedule of architectural, signage and/or landscaping controls be adopted for the development, enforceable by the Town's Special Permit authority as well as deed restrictions on the development and any lots to be sold, unless specific building, signage and landscape designs are submitted for all portions of the project. Such controls shall have the effect of promoting design that is in keeping with the character of the Town and of Cape Cod. Any proposed schedule of architectural, signage and landscaping controls shall require review by the Design Review Committee and its report to the Planning Board prior to approval of the Special Permit application for the development. If such a schedule of architectural, signage and/or landscaping controls is required, it shall be recorded as a deed restriction on the property at the same time as the Special Permit is recorded and the Planning Board shall be provided forthwith a copy of the recorded documents indicating the registry book and page at which each is recorded.
History: Amended 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.

I. Within any commercial center located on a parcel of land greater than two hundred thousand (200,000') square feet in the C-1 district, the Planning Board may approve subdivision lots of any size pursuant to the provisions of the Special Permit issued for said center, provided that each lot shall have at least twenty (20') feet of frontage on a street approved by the Board under the subdivision control law or on a Town or State highway. However, no lot may be created which does not meet the minimum lot area and frontage requirements of the zoning district unless said lot is serviced by a public wastewater treatment plant or by a private wastewater treatment facility which is approved by the Planning board to service said lots, and to which all such proposed lots may be legally connected.. No Building Permit may be issued for a building on said lots unless the required wastewater plant has been completed, with capacity specifically allocated to said lots, and has received all required state and local permits.
History: Amended 10-18-2010 ATM, Article 9, approved by Attorney General 1-31-2011

Within any commercial center located in the C-1 district, the Planning Board, as part of its approval of the Special Permit for said center, may approve a specific schedule of dimensional controls, including setbacks, required buffer areas, frontage and lot size, but not including height, except as provided below or specifically authorized elsewhere in the by-law or overall commercial center lot coverage, which differs from that required in the underlying zoning district. Unless such a schedule is adopted, no structure within a commercial center may be built closer to the street line, side line or rear line of a lot than the minimum requirements of the underlying zoning district. However, in no case may one(1) or two (2)-story primary structures be located less than twenty (20') feet from each other or may structures containing more than two (2) stories be located less than thirty (30') feet from any other habitable structure except in conformance with any applicable state and local building and fire codes or regulations. As part of its project review, the Planning Board will request a written recommendation from the Fire Department and Building Inspector regarding structures proposed to be set back from each other by less than the above required distances.
History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.

Maximum lot coverage with buildings shall be as allowed for the applicable zoning district. This area may be calculated in one (1) of two (2) ways: either on an individual

lot basis for each lot created within the development, or as an overall average for the development. In the latter case, total area of lot coverage by buildings shall be calculated for the project and specified in the Special Permit decision. The applicant shall devise a method by which building coverage area may be allocated to each lot and said method shall require the approval of the Planning Board as part of its Special Permit decision. In addition, the provisions of Section 174-80.H. regarding impervious surface coverage within Groundwater Protection Districts shall apply.

In addition to the provisions of its Special Permit, the Planning Board shall require that the applicant establish deed restrictions or other legal mechanisms to ensure that the dimensional or other provisions of the Special Permit are adhered to by subsequent lot owners within the development.
History: Added 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.

Where bedrooms are to be transferred into the commercial center under the provisions of Subsection 174-46.3, the Planning Board, as part of its approval of the Special Permit for said center, may authorize an increase in building height to three (3) stories and up to forty-five (45') feet to accommodate said bedrooms only.
History: Added 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

No increase in height above that which is allowed in the underlying zoning district may be approved unless there is adequate access for Fire Department vehicles and equipment and all Fire Protection Construction Documents required by 780 CMR Subsection 903.1.1 of the Massachusetts State Building Code, as it existed on May 3, 2004, have been submitted to the Planning Board and Fire Department as part of the Special Permit application and the Board is satisfied that the fire protection standards of said Subsection will be met.
History: Added 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.

J. In addition to any other application materials required for Special Permits, applications for Commercial Centers shall include:

1. A calculation of maximum allowed lot coverage with buildings, in square feet, and a discussion of the proposed method of allocating building coverage area to any proposed or future lots. If the development lies wholly or partly in a groundwater protection district, the requirements of Article XIII shall also be addressed.

2. A plan of the proposed parking facilities, including proposed parking space layout, drainage, lighting, landscaping and bicycle racks or similar facilities and a description of the proposed means of ownership, construction, operation and maintenance of such facilities, including copies of any proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms required. In addition, the applicant shall provide his calculations of the number of required off-street parking spaces and a description of any additional on-street parking proposed.

3. Any proposed schedule of architectural, signage and landscaping controls, along with a written record of any review and comments by the Design Review Committee. Where such a schedule is not proposed, the applicant shall submit architectural elevations and other architectural plans, along with samples or descriptions of exterior materials proposed to be used, and landscaping plans for all structures, for entrance ways and for major signs, along with a written record of any review and comments by the Design Review Committee. Where

development is to be done in phases, these items shall be submitted for at least the first phase, along with typical plans for later phases. All of the above-required plans shall be submitted at the time approval is sought to construct such later phases.

History: Added 10-5-1998 ATM, Article 29, approved by Attorney General 1-4-1999.

§174-45.2 Adult Entertainment Uses:

History: Added 5-4-1998 ATM, Article 32, approved by Attorney General 8-12-1998.

A. **Authority, Purpose and Intent.**

1. This by-law is enacted pursuant to M.G.L. Chapter 40A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment and uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

2. It is the purpose and intent of this by-law to regulate the locations of adult entertainment uses in order to lessen the harmful secondary effects on adjacent areas. These secondary effects, which are documented in various studies include an increase in crime, a decline in property values, a flight of existing businesses, and gradual blight on neighborhoods. The purpose of the Adult Entertainment Use By-law is to prevent crime, maintain property values, protect the Town's retail trade, and protect and preserve the quality of residential neighborhoods and prevent adverse impacts on school children. The section does not prohibit adult entertainment uses, but rather provides reasonably regulated areas for these purposes within the Town.

3. The provisions of this by-law have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this by-law to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this by-law to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

B. **Special Permits Rules and Application Requirements** Adult entertainment uses shall be prohibited in all zoning districts excepted as otherwise permitted in this bylaw; and furthermore, may be permitted only upon the grant of an adult use Special Permit in accordance with §174-24C(1). Such an adult use Special Permit shall not be granted unless each of the following requirements, in addition to the requirements in §174-24 C Special Permit use, are satisfied:

1. The application requirements and procedures shall be conducted pursuant to §174-24C of this Zoning Bylaw.

2. The application for a Special Permit for an adult use shall provide the name and address of the legal owner of the establishment, the legal owner of the property, and the manager of the proposed establishment.

3. No Special Permit shall be issued to any applicant, if any applicant, principal(s), manager(s) have been convicted of violating the provisions of MGL C. 119, §63, or MGL C. 272, §1 through §35A, or equivalent statues in other jurisdictions. The application shall include authorization for the Planning Board to confirm criminal record information through the appropriate authorities.

4. In addition to the Dimensional Requirements specified in §174-25E (11), a twenty (20') foot vegetative buffer containing adequate screening given the character of the neighborhood and the intensity of the use shall be provided between adult entertainment uses and abutting commercial uses, if any.
History: Amended 10-7-2002 ATM, Article 14, approved by Attorney General 11-27-2002.

5. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.

6. No adult use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may see through glass or other like transparent material any sexually explicit figures or words as defined in M.G.L. C. 272, §31.

7. No adult entertainment use shall have any flashing lights visible from outside the establishment.

8. No adult entertainment use shall have a freestanding accessory sign.

9. No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

10. A Special Permit issued under this section shall lapse upon any transfer of ownership or legal interest or change in contractual interest in the subject premises or property. The Special Permit may be renewed thereafter only in accordance with §174-24(C) and the procedures outlined therein and the procedures outlined above.

11. Special Permits issued hereunder shall lapse unless substantial use thereof is made within six (6) months of being granted, exclusive of the time, if any, consumed during any appeals pursuant to M.G.L. C. 40A, §17, except for good cause shown. Any application for an extension of this period shall be filed prior to the lapse of the Special Permit.

12. A violation of any one of these requirements may result in the revocation of the establishment's Special Permit.

13. The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

14. All other applicable provisions of the Mashpee Zoning Bylaw shall also apply.

§174-45.3 Personal Wireless Service Facilities:

History: Added 10-5-1998, ATM Article 35, approved by Attorney General 1-4-1999.

A. **Purpose and intent:** For the purpose of minimizing the visual and environmental impacts, as well as any potential deleterious impact on property values, of personal wireless service facilities, no personal wireless service facility shall be placed, constructed or modified within the town except in conformance with the requirements of this section, in conjunction with other regulations adopted by the Town, including historic district regulations, design review and other bylaws and regulations designed to encourage appropriate land use, environmental protection, and provision of adequate infrastructure development.

The regulation of personal wireless service facilities is consistent with the purposes of the Mashpee zoning bylaw and the planning efforts of the town through its comprehensive plan, including those intended to further the conservation and preservation of developed, natural and undeveloped areas, wildlife, flora and habitats for endangered species, the preservation of coastal resources, protection of natural resources, balanced economic growth, the provision of adequate capital facilities, the coordination of the provision of adequate capital facilities with the achievement of other goals and the preservation of historical, cultural, archaeological, architectural and recreational values.

In accordance with the requirements of 47 U.S.C. s332(c)(7)(B), and until these requirements are modified, amended or repealed, in regulating the placement, construction and modification of personal wireless service facilities, the administration of this bylaw shall not be undertaken in a manner which unreasonably discriminates among providers of functionally equivalent services or prohibits, or has the effect of prohibiting, the provision of personal wireless services. Any decision to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. Furthermore, this bylaw may not regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's regulations concerning such emissions.

B. **Definitions:** In addition to the definitions contained in Section 174-3, the following shall apply to Personal Wireless Service Facilities:

Above Ground Level (AGL) - A measurement of height from the natural grade of a site to the highest point of a structure.

Antenna - The surface from which wireless radio signals are sent and received by a personal wireless service facility.

Camouflaged - A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered "camouflaged."

Carrier - A company that provides wireless services.

Co-Location - The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

Cross-Polarized (or Dual-Polarized) Antenna - A low mount that has three panels flush mounted or attached very close to the shaft.

Elevation - The measurement of height above mean sea level.
Environmental Assessment (EA) - An EA is the document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

Equipment Shelter - An enclosed structure, cabinet, shed or box at the base of the mount within which are housed batteries and electrical equipment.

Fall Zone - The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Functionally Equivalent Services - Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging.

Guyed Tower - A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

Lattice Tower - A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

Licensed Carrier - A company authorized by the FCC to construct and operate a commercial mobile radio services system.

Monopole - The type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top and/or along its length.

Mount - The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted: Mounted on the roof of a building.

2. Side-mounted: Mounted on the side of a building.

3. Ground-mounted: Mounted on the ground.

4. Structure-mounted: Mounted on a structure other than a building.

Omnidirectional (WHIP) Antenna - A thin rod that beams and receives a signal in all directions.

Panel Antenna - A flat surface antenna, usually developed in multiples.

Personal Wireless Service Facility - Facility for the provision of personal wireless services, as defined by the Telecommunications Act, including towers, poles, antennae and appurtenant structures.

Personal Wireless Services - The three types of services regulated by this bylaw: commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services.

Radiofrequency (RF) Engineer - An engineer specializing in electrical or microwave engineering, especially the study of radiofrequencies.

Radiofrequency Radiation (RFR) - The emissions from personal wireless service facilities. (Regulated by the FCC "Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation").

Security Barrier - A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

Separation -The distance between one carrier's array of antennas and another carrier's array.

C. **Permit process:** A personal wireless service facility shall require a Building Permit in all cases and may be permitted as follows:

1. A personal wireless service facility may be located on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower or water tower, provided that the installation of the new facility does not increase the height of the existing structure except as provided in Subsection E(5) below. Such installations shall not require a Special Permit but shall require plan review (PR) approval by the town under the provisions of §174-24B.

2. Otherwise, no personal wireless service facility involving construction of one (1) or more ground or building (roof or side) mounts shall be located in the town except upon issuance of a Special Permit by the Planning Board under the provisions of §174-24(C) and of this section.

3. A personal wireless service facility that exceeds the height restrictions of Subsections E(1) through (5) may be permitted by Special Permit, as specified in Subsection C(2), in a designated Wireless Service Overlay District provided that the proposed facility complies with the height restrictions of Section E(6), and all of the setback and other regulations set forth in this section.

4. Any applicant must demonstrate that the proposed facility is necessary in order to provide adequate service to the public.

D. **Location:** Applicants seeking approval for personal wireless service facilities shall comply with the following:

1. If feasible, personal wireless service facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more personal wireless service facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

2. If the applicant demonstrates that it is not feasible to locate on an existing structure, personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

3. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of application for plan review or Special Permit.

E. **Dimensional requirements:** Personal wireless service facilities shall comply with the following requirements:

1. **Height, General -** Regardless of the type of mount, personal wireless service facilities shall be no higher than ten (10') feet above the average height of buildings within three hundred (300') feet of the proposed facility. In addition, the height of a personal wireless service facility shall not exceed by more than ten (10') feet the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged such as within a flagpole, steeple, chimney, or similar structure. Personal wireless service facilities may be located on a building that is legally non-conforming with respect to height, or has received a height variance, provided that the facilities do not project above the existing building height. When any personal wireless service facility or portion thereof is proposed to exceed forty (40') feet in height, Special Permit or plan review approval shall require a Federal Aviation Administration (FAA) Determination of No Hazard or evidence of exemption from the determination process.
History: 10-16-2006 ATM, Article 30, approved by Attorney General 2-13-2007.

2. **Height, Ground-Mounted Facilities -** Ground-mounted personal wireless service facilities shall not project higher than ten (10') feet above the average building height or, if there are no buildings within three hundred (300') feet, these facilities shall not project higher than ten (10') feet above the average tree canopy height, measured from ground level (AGL). If there are no buildings within three hundred (300') feet of the proposed site of the facility, all ground-mounted personal wireless service facilities shall be surrounded by dense tree growth to screen views of the facility in all directions. These trees may be existing on the subject property or planted on site.

3. **Height, Side- and Roof-Mounted Facilities -** Side- and roof-mounted personal wireless service facilities shall not project more than ten (10') feet above the height of an existing building nor project more than ten (10') feet above the height limit of the zoning district within which the facility is located. Personal wireless service facilities may be located on an existing building that is legally nonconforming with respect to height, or has received a height variance, provided that the facilities do not project above the existing building height.

4. **Height, Existing Structures -** New antennas located on any of the following structures existing on the effective date of this bylaw shall be exempt from the height restrictions of this bylaw provided that there is no increase in height of the existing structure as a result of the installation of a personal wireless service facility: water towers, guyed towers, lattice towers, fire towers and monopoles.

5. **Height, Existing Structures, (Utility) -** New antennas located on any of the following existing structures shall be exempt from the height restrictions of this bylaw, provided that there is no more than a twenty (20') foot increase in the height of the existing structure as a result of the installation of a personal wireless service facility: electric transmission and distribution towers, telephone poles and similar existing utility structures. This exemption shall not apply in Historic Districts, within three hundred (300') feet of structures or places listed in the Massachusetts State Register of Historic Places, within one hundred (150') feet of the

right-of-way of any designated scenic roadway, or within three hundred (300') feet of any Great Pond or tidal water body.

6. **Height, Wireless Facility Overlay District -** Within the Wireless Facility Overlay District (as described in §174-5.C.), personal wireless service facilities of up to one hundred (100') feet in height may be permitted by Special Permit, except that the Planning Board may grant a waiver to allow a height of up to two hundred (200') feet where circumstances warrant (e.g. no serious impact on neighboring properties, residential areas, historic districts, historic places or scenic vistas, along with the opportunity to eliminate a larger number of towers of lower height which might result in such impacts). Monopoles are the preferred type of mount for such taller structures. Such structures shall comply with all setback and Special Permit Regulations set forth in this Bylaw.

7. **Setbacks -** All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facilities are located. In addition, the following setbacks shall be observed:

   (a) In order to ensure public safety and prevent hazards to people and neighboring property from potential facility collapse or falling ice or other debris, the minimum distance from the base of any ground-mounted personal wireless service facility to any property line, road, habitable dwelling, business or institutional use, or public recreational area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered a "fall zone".

   (b) In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformities, except as provided in Subsection (8) below.

8. **Flexibility -** In reviewing a Special Permit application for a personal wireless service facility, the Planning Board may reduce the required fall zone and/or setback distance of the zoning district by as much as fifty (50%) per cent of the required distance if it finds that a substantially better design will result from such reduction. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

F. **Design standards:** The design of a personal wireless service facility determines its visibility and its impact on community character. Height and fall zone/setback standards will have an impact on the visibility of personal wireless service facilities, but they may still be visible from public areas and surrounding residential properties. All personal wireless service facilities shall comply with the following design standards in order to limit negative visual impacts from these facilities through effective design:

1. **Visibility/Camouflage -** Personal wireless service facilities shall be camouflaged as follows:

   (a) **Camouflage by Existing Buildings or Structures:** When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from

public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

(b) Personal wireless service facilities that are side mounted shall blend with the existing building's architecture and, if over five (5') square feet, shall be painted or shielded with material which is consistent with the design features and materials of the building.

(c) **Camouflage by Vegetation:** If personal wireless service facilities are not camouflaged from public viewing areas by existing buildings or structures, or are not located on existing structures or along a high tension power line right of way, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted personal wireless service facilities shall have a vegetated buffer of fifty (50') feet or more, and of sufficient height to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions and the height of the proposed tower.

(d) **Color:** Personal wireless service facilities that are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them. To the extent that any personal wireless service facility extends above the height of the vegetation immediately surrounding it, it shall be painted in a light gray or light blue hue that blends with sky and clouds.

2. **Equipment Shelters:** Equipment shelters for personal wireless service facilities shall be designed consistent with one of the following design standards:

(a) Equipment shelters shall be located in underground vaults; or

(b) Equipment shelters shall be designed consistent with traditional Cape Cod architectural styles and materials, with a roof pitch of at least 10/12 and wood clapboard or shingle siding; or

(c) Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine if the style of fencing and/or landscape buffer proposed is compatible with the neighborhood.

3. **Lighting and signage.**

(a) Personal wireless service facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment shelters and any other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.0 initial footcandles when measured at grade.

(b) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of Article X of this bylaw.

(c) All ground mounted personal wireless service facilities shall be surrounded by a security barrier.

4. **Historic buildings and districts.**

(a) Any personal wireless service facilities located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.

(b) Any alteration made to an historic structure to accommodate a personal wireless service facility shall be fully reversible.

(c) Personal wireless service facilities within an historic district shall be concealed within or behind existing architectural features, such as towers, cupolas or spires, or shall be located so that they are not visible from public roads and viewing areas within the district.

(d) Copies of all plans for any personal wireless service facility proposed in a historic district, or within one thousand (1000') feet of a historic district or a structure or place listed on the Massachusetts State Register of Historic Places, shall be provided to the Mashpee Historical Commission before or at the same time that they are submitted to the Town for approval, in order to facilitate their review and comment on the proposal. Applicants are encouraged to meet with the Commission to solicit their input and advice prior to seeking permit approvals.

5. **Scenic roads and vistas**.

(a) Except along an existing cleared high tension power line right-of-way, personal wireless service facilities shall not be located within open areas that are visible from public roads, recreational areas or residential development. As required in Section F(1) above, all ground-mounted personal wireless service facilities that are not camouflaged by existing buildings or structures shall be surrounded by a buffer of dense tree growth.

(b) Any personal wireless service facility that is located within 300 feet of a scenic road as designated by the town shall not exceed the height of vegetation at the proposed location. If the facility is located farther than 300 feet from the scenic road, the height regulations described elsewhere in this bylaw will apply.

G. **Environmental standards.**

1. Personal wireless service facilities shall not be located in wetlands, within one hundred (100') feet of wetlands or within two hundred (200') feet of rivers.

2. No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred (110%) percent of the volume of the hazardous materials stored or used on the site.

3. Stormwater run-off shall be contained on-site.

4. Ground-mounted equipment for personal wireless service facilities shall not generate noise in excess of fifty (50) db at the property line.

5. Roof-mounted or side-mounted equipment for personal wireless service facilities shall not generate noise in excess of fifty (50) db at ground level at the base of the building closest to the antenna.

H. **Radiofrequency Radiation (RFR) Standards.** All equipment proposed for a personal wireless service facility shall be authorized per the FCC *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation* (FCC Guidelines). Any application for approval of a personal wireless service facility shall include documentation that the FCC Guidelines are being met and a copy of the letter of approval by the Massachusetts Department of Public Health required by 105 CMR 122.000. The Planning Board may require that the applicant fund the services of an RF Engineer to review the documentation regarding the FCC Guidelines.

I. **Application procedures.**

1. **Pre-application conference**. Prior to the submission of an application for a Special Permit under this regulation, the applicant is strongly encouraged to meet with the Planning Board at a public meeting to discuss the proposed personal wireless service facility in general terms and to clarify the filing requirements. The purpose of the conference is to inform the Board as to the preliminary nature of the proposed personal wireless service facility. As such, no formal filings are required for the pre-application conference. However, the applicant is encouraged to prepare sufficient preliminary architectural and/or engineering drawings to inform the Board of the location of the proposed facility, as well as its scale and overall design.

2. **Application filing requirements.** In addition to those items required by §174-24C(5), other applicable portions of this chapter or the regulations of the Planning Board, the following shall be included in any Special Permit application for personal wireless service facilities:

(a) Name, address and telephone number of the landowner of the property and of the applicant and any co-applicants as well as any agents for the applicant or co-applicants. Co-applicants may include licensed carriers and tenants for the personal wireless service facility. A licensed carrier shall either be an applicant or a co-applicant.

(b) Original signatures for the landowner, applicant and all co-applicants applying for the Special Permit. If the landowner, applicant or co-applicant will be represented by an agent, original signature authorizing the agent to represent the applicant and/or co-applicant. Photo reproductions of signatures will not be accepted.

(c) Location of the subject property, including the name of the nearest road or roads, the property's location relative to those roads, the street address, if any, and the tax map and block number of the subject property.

(d) Zoning district designation for the subject parcel.

(e) A line map to scale showing the lot lines of the subject property and all properties within three hundred (300') feet and the location of all buildings, including accessory structures, on all properties shown.

(f) A town-wide map showing the other existing personal wireless service facilities in the Town and outside the Town within one mile of its corporate limits.

(g) The proposed locations of all future personal wireless service facilities in the Town on a Town-wide map for this carrier.

(h) A one (1”)-inch-equals-forty (40’) feet vicinity plan showing the following:

(1) Property lines for the subject property.

(2) Property lines of all properties adjacent to the subject property within three hundred (300’) feet.

(3) Tree cover on the subject property and adjacent properties within three hundred (300’) feet, by dominant species and average height, as measured by or available from a verifiable source.

(4) Outline of all existing buildings, including purpose (e.g. residential buildings, garages, accessory structures, etc.) on subject property and all adjacent properties within three hundred (300’) feet.

(5) Proposed location of antenna, mount and equipment shelter(s).

(6) Proposed security barrier, indicating type and extent as well as point of controlled entry.

(7) Location of all roads, public and private, on the subject property and on all adjacent properties within three hundred (300’) feet including driveways proposed to serve the personal wireless service facility.

(8) Distances, at grade, from the proposed personal wireless service facility to each building on the vicinity plan.

(9) Contours, at each two feet AMSL, for the subject property and adjacent properties within three hundred (300’) feet.

(10) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.

(11) Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the personal wireless service facility.

(12) Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" subsection below.

(i) Sight lines and photographs as described below:

(1) **Sight line representation.** A sight line representation shall be drawn from any public road within three hundred (300') feet and the closest facade of each residential building (viewpoint) within 300 feet to the highest point (visible point) of the personal wireless service facility. Each sight line shall be depicted in profile, drawn at one-inch equals forty (40') feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building within three hundred (300') feet there shall be at least two (2) sight lines from the closest habitable structures or public roads, if any.

(2) **Existing (before condition) photographs.** Each sight line shall be illustrated by one four-inch by six-inch color photograph of what can currently be seen from any public road within three hundred (300') feet.

(3) **Proposed (after condition).** Each of the existing condition photographs shall have the proposed personal wireless service facility superimposed on it to show what will be seen from public roads if the proposed personal wireless service facility is built.

(j) Siting elevations, or views at-grade from the north, south, east and west for a fifty (50') foot radius around the proposed personal wireless service facility plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter(1/4") inch equals one foot (1') or one-eighth inch (1/8$^{th'}$) equals one (1') foot scale and show the following:

(1) Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.

(2) **Security barrier.** If the security barrier will block views of the personal wireless service facility, the barrier drawing shall be cut away to show the view behind the barrier.

(3) Any and all structures on the subject property.

(4) Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.

(5) Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two (2')-foot contours above mean sea level.

(k) Equipment brochures for the proposed personal wireless service facility, such as manufacturer's specifications or trade journal reprints, shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs and security barrier, if any.

(l) Materials of the proposed personal wireless service facility specified by generic type and specific treatment (e.g., anodized aluminum, stained

wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.

(m) Colors of the proposed personal wireless service facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.

(n) Dimensions of the personal wireless service facility specified for all three (3) directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.

(o) Appearance shown by at least two (2) photographic superimpositions of the personal wireless service facility within the subject property. The photographic superimpositions shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.

(p) Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.

(q) If lighting of the site is proposed, the applicant shall submit a manufacturer's computer-generated point-to-point printout, indicating the horizontal footcandle levels at grade, within the property to be developed and twenty-five (25") feet beyond the property lines. The printout shall indicate the location and types of luminaires proposed.

(r) The applicant shall list location, type and amount (including trace elements) of any materials proposed for use within the personal wireless service facility that are considered hazardous by the federal, state or local government.

(s) **Noise filing requirements.** The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed personal wireless service facilities, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night), for the following:

(1) Existing, or ambient: the measurements of existing noise.

(2) Existing plus proposed personal wireless service facilities: maximum estimate of noise from the proposed personal wireless service facility plus the existing noise environment.

Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards of this Bylaw.

(t) **Radiofrequency Radiation (RFR) filing requirements.** The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed personal wireless service facility, for the following situations:

(1) Existing, or ambient: the measurements of existing RFR.

(2) Existing plus proposed personal wireless service facilities: maximum estimate of RFR from the proposed personal wireless service facility plus the existing RFR environment. The applicant shall also provide a certification, signed by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radiofrequency Radiation Standards sub-section of this Bylaw.

(u) **Federal environmental filing requirements**. The National Environmental Policy Act (NEPA) applies to all applications for personal wireless service facilities. NEPA is administered by the FCC via procedures adopted as Subpart 1, Section 1.1301 et seq. (47 Ch. I). The FCC requires that an environmental assessment (EA) be filed with the FCC prior to beginning operations for any personal wireless service facility proposed in, or involving any of, the following:

(a) wilderness areas,

(b) wildlife preserves,

(c) endangered species habitat,

(d) historical site,

(e) Native American religious site,

(f) flood plain,

(g) wetlands,

(h) high intensity white lights in residential neighborhoods,

(i) excessive radiofrequency radiation exposure.

At the time of application filing, an EA that meets FCC requirements shall be submitted to the Town for each personal wireless service facility site that requires such an EA to be submitted to the FCC.

(3) **Balloon or crane test.** Within thirty (30) days of the pre-application conference, or within twenty-one (21) days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least fourteen (14) days, but not more than twenty-one (21) days prior to the test.

(4) **Waiver of filing requirements.** The Board may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of the proposed personal wireless service facility.

J. **Co-location.**

(1) Licensed carriers shall share personal wireless service facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless service facilities that are stand-alone facilities. All applicants for a Special Permit for a personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes:

(a) A survey of all existing structures that may be feasible sites for co-locating personal wireless service facilities;

(b) Contact with all the other licensed carriers for commercial mobile radio services operating in Mashpee and each of the adjoining towns; and

(c) Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

(2) In the event that co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Board. The Board may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Board may deny a Special Permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

(3) If the applicant does intend to co-locate or to permit co-location, the Board shall request drawings and studies that show the ultimate appearance and operation of the personal wireless service facility at full build-out.

(4) If the Board approves co-location for a personal wireless service facility site, the Special Permit shall indicate how many facilities of what type shall be permitted on that site. Facilities specified in the Special Permit approval shall require no further zoning approval. However, the addition of any facilities not specified in the approved Special Permit shall require a new Special Permit. Estimates of RFR emissions will be required for all facilities, including proposed and future facilities.

K. **Modifications.** Modification of a personal wireless service facility will be considered equivalent to an application for a new personal wireless service facility and will require a Special Permit when the following events apply:

(1) The applicant and/or co-applicant wants to alter the terms of the Special Permit by changing the personal wireless service facility in one or more of the following ways: a change in the number of facilities permitted on the site or a change in technology used for the personal wireless service facility.

(2) The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

L. **Monitoring and Maintenance.**

(1) After the personal wireless service facility is operational, the applicant shall submit, within ninety (90) days of beginning operations, and at annual intervals from the date of issuance of the Special Permit, existing measurements of RFR from the personal wireless service facility. Such measurements shall be signed

and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in Section H. of this bylaw.

(2) After the personal wireless service facility is operational, the applicant shall submit, within ninety (90) days of the issuance of the Special Permit, and at annual intervals from the date of issuance of the Special Permit, existing measurements of noise from the personal wireless service facility. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards sub-section of this Bylaw.

(3) The applicant and co-applicant shall maintain the personal wireless service facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier and maintenance of the buffer areas and landscaping.

M. **Abandonment or Discontinuation of Use.**

(1) At such time that a licensed carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the personal wireless service facility shall be considered abandoned upon such discontinuation of operations.

(2) Upon abandonment or discontinuation of use, the carrier shall physically remove the personal wireless service facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

(a) Removal of abandoned antennas, mount, equipment shelters and security barriers from the subject property.

(b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

(c) Restoring the location of the personal wireless service facility to its natural or original condition, except that any landscaping and grading shall remain as-is.

(3) If a carrier fails to remove a personal wireless service facility in accordance with this section of this Bylaw, the Town shall have the authority to enter the subject property and physically remove the facility. The Planning Board may require the applicant to post a bond at the time of construction in an appropriate amount to cover all costs for the removal of the personal wireless service facility in the event the Town must remove the facility.

N. **Reconstruction or Replacement of Existing Towers and Monopoles.** Guyed towers, lattice towers, utility towers and monopoles in existence at the time of adoption of this bylaw may be reconstructed, altered, extended or replaced on the same site by Special Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or

replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts. No reconstruction, alteration, extension or replacement shall exceed the height of the existing facility by more than twenty (20') feet.

O. **Term of Special Permit.** A Special Permit issued for any personal wireless service facility over fifty (50') feet in height shall be valid for fifteen (15) years. At the end of that time period, the personal wireless service facility shall be removed by the carrier or a new Special Permit shall be required.

§174-45.4 Accessory Apartment:

A Special Permit authorizing one (1) accessory apartment per lot may be granted by the Board of Appeals if consistent with the following:
History: Added 10-20-2003 ATM, Article 16, approved by Attorney General 11-14-2003.

A. In order for an accessory apartment to be permitted, in addition to meeting all of the requirements under subsections B-I, the principal dwelling unit shall not be occupied by anyone other than the property owner as listed on the latest recorded deed. On an annual basis coinciding with the initial date of issuance of the Special Permit, the property owner shall submit to the Building Inspector sufficient evidence to demonstrate occupancy of the principal dwelling unit.

B. The Applicant must provide documentation, endorsed by the Board of Health or its agent, that the proposed accessory apartment conforms with all state and town health and sewage disposal regulations.

C. **Unit Size.** The design, installation, use of an accessory apartment shall be secondary and incidental to the principal use of the structure as the owner's home, and the apartment shall be located within the same structure as said home. The design, installation, use of an accessory apartment shall be secondary and incidental to the principal use of the structure as the owner's home. The gross floor area of the accessory apartment shall be not less than three hundred (300') square feet nor more than forty percent (40%) of the gross floor area of said structure on the date the Special Permit application is filed.
History: Amended 10-17-2005 ATM, Article 19, approved by Attorney General 3-7-2006.

D. **Interior Design.** The accessory apartment shall be self-contained, with separate sleeping, cooking and sanitary facilities for the exclusive use of the occupant(s). Provided that the requirements of subsection B are met, there shall be a maximum of two (2) bedrooms in an accessory apartment. Rooms which might be converted at some future time to a bedroom, such as studies, studios, libraries and the like, shall be counted as bedrooms for the purposes of this Section.

E. **Exterior Design.** Modifications to the exterior of an existing principal structure resulting from the installation of an accessory apartment shall be consistent with the principal structure's predominant character as a single-family home. Appropriate landscaping may be required in order to provide a buffer between the applicant's lot and abutting properties.
History: Amended 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004.

F. **Parking.** Notwithstanding the provision of §174-39, at least one (1) off-street parking space shall be provided for the accessory apartment in addition to any other off-street parking requirement.

G. No new driveway or curb cut shall be created to service the accessory apartment, unless the Board determines that, due to severe topographic or other constraints on the lot, the required parking cannot be provided without relief from this provision and unless any necessary town or state curb cut permit is approved.
History: Amended 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004.

H. Any application for a Special Permit under this Section shall require the submission of three (3) original copies of the application, plans and documentation required under §174-24C.3 for Special Permit application to the Board of Appeals.
History: Amended 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004.
History: Amended 10-19-2015 ATM, Article 23, approved by Attorney General 1-19-2016

I. The Special Permit granted under this section shall run with the property owner and shall lapse upon sale and/or transfer to another property owner.
History: Amended 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004.

J. The accessory apartment shall not be rented or occupied until a Certificate of Occupancy has been issued by the Building Inspector.
History: Amended 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004.

K. A single accessory apartment per existing principal structure is exempt from the Plan Review requirement of §174-24.B.
History: Added 10-19-2015 ATM, Article 23, approved by Attorney General 1-19-2016

§174-45.5 Land-Based Wind Energy Conversion Facilities (WECFs):
History: Added 10-15-2007, ATM, Article 22, approved by Attorney General 1-28-2008.

A. **Purpose and Intent.** It is the express purpose of this section to accommodate distributed Wind Energy Conversion Facilities (WECFs) in appropriate land-based locations while protecting public health, safety, welfare, the character of the neighborhoods, property values, preservation of environmental, historical and scenic resources and minimizing adverse impacts of WECfs. All WECFs shall require issuance of a Special Permit by the Planning Board, acting as the Special Permit Granting Authority. This section is intended to be used in conjunction with other regulations adopted by the Town, including, but not limited to, historic district, Special Permit, conservation and other applicable by-laws and regulations designed to encourage appropriate land use and environmental protection. Further, it is the express intent of this section that any Special Permit hereunder granted runs with the land and that any subsequent owner of said land be bound by the terms and conditions of said Special Permit.

B. **Definitions:** In addition to the definitions contained in §174-3, the following shall apply to Wind Energy Conversion Facilities:

Clear Area – The distance from the lowest point of the blade tip to the ground.

Height – Height is measured from the average grade at the base of the tower to the top of the fixed tower (moveable blades are not included).

Land-based – Land-based shall mean wholly located on upland including any guy wires as may be required.

SPGA – Special Permit Granting Authority (SPGA) for Wind Energy Conversion Facilities shall be the Planning Board.

WECF – Wind Energy Conversion Facility (WECF). All equipment, machinery and structures utilized in connection with conversion of wind to electricity. This includes,

but is not limited to, all transmission, storage, collection and supply equipment, substations, transformers, site access, service roads and machinery associated with the use. A Wind Energy Conversion Facility may include one or more wind turbines.

Met Tower – Wind monitoring or Meteorologist ("test "or "met") Tower. Tower used for supporting anemometer, wind vane and other equipment to assess the wind resource at a predetermined height above the ground.

Wind Turbine – A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft.

C. **Use Regulations.** WECFs or Met Towers shall require Building Permit. The construction of any WECF or Met Tower may be permitted in all zoning districts, subject to issuance of a Special Permit by the Planning Board and provided the proposed use complies with provisions of this section (unless waived by the Board) and any other applicable provisions of this chapter. Any subsequent change or modification of a WECF shall be subject to Planning Board approval of a modification to the original Special Permit under the provisions of §174-24 C(9).

D. **Dimensional Requirements.**

1. **Type -** Tilt-up towers, fixed-guyed towers, freestanding towers or other designs may be considered for approval. WECFs may not be roof mounted or otherwise attached to buildings.

2. **Setback -** The base of any WECF shall be set back from any property line or road layout line to the center of the tower by not less than one hundred twenty percent (120%) of the proposed height of the tower if abutting residentially zoned properties and eighty per cent (80%) of the proposed height of the tower if abutting non-residentially zoned properties. Guy wires or any WECF-related construction not wholly below grade, as may be required by the proposed design, shall be set back at least twenty (20') feet from property lines, and thirty (30') feet from road layout lines. Other setbacks shall conform to the required building setbacks of the zone in which the subject property is located. Guy Wire anchors shall be of sufficient depth and length as to ensure safe operation of the WECF. The SPGA may allow the setback to be reduced as part of the Special Permit process if the project applicant can demonstrate that additional height is needed and that the additional benefits of the higher tower outweigh any increased adverse impacts.

3. **Height -** No WECF may exceed one hundred (100') feet in height unless approved by the SPGA. In addition, the provisions of §174-24 G. shall apply.

E. **General Requirements.**

1. Proposed WCEFs shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.
2. **Demonstrated Utility -** Prior to issuance of a Special Permit the applicant shall demonstrate that the proposed WECF efficiently generates electrical power by providing the SPGA with a "Return on Investment (ROI) report" generated by the manufacturer, installer or wind power consultant. In addition to the ROI information, this report shall include a wind source verification to ensure adequate source of wind for the proposed site.

3. **Maintenance Plan - Appearance and Operation -** A written maintenance plan shall be submitted with the application for a Special Permit for review and approval by the SPGA and shall be made a condition of said Special Permit. The maintenance plan shall include:

   (a) Planned shutdowns. All planned shutdowns for more than three (3) months shall be outlined in the maintenance plan. The WECF will not be considered abandoned during these planned shutdown periods.

   (b) General maintenance. The general maintenance of the WECF as recommended by the manufacturer shall be included in the maintenance plan.

   (c) Maintenance of appearance of exterior of WECF.

4. **Complaints -** Upon written notification of a complaint detailing non-compliance with the terms of the Special Permit or the requirements of this chapter, the Building Inspector or his designee shall record the filing of such complaint and shall promptly investigate the complaint. If the Building Inspector determines that the WECF is not in compliance, the owner of the property shall be notified in writing to correct the violation. If the violation is not remedied within thirty (30) days from the date of notification, the Building Inspector may require the WECF be rendered inactive and shall remain so until such time as the Building Inspector determines the WECF is in compliance.

   If, upon investigation of said complaint, the Building Inspector determines that the WECF is operating in compliance with the Special Permit and the requirements of this chapter, notice in writing shall be provided to the person who has filed such complaint and to the owner of the property stating that no further action is required, all within thirty (30) days of receipt of the written notification of complaint. Any person aggrieved by the Building Inspectors decision may appeal such decision to the SPGA.

5. **Professional consulting fees -** The SPGA may retain a technical expert/consultant to review and verify information submitted by the applicant. The cost for such a technical expert / consultant shall be at the expense of the applicant.

F. **Design Standards.**

1. **Visual Impact -** The applicant shall demonstrate through project siting, facility design and proposed mitigation that the WECF minimizes any impact on the visual character of surrounding neighborhoods and the community. This may include, but not be limited to, information regarding site selection, turbine design, buffering and lighting. All electrical conduits shall be underground.

2. **Color -** WECFs shall be of non-reflective muted colors that blend with the sky, without graphics or other decoration. A single color shall be used on the blades and a single color on the tower.

3. **Equipment Shelters -** All equipment necessary for monitoring and operation of the WECF shall be contained within the turbine tower. If this is infeasible, at the discretion of the SPGA, ancillary equipment may be located outside the tower, provided it is either contained within an underground vault or enclosed within a structure or behind a year-round landscape or vegetated buffer.

4. **Lighting and Signage.**

(a) Wind turbines shall be lighted only if required by the Federal Aviation Administration (FAA). The applicant shall provide a copy of the FAA's determination to establish the required markings and/or lights for the structure.

(b) Lighting of equipment, structures and any other facilities on site (including lighting required by the FAA, if possible) shall be shielded from abutting properties.

(c) No signage allowed.

5. **Guy Wires -** Guy wires utilized in the construction of any tower shall be left totally unadorned. Nothing shall be hung from or attached to said wires, except that, in order to prevent unintended contact by persons who may be on the site, they may be wrapped with a colored sleeve only, which shall extend to a height not greater than ten (10) feet above grade.

6. **Telecommunications -** WECFs may include telecommunication antennas, provided they comply with § 174-45.3 of the zoning by-law. Joint Special Permit applications may be filed under the provisions of this Section and §174-45.3. In such case, the proposed telecommunications carrier shall be named as a co-applicant.

G. **Environmental Standards.**

1. **Sound -** The WECF and associated equipment shall not generate sound in excess of ten (10) decibels (DB) above ambient sound level at the property line. In order to demonstrate compliance with these sound standards, the applicant shall provide to the SPGA, as part of the Special Permit application, an analysis which is consistent with Massachusetts Department of Environmental Protection guidance for sound measurement.

2. **Shadow/Flicker Impact -** WECFs shall be sited in a manner that does not result in significant shadowing or flicker impact. The applicant has the burden of proving that this effect does not have significant adverse impact on neighboring or adjacent uses either through shadow/flicker modeling and/or siting and/or landscaping mitigation.

H. **Safety Standards.**

1. No hazardous materials or waste shall be discharged on the site of any WECF. If any hazardous materials or wastes are to be used on site, there shall be provisions for full containment of such materials or waste. The provisions of Article XIII regarding Groundwater Protection Districts shall apply.

2. Climbing access to any tower shall be limited by placing climbing apparatus no lower than ten (10) feet from the ground.
3. Clear Area, as defined in §174-45.5.B., shall be no less than ten (10) feet.

4. The wind turbine shall conform to FAA Safety Standards, as amended.

I. **Condemnation.**

1. Upon a finding by the Building Inspector that the WECF has been abandoned or has been left in disrepair or has not been maintained in accordance with the approved maintenance plan, the owner of said WECF shall be notified in writing by certified mail that the WECF shall be brought up to standard. If required repairs or maintenance are not accomplished within forty five (45) days of the date of said notification, the WECF shall be deemed condemned and shall be removed from the site within ninety (90) days thereafter. The aforementioned periods of time may be extended at the request of the owner and at the discretion of the Building Inspector. "Removed from the site" shall mean:

   (a) Removal of the wind turbine and tower, all machinery, equipment, equipment shelters, security barriers and all appurtenant structures from the subject property;

   (b) Proper disposal of all solid or hazardous materials and wastes from the site in accordance with local and state solid waste disposal regulations and

   (c) Restoration of the location of the wind energy conversion facility to its natural condition, except that landscaping and grading may remain in the after-condition at the discretion of the SPGA.

2. If an applicant fails to remove a WECF in accordance with the provisions of this section, the Town shall have the authority to enter the subject property and physically remove and dispose of the facility. As a condition of the Special Permit, the SPGA may require the applicant to provide a cash escrow account at the time of construction to cover the costs of removal from the site, as specified in Subsection (1) above, in the event said removal must be done by the Town. The amount of such escrow shall be equal to 150 percent of the costs of removal and disposal of the WECF and restoration of site. The applicant shall submit a fully inclusive estimate of said costs as part of the Special Permit application. The escrow account shall be maintained by the Town until the WECF is removed by the applicant to the satisfaction of the Building Inspector or until, after due notice to the applicant pursuant to this by-law, the SPGA determines that the applicant has failed to take appropriate measures to remove and dispose of the WECF, whereupon the Town may utilize the sums in said escrow account for the purpose of removing and disposing of the WECF and restoring the site by such means as it deems appropriate. Any unexpended balance of the escrow account remaining after the Town has completed dismantling/removal of the WECF shall be returned to the applicant.

§174-46 Open Space Incentive Development (OSID):

For the purposes of preserving critical open space and natural resource areas within the Town of Mashpee, of promoting an efficient pattern of land development and of promoting the health, safety and general welfare of the inhabitants of the town, an open space incentive development (OSID) may be allowed by Special Permit from the Planning Board in any residential district, except as provided under Subsection H. in accordance with the following procedures and standards.

A. **Site eligibility and standard -** An OSID shall include a parcel or parcels of land containing a total of at least twenty (20) acres, of which no developable parcel may be less than five (5) acres in size, with land covered by tidal water, pond, lake, stream or

river**,** or any wetlands as defined by MGL C. 131, §40, not to be included in calculating either total. The developed portion of the OSID shall be required to have frontage on Route 28, Route 151, Cotuit Road, Route 130, Great Neck Road North or South, Quinaquisset Avenue, Great Oak Road, Mashpee Neck Road or Red Brook Road in a location which will allow for a safe entrance onto such road**,** or shall have access to such road as specified in Subsection E(5). The developed portion of an OSID shall not be located in any Primary or Secondary Conservation Area designated by the Mashpee Open Space Incentive Plan dated October 1998, which is on file in the office of the Town Clerk. No structure within the developed portion of an OSID may be located, and no clearance of natural vegetation, except as provided elsewhere in this section, may occur within three hundred (300) feet of any freshwater or saltwater body of more than ten (10) acres or within three hundred (300) feet of the Mashpee, Santuit, Quashnet or Childs Rivers or Red Brook or within one hundred (100) feet of any active or recently active [within ten (10) years] cranberry bog, pond under ten (10) acres or any wetlands as defined by MGL C. 131. §40. The provisions of this section regarding building setbacks or clearance of vegetation shall not apply to any artificial water body or watercourse created (i.e. as an entirely new water body or watercourse) as part of the OSID in conformance with any applicable local, state or federal regulations. A permit shall not be approved for an OSID where the Planning Board determines that the design of the project or any clearance or removal of natural vegetation within the previous five-year period or any land division or transfer within the previous five-year period was intended to or has the effect of subverting or avoiding the purposes or requirements of this section.
History: Amended 5-8-1989 STM, Article 7, approved by Attorney General 8-10-1989.
History: Amended 10-5-1998, ATM Article 31, approved by Attorney General 1-4-1999.

B. **Permitted uses: Within an OSID, only the following uses shall be permitted:**

1. One (1)-family detached dwellings and detached accessory dwellings, or one-(1) family townhouses located on individual lots, pursuant to the following provisions:

   (a) One (1) lot for use by one (1) one-family detached dwelling only, or one (1) one-family townhouse only, may be created for each four (4) bedrooms allowed by Subsection D, provided that said lot shall be serviced by a public or private wastewater treatment plant. Once created, said lot shall have no limit on number of bedrooms. Lots may be created for a smaller number of bedrooms provided that said lots are restricted by the Special Permit and by a recorded deed restriction to residences with said fewer number of bedrooms.
   History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

   (b) One (1) lot for use by one (1) one-family dwelling and one (1) accessory dwelling may be created for each six (6) bedrooms allowed by Subsection D, provided that said lot shall be serviced by a public or private wastewater treatment plant. Once created, said lot shall have no limit on number of bedrooms. Lots may be created for a smaller number of bedrooms provided that said lots are restricted by the Special Permit and by a recorded deed restriction to residences with said fewer number of bedrooms.
   History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

   (c) One-family dwellings may be constructed other than on individual lots. The number of bedrooms and such dwellings shall count against the total allowed for the project under Subsection D.

History: Amended 10-5-1998, ATM Article 32, approved by Attorney General 1-4-1999.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

2. Any other type of residential structure, including attached single-family dwellings, one-family detached dwellings or townhouses on common lots, apartment buildings, two-family dwellings, clustered units, etc., but not including mobile homes or trailers, provided that:

   (a) Including lots and dwellings allowed by Subsection B.1., there shall be an overall limit within the OSID of not more than the number of bedrooms allowed for the development by Subsection D.
   History: Amended 10-5-1998 ATM, Article 32, approved by Attorney General 1-4-1999.
   History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

   (b) No structure shall exceed three (3) stories or forty five (45') feet in height.
   History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016
   History: Amended 10-17-2015 ATM, renumbered

   (c) No structure within three hundred (300) feet of the perimeter of the OSID or of the permanently dedicated open space required by Subsection C or of any other dedicated conservation land or natural water body shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height.
   History: Amended 10-17-2015 ATM, renumbered

3. A community building and recreational facilities for the use of the residents of the OSID and their nonpaying guests or visitors.
   History: Amended 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.

4. Buildings and uses ordinarily incidental to the construction, operation and maintenance of a planned residential community, such as buildings for the maintenance and administration of the OSID and for the storage of equipment and supplies therefor, model dwellings, offices for the sale or rental of dwelling units within the OSID**,** sewage collection, treatment and disposal, potable and other water, temporary trash storage [in structures less than two hundred (200) square feet in floor area] and other utilities, and for the operation and maintenance thereof, but not including restaurants, golf course clubhouses, real estate offices and the like, except under the provisions of Subsections B(5) and B(6) below. No sewage treatment or disposal facility or trash storage structure may be located less than two hundred (200) feet from developed or developable residentially zoned property outside the OSID.
   History: Amended 10-5-1998 ATM, Article 32, approved by Attorney General 1-4-1999.

5. Non-residential uses in mixed-use developments permitted under the provisions of Subsection H.
   History: Added 10-5-1998 ATM, Article 32, approved by Attorney General 1-4-1999.
   History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

C. **Open Space Requirements.** A minimum of fifty percent (50%) of the upland area of the parcel or parcels included within the OSID shall be permanently dedicated as open space.

1. This minimum required open space shall lie within a Primary or Secondary Conservation Area shown on the Mashpee Open Space Incentive Plan, or within the authorized acquisition boundaries of the Mashpee National Wildlife Refuge, and shall be left in essentially its undisturbed natural state, except for pedestrian, equestrian or bicycle trails, minor clearing for passive recreation purposes such as picnicking, including parking areas of no more than ten (10) parking spaces intended for public access to said trails or recreation facilities and areas disturbed for water wells, pumphouses and related access, provided that such uses may disturb no more than five percent (5%) of such open space unless a management plan for said open space has been approved by the Planning Board and the Conservation Commission, which may include up to ten percent (10%) disturbed area. In no case shall such area be used for roads, play-grounds, golf courses, tennis courts or other uses requiring significant amounts of clearing, structures or paving. In any OSID, all upland within three hundred (300) feet of the mean high-water line of great ponds or the rivers listed in Subsection A, as well as any upland within one hundred fifty (150) feet of other water bodies, streams, bogs or wetlands as noted in Subsection A above, shall be included within such dedicated undisturbed natural open space, except that where the developed portion of the OSID exceeds one hundred (100) acres, upon approval of the OSID Special Permit by the Planning Board in consultation with the Conservation Commission, Shellfish Commission and Harbormaster, and upon approval of any permits required from the Conservation Commission, up to one hundred (100) feet of the shoreline and a corresponding one-hundred-foot-wide (100) corridor roughly perpendicular to the shoreline through any open space may be developed for use as a dock, marina, boat launch or other water-related facility, such as a waterfront park or picnic area not involving active recreation facilities, enclosed structures or paved areas covering more than ten percent (10%) of such corridor area. The area of such corridor and facilities shall not count toward the required fifty percent (50%) of open space or be credited for bedrooms under Subsection D. In addition to the minimum required open space in Primary and Secondary Conservation Areas, or the Mashpee National Wildlife Refuge other undisturbed natural open space is encouraged adjacent to the required buffer areas from water and wetlands and/or adjacent to existing or proposed conservation areas on the site or on neighboring properties where such are present or otherwise in areas which the Planning Board determines would best serve the purposes of this section. All of the required open space shall be composed of large unified areas rather than small strips or lots. No open space area whose width or other horizontal dimension is less than one hundred (100) feet shall be counted toward the requirements of this subsection, except in the case of previously approved and valid subdivision lots in a Primary or Secondary Conservation Area or the Mashpee National Wildlife Refuge which are proposed to be converted to preserved natural open space.
History: Amended 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.
History: Amended 10-7-1996, Article 30, approved by Attorney General 12-9-1996.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

2. In addition to the required dedicated open space described in Subsection C(1), there shall be a fifty-foot (50') buffer strip along the perimeter of the site [except where required buffer strips from water and wetlands under Subsection C(1) are present], preferably left in its natural undisturbed state except for required access roads and except that it shall be additionally landscaped or shall be increased in width if, in the opinion of the Planning Board, such landscaping or additional width is necessary to protect the privacy of adjoining landowners or the aesthetic quality of important views from public ways. Said buffer may not be used for parking or active recreational activities. The Planning Board may waive or reduce the requirement for said buffer strip where the legal owner of the abutting property has

certified, in writing, that he has no objection to the elimination or reduction of said buffer strip. In addition, all wetlands, as defined by MGL C. 131, §40, shall be permanently preserved under the same ownership as the majority of the minimum open space required under Subsection C(1). All other land uses not allowed in the open space area described by Subsection C(1) shall be considered part of the developed area of the OSID.

History: Amended 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

3. Any open space required to meet the minimum provisions of Subsection C shall be surveyed, properly bounded on the ground by concrete monuments and shown on a plan recorded at the Barnstable County Registry of Deeds or Land Court Registry. Said plan shall be recorded and said boundary monuments shall be set within six (6) months of the approval of the OSID Special Permit by the Planning Board, along with the covenants and restrictions required by Subsection C(4) below. Any transfer of the fee title to property to the town or a nonprofit organization shall be completed within one (1) year of the approval of the OSID Special Permit.

History: Amended 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.

4. Any open space required to meet the minimum provisions of Subsection C shall be permanently dedicated in one of the following ways.

(a) **Public ownership:** The open space may be conveyed in fee to the Town of Mashpee, subject to a conservation restriction, approved by the Commonwealth of Massachusetts and enforceable by an appropriate party, which shall be recorded at the Barnstable County Registry of Deeds or Land Court Registry, as appropriate, providing that such land shall be kept in an open and natural state and shall not be built on for residential use or developed for accessory uses such as roadway or any other uses not allowed by this section in minimum open space areas, or alternately, may be conveyed to the Mashpee Conservation Commission and accepted by it for open space use.

History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(b) **Ownership by a nonprofit organization:** The open space may be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space. The nonprofit organization shall execute a conservation restriction, approved by the Commonwealth of Massachusetts and enforceable by the Town of Mashpee, which shall be recorded at the Barnstable County Registry of Deeds or Land Court Registry, as appropriate, providing that such land shall be kept in an open and natural state and shall not be built on for residential use or developed for accessory uses such as roadway or any other uses not allowed by this section in minimum open space areas. The nonprofit organization shall own and maintain the common open space and shall not dispose of any of the common open space by sale or otherwise, except that said nonprofit organization may offer to convey such open space to the Mashpee Conservation Commission for acceptance by it for open space use.

History: Amended 10-19-2015 ATM, Article 22

(c) **Ownership by a corporation or trust:** The open space may be conveyed to a corporation or trust owned or to be owned by the owners of the lots or residential units within the development. Ownership of the corporation or

trust shall pass with conveyance of the lots or residential units. The corporation or trust shall execute a conservation restriction, approved by the Commonwealth Massachusetts and enforceable by the Town of Mashpee or another appropriate party, which shall be recorded at the Barnstable County Registry of Deeds or Land Court Registry, as appropriate. Said restriction shall provide that such land shall be kept in an open and natural state and not be built on for residential use or developed for accessory uses such as roadway or any other uses not allowed by this section in minimum open space areas. The corporation or trust shall own and maintain the common open space and shall not dispose of any of the common space by sale or otherwise, except that said corporation or trust may offer to convey such open space to the Mashpee Conservation Commission for acceptance by it for open space use.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

5. The developer's declaration of his choice of the three (3) methods described in Subsection C(4) above shall be included in his application to the Planning Board for a Special Permit to develop an OSID, along with the required maps and plans describing the open space areas and the proposed uses within said areas Before the issuance of any occupancy permits for structures within the development, the developer shall also file with the Board a copy of the conservation restriction approved by the Commonwealth of Massachusetts and recorded in the appropriate Registry necessary to secure the permanent legal existence of the open space, if it is not to be owned by the Mashpee Conservation Commission, and a copy of any recorded deed for transfer in fee to the Town or to a nonprofit organization. Approval of the OSID shall require approval by the Planning Board of said covenants and restrictions after consultation with the Town Attorney.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

6. In the event that the organization established to own and maintain the open space, or any successor organization, shall, at any time after establishment of the open space residential development, fail to maintain the open space in reasonable order and condition in accordance with the plan, the Town of Mashpee will serve written notice upon such organization or upon the residents of the open space residential development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of hearing hereon which shall be held within fourteen (14) days of the notice. At such hearing the Town of Mashpee may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty (30) days, the Town of Mashpee, in order to preserve the taxable values of the properties within the open space residential development and to prevent the open space from becoming a public nuisance, may enter upon said open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any right to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the Town of Mashpee shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon notice to such an organization or to the residents of the open space residential development, to be held by the Town of Mashpee Planning Board, at which hearing such organization or the residents of the open space residential development shall show cause why such maintenance by the Town of

Mashpee shall not, at the election of the Town of Mashpee, continue for a succeeding year. If the Planning Board of the Town of Mashpee shall determine that such organization is ready and able to maintain said open space in reasonable condition, the Town of Mashpee shall cease to maintain said open space at the end of said year. If the Planning Board of the Town of Mashpee shall determine such organization is not ready and able to maintain said open space in reasonable condition, the Town of Mashpee may, in its discretion, continue to maintain said open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The decision of the Planning Board of the Town of Mashpee in any such case shall constitute a final administrative decision subject to review in accordance with any applicable statute of the Commonwealth of Massachusetts. The cost of such maintenance by the Town of Mashpee shall be assessed pro rata against the properties within the open space residential development that have a right to enjoyment of the open space. Such assessment shall become a lien on the properties. The Town of Mashpee, at the time of entering upon the open space for a purpose of maintenance, shall file a notice of such entry with the Town Clerk and at the principle office of the corporation, trust or association owning the open space, which notice shall contain a statement that the individual owners within the open space residential development may become subject to an assessment and lien for their pro rata share of the total cost of the maintenance.

D. **Incentive Bonus and Affordable Housing Provisions –** In order to encourage the preservation of critical open space and natural resource areas within the Town of Mashpee for the benefit of the inhabitants of the Town, as well as to provide affordable housing, certain increases in density of dwellings within an open space incentive development may be allowed in accordance with MGL C. 40A, §9. Such increase in density, in the form of bonuses allocated for transfer of development rights from portions of parcels within an OSID, which will be preserved as open space, to those portions of parcels of the OSID which will be developed, shall require approval by the Planning Board as part of its approval of a Special Permit for the OSID in conformance with the following guidelines:
History: Amended 10-21-2013 ATM, Article 21, approved by Attorney General 12-16-2013.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

1. For the purposes of this section "bedroom" shall be defined as a room providing privacy, intended primarily for sleeping and having floor space of no less than seventy (70') square feet, a ceiling height of no less than seven feet three inches (7'3"), an electrical service, ventilation and at least one (1) window which is other than a living room [one (1) allowed], dining room [one (1) allowed], kitchen [one (1) allowed], hall, utility (boiler, water heater, laundry, etc.) room or bathroom. Rooms with six (6') foot wide entranceways and/or rooms consisting of three (3) walls and a half-wall not exceeding forty two (42") inches in height shall not be considered a bedroom. Unfinished cellars and unheated storage areas over garages are not considered bedrooms. Actual dwelling units within the OSID (except any accessory dwelling units) may contain any number of bedrooms, but the aggregate total of bedrooms allowed in the OSID, excluding any lots created under the provisions of §174-46B(1)(a) or (b), shall not exceed the maximum number of bedrooms allowed by this subsection.
History: Amended 10-5-1998, Article 31, approved by Attorney General 1-4-1999.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

2. The base number of bedrooms allowed within an open space incentive development shall be calculated as follows:
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(a) Any previously approved and recorded subdivision lot which meets current zoning and health requirements and regulations or which would otherwise be buildable if developed, due to protection from [such lot shall not qualify for any bonus multiplier unless it contains at least ten thousand (10,000') square feet of upland area]; otherwise it shall be treated as unsubdivided and undeveloped land as in Subsection D.2(c) below.
History: Amended 5-8-1989 STM, Article 8, approved by Attorney General 8-10-1989.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(b) Any dwelling unit previously approved under a current valid (unexpired) Special Permit, except cluster subdivision lots covered in Subsection D.2.(a) above and motel units (which shall not qualify as dwelling units under this bylaw for any purpose), shall count ~~f~~or the number of bedrooms allowed under said Special Permit, and shall not qualify for any bonus multipliers.
History: Amended 5-8-1989 STM, Article 8, approved by Attorney General 8-10-1989.
History: Amended 10-19-2015 ATM, Article 22

(c) For undeveloped unsubdivided land, the base number of bedrooms shall equal the area of land, excluding ninety percent (90%) of any wetlands as defined under MGL C. 131, §40, divided by ten thousand (10,000') square feet.
History: Amended 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.
History: Amended 10-19-2015 ATM, Article 22

3. Where land is permanently dedicated as open space in conformance with the requirements of Subsection C, the bedrooms [as defined in Subsection D.1 above] which would otherwise have been allowed on such specific area of land may be transferred to another portion or parcel of the OSID (subject to the conditions listed in Subsection C). Depending on the level of environmental, scenic and public value and on the ultimate level of public access to or ownership of the land so dedicated, the bedrooms transferred may be subject to the following bonus multipliers:
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(a) On the basis of location, one (1) of the following multipliers may be applied:
History: Amended 5-8-1989 STM, Article II, approved by Attorney General 8-10-1989.

(1) Two and zero-tenths (2.0) for lands or existing subdivision lots fronting on navigable saltwater or on fresh water ponds over one hundred (110) acres, where the entire lot or all the unsubdivided land within three hundred (300') feet from the mean high-water mark is preserved as open space [for the purposes of this section, "navigable water" shall be defined as water having a minimum depth of one (1) foot at mean low tide within seventy (70') feet of the mean high-water mark on the lot or unsubdivided land to be preserved.]

(2) One and five-tenths (1.5) for lands or existing subdivision lots fronting on unnavigable salt-water, saltwater or tidal wetlands or

freshwater pond over ten (10) acres or for subdivision lots not fronting on a water body but having over fifty percent (50%) of their area lying within three hundred (300') feet of the high-water mark of any saltwater body, saltwater wetland or freshwater pond over ten (10) acres, where the entire lot (including the adjacent portion of a paper street) or all of the unsubdivided land with three hundred (300') feet from the mean high-water mark or the edge of the wetland is preserved as open space.

(3) One and three-tenths (1.3) for lands or existing subdivision lots lying within three hundred (300') feet of freshwater ponds under ten (10) acres, nontidal portion of the Mashpee, Quashnet, Santuit or Childs Rivers, Red Brook or Quaker Run and their adjacent wetlands or other cranberry bogs or wetlands greater than one (1) acre in area, where the entire lot (including the adjacent portion of any paper street) or all of the unsubdivided land within three hundred (300') feet from the mean high-water mark or the edge of the wetland is preserved as open space.

(4) One and two-tenths (1.2) for lands having prime farmland soils as listed by the United States Department of Agriculture Soil Conservation Service and as mapped in its *Soil Survey of Barnstable County, Massachusetts,* issued March 1993.
History: Amended 10-5-1998, Article 31, approved by Attorney General 1-4-1999.

(b) On the basis of consistency with the Mashpee Open Space Incentive Plan, one (1) of the following multipliers may be applied:

(1) One and four-tenths (1.4) for lands located in Primary Conservation Areas as defined by the plan.

(2) One and two-tenths (1.2) for lands located in Secondary Conservation Areas or within the authorized acquisition boundaries of the Mashpee National Wildlife Refuge as defined by the Plan.
History: Amended 10-7-1996, Article 30, approved by Attorney General 12-9-1996.

(c) On the basis of public access and benefit to the inhabitants of the town, one (1) of the following multipliers may be applied:

(1) One and six-tenths (1.6) for lands transferred in fee to the town in conformance with Subsection C(4)(a).

(2) One and two-tenths (1.2) for lands transferred in fee to a recognized nonprofit conservation organization, not to include an association of landowners within the development, in conformance with Subsection C(4)(b).

(3) One and zero-tenths (1.0) for lands dedicated in conformance with Subsection C(4)(c).
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(4) The bonus multipliers allowed by Subsection D.3.(a),(b) and (c) for any particular base number of bedrooms may be multiplied to determine the maximum number of bedrooms available for transfer from the portion of the preserved open space where that base number of bedrooms could otherwise have been built (a x b x c = total bedrooms allowed for transfer). That number is in lieu of the base number of bedrooms, not in addition to it.
History: Added 10-19-2015 ATM, Article 22

(5) Where bedrooms approved under a Special Permit as specified in Subsection D.2.(b) are to be transferred, a minimum of the total area of the site covered by the Special Permit, divided by the number of bedrooms approved under said Special Permit, shall be permanently preserved per each bedroom to be transferred. Such bedrooms shall not qualify for any bonus multiplier, but the land from which they are transferred shall be counted toward the minimum open space requirements of Subsection C.1., provided that it otherwise meets the criteria of Subsection C.
History: Renumbered 10-19-2015 ATM, Article 22
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(6) No bedrooms may be credited for transfer from lands shown as open space on an approved definitive subdivision plan or Special Permit site plan, or from utility easements, except that where a previously-approved definitive subdivision plan or Special Permit project is legally abandoned in its entirety, it may be treated as undeveloped and unsubdivided land under Subsection D.2.(c). However, bedrooms may be transferred from lands subject to Otis Air Base easements if such lands are transferred in fee to the Town of Mashpee and such lands are shown as Primary or Secondary Conservation Areas on the Mashpee Open Space Incentive Plan, or lie within the authorized acquisition boundaries of the Mashpee National Wildlife Refuge, in which case the upland area of such land may be divided by thirty thousand (30,000') square feet to determine the number of bedrooms which may be transferred to a developable site or parcel within an OSID.
History: Amended 5-8-1989 STM, Article 8, approved by Attorney General 8-10-1989.
History: Amended 10-7-1996, Article 30, approved by Attorney General 12-9-1996.
History: Renumbered 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(7) Require Affordable Housing – Of the total bedrooms allowed and constructed in the project after application of the above bonus calculations, at least ten (10%) percent of such bedrooms shall be in permanently deed-restricted dwellings meeting the low-income affordability requirements of MGL C. 40B as it existed on October 21, 2013. For each of said bedrooms in dwellings so restricted, one (1) additional bonus bedroom may also be created, which will become available for construction upon completion of each deed-restricted dwelling, or upon the donation of, and recording of a deed to, each deed-restricted dwelling or building lot to the Town or to a public or non-profit affordable housing agency, organization or trust for the purpose of creating affordable housing. Such permanently deed-restricted affordable dwellings shall not be subject to the growth management provision of Subsection 174-26 or the phasing requirements of §174-46F.
History: Added 10-21-2013 ATM, Article 21, approved by Attorney General 12-16-2013.
History: Renumbered 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016
History: Amended 10-19-2015, approved by Attorney General 1-19-2016

E. **Development Standards.** Any open space incentive development shall be designed and constructed in conformance with the following standards:

1. Any Special Permit for an open space incentive development shall be conditioned upon approval of all necessary permits from the Board of Health, Planning Board,

Board of Appeals, Conservation Commission, Massachusetts Department of Environmental Protection and other town, state and federal agencies. No clearing, grading, filling, construction or other development activity will be permitted until the necessary permits for such activities have been approved.
History: Amended 10-5-1998 ATM, Article 32, approved by Attorney General 1-5-1999.

2. (Reserved)[1]

3. No structure within an open space incentive development may be built on a lot smaller, or closer to the street line, side line or rear line**,** than the minimum requirements of the underlying zoning district, except where the Planning Board, as a part of its approval of the Special Permit for the OSID, has approved a specific schedule of dimensional controls which differ from those requirements. However, in no case may one-(1) or two-(2) story primary structures be located less than twenty (20) feet from each other or may structures containing more than two (2) stories be located less than thirty (30) feet from any other habitable structure without specific approval from the Mashpee Fire Chief. Access to, and the location of, any multifamily structure or structure containing three (3) stories shall also require the approval of the Mashpee Fire Chief before any Special Permit or Building Permit may be granted.
History: Amended 5-8-1989 STM, Article 12, approved by Attorney General 8-10-1989.
History: Amended 10-5-1998 ATM, Article 32, approved by Attorney General 1-5-1999.

4. All development within an OSID shall conform to the parking requirements of Article VIII except that, where an OSID will be divided into individual lots, the Planning Board may allow parking requirements to be met in one (1) of two (2) ways. Either each lot will be required to provide off-street parking based on the requirements for individual uses contained in Article VIII, or an overall shared parking scheme, which may include on-street parking if approved by the Board, may be developed which conforms with the parking space requirements of Article VIII for residential uses and any commercial uses proposed in the OSID. In the latter case, the applicant shall specify how shared parking areas are to be owned, constructed, operated and maintained and provide the Board with proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms for ensuring the same.
History: Amended 10-5-1998 ATM, Article 32, approved by Attorney General 1-5-1999.

5. Access to the OSID shall only be directly from a street listed in Subsection A or from a road which intersects such arterial street within two thousand (2,000') feet of the entrance onto it from the OSID, is reconstructed by the developer to a standard, including sidewalks, bikeways and signalization where required by the Planning Board, which is sufficient to carry the traffic from the OSID plus all other traffic projected to use such road at the time of the completion of the OSID, except that the Planning Board may allow for a pro rata sharing of such reconstruction costs with other major developments requiring Special Permits which will generate more than two hundred (200) trips per day on the road in question, and does not provide direct driveway access to any single-family residence or school on that portion between the OSID access and the street listed in Subsection A at the time of filing of the OSID Special Permit application.

[1] Editor's Note: Former Subsection E(2), which provided that all dwelling units except garden apartments have a ground floor with a direct outside entrance, was repealed 5-8-1989 STM, Art. 10, approved 8-10-1989.

6. Streets and drives within the OSID shall be constructed in accordance with the standards adopted by the Planning Board for subdivision streets and Special Permit projects. In addition:

   (a) no on-street parking shall be allowed on such streets unless eight-(8) foot-wide parking lanes are constructed; any gutters, berms or other drainage facilities shall be in addition to the required lane width, including parking lanes;

   (b) paved sidewalks of at least four (4) feet in width shall be required on one (1) side of streets having five hundred (500) to one thousand (1,000) trips per day and on both sides of streets having over one thousand (1,000) trips per day

   (c) where required by the Planning Board, bicycle facilities shall be constructed along such streets in the form of two (2) five-(5) foot-wide paved shoulder bike lanes or a paved bikeway or mixed bicycle/pedestrian facility having a width of at least ten (10) feet.
   History: Amended 10-5-1998 ATM, Article 32, approved by Attorney General 1-4-1999.

7. No drainage from streets, parking areas, roofs or other impervious surfaces may be directed into any natural water body, stream, river, marsh, bog or other wetland as heretofore defined. Drainage shall be in conformance with the stormwater management provisions of §174-27.2. Application of nitrogen and other fertilizers, as well as road salt, shall be minimized to reduce impacts on groundwater quality. Any recommendations of the Board of Health regarding drainage and groundwater quality shall be incorporated into the conditions of any OSID Special Permit and into the subdivision review process of the Planning Board.
   History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

F. **Phasing, Expiration and Extension.** An open space incentive development may be subdivided, developed and constructed in phases according to a phasing schedule approved by the Planning Board as part of the OSID Special Permit. Within any OSID, no more than fifty (50) residential units or twenty percent (20%) of the total number of residential units approved under the Special Permit, whichever is greater, may be constructed during any calendar year, and Building Permit shall not be issued for more than that number of units. The phasing schedule shall be included in the master plan of the OSID and shall indicate the surveyed and bounded open space area required by Subsection C (3), the approximate boundaries of each phase for which subdivision approval will be sought (if subdivision is to be done in phases) and the proposed year of such subdivision application, the general location of all roads projected to carry over two hundred (200) vehicles per day and the proposed year of their construction, the general location of any proposed recreation facilities, road improvements, sewage treatment plants, commercial uses and similar major structures and amenities and the year in which they are proposed to be built in a general master plan showing the clusters or areas of residential development and the number and type of dwellings approved for development within each area. Where the developer of an OSID continues file definitive plans of each phase, constructs required improvements and performs all other actions required by the Special Permit and this chapter in conformance with the phasing schedule, the Special Permit shall remain in effect. Otherwise a Special Permit for an open space incentive development shall become void if the developer has not applied for a Building Permit for or constructed the proposed improvements contained in the phasing schedule and conditions of the permit within two (2) years of the dates specified on the phasing

schedule, excluding any time required to pursue or wait the determination of an appeal. If the permit does become void, there shall be no effect on the ownership and location of the required open space areas or on the number of bedrooms originally approved under the bonus provisions of this section. However, the developer shall resubmit plans for the developed portion of the OSID, and any such plans shall be reviewed by the Conservation Commission, Board of Health, Planning Board and any other agencies having applicable regulatory powers under the regulations in effect at the time of resubmission. The developer may also apply to the Planning Board for a extension of the two-(2) year expiration date for any element of the OSID, and the Board may grant such request after a properly advertised public hearing if it determines that there is a reasonable justification for the extension, that the developer is acting in good faith regarding the provisions of the OSID Special Permit and that there will be no adverse impact on the public health, safety and welfare or on the town's environment and natural resources.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

G. **Application and Review Procedures for OSID.** Any open space incentive development shall be reviewed in conformance with the following procedures. In general, the basic OSID master plan regarding bonuses, site plan, roads, open space areas and phasing, along with any preliminary or definitive subdivision plans, shall be the responsibility of the Planning Board.
History: Amended 10-7-1996, ATM Article 32, approved by Attorney General 12-9-1996.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

1. **Preapplication conferences -** Prior to the submission of a formal application for a Special Permit to develop an open space incentive development, the applicant shall confer at a public meeting with the Planning Board, Conservation Commission, Design Review Committee, Plan Review Committee and Board of Health to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of detailed plans, surveys and other data, to present to each board a preliminary master plan of the development and to allow each board to make comments on the proposal in order to minimize potential problems at later stages of the application process. In addition to such preapplication conference, the applicant should arrange for site visits by members of each board. The following items shall be submitted to each board at least fourteen (14) days prior to each preapplication conference and to the Town Planner, the Superintendent of Streets, the Fire Chief, Police Chief and the consulting engineer to the Planning Board at least fourteen (14) days prior to the first or such conferences:
History: Amended 5-8-1989 STM, Article 13, approved by Attorney General 8-10-1989.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(a) A topographic plan of the entire site, including all parcels proposed for open space or for development, showing topography at five-(5') foot contour intervals or less, all existing paved and improved roads, ways and trails and all existing structures.

(b) A natural resource map or maps, on a copy or copies of the topographic plan, indicating all wetlands as defined by MGL C. 131, §40, or otherwise referenced in this section, generalized vegetation types and location, soil types based on the latest information available from the United States Department of Agriculture Natural Resources Conservation Service or on more detailed information obtained by the applicant and depth to groundwater table based on exploration by the developer or on other reliable data acceptable to the Board of Health.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(c) A sketch plan of the proposed development showing the approximate boundaries of areas proposed as open space as required by Subsection C(1), the general location of any clusters or areas of residential development, the location of any well field or sewage treatment facility and the general location of any recreation facilities, commercial structures or other major features of the development.

2. **Special Permit application**. After preapplication conferences have been completed, the applicant may submit an application, containing all of the items required below, for a Special Permit for an open space incentive development to the Town Clerk. The required number of copies of such application, including the date and time of filing certified by the Town Clerk and including all of the items required below, shall then be filed forthwith by the petitioner with the Planning Board. Within sixty-five (65) days, but no less than forty (40) days, after the filing of such application with the Board, the Board shall hold a public hearing for which proper notice has been given by publication or posting as required by MGL C. 40A, §11, and by mailing to all parties in interest, including the owners of all real property within three hundred (300') feet of such development. The following items shall be required as part of the application for a Special Permit under this section, along with receipts indicating that items in Subsection G.2.(c) through (h) and (k) have been submitted to the Board of Health, Design Review Committee, Plan Review Committee, Conservation Commission, Town Planner, Superintendent of Streets, Fire Chief, Police Chief.
History: Amended 5-8-1989 STM, Article 13, approved by Attorney General 8-10-1989.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(a) Any required fees established by the Planning Board along with any application forms established by the Board for the purpose, signed by the owner or owners of the parcel or parcels of land to be included in the OSID. If the application is not signed by the owner, it shall be accompanied by a notarized letter signed by the property owner authorizing the agent signing the application to act in his behalf in all matters relative to the application and to legally bind the owner regarding any conditions or requirements of the Special Permit. More than one (1) party may be named as an applicant for a Special Permit. However, the Special Permit is not transferable to other parties not named in the application without specific written permission from the Planning Board.

(b) A copy of the latest recorded deed or deeds to all property included within the proposed OSID along with a copy of any currently valid recorded subdivision plan or Special Permit applicable to the site of the proposed OSID.

(c) A master site plan showing existing and proposed topography at two-(2') foot intervals, all proposed roads as referenced in Subsection E.6.(b) with plan and profile drawings as required by the Board for definitive subdivision plans and all existing paved and unpaved roads, ways and trails to remain or proposed to be moved or removed, proposed general locations for structures other than detached single-family residences on subdivision lots, the location of any proposed recreational facilities or other amenities, the location of any wetlands as heretofore defined, the general boundary of any areas to be subdivided into single-family residence lots showing the approximate number of such lots proposed and the location of future road access points from such subdivision onto the roads referenced in Subsection E.6(b) and required to be shown on this

plan, the items required by Subsection F to show any proposed phasing of the development, the general location of any bikeways or pedestrian facilities and the specific location of the surveyed and bounded areas to be set aside as open space in conformance with Subsection C. The scale and size of plans, etc., shall conform to the Planning Board regulations for definitive subdivision plans unless a waiver is granted by the Board prior to the submission of the Special Permit application.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(d) Accurate calculations of the area within the OSID of wetlands, of open space to be preserved or transferred to the town or to a nonprofit organization and of areas proposed for roadways and other development, along with the applicant's calculation of allowed bedrooms based on the provisions of Subsection D.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(e) The developer's declaration of his choice of method or methods of dedicating the required open space of the three (3) methods described in Subsection C.4, along with proposed conservation restrictions to secure the permanent legal existence of the preserved open space and the proposed wording of any deed for transfer in fee to the town or to a nonprofit organization.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(f) A plan indicating the general location of any proposed well field, sewer treatment plant, major water or sewer lines, fire hydrants and any other significant utility element.

(g) Generalized architectural plans and landscaping plans for all structures other than single-family residences, including treatment of a typical structure, entranceways and major signs. (Where development is to be done in phases, only typical plans are required at this stage of review.)

(h) Copies of the minutes of the reapplication conferences held with the Design Review Committee, Plan Review Committee Conservation Commission and Board of Health, as well as any other letters or comments by those boards or by the Town Planner, Superintendent of Streets, Fire Chief, Police Chief and the consulting engineer to the Planning Board regarding the preapplication proposal for the development.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(i) A list of the names, as certified by the Assessors maintaining any applicable tax list, and most recent available mailing addresses including two (2) sets of mailing labels, of the owners of all real property within three hundred (300') feet of the proposed development, notwithstanding that the land of any such owner is located in another town.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(j) The developer's proposed phasing plan as required by Subsection F.

(k) Any other items requested by the Conservation Commission, Planning Board or Board of Health at the preapplication conferences.

3. **Special Permit review**. Upon submission of the required application materials to the Board of Health, Design Review Committee, Plan Review Committee, and Conservation Commission, the applicant shall arrange to attend a regularly scheduled meeting of each in order to discuss the application and to solicit their comments. As part of its presentation at the Planning Board hearing on the OSID Special Permit, the applicant shall present the minutes of such hearings [unless fourteen (14) days have elapsed since a hearing and no minutes have become available], any letters or other comments issued regarding the development and any letters or comments received from the other town officials noted in Subsection G.2. The agencies receiving copies of the plans shall submit written recommendations and comments on the proposed project within thirty-five (35) days of filing. Failure to comment shall be deemed lack of objection. In reviewing the OSID application, the Planning Board shall make written findings regarding the following items:
History: Amended 5-8-1989 STM, Article 13, approved by Attorney General 8-10-1989
History: Amended 10-7-1996, ATM Article 30, approved by Attorney General 12-9-1996.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(a) Does the site meet the eligibility standards of Subsection A?

(b) Are the proposed uses permitted under Subsection B?

(c) Does the proposed open space meet the requirements of Subsection C?

(d) Are the proposed conservation restrictions and/or deeds regarding the open space adequate to ensure its protection under the standards of this section and are they legally acceptable to the Town Counsel?
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(e) Is the proposal generally in conformance with the requirements and comments of the Conservation Commission, Board of Health, Design Review Committee, Plan Review Committee and the other town officials and agencies noted in Subsection G(2)?
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(f) Should the development qualify for the full bonuses allowed by Subsection D because it preserves critical open space and natural resource areas for the benefit of the inhabitants of the town? (Unless there are serious problems regarding the layout of the development, proposed or existing uses on or adjacent to the proposed open space or serious potential adverse effects on public health, safety and welfare, open space which meets all of the requirements of Section C should normally qualify for the full bonus allowed.)

(g) Does the proposed development conform to the standards of this section?

(h) Will the project have a safe and adequate access to a road listed in Subsection A?

(i) Have the location of structures, building heights and setbacks between buildings been approved (where required) by the Fire Chief?

(j) Does the proposed development conform to the requirements of Subsection F?
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(k) Will the proposed development be superior to alternative plans in preserving open space for conservation and public recreation, in its use of the natural features of the land and in allowing for more efficient provisions of public services?

(l) Is the proposed development in the best interest of the public health, safety and general welfare? No Special Permit for an OSID may be issued by the Planning Board unless the Board finds in the affirmative with regard to all of the above items. The Planning Board shall act regarding an OSID Special Permit application within ninety (90) days of the public hearing. Approval of the Special Permit shall require a four-fifths vote of the Board.

4. The Board may either approve the application as submitted, approve it subject to modifications and conditions or deny the application. If modified or denied, the Board shall include written reasons for such action in its decision. Unless an extension of time is requested in writing by the applicant, if the Board fails to make its decision within ninety (90) days from the public hearing, the plan shall be deemed approved. However, no Building Permit shall be issued until the Special Permit, signed by the majority of the members of the Board, has been recorded in the Registry of Deeds and until any appeal period has passed. Adjustments to roadway locations and design or similar items shown on the master plan which the Board determines are of a minor nature and will not impact on neighboring properties or public interests may be made at a public meeting, but the Board may otherwise modify its Special Permit decision, phasing and other conditions only by a favorable vote of at least four (4) members of the Board after holding a public hearing as specified in Subsection G(2). A notice of the Board's vote shall be delivered within twenty (20) days to the applicant, Building Inspector and Town Clerk.

5. If the project is denied, the developer shall not submit substantially the same proposal for two (2) years, except as provided under MGL C. 40A, §11.

6. **Contents of the Special Permit**. If a Special Permit is approved by the Board, it shall include the following items:

(a) The Board's written findings regarding Subsection G.3.

(b) The Board's decision regarding the number of bonus bedrooms to be allowed, the total number of bedrooms to be allowed and any commercial uses to be allowed.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(c) Any other conditions imposed by the Board regarding the development, including any required road improvements, bonding, etc.

(d) A copy of the master site plan and phasing plan as approved for the development, including all items required by Subsection G(2).

(e) Copies of the proposed conservation restrictions and deeds to be recorded under Subsection C(3).
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(f) Any other items the Board deems necessary to ensure an adequate legal public record of its findings and decision. Within fourteen (14) days of the Board's decision regarding a Special Permit for an OSID or any extension, modification or renewal thereof, the Planning Board shall issue to the owner, and to the applicant if other than the owner, a copy of its decision certified by the Board and in conformance with the requirements of MGL C. 40A, §11. A copy of the decision and, if favorable, all the items listed above shall also be filed with the Town Clerk and in the Planning Board files. Said permit shall not take effect until a copy of the decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed or that if such appeal has been files, that it has been dismissed or denied, is recorded in the Barnstable County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

7. **Subdivision within the OSID**. Upon approval of an OSID Special Permit, definitive subdivision plans may be submitted to the Planning Board in conformance with the phasing schedule of the Special Permit and with the normal subdivision regulations of the town. Subdivision plans shall show any streets included in Subsection E(6)(b) and any other roadways deemed significant by the Planning Board and shall be accompanied by a plan showing street addresses for all proposed lots and buildings within the OSID. No preliminary plans shall be required for subdivisions within an approved OSID which conform with the requirements and conditions of the OSID Special Permit. The definitive plan for the required open space area noted by Subsection C(3) shall be filed with the Board no later than ninety (90) days from the date of approval of the OSID Special Permit.
History: Amended 5-8-1989 STM, Article 14, approved by Attorney General 8-10-1989.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

8. **Construction and development within the OSID**. The construction of buildings or freestanding signs within the OSID, as well as the construction of any other facility or structure requiring significant disturbance of natural topography or vegetation other than detached one-family dwellings or authorized accessory dwellings, shall require review and comment by the Design Review Committee and Plan Review Committee and approval by the Planning Board prior to the issuance of any Building Permit, Special Permit or other permit required by this chapter prior to such construction. Application, review and approval procedures shall be as follows:
History: Amended 10-1-1990 ATM, Article 1, approved by Attorney General 12-18-1990.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(a) Application shall be made to the Design Review Committee and Plan Review Committee, said application to include, along with any required forms and fees, specific building locations, generalized architectural plans, utilities, vehicular and pedestrian facilities, parking areas, proposed drainage facilities, proposed landscaping and any other materials required

by the Committee. Submission of large segments of the OSID phases, or an entire phase, is encouraged.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(b) Within thirty-five (35) days of the receipt of the application, the Committees shall review the application at a advertised public meeting with regard to conformance with the provisions and conditions of the OSID Special Permit, any other applicable town bylaws and regulations and the attractiveness and appropriateness of the design.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(c) Within thirty (30) days of said meeting, unless an extension of time is requested in writing by the applicant, the Committees shall make written recommendations regarding the application and transmit them forthwith to the Planning Board along with copies of the plans required under Subsection G.8.(a) above, as recommended for approval, denial or modification.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(d) Said recommendations shall be reviewed by the Planning Board, along with the items required under Subsection G.8.(a) above, at a public meeting held within thirty-five (35) days of their receipt from the Design Review Committee and Plan Review Committee in order to determine their conformance with the provisions and conditions of the OSID Special Permit and the requirements of this Zoning Bylaw.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(e) Within ninety (90) days of such meeting, the Board shall vote to approve or disapprove the proposal and plans, require amendments or add conditions. A notice of the Board's action shall be delivered within twenty (20) days to the applicant, the Building Inspector and the Town Clerk.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(f) After final approval by the Planning Board, the applicant may apply to the Building Inspector to construct any structures so approved. The Building Inspector shall require that prior to the issuance of any Building Permit the applicant show proof that any permit is in conformance with the OSID Special Permit, any conditions imposed by the Planning Board, the OSID phasing schedule, if any, and that all required permits have been obtained from the Board of Health, Conservation Commission and other applicable town, state and federal agencies.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

(g) The Building Inspector may revoke a Building Permit issued under this section in case the builder or developer fails to conform to the plans and schedules as approved.

(h) Changes in the location or design of buildings, signs or other facilities or structures or landscaping approved under Subsection G(8) may be made by the Board by a majority vote at a public meeting. A notice of the

Board's action shall be delivered within twenty (20) days to the applicant and to the Design Review Committee, Building Inspector and Town Clerk.

H. **Mixed-Use Developments.**

1. As part of an open space incentive development, the Planning Board may allow the development of dwellings within a commercial or industrial zone, as part of a residential development or in conjunction with the uses otherwise allowed in that district as part of a coordinated mixed-use development. Such mixed-use development shall comply with the requirements of this section except with regard to permitted uses (Subsection B) and except that there shall be at least a one-hundred-(100') foot buffer strip providing a vegetated visual buffer between any residential development in an industrial zone and any other industrially zoned land. There shall be no base residential bedroom density credited for developed sites within the commercial or industrial zone. Where land in a commercial or industrial zone is shown on the Mashpee Open Space Incentive Plan within a Primary or Secondary Conservation District, it may not be included in the developed area of an OSID developed under this subsection, but it may be included in preserved open space, for which a base density of one (1) bedroom per five thousand (5,000') square feet of land so preserved [excluding ninety percent (90%) of any wetlands as defined by MGL C. 131, §40] shall be credited in calculating incentive bonuses under Subsection D. For those portions of such OSID within residential zones, the requirements of Subsections A through G shall apply.
History: Amended 10-5-1998 ATM, Article 32, Approved by Attorney General 1-4-1999.
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

2. Where residential uses are proposed to be combined with nonresidential uses in the same structure, any such structure shall require the approval of the Mashpee Fire Chief and Board of Health in addition to any other required permits and approvals.

3. As an alternative to the above provisions, bedrooms may be transferred from other parcels that will be preserved as open space to land within a commercial or industrial zone as part of a mixed-use commercial center development permitted under the provisions of §174-45.1. The maximum number of bedrooms so transferred shall be determined by reference to the incentive bonus provisions contained in §174-46D. and shall include the requirement for permanently deed-restricted affordable dwellings and the resulting additional bonus bedrooms. Any land set aside as open space as part of a transfer of bedrooms under this subsection shall also be subject to the bounding requirements described in §174-46 C(3), the permanent dedication requirements of §174-46 C.(4), the declaration of choice and filing requirements of §174-46.C(5) and the maintenance requirements of §174-46 C(6).
History: Added 5-3-2004 ATM, Article 12, approved by Attorney General 8-18-2004.
History: Amended 10-21-2013 ATM, Article 21, approved by Attorney General 12-16-2013.
History: Amended 10-19-2015 ATM, Article 23 renumbered, approved by Attorney General 1-19-2016
History: Amended 10-19-2015 ATM, Article 22, approved by Attorney General 1-19-2016

§174-47 Cluster Development:

History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

A. The purposes of this Section are to encourage the preservation of open space, to reduce the impact of new development on the Town's water quality and natural resources, to promote the more efficient use of land and municipal infrastructure, and to protect and promote the health, safety and general welfare of the inhabitants of the town.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

B. The Planning Board may grant a Special Permit approving a cluster development in any residential zoning district for a tract of land, containing at least twice the minimum lot area required in the applicable zoning district, in which some or all of the lots do not conform to the upland lot area, frontage, setback (except from water or wetlands) or yard requirements of Article VII of this chapter. For any parcel of five (5) acres or more in area, no subdivision in a residential zoning district may be approved except pursuant to a Special Permit for a cluster development under the provisions of this section or of §174-46, except that the Planning Board may waive this requirement upon written request from the applicant where, at its sole discretion, the Planning Board finds that the applicant has demonstrated that a cluster development will not achieve the purposes of this Section as effectively as a conventional subdivision. Approval shall require that the Planning Board makes a finding that the public good will be served and that the following criteria are met.

History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

1. The proposed plan will promote the purpose of this section and shall be superior to a conventional plan in preserving natural open space, protecting wetlands, wildlife habitats, water quality and other natural resources, utilizing natural features of the land and allowing more efficient provisions for public services. Where applicable, the open land shall be located in Primary or Secondary Conservation Areas designated by the Mashpee Open Space Conservation Incentive Plan and in areas of prime agricultural soils as identified in the *Soil Survey of Barnstable County, Massachusetts* issued by the United States Department of Agriculture in March 1993. Open space should also be laid out so as to maximize buffer areas to water bodies and wetlands and to promote and protect maximum solar access within the development.

   History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

2. Except as provided under Subsections B(9) and (10) below, the total number of lots for building purposes within the tract shown on the plan shall be not more than the number of times that the total upland area of the tract, in square feet, exclusive of water, wetlands as defined under MGL C. 131, §40, existing or proposed streets, roadway rights-of-way or easements twenty (20') feet or more in width and overhead utility rights-of-way or easements twenty (20') feet or more in width, is wholly divisible by the minimum lot size, in square feet, normally required for the zoning district in which the tract is located.

   History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

3. The lots for building purposes shall be grouped in a cluster or clusters, and within each cluster the lots shall be continuous. Open space shall be contiguous within the subdivision, or to other existing or proposed open space to the maximum extent practicable.

   History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

4. The design process should follow this sequence:

   (a) delineation of topography, wetlands, prime agricultural soils, Primary and Secondary Conservation areas, historic or archaeological sites and any active agricultural lands or facilities;

   (b) delineation of proposed open space;

   (c) delineation of potential building sites;

   (d) location and alignment of access roads and driveways;

(e) general design of stormwater management and treatment facilities and;

(f) establishment of lot lines.

Application materials shall include mapping and other evidence showing how this design sequence was implemented.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

5. As part of its Special Permit decision, the Planning Board may, at its sole discretion, set a schedule of lot area, frontage, setback and dimensional regulations (except height and setbacks from wetlands and cranberry bogs as specified elsewhere in this Chapter) for building lots in the cluster development which differ from those otherwise required by §174-31. However, each lot shall have no less than twenty (20') feet of frontage on a public or private street. Said schedule of dimensional regulations shall also be included as a table or graphically on the definitive subdivision plan. Except when required to protect wetlands or other critical natural resource areas, the Board may not require setbacks greater than those normally required in the zoning district without written agreement of the applicant. Any proposed building lot shall contain adequate width and area to;

(a) allow for a building footprint of a least one thousand (1000') square feet plus additional area to meet the setback regulations established by the Planning Board for the subdivision and any setback requirements from wetlands and cranberry bogs established elsewhere in this chapter;

(b) include sufficient area to accommodate required grade changes;

(c) provide adequate area for required parking and access drive;

(d) provide for stormwater management on the lot in conformance with the provisions of this chapter;

(e) provide for required wastewater disposal facilities and setbacks from wells or other features as specified by the Board of Health and;

(f) provide for reasonable privacy and landscape buffers between residences (except where attached zero-set-back residences are allowed by the Board).
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.
History: Amended 10-18-2010 ATM, Article 11, approved by Attorney General 1-31-2011

6. Provisions shall be made so that open space set aside under the provisions of this chapter shall be owned in one of the following ways:
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

(a) **Public ownership**. The open space shall be conveyed to the Town of Mashpee and accepted by it for park or open space use.

(b) **Ownership by nonprofit organization**. The open space shall be conveyed to a nonprofit organization, the principal purpose of which is conservation of open space.

(c) **Ownership by corporation or trust.** The open space shall be conveyed to a corporation or trust owned or owned by the owners of lots or

residential units within the development. Ownership of the corporation or trust shall pass the conveyance of the lots or residential units.

7. Within one hundred eighty (180) days of the endorsement of the subdivision plan by the Planning Board, unless said time is extended by the Planning Board, and prior to the issuance of any Building Permit for lots in the subdivision or the release of any roadway covenant or other roadway performance guarantee for the subdivision, a deed restriction shall be executed, approved by the Commonwealth of Massachusetts and recorded at the Barnstable County Registry of Deeds, which shall provide that such land shall be restricted as specified below. If the open space is not deeded to the Town, said restriction shall be enforceable by the Town. The non-profit organization, or corporation or trust, shall own and maintain the open space and shall not dispose of any of the open space by sale or otherwise, except that said corporation or trust may offer to convey such open space to the Town of Mashpee for acceptance by it for park or open spaces uses. Where open space is to be conveyed to the Town, it shall be made subject to a restriction enforceable by a nonprofit organization, the principal purpose of which is the conservation of open space, which shall be recorded at the Barnstable County Registry of Deeds, and which shall provide such land shall be restricted as specified below. The open space set aside under the provisions of this chapter shall be:
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

(a) Restricted to specific agricultural, open space or park uses approved by the Planning Board as part of its Special Permit decision and shall be left in essentially its undisturbed natural state, except for agricultural uses, pedestrian, equestrian or bicycle trails, minor clearing for water wells, pumphouses and related access, or stormwater bioretention systems and similar stormwater treatment facilities approved by the Planning Board, provided that such uses or activities, other than agricultural uses, may disturb no more than ten percent (10%) of such open land. Open space proposed to be reserved for agricultural use shall be permanently restricted by deed to those agricultural uses listed in §174-25 Table of Use Regulations, Subsections C(1) through (5), which may include greenhouses, or barns, stables and similar structures for housing poultry or livestock specifically permitted by the Planning Board for inclusion within said open land, but not residences, garages, or other buildings.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

(b) Except for lands reserved for agricultural uses open to such allowed uses by at least the owners and occupants of the lots in the tract in the case of ownership under criteria in Subsection B(6)(c) above and to the general public in the case of ownership under criteria in Subsection B(6)(a) and (b) above.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

(c) Restricted so that no structure, road, parking area, tennis court or similar development shall be erected thereon, except for pumphouses and similar minor public utility structures no more than fifteen (15') feet in height, and except for barns, stables or similar structures necessary for operation of an agricultural use permitted by Planning Board inclusion with said open land.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

8. All wetland areas as defined in MGL C. 131, §40, plus a minimum of fifty percent (50%) of the total upland area of the tract (excluding roads, street layouts and other traveled ways), including all land within one hundred (100') feet of said wetland areas, shall be preserved as open land as described in criteria in Subsection B(6) and (7). Wetland areas and all uplands within one hundred (100') feet of any wetland area, at a minimum, shall be left in their undisturbed natural state. Otherwise, the portions of the proposed open space to be reserved in their undisturbed natural state, or reserved for agricultural use, as well as the approximate location of existing or proposed structures within said open space, shall be specifically delineated on the recorded plan and shall require approval by the Planning Board as part of its Special Permit decision.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

9. For each eighty thousand (80,000') square feet in R-5 zoning districts, or forty thousand (40,000') square feet in other zoning districts, of additional upland area set aside as permanently restricted open space, beyond the required fifty percent (50%), on additional residential lot may be created.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

10. At least one (1) or each ten (10) lots allowed as part of such subdivision under the provisions of Subsection B(2), shall be reserved for construction only of a permanently deed-restricted home meeting the low income affordability requirements of MGL C. 40B as it existed on October 18, 2010. For each of said lots so reserved, one (1) additional lot may also be created, which will become buildable for a single family residence upon completion and sale or each of said deed-restricted homes, or upon donation of, and recording of deed to, the lots set aside for such deed-restricted homes to the Town or to a public or non-profit housing agency or trust. Such permanently deed-restricted affordable homes or lots shall not be subject to the growth management provisions of Section 174-26. No occupancy permits may be issued for residences on more than half (1/2) of the approved market-rate lots until completion of each said deed-restricted affordable home, or upon donation of, and recording deeds to, the lots set aside for such deed-restricted affordable homes to the Town or to a public or non-profit housing agency or trust. Where completion and sale of said deed-restricted homes or donation of said lots is not done within three (3) years of the approval of the Special Permit, the additional market-rate lots referenced shall be considered permanently unbuildable and part of the restricted open space.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007
History: Amended 10-18-2010 ATM, Article 11, approved by Attorney General 1-31-2011
History: Amended 10-20-2014 ATM, Article 15, approved by Attorney General 1-22-2015

C. **Application Procedure.**

1. The application to the Planning Board for a Special Permit for a cluster development shall include all application forms, fees and any other materials required by the Planning Board under Special Permit Regulations, along with mapping and other materials showing how the design sequence specified under Subsection B(4) was implemented. Applications shall be filed with the Town Clerk in conformance with the provisions of the General Laws and of §174-24 C of these by-laws. After submission of the required materials to the Town Clerk, the applicant shall forthwith deliver to the Planning Board a copy said materials, including the date and the time of filing certified by the Town Clerk. Once the mapping and materials specified under Subsection B(4) have been prepared, and prior to preparation of formal plans and application materials, it is recommended that the applicant initiate one or more pre-application conferences with the Town

Planner and plan Review Committee, along with an informal review by the Planning Board to discuss conceptual aspects of the proposed plan, The Planning Board may provide informal, non-binding suggestions to the applicant.
History: Amended 10-5-1998 ATM, Article 27, approved by Attorney General 1-4-1999.
History: Amended 10-16-2006 ATM, Article 29 approved by Attorney General 2-13-2007.

2. Within sixty-five (65) days, but no less than twenty-one (21) days, after the required application materials have been submitted, the Board shall hold a public hearing, notice of which shall be published and set by mail to all parties in interest in conformance with MGL C. 40A, §11.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

3. The Planning Board shall, within ninety (90) days following close of the public hearing, take final action to approve, approve subject to modifications or deny the Special Permit application. Failure by the Board to take final action upon the application for a Special Permit within said ninety (90) days following the date the public hearing is closed shall be deemed a grant of permit applied for.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

4. Approval of the Special Permit shall require a four-fifths (4/5th) vote of the Planning Board based on the application materials, any comments received from other town agencies or at the close of the public hearing, the criteria contained in Subsection B and required under Subsection 174-24 C(2) and the best judgment of the Board regarding the accomplishment of the purpose of this section and the protection of the public health, safety and welfare. The Board may require any reasonable conditions to ensure that the criteria and purpose are met and that public interests are protected.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

5. Special Permits granted under this section shall lapse within two (2) years, which shall not include such time required to pursue or await the determination of an appeal under MGL C. 40A, §17, from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Construction of streets and utilities to service at least fifty percent (50%) of the lots in the development, or posting a performance guarantee with the Town in a form and amount acceptable to the Planning Board to ensure completion of construction of said streets and utilities, shall constitute "substantial use" for the purposes of this subsection.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

D. After a Special Permit for a cluster development has been approved by the Planning Board, the Board may approve a definitive subdivision plan based on the Special Permit approval and conditions and following the normal procedures specified in the Subdivision Regulations for definitive plans. The application for the Special Permit and a definitive subdivision plan may proceed concurrently. No preliminary plan submittal will be required.
History: Amended 10-16-2006 ATM, Article 29, approved by Attorney General 2-13-2007.

E. No Building Permit may be issued for any lot within a cluster development until the open space within the development has been deeded to the Town or, where the open space will not be deeded to the Town, until the deed restriction required by §174-47 B(7) has been recorded, and evidence of such recording has been submitted to the Planning Board and Building Inspector.
History: Amended 10-7-1996, ATM Article 32, approved by Attorney General 12-9-1996.

§174.47.1 Golf Course:

A. Any such use and related development shall require the issuance of a Special Permit by the Planning Board, whether proposed as part of a residential development or other project, or as a separate use.

B. The site permitted for development under this section, including any required open space, shall be a specifically defined parcel, or a number of separate parcels, bounded on the ground with permanent monuments, which may not be considered to meet the open space requirements of any other section of these by-laws.

C. A minimum undisturbed buffer strip of fifty (50') feet in width shall be maintained between any area brushed or cleared for golf course or associated construction and any site boundary line or the street layout line of a public way, except for access roads to the property and for walking, bicycle or golf cart paths approved by the Planning Board or for areas where the legal owner of the abutting property has certified, in writing, that he has no objection to the elimination or reduction of said buffer strip if approved by the Planning Board. In addition, a minimum undisturbed buffer area of two hundred (200') feet in width shall be maintained between any water body or wetland as defined under M.G.L. Ch. 131, Section 40, excluding flood zones or land in agricultural use as defined in Mashpee Conservation Commission Regulation 24 (as in effect on August 25, 1999) for the Mashpee Wetlands Bylaw (Chapter 172 of the Code of the Town of Mashpee), and any area brushed or cleared for golf course or associated construction, except that the Planning Board may approve, by a four-fifths (4/5ths) vote, a waiver allowing reduction of said buffer when the Board determines that said waiver would be consistent with the findings required under §174-24 C(2), particularly with respect to its effect on water quality, wildlife habitat or fisheries, and the Mashpee Conservation Commission has determined that the proposed reduction is consistent with the provisions of the Massachusetts Wetlands Protection Act, the Mashpee Wetlands Bylaw and the Commission's regulations. Additional area, plantings, fencing or other similar items may be required by the Planning Board to protect adjacent property owners or natural resources from adverse impacts of the project or to protect the character of the neighborhood. A minimum of forty percent (40%) of the site shall be left as open space in its undisturbed natural state, including any buffer areas required from water bodies or wetlands, but not including water bodies, wetlands, cranberry bogs or the fifty (50) foot wide buffer strips required above. Said open space shall be owned by one of the entities identified in §174-47 B(6) and be made subject to a deed restriction, enforceable by the Town of Mashpee, providing that said open space shall be left in essentially its undisturbed natural state, except for pedestrian, equestrian or bicycle trails, minor clearing for water wells, pump houses and related access, provided that such activities may disturb no more than ten percent (10%) of such open space. Where a proposed golf course lies partly in another town, these requirements shall be applied to that portion lying within the town of Mashpee and the required forty percent (40%) open space shall be located in Mashpee. The Planning Board may grant a reduction in the amount of said open space to no less than thirty five percent (35%) if greater than fifty percent (50%) of said open space is to be deeded to the Town of Mashpee.

D. In addition to the golf course itself, the Planning Board may permit a country club, including dining, lounge, pro shop, indoor athletic facilities, tennis courts, swimming pools and other similar facilities normally associated with a golf course and country club, along with necessary parking areas, signage, maintenance structures and similar facilities.

E. There shall be no residential structures allowed within the site permitted for development under this section except for one (1) residence for an on-site caretaker. Should other residences be proposed, they shall be located on a separate parcel or parcels, which may be integrated within the golf course project boundaries, and be subject to the provisions of this bylaw applicable to residential developments.

F. No building constructed on the site shall be located within two hundred (200') feet of the exterior boundary line of the site. Such use is subject to the provisions of §174-27, except that the required number of test wells shall be two (2) per twenty (20) acres of site area unless the Board of Health recommends, and the Planning Board approves, a reduced number of wells. No runoff from any golf course or related facilities may be directly discharged into any stream, water body or wetland, including cranberry bogs and vernal pools. In addition, any application for approval of such use shall include a Golf Course Management Plan including fertilizer, pesticide and herbicide types and application rates, groundwater withdrawals for irrigation and other management practices related to the golf course and associated facilities and their potential impact on water resources, wildlife and the health and safety of abutters and of users of the course.
History: Added 10-4-1999 ATM, Article 26, approved by Attorney General 1-11-2000.

§174-48 Design Review Committee:

A. A Design Review Committee shall be established to advise the Building Inspector, Planning Board and Board of Appeals on matters of architectural and design concerns in the review of applications for Special Permits and sign permits in the R-5, R-3, C-2, I-1, C-1, and C-3 Zoning Districts. "Architectural and design concern" shall include, but not be limited to site planning, building placement, building size, design compatibility, exterior appearance, construction materials and finishes, parking and roadways, landscaping and site grading, building entrance and exit placement and signs.
History: Amended 10-18-2004 ATM, Article 38, approved by Attorney General 12-16-2004
History: Amended 5-2-2011 ATM, Article 17, approved by Attorney General 8-23-2011

B. The Design Review Committee will sit with the Planning Board and Board of Appeals in any public meetings dealing with development proposals in the R-5, R-3, C-2, I-1, C-1, C-1-SV Incentive and C-1-0 Incentive Zoning Districts. The Design Review Committee may call special meetings of its own to review applications. Findings of the Design Review Committee shall be advisory to the Planning Board and Board of Appeals. Full power for granting or denial of applications for Special Permits shall remain with these Boards.
History: Amended 5-2-2011 ATM, Article 17, approved by Attorney General 8-23-2011

C. Membership of the Design Review Committee shall consist of four (4) persons, one (1) each from the Planning Board and Board of Appeals and two (2) members to be appointed by the Board of Selectmen. The Planning Board member shall be appointed by the Planning Board Chairman, and the Board of Appeals member shall be appointed by the Chairman of the Board of Appeals. In addition, the Chairman of the Planning Board and Board of Appeals, respectively, may appoint any number of alternate members from their Board, who may be designated by the Chairman to replace the regular member when the regular member is unable to attend a meeting of the committee. One (1) of the two (2) members appointed by the Board of Selectmen shall be an architect, landscape architect or civil engineer. In the event that no such person is available, the Design Review Committee may retain, with prior approval of the Board of Selectmen, the services of an architect, landscape architect or civil engineer.
History: Amended 5-2-2011 ATM, Article 17, approved by Attorney General 8-23-2011

§174-48.1 Plan Review Committee:

History: Added 10-18-2004 ATM, Article 35, approved by Attorney General 12-16-2004

A. A Plan Review Committee shall be established to perform the functions described in §174-24, to otherwise advise the Building Inspector, Board of Selectmen, Planning Board and Board of Appeals on matters related to the areas of expertise of its members, and to provide informal advice and review to prospective applicants for permits under this chapter.

History: Amended 5-2-2011 ATM, Article 17, approved by Attorney General 8-23-2011

B. Membership of the Plan Review Committee shall consist of the Building Inspector, Health Agent, Town Planner, Conservation Agent, Fire Chief, Police Chief, Director of Public Works and Town Manager or their designees. The Committee may organize itself in any way it deems appropriate and establish rules and procedures it deems necessary for the performance of its functions. The Committee may meet as a group to discuss projects, in which case it shall follow the requirements of the "Open Meeting Law", or it may establish procedures under which, for certain types of uses, the members may file individual recommendations regarding a project with the Building Inspector, who shall compile the Committee's decision or recommendation letter, provide it to the applicant and, if appropriate, to the Special Permit granting authority, and record it with the Town Clerk

ARTICLE X - Signs

§174-49 Intent:

It is the intent of this Article to protect, conserve and improve the visual quality of the Town of Mashpee while providing reasonable regulations and control of the erection and maintenance of signs and advertising devices without restricting the conduct of lawful enterprise.

§174-50 Compliance Required:

Except for signs erected by government agencies, or mandated by government regulations, no sign or advertising device of any kind or nature shall be erected on any premises or affixed to the outside of any structure or be visible from the outside of any structure in Mashpee except as permitted by this Article.

History: Amended 10-15-2007 ATM, Article 20, approved by Attorney General 1-28-2008.

A. **New Signs**. A new sign shall not be erected, constructed, altered or maintained except as herein provided and until after a sign permit has been issued by the Building Inspector and the bond, if required, shall have been filed in accordance with §174-56.

B. Pre-existing signs in existence on September 1, 1985 may continue. All other signs must be permitted as required by this Chapter.

C. Any sign allowed under this Chapter may, in lieu of any specified copy, only identify the occupancy of such premises or advertise the articles and services available within said premises, or contain any otherwise lawful, noncommercial message. In order to avoid public safety problems related to misdirection of emergency response services, signage should, if possible, avoid duplication or avoid like sounding names or properties and business establishments.

D. **Alterations.** A sign shall not be enlarged or relocated except in conformity with the provisions of this chapter for new sign permits or Special Permit modifications nor until a proper permit has been secured. The changing of movable parts of an approved sign that is designed for such changes, or the repainting or reposting of display matter, shall

not be deemed an alteration, provided that the conditions of the original approval and the requirements of this Article are not violated.

E. Dimensional measurement of signage.

1. For freestanding signs, square footage shall be measured at the outside perimeter of the structure on which the sign is located, exclusive of the portion of any supporting posts or similar structure below the lower edge of the sign face. Signage on the reverse side of the sign face will not be counted additionally. The top edge of any such freestanding sign shall not be higher that fifteen (15') feet vertical measure above the average level of the ground between the supports of each sign.

2. For building signs, square footage shall be measured at the outside perimeter of the sign board, if separately attached to the building, or for signs consisting of separately attached or painted letters or symbols, as the maximum height of said letters or symbols time the maximum distance between the left side of the first letter or symbol and the right side of the last letter or symbol. Signage on the reverse side of projecting signs will not be counted additionally. Signs on awnings shall be measured in the same manner as separately attached or painted letters or symbols, unless, in the opinion of the Special Permit granting authority, such awning is intended primarily as an advertising device or support for said signage, in which case the entire surface area of the awning will be counted as signage.

3. Signs attached to walls and structures other than buildings shall be measured in the same manner as building signs, unless in the opinion of the Special Permit granting authority, or the Building Inspector for projects not involving a Special Permit or a sign over twenty (20') square feet, such wall or structure is intended primarily as an advertising device or support for said signage, in which case the entire surface area of the wall or structure will be counted as signage.

§174-51 Required Review and Permits:

History: Amended 10-15-2007 ATM, Article 20, approved by Attorney General 1-28-2008.

A. All new signs over six (6') square feet tall require issuance of a sign permit for said sign by the Building Inspector, after review and comment by the Design Review Committee. Before any permit is granted for the erection of a sign, plans and specifications shall be filed with the Building Inspector showing the dimensions, materials and required details of construction, including loads, stresses and anchorage, where required. The application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected.

B. Except where permitted or proposed as part of development for which a Special Permit has been issued by, or is required from, the Planning Board, any new sign exceeding twenty (20') square feet, and any awning sign, shall require a Special Permit from the Board of Appeals, in accordance with Article VI.

C. For any building or other development requiring a Special Permit from the Planning Board or Zoning Board of Appeals, location and size of any building or freestanding signage shall be in conformance with the provisions of this article as specified on the approved Special Permit plans. Modifications to location and size of such signage may be approved by the Special Permit granting authority as a minor Special Permit modification under §174-24 C(9)(a).

§174-52 Prohibitions:

History: Amended 10-15-2007 ATM, Article 20, approved by Attorney General 1-28-2008.

A. **Moving or flashing signs.** In order to avoid, in the opinion of the zoning enforcement officer, a distraction or hazard to any vehicle operator or pedestrian upon any way, no sign or display, any part of which is designed intentionally to move, and no sign illuminated by or including any flashing or oscillating light shall be permitted. Strings, banners, pennants or so-called whirligigs and the like shall be included in this prohibition, which shall also apply to window signs, as denied herein. A sign which is designed, for structural reasons, to align itself with direction of the wind shall not be considered a moving sign.

B. **Overhanging signs.** No signs shall be permitted which overhang public ways, however, this provision shall not apply to street-name signs nor to signs or devices erected by the Town, County or Commonwealth for the direction and control of traffic, nor shall this provision apply to signs permitted under Subsection D.

C. **Signs on trees, etc.** Except for signs warning of danger or prohibiting trespass or the like, no sign shall be printed on or affixed to any tree, fence, utility pole, rock or ledge, nor painted or posted on any wall without an intermediary removable surface.

D. **Private signs on town property.** Unless a permit for such a sign is authorized by the Board of Selectmen, no such signs are permitted. No such authorization shall be given until after a duly advertised public hearing. Except for setback from property lined, any such signs shall conform in all respects to all other provisions of this Article. All permits issued hereunder shall be subject to the provisions of §174-56. Permits for such signs may be revoked at any time by the Board of Selectmen.

E. Portable signs, including portable signs attached to a permanent post or installed on any portable vehicle, except temporary real estate or contractor signs listed under §174-54 D, E and F are not permitted.

F. Signs and billboards advertising products not sold, or services not available, on the property are prohibited.

G. **Illuminated signs.** No sign or advertising device, including window signs, shall be internally lit or of neon, neon-type, fiber optic, LCD or illuminated tube type. Signs may only be externally lit or of a wall-mounted back-lit design. Lighting of any sign or advertising device shall be continuous (not intermittent or flashing or changing). In all zoning districts, for safety reasons, any private outdoor lighting fixture, exclusive of streetlights, whether temporary or permanent, shall be so placed or hooded so that no light beams shall be directed at any point beyond the lot lines of the premises illuminated. "Picture framing" of structures with lights, except for seasonal displays, shall not be permitted.

H. Roof signs shall be prohibited.

§174-53 Maintenance:

A. All signs, whether erected before or after the effective date of this chapter, shall be maintained in a safe condition to the satisfaction of the Building Inspector.

B. When any sign becomes insecure, in danger of falling or otherwise unsafe or poorly maintained as evidenced by illegibility or excessive defacement or missing sections, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the

provisions of this Article, the owner thereof or the person or firm maintaining same shall, upon written notice of the Building Inspector, forthwith in the case of immediate danger and in any case within not more than ten (10) days, make such sign conform to the provisions of this Article or shall remove it. If within ten (10) days the order is not complied with, the Building Inspector may remove such sign at the expense of the owner or lessee thereof. Any sign existing in a commercial or industrial district shall be removed within sixty (60) days, or such further period as allowed by written letter of the Building Inspector, following the permanent closing of the commercial or industrial operation. Any sign not removed in compliance herewith may be removed by the Building Inspector.

§174-54 Residential Districts:

A. One (1) sign displaying the street number or name of the occupant of the premises or both, not exceeding four (4') square feet in area, is permitted. Such sign may be attached to a building or be freestanding and may identify any other permitted accessory uses on the premises.

B. One (1) freestanding identification sign for permitted nonresidential building or use, not more than six (6') square feet in signboard area, is permitted. For churches, synagogues, mosques or institutions one (1) bulletin or announcement or identification sign on each building and/or one (1) freestanding bulletin or announcement or identification sign is permitted. Each church, synagogue, mosque or institution building sign shall be governed by §174-55 B. Freestanding signs up to six (6') square feet are allowed for those identified institutions. Freestanding signs may not be placed closer than five (5') feet from the property line or block line of sight for pedestrian and traffic safety if so determined by the D.P.W. Director.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

C. On premises with a lawfully nonconforming nonresidential use, one (1) sign of not more than six (6') square feet signboard area is permitted.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

D. One (1) "for sale" or "for rent" sign, not more than five (5') square feet in signboard area and advertising only the premises on which the sign is located, is permitted.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.

E. One (1) real estate sign, not more than five (5') square feet in signboard area, is permitted. Such sign shall be removed forthwith upon the signing of a legally binding purchase and sales agreement or lease agreement.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.

F. One (1) building contractor's sign on a building or site while actually under construction, not exceeding five (5') square feet in signboard area, is permitted. Such sign shall be removed forthwith upon completion or occupancy of the structure.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

G. No sign or advertising device shall be illuminated after 11:00 p.m., except as permitted by the Board of Selectmen, upon application to it for a permit, citing reasons for the exceptions.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

H. Subdivisions, condominium and apartment complexes. One (1) identification sign not to exceed six (6') square feet per entrance to subdivision, apartment and condominium complexes. Except for subdivisions over twenty (20) lots and complexes over twenty

(20) units, one sign per entrance not to exceed twenty (20') square feet in sign area. For each subdivisions and complexes, two single face signs will be allowed, one for each side of the entrances, so long as the total signage does not exceed twenty (20') square feet.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.

I. Two (2) nonilluminated noncommercial signs per lot not to exceed six (6') square feet per sign.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.

§174-55 Commercial and Industrial District:

Signs shall relate to the premises on which they are located and shall only identify the occupancy of such premises or advertise the articles and services available within said premises, except as provided for in §174-50 C.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

A. Temporary special event sign(s) and decoration(s) as allowed by permit from the Building Inspector for special events, grand openings, or holidays. Such signs and decorations may be erected seven (7) days prior to a special event or holiday and shall be removed within twenty four (24) hours following the event or holiday. For grand openings, such signs may be used for no more than seven (7) days from the date of the opening. This excludes those signs which need Board of Selectmen approval. Such signs shall be limited to no more than twenty (20') square feet and may not be located closer than five (5') feet to any lot line or block a line of sight for pedestrian traffic safety if so determined by the D.P.W. Director.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

B. Building signs are allowed up to ten (10%) percent of the aggregate square footage of the front wall area of the building, with wall area measured as total width times average height of the wall elevation being measured. Determination of which wall area shall be considered the front shall be by the Special Permit and by the Building Inspector where no Special Permit is required, with that wall facing the nearest street line normally considered the front. The square footage allowed may be applied to a single-sign, a series of signs representing individual businesses or any combination thereof. Such signs can be placed on or attached to any wall, but in no case shall the total of all building signs exceed ten (10%) percent of the front wall square footage, nor shall any wall have signage exceeding five (5%) percent of that wall's aggregate square footage (with said limit including any projecting window or awning signage). Where a building is divided into multiple units intended for occupancy by different owners or tenants, each unit shall be entitled to a share of the total building signage, as calculated above, equal to the proportion its total outside wall area comprises of the total outside wall area of the building of which it is a part, provided that the signage on its front wall may not exceed five (5%) percent of that wall's aggregate square footage. These signs can be any of the following: wall, window (per requirements in subsection E), projecting and awning. The top edge of each such sign shall be not higher than the top edge of the wall and no higher than the plate of a flat roof.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.
History: Amended 10-19-2015 ATM, Article 23, approved by Attorney General 1-19-2016

C. In an industrial or commercial district, one (1) freestanding sign is permitted on each lot, provided that it does not exceed forty (40') square feet in signboard area, does not exceed fifteen (15) feet in height and is not located closer than five (5') feet to any lot line or

block a line of sight for pedestrian and traffic safety if so determined by the D.P.W. Director. In addition, two (2) non-illuminated noncommercial signs per lot, not to exceed six (6') square feet per sign, will be allowed in commercial and industrial districts.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-7-2002 ATM, Article 16, approved by Attorney General 11-27-2002.
History: Amended 10-16-2006, ATM, Article 31, approved by Attorney General 2-13-2007.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

D. Sign coverage of a window shall not exceed twenty five percent (25%) of the total window size, with the area of such signs included in the limits specified in subsection B above for the wall on which the window is located. A window sign shall be any sign, picture, symbol, or combination thereof that is placed inside a window or affixed to the windowpane of glass and is intentionally visible from the exterior of the window. No sign shall be affixed to the outside of a window.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

E. No sign shall have signboard area (or display area if no signboard) exceeding the dimensions allowed.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

F. **Illumination.** Except as otherwise prohibited herein, signs may be illuminated by any fixed steady light of such nature and in such manner that the brightness of the sign face does not exceed or project one hundred (100) lumens per square foot. Such illumination shall be so arranged that its exterior source is not directly visible from any way or occupied building, and no illumination shall be of a color that might be confusion to traffic. Holiday lights shall not be deemed as coming within the provisions of this subsection, but this subsection shall apply to window signs. Sign illumination is permitted only between the hours of 7:00 a.m. and 11:00 p.m., except that the signs of commercial or industrial establishments may be illuminated during any hours that these establishments are open to the public or in operation. Illuminated signs on public buildings and land are exempt from this provision.
History: Amended 5-6-1997, ATM, Article 38, approved by Attorney General 9-25-1997.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

G. **Gasoline Stations.** Standard pump head signs of gasoline filling stations shall not be included in the total area of signs permitted, and no permit shall be required therefore, but they shall not be internally lit and shall otherwise conform with the requirements of this chapter.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

H. **Contractors and developers.** For each construction or development project, there may be issued a temporary sign permit for one (1) freestanding sign not to exceed twenty (20') square feet in signboard area, setting forth facts and names pertinent to the subject. Such signs shall be removed forthwith when the project is completed.
History: Amended 10-15-2007, ATM, Article 20, approved by Attorney General 1-28-2008.

§174-56 Bonds and Liability Insurance:

A. **Filing.** A person shall not erect, install, remove, rehang or maintain over public property any sign for which a permit is required under the provisions of this chapter until approved bond or liability insurance shall have been filed in accordance with the requirements of the Board of Selectmen.

B. **Conditions.** Such bond or insurance policy may provide that the town shall be protected and held harmless from any and all claims or demands for damages by reason of any negligence of the sign hanger, contractor or his agents or by any reason of defects in the

construction or damages resulting from the collapse, failure or combustion of the sign or parts thereof.

C. **Notice of cancellation.** Any such obligation shall remain in force and effect during the lifetime of every such sign and shall not be canceled by the principle or surety until after thirty (30) days' notice to the Building Inspector.

§174-57 (Reserved)

ARTICLE XI - Floodplain Zone Provisions

§174-58 General provisions:

Permits for new construction, alteration of structures or other development (any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations), at or below the base flood elevation as specified within the A and V Zones (in unnumbered A Zones), in the absence of Flood Insurance Administration data, the base flood elevations shall be determined by obtaining, reviewing and reasonably utilizing any existing base flood elevation data from federal, state, local or other sources) as designated on special Flood Insurance Administration Flood Insurance Rate Maps dated July 16, 2014, and the Flood Insurance Study dated July 16, 2014, which are on file with the Town Clerk, Planning Board and Building Inspector, shall be approved subject to other laws and bylaws applicable thereto and to the following.
History: Amended 10-1-2001, ATM, Article 15, approved by Attorney General 12-6-2001.
History: Amended 5-5-2014, ATM, Article 14, approved by Attorney General 6-11-2014

§174-59 New Construction or Substantial Improvement:

New construction or substantial improvement* [repair, construction or alteration containing fifty percent (50%) or more of the market value of the structure before improvement or, if damaged, before the damage occurred] of residential structures shall have the lowest floor, including basement, elevated to not less than base flood elevations. New construction or substantial improvement of nonresidential structures shall either be similarly elevated or, together with attendant utility** and sanitary facilities, be floodproofed to not less than base elevations.

NOTES:
*** Substantial improvement will have been deemed to occur when the first alteration of any structural part of the building commences.**
****Utilities include electrical, heating, ventilation, plumbing, air-conditioning equipment and sanitary and other service facilities.**

§174-60 Certification of Floodproofing Methods:

Where floodproofing is required in accordance with §174-59, a registered engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.

§174-61 Compliance with State Building Code:

Any new construction or substantial improvement to be undertaken within said zones shall be in accordance with the Massachusetts Uniform Building Code, Section 744.0, as amended. The Building Inspector shall review all proposed development within the flood zones to assure that all necessary permits which are obtainable at such time have been received from those

governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Amendments of 1972, 33 U.S.C. § 1334, and obtain, review and reasonably utilize any base flood elevation and floodway data available form a federal, state, local or other source as criteria for requiring that new construction, substantial improvements or other development in Zone AE meet floodplain zone provisions.
History: Amended 5-5-2014, ATM, Article 15, approved by Attorney General 6-11-2014

§174-62 Development within V Zones:

No land within areas designed as V (velocity) Zones on the Federal Emergency Management Agency Flood Insurance Rate Maps shall be developed unless such development is demonstrated by the application to be located landward of the reach of the mean high tide. Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code, all new construction and substantial improvement within the V Zones shall be elevated on adequately anchored pilings or columns and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor, excluding the pilings or columns, is elevated to or above the base flood elevation, and certified by a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash. The following shall be prohibited within said V Zones:

A. Any man-made alteration of sand dunes which might increase the potential for flood damage.

B. Use of fill for structural support for new construction or substantial improvement of structures.

C. Manufactured homes, except in existing manufactured home parks and existing manufactured home subdivisions.
History: Amended 5-5-2014, ATM, Article 14, approved by Attorney General 6-11-2014

§174-63 Variation of Restrictions:

The Zoning Board of Appeals may vary the restrictions and requirements set forth in this Article in the case of new structures or where there is to be substantial improvement or other development on a lot of one-half (1/2) acre in size or less, contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided that the following are met:

A. A showing of good and sufficient cause.

B. A determination that failure to grant the Special Permit would result in exceptional hardship to the applicant.

C. A determination that the granting of the Special Permit will not result in increased flood heights, additional threats to public safety, extraordinary public expense or any conflict with requirements in accordance with Chapter 40A of the Massachusetts General Laws.

D. The Zoning Board of Appeals has notified the applicant for the Special Permit, in writing, that the actuarial rates will increase as the first-floor elevation level increases risks to life and property.

§174-64 Record and Report of Special Permits:

Upon the granting of such Special Permits, the Zoning Board of Appeals shall require that the Town of Mashpee shall maintain a record of all Special Permit actions, including justification for their issuance, and report such Special Permits issued in its annual report to the Food Insurance Administrator in accordance with the Department of Housing and Urban Development guidelines.

§174-65 Manufactured Home Parks and Subdivisions:

Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code within Zones AE, for new manufactured home parks and manufactured home subdivisions and for exiting manufactured home parks and manufactured home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, lots are to be elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level; adequate surface drainage and access for a hauler must be provided; and, in the instance of elevation on pilings, lots must be large enough to permit steps, piling foundations must be placed in stable soil no more than ten (10) feet apart and reinforcement must be provided for pilings more than six (6) feet above the ground level.
History: Amended 5-5-2014, ATM, Article 15, approved by Attorney General 6-11-2014

§174-66 Manufactured Homes not in Parks or Subdivisions:

Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code, in all manufactured homes to be placed within Zones AE but not into a manufactured home park or manufactured home subdivision:
History: Amended 5-5-2014, ATM, Article 14, approved by Attorney General 6-11-2014

A. Manufactured Homes must be elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level.

B. Adequate surface drainage and access for a hauler must be provided.

C. In the instance of elevation on pilings, lots must be large enough to permit steps, piling foundations must be placed in stable soil no more than ten (10) feet apart and reinforcement must be provided for piers more than six (6) feet above ground level.

§174-67 Historic District Procedures:

The Zoning Board of Appeals may grant a Special Permit for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in §174-62 above.

§174-67.1 Subdivisions
History: Added 5-5-2014 ATM, Article 14, approved by Attorney General 6-11-2014

All Subdivision proposals shall be designed to ensure that:

A. All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and

B. Adequate drainage is provided to reduce exposure to flood hazards.

§174-67.2 Other Regulations

History: Added 5-5-2014 ATM, Article 14, approved by Attorney General 6-11-2014

In Zone AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

§174-68 More Restrictive Regulations to Apply:

Where these flood area provisions impose greater or lesser restrictions or requirements than those of other applicable bylaws or regulations, the more restrictive shall apply.

ARTICLE XII - Mashpee River and Quashnet River-Protective Districts

§174-69 Purpose:

The purpose of this Article is the preservation of the Mashpee River and Quashnet River and the protection of wildlife resources.

§174-70 Designation of Areas:

The area affected shall be the Mashpee River and Quashnet River marshes and uplands up to one hundred (100') horizontal feet from the natural bank of the Mashpee River and Quashnet River as delineated on the plan entitled "Mashpee River Protective Zoning Bylaw." All distances shall be measured in horizontal feet. In tidal areas, the area affected shall be measured from a line which is two and eight-tenths (2.8) feet above the National Geodetic Vertical Datum (formerly known as "mean sea level"). In freshwater wetland areas, this shall mean the landward edge of the freshwater marsh as defined in MGL C. 131, §40. The area subject to this Article shall be the source of the Mashpee River beginning at the northern point, thence running in a southerly direction along the natural bank to a depth of one hundred (100') feet on both sides of the Mashpee River terminating on the western bank of the river on the southern point of Parcel No 8 located on Assessor's Map 95, now or formerly of Herbert Stenberg, thence running southerly and terminating on the east side of the Mashpee River bounded by Parcel No. 24 located on Assessor's Map No. 90, also known as the northerly boundary of Pirate's Cove. The area known as Pirate's Cove and all areas south of Pirate's Cove shall be excluded from the provisions of the Article. The following area shall also be subject to this Article. The intersection of Quashnet River with the southern right-of-way boundary of State Route 151, thence running in a southerly direction along the natural bank, to a depth of one hundred (100') feet on both sides of the Quashnet River to its southern point at the intersection with the boundary between the Towns of Mashpee and Falmouth.

§174-71 Prohibited Uses in any Area:

A. No structure of any kind may be located within the area subject to this Article with the exception of docks, which may be constructed in keeping with the state and local laws.

B. No dumping, filling, removing of material or dredging, except for maintenance dredging, except for maintenance dredging of the Mashpee River and Quashnet River, may be done except as subject to the requirements of MGL C 131, §40, and all other applicable laws, bylaws and regulations.

§174-72 Existing Uses:

Any existing structure or use of such structure lawful at the effective date of this Article may continue although such structure or use does not conform to this Article. Any existing structure may be repaired, maintained and improved, but in no event made larger. Any nonconforming structure which is destroyed may be built on the same location, but no larger than the original overall square footage.

§174-73 Previously Issued Building Permits:

To avoid undue hardship, nothing in this Article shall be deemed to require a change in the design, construction or intended use of any structure with respect to which a Building Permit was legally granted prior to the effective date of this Article. Such construction must be substantially completed within a period of two (2) years from the effective date of this Article, or such construction shall be required to conform to this Article.

§174-74 Application for Variance:

Any owner of a lot which is buildable at the time of the effective date of this Article, but which is made unbuildable due to said Article, may apply to the Board of Appeals for variance.

§174-75 Limit of Powers:

Nothing contained in this Article is intended to override, restrict, impede or otherwise invalidate any of the rules, regulations, laws, or bylaws, etc., of the Mashpee Conservation Commission, the Town of Mashpee or the Commonwealth of Massachusetts which pertain to the subject matter of this Article. Unless otherwise indicated, this Mashpee River and Quashnet River Protective District Zoning Bylaw shall govern and supersede all other provisions of the Zoning Bylaw.

ARTICLE XIII - Groundwater Protection District

§174-76 Authority:

This Article is adopted by the Town of Mashpee under its home rule powers, its police powers to protect the public health, safety and welfare and under powers authorized by Massachusetts General Laws, Chapter 41A, as amended.

§174-77 Purposes:

The purposes of this Article are to protect public health from the contamination of existing and potential public and private water supplies and to protect the general welfare by preserving limited water supplies for present and future use.

§174-78 Definitions:

Animal Feedlot - A plot of land on which twenty-five (25) or more livestock per acre are kept for the purposes of feeding.

Aquifer - A geologic formation, group of formations or part of a formation which contains sufficient saturated permeable material to yield significant quantities of potable groundwater to public or private wells.

Disposal - The deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material or any

constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

Groundwater - All the water beneath the surface of the ground.

Hazardous Materials - Any substance or combination of any substances, not including any liquid petroleum product, that, because of quantity, concentration or physical, chemical or infectious characteristics, poses a significant present or potential hazard to water supplies or to human health if disposed of into or on any land or water in this town. Any substance deemed a "hazardous waste" in Massachusetts General Laws, Chapter 21C, shall also be deemed a "hazardous material" for purposes of this Article.

Impervious - Impenetrable by water.

Leachable Wastes - Waste materials, including solid wastes, sewerage, sludge and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.

Mining of Land - The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores and bedrock.

Recharge Area - Any area of porous, permeable geologic deposits, especially but not exclusively deposits of stratified sand and gravel through which water from any source drains into an aquifer, and includes any wetland or body of surface water surrounded by or adjacent to such area, together with the watershed and any wetland or body of surface water adjacent to such area.

Solid Wastes - Useless, unwanted or discarded solid materials with insufficient liquid content to be free flowing, including, for example, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.

§174-79 Delineation of District:

A. **General provisions.**

1. For the purposes of this Article, there is hereby established within the Town of Mashpee an overlay district consisting of certain groundwater protection areas, including aquifers and recharge areas, which are delineated on a map dated October 1991 entitled "Groundwater Protection District, Town of Mashpee," and which shall be considered as superimposed over other districts established by the zoning bylaws of this town. This map, as it may be amended from time to time, is on file with the office of the Town Clerk, and, with any explanatory material thereon, is hereby made a part of this chapter.
History: Amended 10-7-1991 ATM, Article 9, approved by Attorney General 1-31-2000.

2. Uses otherwise not permitted in the portions of a zoning district superimposed by this district shall not be permitted in this district.

3. Where the bounds of the Groundwater Protection District, as delineated on the Groundwater Protection District Map, are in doubt or in dispute, the burden of proof shall be upon the owner(s), the town may engage a professional hydro geologist or soil scientist to determine more accurately the location and extent of an aquifer or recharge area and may charge the owner(s) for all or part of the cost of the investigation.

(4) The Groundwater Protection District shall include all of the land within the lines described in Subsection B.
History: Amended 10-7-1991 ATM, Article 9, approved by Attorney General on 1-31-2000.

B. **Bounds.**

1. Including all of the land within the following described lines:

   Beginning at the point where the southern shore line of Ashumet Pond intersects the Mashpee/Falmouth Town line;
   southeasterly and easterly along the Mashpee/Falmouth Town line to the westerly side line of Falmouth Road (Route 28);
   Thence northerly and westerly by the eastern property line of the 1987 Mashpee Associations' Map 87, Plots 4 and 5, Map 88, Plot 40 and Map 81, Block 1 to the southerly line of the New Bedford Gas and Electric Light Company easement where it intersects the western property line of Map 81, Block 6;
   Thence westerly 1,567 feet, more or less, to the easterly side line of existing Whitings Road;
   Thence northerly by the easterly side line of existing Whitings Road to its intersection with the south side line of the Nathan S. Ellis Highway (Route 151);
   Thence westerly by the southern side line of the Nathan S. Ellis Highway (Route 151) to the northeast corner as shown on Assessors' Map 72, Block 85;
   Thence northwesterly to the northwest corner as shown on Assessors' Map 72, Block 53;
   Thence northwesterly to the northwest corner as shown on Assessors' Map 72, Block 46;
   Thence northwesterly to the northwest corner as shown on Assessors' Map 72, Block 18 and continuing on the same course to the shoreline of John's Pond;
   Thence westerly and northerly along the shoreline of John's Pond to its intersection with the northern property line as shown on Assessors' Map 57, Block 44A;
   Thence northwesterly along the northern property line of Assessors' Map 57, Plot 44A, a distance of 609 feet, more or less; to its intersection with the eastern side line of Hooppole Road;
   Thence west-northwesterly in a straight line to the intersection of the northern property line of Assessors' Map 57, Block 42 and the shoreline of Ashumet Pond;
   Thence westerly along the shoreline of Ashumet Pond to the point of beginning at the Mashpee/Falmouth Town line.
   History: Amended 10-4-1999 ATM, Article 16, approved by Attorney General on 1-11-2000.

2. Beginning at the northernmost corner of the parcel shown on the FY 2004 Mashpee Assessors' Maps as Map 25, Block 1, which is also at a corner of the Mashpee / Sandwich town line;

   Thence southerly along a straight line to the westernmost corner of Map 26, Block 10;
   Thence southerly along a straight line to the southwest corner of Map 27, Block 22:
   Thence southerly along a straight line to the northernmost corner of Map 34, Block 8;
   Thence southerly along a straight line to the northernmost corner of Map 43, Block 3;
   Thence southeasterly along a straight line to the southernmost corner said parcel;
   Thence southeasterly in a straight line to the northern intersection of the property line of Map 51, Block 24;
   Thence southeasterly and northeasterly along the northern property line of said parcel to its northernmost corner;
   Thence northwesterly in a straight line to the southernmost corner of Map 34, Block 10;

Thence northerly along the western property line of said parcel to its northernmost corner;
Thence northerly to a point on the northern property line of Map 26, Block 12 located 440 feet, measured along said property line, from the side line of Ashumet Road;
Thence northerly in a straight line to the easternmost corner of Map 26, Block 14;
Thence northerly in a straight line to the southwest corner of Map 19, Block 5;
Thence northerly along the western sideline of said parcel to its northwest corner;
Thence northerly in a straight line to the westernmost corner of Map 13, Block 47;
Thence northerly in a straight line to the westernmost corner of Map 13, Block 41;
Thence northwesterly in a straight line to a point on the northern property line of Map 13, Block 51 located 360.41 feet, measured along said property line, west of the northeast corner of said parcel;
Thence northwesterly in a straight line to a point on the northwestern property line of Map 9, Block 1 located 880 feet, measured along said property line, from the westernmost corner of said parcel;
Thence northerly along a straight line to the northernmost corner of Map 9, Block 6, which is located at the Mashpee/Sandwich town line?
Thence northwesterly along said town line to the point of beginning.
History: Amended 10-17-2005 ATM, Article 21, approved by Attorney General on 3-7-2006

3. Including all of the land within the following described lines:

Beginning where the Mashpee/Barnstable Town line intersects the centerline of the Santuit River, thence northeasterly and northwesterly along said Town line to the Sandwich/Mashpee Town line, thence, westerly, southerly and westerly along said Town line to its intersection with the eastern shoreline of Mashpee Pond;
Thence southeasterly in a straight line to the northeast corner of that parcel of land shown on the 1991 Mashpee Assessors' Maps as Map 21, Block 8;
Thence southerly and westerly along the along the eastern and southern property lines of said parcel to the eastern shoreline of Mashpee Pond;
Thence southerly along the shoreline of said pond to the most northern corner of that parcel shown as Map 28, Block 13;
Thence southeasterly and southerly along the northeastern and eastern property lines of said parcel to the northern sideline of Main Street (Route 130)
Thence in a straight line to the northwest corner of that parcel shown as Map 36, Block 47;
Thence southeasterly in a straight line to the northwestern corner of that parcel shown as Map 36, Block 47D;
Thence southerly and easterly along the western and southern property lines of said parcel to its southeastern corner;
Thence southerly across Lettie Lane to the northwestern corner of that parcel shown as Map 36, Block 47B;
Thence southerly along the western property line of said parcel to its southwest corner;
Then southeasterly in a straight line to the northernmost corner of that parcel shown as Map 36, Block 76;
Thence southwesterly and southeasterly along the property line of said parcel to the sideline of Park Place Way;
Thence southerly in a straight line to the northernmost corner of that parcel shown as Map 45, Block 59;
Thence southerly along the sideline of Park Place Way and easterly along the southern property line
of said parcel to the northwest corner of that parcel shown as Map 45, Block 61;

Thence southerly along the western property line of said parcel to the sideline of Hollow Road;
Thence southerly in a straight line to the northeast corner of that parcel shown as Map 61, Block 48;
Thence southeasterly along the eastern property line of said parcel and of that parcel shown as Map 61, Block 51 to the sideline of Falmouth Road (Route 28);
Thence in a straight line across Falmouth Road to the northwest corner of that parcel shown as Map 61, Block 5A;
Thence southerly along the western property line of said parcel (which is also the eastern sideline of Harwich Road) and the western property line of that parcel shown as Map 61, Block 7A to the southwest corner of the latter parcel;
Thence easterly and southerly along the northern and eastern property lines of that parcel shown as Map 62, Block 109 to its southeastern corner;
Thence southerly along the easterly property line of that parcel shown as Map 62, Block 110 to its southeastern corner;
Thence southeasterly in a straight line to the northwest corner of that parcel shown as Map 69, Block 17;
Thence southerly and easterly along the western and southern property lines of said parcel to its southeast corner;
Thence southeasterly in a straight line to the northwest corner of that parcel shown as Map 69, Block 125;
Thence easterly along the northern property line of said parcel to the sideline of Stirling Road;
Thence southeasterly across Stirling road to the northwest corner of that parcel shown as Map 69, Block 132;
Thence northeasterly along the northern property line of said parcel to its northeast corner;
Thence southeasterly in a straight line to the northwest corner of that parcel shown as Map 69, Block 139;
Thence easterly and southeasterly along the property line of that parcel shown as Map 69, Block 166 to its southeast corner;
Thence northeasterly and northerly along the southern and eastern property line of that parcel shown as Map 69, Block 116 to its northeastern corner;
Thence easterly across Simons Road to the southwestern corner of that parcel shown as Map 62, Block 73;
Thence northerly and easterly along the western and northern property lines of said parcel to the southwest corner of that parcel shown as Map 63, Block 36;
Thence northerly along the western property line of Map 63, Block 36, 46, 45 and 44 to the sideline of Sampson's Mill Road;
Thence across Sampson's Mill Road to the southeast corner of that parcel shown as Map 62, Block 154;
Thence northerly along the eastern property line of said parcel to its northeast corner;
Thence northerly in a straight line to the southeastern corner of the parcel shown as Map 54, Block 5;
Thence northerly along the eastern property line of said parcel and continuing in a straight line across Falmouth Road (Route 28) to the Mashpee/Barnstable Town Line;
Thence westerly, northwesterly, northeasterly and easterly along said Town Line to the eastern sideline of Main Street (Route 130);
Thence northwesterly along said sideline to the southernmost corner of that parcel shown as Map 47, Block 22;
Thence northeasterly and northwesterly along the southeast and northeast property lines of said parcel to its northernmost corner;

Thence northerly in a straight line to the southeast corner of that parcel shown as Map 38, Block 23;
Thence northeasterly and northerly along the eastern property line of said parcel and of the parcel shown as Map 38, Block 21, continuing across Shields Road to the western sideline of Tobisset
Court, and following said sideline northerly and westerly to the northeastern corner of that parcel shown as Map 29, Block 108;
Thence northerly in a straight line to the northernmost corner of that parcel shown as Map 29, Block 109A;
Thence southeasterly along the shoreline of Santuit Pond and southerly along the centerline of the Santuit River to the point of beginning.
History: Amended 10-7-1991 ATM, Article 9, approved by Attorney General 1-31-2000.

4. Including all of the land within the following describe lines:

Beginning at the southwest corner of that parcel of land shown on the 1991 Mashpee Assessors' Maps as Map 110, Block 42;
Thence easterly along the southern line of said parcel and of that parcel shown as Map 110, Block 41 to the westerly sideline of Four Seasons Drive;
Thence southeasterly across Four Seasons Drive to the southwest corner of the parcel shown as Map 110, Block 12;
Thence along the southerly line of said Map 110, Block 12 to its southeastern corner;
Thence in a straight line southeasterly to the southwest corner of that parcel shown as Map 111, Block 232;
Thence easterly along the southern line of said parcel to the sideline of The Paddock Circle;
Thence easterly in a straight line to the intersection of the sideline of The Paddock Circle and the northeastern property line of the parcel shown as Map 111, Block 226;
Thence southeasterly along the northeaster property line of said parcel to "Bridal Path" (Map 111, Block 256);
Thence southerly in a straight line to the southwest corner of the parcel shown as Map 111, Block 6;
Thence along the southern property line of said parcel to the sideline of High Wood Way;
Thence southerly in a straight line to the southwest corner of the parcel shown as Map 111, Block 217;
Thence southeasterly along the southern property line of said parcel to "Fox Run" (Map 117, Block 382);
Thence southerly in a straight line to the northwest corner of the parcel shown as Map 111, Block 213;
Thence along the northern property line of said parcel to Surrey Place;
Thence southerly along the western sideline of Surrey Place and westerly along the northern sideline of The Hacking Circle to a point opposite the intersection of the southern sideline of The Hacking Circle with the northwest corner of the parcel shown as Map 117, Block 19;
Thence southerly across The Hacking Circle to said corner and continuing southerly along the western property line of said parcel to "Whiffletree Ride" Map 117, Block 384;
Thence southerly in a straight line across "Whiffletree Ride" to the northwest corner of that parcel shown as Map 117, Block 353;
Thence southerly along the western sideline of said parcel to the sideline of The Hunt Circle;

Thence southerly in a straight line to the northwest corner of that parcel shown as Map 117, Block 378;
Thence southerly along the western sideline of said parcel to its southwestern corner;
Thence southwesterly in a straight line to the southeast corner of that parcel shown as Map 117, Block 34A;
Thence westerly along the southern sideline of said parcel to the sideline of Rock Landing Road;
Thence southwesterly in a straight line to the southeastern corner of that parcel shown as Map 117, Block 31;
Thence westerly along the southern property line of said parcel to its southwestern corner;
Thence southwesterly in a straight line to the northeastern corner of that parcel shown as Map 122, Block 35;
Thence westerly along the northern property line of said parcel to the sideline of Glenneagle Drive;
Thence southwesterly in a straight line across Glenneagle Drive to the northeastern corner of that parcel shown as Map 122, Block, 103 and westerly along the northern property line of said parcel to its northwestern corner;
Thence southwesterly in a straight line to the northeast corner of that parcel shown as Map 122, Block 112 and westerly along the northern property line of said parcel to the sideline of Fells Pond Road;
Thence westerly in a straight line across Fells Pond Road to the northeastern corner of that parcel shown as Map 122, Block 210 and westerly along the northern property line of said parcel to the shore of Fells Pond (also known as Jim Pond);
Thence southerly, westerly and northerly along the southern shore of said pond to the northeast corner of that parcel shown as Map 122, Block187 and westerly along the northern property line of said parcel to the sideline of Fells Pond Road;
Thence northwesterly in a straight line across Fells Pond Road to the southeast corner of the parcel shown as Map 122, Block 128;
Thence along the southern and western property lines of said parcel to the easternmost corner of that parcel shown as Map 122, Block 134;
Thence southwesterly and westerly along the southern property line of said parcel to the easternmost corner of that parcel shown as Map 121, Block 25;
Thence southwesterly and westerly along the southeastern sideline of said parcel to the northwest corner of that parcel shown as Map 121, Block 47;
Thence westerly in a straight line across Great Oak Road and the parcel shown as Map 121, Block 11 to the intersection of the southeastern property line of that parcel shown as Map 115, Block 7 with the centerline of an "Existing Way' crossing said parcel, said way also being shown as "Tom-Joe" Road on a "Plan of Land in Mashpee, Mass." Dated September 24, 1973 by John P. Doyle, R.L.S. which was signed as "Approval Not Required" by the Planning Board on October 3, 1973;
Thence westerly along the centerline of said road across Great Hay Road to the western sideline of said road;
Thence northerly along the western sideline of Great Hay Road to the northeast corner of that parcel shown as Map 115, Block, 14;
Thence southerly and westerly along the eastern and southern property lines of said parcel to the southeast corner of Map 115, Block 15;
Thence northwesterly along the southwestern property lines of said parcel and of that shown as Map 115, Block 16 to the southern sideline of Amy Brown Road;
Thence westerly along said sideline to the northeast corner of that parcel shown as Map 115, Block 3;

Thence southerly and westerly along the eastern and southern property lines of said parcel and westerly and northerly along the southern and western property lines of that parcel shown as Map 115, Block 17 to the southeast corner of that parcel shown as Map 109, Block 28;

Thence westerly along the southern property line of said parcel and westerly and northerly along the southern and western property lines of that parcel shown as Map 109, Block 1 to the southern sideline of Amy Brown Road;

Thence northerly in a straight line to the southeast corner of that parcel shown as Map 109, Block 8;

Thence westerly and northerly along the southern western property lines of said parcel to the southern sideline of Red Brook Road;

Thence northerly across Red Brook Road and northerly along the eastern sideline of Surf Drive to the southwestern corner of that parcel shown as Map 103, Block 28;

Thence easterly along the southern sideline of said parcel to its southeastern corner;

Thence northeasterly in a straight line to the southwest corner of the parcel shown as Map 98, Block 5;

Thence northerly along the western sideline of said parcel to its northwest corner;

Thence northeasterly in a straight line to the northwest corner of that parcel shown as Map 98, Block 12;

Thence southeasterly along the northern property line of said parcel and the northern property line of that parcel shown as Map 99, Block 1 to the northeastern corner of the latter parcel;

Thence southeasterly in a straight line to the northwestern corner of that parcel shown as Map 99, Block 11;

Thence southerly along the western property line of said parcel and continuing in a straight line to the southern sideline of Lisa Lane;

Thence easterly and southerly along the southern sideline of Lisa Lane and the western sideline of Old Great Neck Road to the northeast corner of that parcel shown as Map 99, Block 31;

Thence westerly and southerly along the northern and western property lines of said parcel to its southwestern corner;

Thence in a straight line across Tracy Lane to the northwest corner of that parcel shown as Map 104, Block 67;

Thence southerly and easterly along the western and southern property lines of said parcel to the northwest corner of that parcel shown as Map 104, Block 64;

Thence southerly along the western property line of said parcel to the northern sideline of Gia Lane;

Thence in a straight line across Gia Lane to the northeast corner of that parcel shown as Map 104, block 37;

Thence southerly along the eastern property line of said parcel to its southeast corner;

Thence westerly and southerly along the northern and western sidelines of that parcel shown as Map 104, Block 23 and continuing southerly to the south side of Blue Castle Drive;

Thence easterly, southerly and westerly along the northern, eastern and southern property lines of that parcel shown as Map 104, Block 11 to the northwestern corner of that parcel shown as Map 104, Block 102;

Thence southerly along the western property line of the latter parcel to its southwest corner;

Thence southeasterly in a straight line to the point of beginning;

History: Amended 10-7-1991 ATM, Article 9, approved by Attorney General 1-31-2000.

5. Including all of the land within the following described lines:

Beginning at the southeast corner of that parcel shown as Map 88, Block 29 on the 1994 Mashpee Assessor's Maps;
Thence southerly to the northernmost corner of that parcel shown as Map 94, Block 34;
Thence southeasterly along the northeastern property line of said parcel to its intersection with
the layout of Shadbush Circle;
Thence southerly to the point of intersection of the layout of Shadbush Circle with the western property line of that parcel shown as Map 94, Block 36;
Thence southerly along said property line to the southwest corner of said parcel;
Thence southeasterly by a straight line to the northeast corner of that parcel shown as Map 99, Block 1;
Thence southwesterly to the southeast corner of that parcel shown as Map 99, Block 9A;
Thence westerly along the southern property line of said parcel to its intersection with the western property line of that parcel shown as Map 98, Block 4;
Thence northerly in a straight line to the center of the intersection of Polaris Drive with Gemini Road;
Thence northerly to the southwest corner of that parcel shown as Map 94, Block 100;
Thence northerly and easterly along the western and northern property lines of said parcel to the southwest corner of that parcel shown as Map 94, Block 98;
Thence northerly to the northwest corner of said parcel;
Thence northeasterly in a straight line to the southwest corner of that parcel shown as Map 94, Block 75;
Thence northerly along the western property line of said parcel to its northwest corner;
Thence northeasterly in a straight line to the southwest corner of that parcel shown as Map 94, Block 57;
Thence northeasterly in a straight line to the northeast corner of that parcel;
Thence northeasterly in a straight line to the northeast corner of that parcel shown as Map 88, Block 69;
Thence northerly to the intersection of the layout line of Nancy Lane with the western property line of that parcel shown as Map 88, Block 72;
Thence northerly and easterly along the western and northern property lines of said parcel to its northeast corner;
Thence easterly along the southern property lines of Map 88, Block 28 and Block 29 to the point of the beginning.
History: Amended 10-3-1994 ATM, Article 16, approved by Attorney General 1-18-1995.
History: Amended 5-1-2000 ATM, Article 35, approved by Attorney General 8-7-2000.

6. Beginning at the shore of John's Pond at the northernmost corner of the parcel shown on the FY 2000 Mashpee Assessors' Maps as Map 58, Block 22;

Thence southeasterly along a straight line to the northwestern corner of Assessors' Map 58, Block 24;
Thence southeasterly along the western property line of said parcel to its intersection with Cayuga Avenue;
Thence southeasterly in a straight line to the southeast corner of Assessors' Map 58, Block 7;
Thence southeasterly in a straight line to the southernmost point of FY 2000 Mashpee Assessors' Map 66, Block 6, which is on the northern side line of Wampanoag Drive;

Thence southeasterly, southerly and westerly along the northern and eastern side line of Wampanoag Drive;
Thence southeasterly, southerly and westerly along the eastern side line of Amos Circle to the southwestern corner of FY 2000 Mashpee Assessors' Map 66, Block 30;
Thence southwesterly to the southwest corner of said parcel;
Thence southwesterly in a straight line to the easternmost corner of Assessors' 73, Block 31;
Thence westerly in a straight line to a point on the eastern side line of the layout of Old Barnstable Road located 250 feet northeasterly along said side line from the westernmost corner of Map 73, Block 46;
Thence northwesterly in a straight line to the southwest corner of FY 2000 Mashpee Assessors' Map 65, Block 39A;
Thence northwesterly in a straight line to the northwestern corner of said parcel;
Thence northwesterly in a straight line to the northwestern corner of Map 65, Block 44;
Thence northwesterly in a straight line to the southeast corner of Map 65, Block 48;
Thence northwesterly in a straight line to the southeast corner of Map 65, Block 119F;
Thence northwesterly in a straight line to the southeast corner of Map 65, Block 119J;
Thence westerly to the southwest corner of said parcel;
Thence northwesterly to the northwest corner of Map 65, Block 126;
Thence northwesterly in a straight line to the southeast corner of Map 65, Block 101;
Thence northwesterly in a straight line to the southeast corner of Map 65, Block 99;
Thence northwesterly in a straight line to the northwest corner of said parcel;
Thence northwesterly in a straight line to the southeast corner of Map 65, Block 97;
Thence northwesterly in a straight line to the northwest corner of said parcel;
Thence northwesterly in a straight line to the southwest corner of Map 65, Block 2;
Thence northeasterly along the shore of John's Pond to the point of beginning.
History: Amended 10-17-2005 ATM, Article 14, approved by Attorney General 3-7-2006

7. Beginning at the shore of Mashpee Pond at the northernmost corner of the parcel shown on the FY 2004 Mashpee Assessors' Maps as Map 20, Block 5;

Thence southwesterly and southerly along the northwestern and western property lines of said parcel to its southwest corner;
Thence southerly along the western property line of Map 20, Block 42 to the southwest corner of said parcel;
Thence southwesterly in a straight line to the southwest corner of Map 20, Block 25;
Thence southwesterly in a straight line to the westernmost point of Map 20, Block 55;
Thence southwesterly in a straight line to the southeast corner of Map 20, Block 56;
Thence southwesterly in a straight line to the southernmost corner of Map 27, Block 156;
Thence southerly in a straight line to the southernmost corner of Map 35, Block 13;

Thence southerly in a straight line to the northernmost corner of Map 43, Block 4;
Thence southerly in a straight line to the northwest corner of Map 44, Block 113;
Thence southerly in a straight line to the northernmost corner of Map 44, Block 115;
Thence southerly in a straight line to the southernmost corner of Map 43, Block 18;
Thence southerly in a straight line to a point on the southeastern property line of Map 51, Block 6 that is located 500 feet from the southeastern corner of said parcel;
Thence southeasterly in a straight line to the westernmost point of Map 52, Block 117;
Thence southerly, easterly and northerly along the property line of said parcel to its intersection with the side line of the way shown on the 2004 Assessors' Map as Lovell's Lane (otherwise known as Asher's Path);
Thence northerly in a straight line to the northwest corner of Map 52, Block 129;
Thence northerly in a straight line to the intersection of the northern property line of Map 44, Block 130 with the side line of Equestrian Ave.;
Thence northerly in a straight line to the southwest corner of Map 44, Block 119;
Thence northerly in along the western property line of said parcel to its northwest corner;
Thence northerly across Quashnet Road to the southeast corner of Map 44, Block 88;
Thence northerly along the eastern property line of said parcel to its northeast corner;
Thence northerly in a straight line to the westernmost corner of Map 44, Block 110;
Thence northerly in a straight line to the easternmost corner of Map 35, Block 19A;
Thence northerly in a straight line to the southwest corner of Map 35, Block 27;
Thence northerly in a straight line to the southwest corner of Map 35, Block 80;
Thence northerly in a straight line to the northwest corner of Map 27, Block 48A;
Thence northerly in a straight line to the northwest corner of Map 27, Block 118;
Thence easterly along the northern property line of said parcel to its northernmost corner;
Thence northeasterly in a straight line to the southwest corner of Map 27, Block 93;
Thence northeasterly in a straight line to the northernmost corner of said parcel;
Thence northwesterly and northerly along the shore of Mashpee Pond to the point of beginning", or take any other action relating thereto.
History: Amended 10-17-2005 ATM, Article 15, approved by Attorney General 3-7-2006

C. All land boundaries, lot lines, property lines and roads referenced in the Subsection B have been taken from the Mashpee Assessors' Maps dated as indicated.
History: Amended 10-7-1991 ATM, Article 9, approved by Attorney General 1-31-2000.

§174-80 Permitted uses:

Within the Groundwater Protection District, the following uses are permitted, subject to the provisions of Article VI, provided that all necessary permits, orders and approvals required by local, state and federal law are also obtained:

A. Conservation of soil, water, plants and wildlife.

B. Outdoor recreation not involving the use of motor vehicles or motorboats, including boating, fishing, nature study and hunting where otherwise legally permitted.

C. Foot, bicycle and horse paths and bridges.

D. Maintenance and repair of any existing structure, provided that there is no increase in impervious pavement

E. Normal operation and maintenance of existing water bodies and dams, splashboards and other water control, supply and conservation devices.

F. Land uses which result in the rendering impervious of no more than fifteen percent (15%) or two thousand five hundred (2,500') square feet of any lot, whichever is greater, except as permitted under §174-82.
History: Amended 5-4-1998 ATM, Article 34, approved by Attorney General 8-12-1998.
History: Amended 10-1-1990 ATM, Article 3, approved by Attorney General 12-18-1990.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

G. Farming, gardening, nursery, conservation, forestry, harvesting and grazing uses, provided that fertilizers, herbicides, pesticides, manure and other leachable materials are not stored outdoors.

H. Publicly owned treatment works, including any device or system used in the treatment (including recycling or reclamation) or collection of municipal sewage or industrial wastes of a liquid nature, which is owned by a public entity, except within the mapped Zone II of an existing or proposed public water supply well.
History: Amended 10-1-1990 ATM, Article 3, approved by Attorney General 12-18-1990.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992

§174-81 Prohibited uses:

Within the Groundwater Protection District, the following uses are prohibited:

A. Storage of liquid petroleum products of any kind, except those incidental to normal household use and outdoor maintenance of the heating of a structure; waste oil retention facilities required by MGL C 21, §52A, as amended; emergency generators required by statute, rule or regulation; or treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 CMR 5.00, as amended, for the treatment of contaminated ground or surface waters, provided that such storage is either in a freestanding standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992

B. Storage of liquid hazardous materials, as defined in MGL C 21E, unless such storage is either in a freestanding container within a building or a freestanding container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992

C. Facilities that generate, treat, store or dispose of hazardous waste that are subject to MGL C 21C and 310 CMR 30.00, as amended, except for very small quantity generators, as defined by 310 CMR 30.00, as amended; household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390, as amended; waste oil retention facilities required by MGL C 21, §524, as amended; and treatment works approved by the Department of the Environmental Protection and designed in accordance with 314 CMR 5.00, as amended, for the treatment of contaminated ground- or surface waters.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

D. The disposal of sludge, septage, soil conditioners, solid wastes, brush or stumps or the storage of sludge or septage unless done in compliance with 310 CMR 32.30 and 32.31, as amended
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

E. Treatment works that are subject to 314 CMR 5.00, as amended, except the replacement or repair of an existing system that will not result in a design capacity greater than the design capacity of the existing system; the replacement of an existing subsurface sewage disposal system with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system; treatment works approved by the Department of Environmental Protection designed for the treatment of contaminated ground- or surface waters; and publicly owned treatment works except when not located within the mapped Zone II of an existing or proposed public water supply well.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

F. Storage of road salt or other deicing chemicals.

G. Disposal of snow that contains deicing chemicals and that has been brought in from outside the district.

H. Industrial uses that discharge process wastewater on site.

I. Outdoor storage of fertilizers, herbicides and pesticides and outdoor uncovered storage of manure.

J. Animal feedlots.

K. Dry-cleaning establishments.

L. Any use or establishment which qualifies as a small quantity generator or large quantity generator of hazardous wastes under the provisions of 310 CMR 30.00, as amended
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

M. Junk- and salvage yards.

N. Land uses which result in the rendering impervious of more than fifteen percent (15%) or two thousand five hundred (2,500') square feet of any lot, whichever is greater, except as permitted under §174-82. X.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.
History: Amended 5-4-1998 ATM, Article 34, approved by Attorney General 8-12-1998.

O. The removal of soil, loam, sand, gravel or any other mineral substances within four (4) feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited, within forty-five (45) days or removal, on site to achieve a final grading greater than four (4) feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works.
History: Amended 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

P. Individual sewage disposal systems that are designed in accordance with 310 CMR 15-00, as amended, to receive more than one hundred ten (110) gallons of sewage per quarter acre under one (1) ownership per day or four hundred forty (440) gallons of sewage on any one (1) acre under one (1) ownership per day, whichever is greater except the replacement or repair of an existing system that will not result in an increase in design capacity above the original design.
History: Added 10-7-1991 ATM, Article 12, approved by Attorney General 2-3-1992.

§174-82 Special Permit uses; Application Procedure:

A. Within the Groundwater Protection District, unless prohibited by a specific provision of Article VI, the following uses may be permitted by the Planning Board under any Special Permit issued by that Board, or otherwise by a Special Permit from the Zoning Board of Appeals following the procedures specified in Subsection B. below, under such conditions as each Board, acting as the permitting authority, may require:
History: Amended 5-4-1998 ATM, Article 34, approved by Attorney General 8-12-1998.

1. Commercial and industrial activities permitted in the underlying district and involving the manufacture, storage, transportation or use of any hazardous material other than hazardous wastes as defined in Massachusetts General Laws Chapter 21C.

2. The application of pesticides for uses that are nondomestic and nonagricultural, provided that all necessary precautions shall be taken to prevent hazardous concentrations of pesticides in the water and on the land within the Groundwater Protection District as a result of such application, such precautions to include, but not limited to, erosion control techniques, the control of runoff water (or the use of pesticides having low solubility in water), the prevention of volatilization and redisposition of pesticides and the lateral displacement (i.e., winddrift) of pesticides.

3. The application of fertilizers for uses that are nondomestic and nonagricultural, provided that such application shall be made in such a manner as to minimize adverse impacts on surface water and groundwater to nutrient transport and deposition or sedimentation.

4. The rendering impervious of greater than fifteen percent (15%) or two thousand five hundred (2,500') square feet of any lot, whichever is greater, provided that a system of stormwater management and artificial recharge of precipitation is developed which is designed to: prevent untreated discharges to wetlands and surface waters, preserve hydrologic conditions that closely resemble pre-development conditions, reduce or prevent flooding by managing the peak discharges and volumes of runoff, minimize erosion and sedimentation, not result in significant degradation of groundwater, reduce suspended solids and other pollutants to improve water quality and provide increased protection of sensitive natural resources. These standards may be met using the following or similar best management practices:

   For lots occupied, or proposed to be occupied, by single or two-family residences, recharge shall be attained through site design that incorporates natural drainage patterns and vegetation in order to maintain pre-development stormwater patterns and water quality to the greatest extent possible. Stormwater runoff from rooftops, driveways and other impervious surfaces shall be routed through grassed water quality swales, as sheet flow over lawn areas or to constructed stormwater wetlands, sand filters, organic filters and/or similar systems capable of removing nitrogen from stormwater.

   For lots occupied or proposed to be occupied by other uses, a stormwater management plan shall be developed which provides for the artificial recharge of precipitation to groundwater through site design that incorporates natural drainage patterns and vegetation and through the use of constructed (stormwater) wetlands, wet (retention) ponds, water quality swales, sand filters, organic filters or similar

site-appropriate best management practices capable of removing nitrogen and other contaminants from stormwater and meeting the Stormwater Management Standards and technical guidance contained in the Massachusetts Department of Environmental Protection's Stormwater Management Handbook, Volumes 1 and 2, dated March 1997, for the type of use proposed and the soil types present on the site. Such runoff shall not be discharged directly to rivers, streams, other surface water bodies, wetlands or vernal pools. Dry wells shall be prohibited. Except when used for roof runoff from non-galvanized roofs, all such wetlands, ponds, swales or other infiltration facilities shall be preceded by oil, grease and sediment traps or other best management practices to facilitate control of hazardous materials spills and removal of contamination and to avoid sedimentation of treatment and leaching facilities. All such artificial recharge systems shall be maintained in full working order by the owner(s) under the provisions of an operations and maintenance plan approved by the permitting authority to ensure that systems function as designed. Infiltration systems greater than three (3') feet deep shall be located at least one hundred (100') feet from drinking water wells. Any infiltration basins or trenches shall be constructed with a three (3') foot minimum separation between the bottom of the structure and maximum groundwater elevation.

History: Added 5-4-1998 ATM, Article 34, approved by Attorney General 8-12-1998.

B. Any application for a Special Permit shall be made, reviewed and acted upon in accordance with the following procedures:

1. Each application for a Special Permit shall be filed, in writing, with the Board of Appeals and shall contain a complete description of the proposed use, together with any supporting information and plans which the Board of Appeals may require.

2. The Board of Appeals shall refer copies of the application to the Board of Health, Planning Board, Conservation Commission and Town Engineer or Department of Public Works, which shall review, either jointly or separately, the application and shall submit their recommendations to the Board of Appeals. Failure to make recommendations within thirty-five (35) days of the referral of the application shall be deemed lack of opposition.

3. The Board of Appeals shall hold a public hearing on the application, in conformity with the provisions of MGL C 40A, within sixty-five (65) days after the filing of the application with the Board of Appeals.

4. After notice and public hearing, and after due consideration of the reports and recommendations of the local boards/departments, the Board of Appeals may issue such a Special Permit, provided that it finds that the proposed use:
   (a) Is in harmony with the purpose and intent of this chapter and will promote the purposes of the Groundwater Protection District.

   (b) Is appropriate to natural topography, soils, and other characteristics of the site to be developed.

   (c) Will not, during construction or thereafter, have an adverse environmental impact on the aquifer or recharge area.

   (d) Will not adversely affect an existing or potential water supply

§174-83 Burden of Proof:

The burden of proof shall be upon the applicant for a Special Permit to demonstrate that the applied-for use shall not result in a use inconsistent with the intent of the creation of the Groundwater Protection District.

ARTICLE XIV - Areas of Critical Environmental Concern (ACEC)

§174-84 Purpose:

The purpose of this Article is the protection of Areas of Critical Environmental Concern, areas of significance for flood control or the prevention of storm damage, waters containing shellfish and fisheries and other public interests identified by the Wetlands Protection Act (MGL C. 131, §40 and 40A) and the town's Wetlands Protection Bylaw.[2]

§174-85 Geographical Applicability:

This Article shall apply to all areas within the Waquoit Bay Areas of Critical Environmental Concern (ACEC) as designated by the Massachusetts Executive Office of Environmental Affairs on November 26, 1979, in accordance with MGL C 21A, §2(7), and to a buffer zone extending twenty-five (25') feet landward from the edge of the ACEC. For those lots or land parcels totally encompassed by the ACEC, this Article's applicability will be limited to one hundred (100') feet landward of the edge of wetlands as defined by MGL C 131, §40. In case of any dispute regarding the boundary of the areas defined under this Article, the Conservation Commission will be consulted, making the final determination based on the best available data.

§174-86 Regulation of Construction and Land Alteration

A. Within the above-described area, no construction of dwellings or any other primary or accessory buildings or structures, except those permitted under §174-25(9) or Subsection D, is permitted.

B. Within the above-described area, no clear cutting of vegetation or wildlife habitat, except for a path no more than twenty (20') feet wide to provide access to structures allowed under §174-25 I(9) or for trail or other passive recreational uses operated by the town, state, or other public agency, is permitted.

C. No dumping, fill, paving, removing of material or dredging may be done, except as permitted under the requirements MGL C 131, §40 and §40A, and any other applicable laws, bylaws and regulations.

D. Any structure which lies wholly or partly within the above-described area and which was lawfully in existence or for which a Building Permit was legally granted prior to the publication date of the Town Meeting Warrant article adopting this Article, may be continued, repaired, maintained, improved or enlarged or replaced in case of its destruction, provided that no improvement, enlargement or other new construction may extend more than ten (10) feet closer to any open water, watercourse, marsh, or other wetland as defined by MGL C 131, §40, (and in no case into such areas) than its location prior to the above date.

E. Repair and maintenance of any road, bikeway or trail within the above-described area is permitted. Construction of any new road, bikeway or other way requiring paving, fill or

[2] Editor's Note: See Ch. 172, Wetlands.

other significant construction is prohibited except for roads, bikeways or other ways constructed by the town, state or other public agencies or where the Board of Appeals has granted a variance from these requirements in order to allow access to areas not included in the above-described area to which access would otherwise be impossible. Any construction, repair, maintenance, improvement or enlargement of such roads, bikeways or other ways shall be in conformance with the requirements of MGL C 131, §40 and §40A, and all other applicable laws, bylaws and regulations.

F. Any owner of a lot which is buildable at the time of the effective date of this Article, but which is made unbuildable due to its requirements, may apply to the Board of Appeals for a variance from the requirements of this Article. The Board of Appeals shall consult the Conservation Commission in making its decision, and in no case shall the grant of relief be more than the minimum necessary to allow a reasonable use of the lot. The Board of Appeals, in considering applications hereunder, shall give primary importance to the protection of the environment.

G. No provisions of this Article are intended to supersede or otherwise limit the authority of the Conservation Commission under MGL C 131, §40 and §40A, or the town's Wetlands Protection Bylaw.

ARTICLE XV[3] - (Reserved)

§174-87 through 174-90 (Reserved)

ARTICLE XVI - Appeals; Board of Appeals

§174-91 Establishment; Appointment; Terms:

There shall be a Zoning Board of Appeals as provided for by the Massachusetts General Laws, consisting of five (5) members. The Board of Selectmen shall appoint the members annually to terms commencing July 1. The members shall be appointed for terms of three (3) years, so arranged that the term of office of as nearly an equal number of members as possible shall expire each year. The Board of Selectmen may appoint up to six (6) associate members for similar terms in the same manner. Vacancies shall be filled for unexpired terms in the same manner as in case of original appointments.
History: Amended 10-20-2003 ATM, Article 11, approved by Attorney General 11-14-2003.

§174-92 Organization:

The Board of Appeals shall organize annually at the meeting next following July 1 by the election of a Chairman and a Clerk from within its own membership and may, subject to appropriation, employ experts other consultants.
History: Amended 5-2-2005 ATM, Article 17, approved by Attorney General 10-14-2005.
History: Amended 10-20-2008 ATM, Article 13, approved by Attorney General 2-11-2009.

§174-93 Associate Members:

The Chairman of the Board of Appeals may designate any associate member to sit on the Board in case of absence, inability to act or conflict of interest on the part of any member thereof or

[3] Editor's Note: Former Article XV, Temporarily Restricted Areas, was repealed 10-7-1991 ATM, Art. 15, approved 2-3-1992.

in the event of a vacancy on the Board until said vacancy is filled by action of the Board of Selectmen.

§174-94 Removal of Members:

Any member or associate member of the Board of Appeals may be removed for cause by the Board of Selectmen only after written charges have been made and delivered to the member and a public hearing has been held.

§174-95 Powers:

The Board of Appeals shall have and exercise the powers specifically granted by the General Laws of the Commonwealth and those powers granted in this Zoning Bylaw which are not inconsistent with the aforesaid General Laws.

ARTICLE XVII - Amendments

§174-96 Proposition of Amendments:

Any person desiring a zoning amendment shall propose it, in writing to the Selectmen for insertion in the Warrant of a Town Meeting, regular or special.

§174-97 Boundary Changes:

If geography change of a zoning boundary description is proposed, words of the boundary description change for insertion in the Warrant shall be accompanied by a brief written statement of the nature, extent and location in the town of the Zoning Map change proposed, together with three (3) black-line prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet.

§174-98 Public Hearing:

On each zoning amendment proposal accepted by the Selectmen for insertion in a Town Meeting Warrant or on any such proposal inserted in a Town Meeting Warrant by petition as provided by statue, the Planning Board shall hold a public hearing, of which notice shall be given by the Planning Board under the statutory zoning notice provision.

§174-99 Costs of Publication and Notice:

The costs of publication and of mailing of notices of hearing and the costs of holding such zoning hearing and of making a public record of the proceedings at such hearing, if such a record is made, shall be paid by the Planning Board, but the Planning Board may determine whether a fee to cover such costs shall be required of zoning amendment proponents.

ARTICLE XVIII - Enforcement and Penalties

§174-100 Permit Requirements:

No building shall be erected, altered or moved in the town without a written permit issued by the Building Inspector. Such permits shall be applied for, in writing, to the Building Inspector. The Building Inspector shall not issue such permit unless the plans for the building and the intended use thereof in all respects fulfill the provisions of this Zoning Bylaw except as may have been specifically permitted otherwise by action of the Board of Appeals, provided that a written copy of the terms governing any such permission is attached to the application and to

the resulting Building Permit issued. One (1) copy of each such permit issued, including any conditions or exceptions attached thereto, shall be kept on file in the office of the Building Inspector.

§174-101 Plot Plan Required:

Each application for a permit to build, alter or move a building shall be accompanied by a plot plan in such number of copies and drawn to such scale as is required by the building bylaws of the town. Each such plot plan shall show dimensions and areas of lots and of structures to be erected, altered or moved, and adjacent streets or angles of all lot lines shown thereon, also of any streets or ways. Such plot plans shall indicate approved street grades and proposed elevations of the top of foundations. Also, such plot plans shall show the locations of existing sanitary sewers, storm drains and water pipes in any street shown and the locations of all existing buildings and structures within the application area. Also, the location of existing or proposed wells and sanitary disposal areas shall be shown.

§174-102 Enforcement Authority; Determination of Violation:

This Zoning Bylaw shall be enforced by the Building Inspector who, upon being informed in writing of a possible violation of this chapter, or on his own initiative, shall make a cause to be made an investigation of facts and an inspection of the premises where such violation is alleged to exist. The Building Inspector, after review and inspection as aforesaid, shall make a determination as to whether or not a violation exists. If the Building Inspector determines that a violation exists, he shall give written notice of such violation to the owner and to the occupant of such premises and shall demand that such violation be abated within a reasonable time as designated in the written notice. Such notice and demand may be given either in person or by mail addressed to the owner at the address appearing on the most recent assessing records of the town and to the occupant at the address of the premises where the violation has occurred.

§174-103 Failure to Enforce; Appeals:

If the Building Inspector, after being requested in writing to enforce the Zoning Bylaw against any violation thereof, declines to act, he shall notify, in writing, the party requesting such enforcement of any action of refusal to act and the reasons therefor within fourteen (14) days of receipt of such written request for enforcement. Any person aggrieved by reason of inability to obtain enforcement action form the Building Inspector may appeal the decision not to act to the Board of Appeals. The Board of Appeals shall, at a public meeting, review the allegation of violation of the Zoning Bylaw, the Building Inspector's reasons for refusal to act and any other information it deems necessary and relevant, and it may, by majority vote, decide to issue a notice of violation and demand for abatement in the same manner as prescribed for the Building Inspector in §174-102.

§174-104 Institution of Proceedings:

If the Building Inspector or the Board of Appeals issues a notice of violation and demand for abatement and if such alleged violation has not been abated within the time specified in the written notice, the Building Inspector of the Board of Appeals, as appropriate, shall institute legal action or proceeding on behalf of the town to prevent, correct, restrain, abate or punish any violation of this chapter. The provisions of this chapter shall be enforceable by injunctive action as provided for in the General Laws, in addition to all other remedies available at law or in equity. All officials, departments, boards, commissions or employees of the town vested with the authority or duty to issue permits, certificate, licenses or approvals shall comply with the provisions of this chapter and shall not issue any such permit, certificate, license or approval regarding any such structure, use, development or site which is not in conformance with the provisions of this chapter or which is the subject of any violation enforcement proceeding

initiated by the Building Inspector or other agent to the town. Any person, owner, agent or other legal entity, against whom such violation enforcement procedure has commenced, shall not be permitted to apply for a permit to construct or for a variance for any matte related to the alleged violation until the violation enforcement proceedings have been finally determined by the proper authority.

§174-105 Violations and Penalties:

Any person found guilty by a court of violating any of the provisions of this chapter shall be punished by a fine of not more than three hundred dollars ($300) per violation. Each day that any violation continues after the issuance of a notice of violation and demand for abatement shall constitute a separate offense.

§174-106 Revocation of Permits or Variances upon Violation:

In addition to any other remedy of punishment provided for in this chapter, any type of permit or variance may be revoked by the body which originally approved it, if the same is not inconsistent with any provisions of the General Laws, upon a determination and finding that any of the provisions of this chapter or any condition of approval has been violated. Hearing procedures for revocation shall be as prescribed for issuance of the permit or variance, including any written or published notice before a hearing.