

ZONING BY-LAW
OF THE
TOWN OF MASHPEE



1967

Rules and Regulations
Governing the
Subdivision of Land

Compiled and edited by
The Mashpee Planning Board

ZONING BY-LAW

A. PURPOSE

1. The purpose of these by-laws is to promote the health, safety, and general welfare of the inhabitants of the Town of Mashpee, to protect and conserve the value of property within the town, to increase the amenities of the town, and to secure safety from fire, congestion, or confusion, all in accord with the General Laws, Chapter 40A, sections one (1) to twenty-two (22) inclusive, as amended.

B. ESTABLISHMENT OF DISTRICTS

1. The Town of Mashpee is hereby divided as shown on the Map entitled "Zoning Map, Town of Mashpee, Massachusetts", dated November 3, 1959, and filed with the Town Clerk, into the following districts: R-75 Residence District, R-100 Residence District, R-150 Residence District, Business District, Marine Area District, and Industrial District. Said map, and such amendments to it as shall be duly enacted, shall be considered an integral part of this by-law. Boundaries of zoning districts shown on said map shall be assumed to be accurate.

2. Lots in Two Districts—Where a District boundary line divides any lot existing at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty feet into the more restricted portion, provided the lot has street frontage in the less restricted area.

C. PERMITTED USES

1. The following uses are permitted in all Districts:
 - (a) General purpose farm, agriculture, garden, greenhouse or nursery, selling only produce or plants the major portion of which is raised locally in the Town of Mashpee or on property owned by a resident or residents of the Town of Mashpee, and excluding any use injurious, noxious, or offensive to the neighborhood.
 - (b) Church use.
 - (c) Educational use, provided that, in the case of non-religious educational uses, they shall be non-profit enterprises of a type subject to regulation by the State Department of Education.
 - (d) Municipal, municipal recreation or water supply use.
 - (e) Hospital or sanitarium use.

(f) Public or private facilities for recreation, such as golf, tennis, boating, bathing, fishing or horseback riding, with accessory uses customarily incident thereto.

D. NON-CONFORMING USES

1. Any lawful building or lawful use of a building or premises or part thereof in the Town of Mashpee existing at the time this by-law is adopted may be continued, although such building or use does not conform to the provisions hereof.

2. Any such non-conforming building which has been damaged by fire or other cause to any extent may be repaired or rebuilt, but the total floor area shall not be increased, unless first authorized by a special permit from the Board of Appeals, and providing said owner shall apply for a building permit and start operations for restoring or rebuilding on said premises within twelve (12) months after such catastrophe. This section shall not apply to Business Districts.

3. In All Districts:

(a) Provided the Board of Appeals first grants a special permit therefor, any such non-conforming building or structure may be altered or increased in size or any such non-conforming use may be extended over all or any part of the premises upon which the same is located at the time this by-law is adopted. It is the intent of this paragraph that only substantial alterations require a special permit; minor alterations may be permitted at the discretion of the Building Inspector.

(b) No such non-conforming use that has been discontinued for three years shall be re-established unless first authorized by special permit from the Board of Appeals.

(c) The Board of Appeals may permit any non-conforming use to be changed to any specified use not more detrimental to a neighborhood.

E. ACCESSORY USES—RESIDENCE DISTRICTS

1. Accessory uses customarily incident to any of the uses permitted in a particular residence district and not detrimental to a residential neighborhood shall be permitted in that particular residence district.

2. The term "Accessory Use" shall not include:

(a) Any use not on the same lot with the building to which it is accessory unless authorized by the Board of Appeals.

(b) A garage or storage for commercial vehicles unless authorized by the Board of Appeals.

(c) Advertising signs except those pertaining to the lease or sale of a lot or building on which they are placed, and not exceeding twelve (12) square feet in total area; provided that on a lot occupied by a dwelling house there may not be more than two (2) signs with a total area of not more than three (3) square feet, pertaining to the use of or accessory use of the building.

3. In business and industrial areas, no advertising signs shall exceed a width greater than one-half of the building frontage, nor a depth exceeding twelve (12") inches. The use of neon or similar gases is prohibited for advertising purposes, as is also the use of continually flashing lights.

F. ZONING DISTRICTS

I. RESIDENCE DISTRICTS:

1. R-75 Residence District:

(a) Use: In a R-75 Residence District, no building shall be erected or altered and no building or premises shall be used for any purpose except:

- (1) Detached one or two-family dwelling.
- (2) The taking of not more than ten (10) lodgers by a family resident in the dwelling.
- (3) Any of the following uses, provided the Board of Appeals authorizes a special permit therefore.
 - (a) Hotel, boarding house, lodging house, apartment house, or dwelling house, otherwise not permitted.
 - (b) Size of Lots—No building, except one-story buildings of accessory use, shall be erected on a lot less than seventy-five (75) feet wide and containing less than seventy-five hundred (7500) square feet, provided that one (1) one-family dwelling and its accessory buildings may be erected on any lot which on the date these by-laws are adopted is separately owned, the owner thereof not owning adjacent land.
 - (c) Front Yards—No building shall be erected within twenty (20) feet at the side line of a street, nor closer than ten (10) feet to the side lines or rear lines of the lot.

2. R-100 District:

(a) Use: No building shall be erected or altered and no building or premises shall be used for any purpose except:

- (1) Detached one-family dwelling, except that alterations of single family units may be permitted, to allow use as a two-family unit by the granting of a special permit.
- (2) In addition to accessory uses permitted under Paragraph E of this by-law the following uses may be permitted, subject to the operator living upon the premises and to the limitations stated herein. A billboard, signboard or advertising sign shall in no case be permitted as an accessory use, except as herein specified. The placing of a "For Sale" or "For Rent" sign shall, however, be permitted as an accessory use. A sign pertaining to a home occupation, as herein specified, shall be permitted, provided such signs be not over three (3) square feet in area.
 - (a) Offices for professional use and customary home occupations such as arts, crafts, service businesses, antique and gift shops, or any use determined to be of a similar character, said determination to be made by the Board of Appeals following a petition of the land owner or owners and a special permit granted therefor, including only uses conducted in dwellings or in accessory buildings and involving only the services of persons living on the premises and not more than one (1) other employee, except that the occasional presence of additional employees on the premises shall not be prohibited, and further excepting physicians, surgeons and dentists, which professions require clerical and medical assistants. Such permitted accessory uses shall not entail any external changes in the structural form of the building. Permitted uses shall be restricted to such as are not offensive by reason of the emission or odor, dust, smoke, gas, noise or vibration, or otherwise obnoxious such as by reason of the accumulation of materials or debris.
 - (3) The taking of not more than six (6) lodgers in any dwelling.
- (b) Size of Lots—No building, except one-story buildings of accessory use, shall be erected on a lot less than one hundred (100) feet frontage and containing not less than ten thousand (10,000) square feet, provided that one (1) one-family dwelling and its accessory buildings may be erected on any lot which at the time this by-law is adopted is separately owned.

(c) Front Yards—No building shall be erected within twenty (20) feet from the side line of the road, nor closer than fifteen (15) feet from side lines or rear lines of the lot.

3. R-150 Residence District:

(a) Use—No building shall be erected or altered and no building or premises shall be used for any purpose except:

- (1) Detached one-family dwelling.
- (2) No building shall be used for the purpose of taking lodgers except where such use of a building lawfully exists at the time this by-law is adopted.

(b) Size of Lots—No building, except one-story buildings of accessory use, shall be erected on a lot less than one hundred fifty (150) feet wide and containing not less than twenty-two thousand five hundred (22,500) square feet, provided that one (1) one-family dwelling and its accessory buildings may be erected on any lot which, at the time this by-law is adopted, is separately owned.

(c) Front Yards—No buildings shall be erected within thirty (30) feet of a street line, provided that no building need be set back more than the average of the setbacks of the buildings on the lots next thereto on either side, vacant lot one hundred (100) feet or more in width or a lot occupied by a building set back more than thirty (30) feet.

(d) No building to be erected closer than fifteen (15) feet from sidelines or rear line.

II. BUSINESS DISTRICT:

(a) Use: Any use permitted in a Residence District, subject to the lot area, setback, sideline, and rear line restrictions in the R-75 Residence District.

(b) Any other business, storage, warehousing, or light manufacturing operations, provided that the Board of Appeals shall find:

1. That adequate provision will be made for off-street parking, loading and unloading, and handling of vehicular circulation;
2. That the proposed use will be so designed and operated that it will not be likely to be obnoxious, injurious, or hazardous to the neighborhood; and
3. That the combination of setbacks and screening by planting or structures will be such as to insure against any detrimental affect upon existing or potential use of adjoining properties. A junk yard or yard for storing, wrecking or dismantling non-operable motor ve-

hicles shall be considered to be adequately screened only if it is entirely surrounded by sight-impervious fence or evergreen planting.

(c) No building shall be erected and no roadside stand or accessory use shall be placed nearer to the street line than the average of the setback of buildings on a lot next thereto. If there is no building on a lot next thereto, then the setback shall be twenty (20) feet unless there is a present existing setback, in which case the present existing setback shall prevail, except:

1. No building in the business area on both sides of Route 28, 130, or 151 shall be nearer than fifty (50) feet to the street line.

III. MARINE AREA DISTRICT

- (1) Establishes a Marine Area limited to the building, sale, rental, storage and repair of boats and for the sale of marine supplies.

IV. INDUSTRIAL AREA DISTRICT

(1) In any Industrial District, no building, structure or premises shall be used and no alteration, enlargement or extension of an existing building or structure shall be designed, arranged, or constructed which is intended or designed to be used in whole or in part except for one or more of the following purposes:

- (a) Any use permitted in a business district.
- (b) Lumber, fuel, feed and ice establishments, and contractors' yards.
- (c) Any manufacturing or industrial use.
- (d) Automobile dismantling or used parts yards and junk yards, if authorized by a special permit granted by the Board of Appeals.
- (e) No building permit shall be granted under this section for any use which might prove injurious to the safety or welfare of the immediate neighborhood, and destructive of property values because of any excessive nuisance qualities.

In all cases where the type of business or industrial operation necessarily produces noises, dust, or air-pollution which might adversely affect other owners or occupants in the neighborhood, it shall be the duty of the Building Inspector to refuse to issue a building permit without prior approval of the Board of Appeals; and a decision of the Board of Appeals approving the issuance of a Building permit under this sec-

tion of the by-law shall not issue unless the said Board has a prior written opinion from the Board of Health wherein the Board of Health may comment on the proposed business or industrial operation and make such recommendations as to it may seem desirable. The requirement of a prior written opinion from the Board of Health shall be deemed to be waived, however, if the same be delayed for more than seven days beyond the date of the hearing held before the Board of Appeals.

V. CLUSTER ZONING DISTRICT:

(1) If a plan of land, containing 100 or more acres in a single parcel or contiguous parcels (disregarding streets, public or private easements, and creeks or other natural barriers) of which not less than 60 acres is registered land, is submitted to the Board of Appeals upon petition under Section 9.3; if the Board finds that development of the land shown on the plan on the cluster zoning principle will fulfill the spirit and intent of this By-Law without substantial detriment to the public good; and if a portion of the registered land, sufficient to constitute a dominant tenement, is deeded to the Town of Mashpee by a deed which states that the land thereby conveyed is benefited by restrictions imposed thereby upon all of the land shown on such plan, which restrictions; (i) run, with respect to their burden, with all of the land shown on such plan; (ii) are noted on or in the certificate or certificates of title to the registered portions of such land; (iii) have a stated duration of not less than the maximum period permitted by Section 27 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts; (iv) contain the provisions for extension described in said section; and (v) have the effect, when considered in the aggregate, of:

- (a) Permitting no more than three dwelling units times the number of acres of registered land, and
- (b) Permitting no more than 870 square feet of area (including in such computation the sum of the floor areas of any building but excluding customer parking areas) times the number of acres of registered land to be devoted to commercial uses, other than recreational uses.

THEN, all other provisions of this Section F, including but not limited to prohibitions on use and minimum lot size and frontage requirements shall not be applicable to the registered land so long as such restrictions are enforceable, except that no part of such land may be used for industrial

or obnoxious uses. If any of the unregistered land is subsequently registered and effectively subjected to the foregoing restrictions in favor of the dominant tenement, it shall thereafter be treated, for all purposes of this Section F, as if it had been registered and subjected at the time of approval of the plan.

(2) For the purposes of this Section F. V., a "dwelling unit" shall not include detached buildings on any lot utilized solely for non-paying guests of the person or persons occupying the principle dwelling unit on the same lot but it shall include each individual room or suite of rooms in any hotel or motel.

G. ADMINISTRATION

1. Board of Appeals—A Board of Appeals shall be appointed by the Selectmen. The Board shall consist of three members and each shall be appointed by the Selectmen to hold office for the term of three years or until his successor is appointed and qualified. In case of vacancy, inability to act, or interest on the part of a member of the Board, the Chairman of the Board of Appeals may designate an associate member pro-tem to act in his place. Three associate members shall also be appointed by the Selectmen, to hold office under the same conditions as regular members.

2. The Board of Appeals may in appropriate cases and subject to appropriate conditions and safeguards make exceptions to the terms of the zoning by-laws in harmony with their general purpose and intent.

3. Special permits.

- (a) Under all sections of the zoning by-law where the granting of special permits is specified, a petition shall be filed with the Board of Appeals.
- (b) A decision of the Board of Appeals on a petition for special permits shall be by a majority vote of the Board and shall be based on consideration of the following factors:
 - (1) Whether or not the petition falls within the category specifically excepted by the by-law.
 - (2) An evaluation of all the evidence presented at the hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of the by-law without substantial detriment to the public good.
- (c) A special permit shall become void if not made use of in the intended manner within twelve (12) months.

4. Enforcement

(a) The Chief of Police, upon application of the Inspector of Buildings or a member of the Board of Selectmen shall cause complaint to be made before the proper court for any violation under this by-law. Anyone convicted of a violation under this by-law shall be fined not more than twenty (\$20.00) dollars.

(b) The Board of Selectmen, upon application of the Inspector of Buildings shall institute proceedings to enforce this by-law and to enjoin the construction, alteration, enlargement, reconstruction or use of any building, or the use of any premises in violation hereof.

(c) The Inspector of Buildings may require any plans, documents, or written statements under penalties to be filed with his office to verify the intended use of the premises.

(d) The use of one (1) remedy shall not preclude a resort to any other remedy for the same violation.

H. BUILDING INSPECTOR

1. An Inspector of Buildings shall be appointed and may be removed by the Board of Selectmen, who shall fix his salary and provide for reimbursements for his incidental expenses in the performance of his duties.

2. The Inspector of Buildings shall enforce all laws and regulations relating to the construction, alteration, repair, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, except as may be otherwise provided. He shall inspect all building operations within the town, and shall have the right of entry at reasonable hours. He shall require that all workmanship and all building materials shall be of good quality, and that types and methods of construction shall be in accordance with generally accepted standards of engineering practice in accordance with Section III, Chapter 143 of the General Laws of the Commonwealth of Massachusetts. In case of violation of these regulations, he shall order, in writing, the suspension of the work, which notice shall state the conditions under which the work may be resumed.

I. RECORDS AND REPORTS

1. The Inspector of Buildings shall keep records of applications, permits issued, reports and notices or orders issued. He shall make a report to the Board of Selectmen annually, and at such other times as requested by said Board.

J. APPLICATION FOR PERMITS

1. It shall not be lawful to construct, alter, remove, demolish or change the class of occupancy of any building or structure without first filing with the Inspector of Buildings an application in writing and obtaining a permit.

2. An application for a permit shall be submitted in such form as the Inspector of Buildings may prescribe, and shall be made by the owner or his duly authorized representative.

3. Applications for permits shall be accompanied by such plans, drawings and other data as the Inspector of Buildings may require.

4. In existing buildings minor repairs may be made without filing or obtaining a permit.

K. PERMITS, INSPECTION FEES

1. It shall be the duty of the Inspector of Buildings to act upon applications for a permit or plans without unreasonable or unnecessary delay.

2. The Inspector of Buildings shall inspect all buildings or structures during the construction to see that the provisions of these regulations are complied with and the construction prosecuted safely.

3. The fee for a building permit shall be established by the Board of Selectmen.

L. UNSAFE BUILDINGS

Upon notice of an unsafe building the Inspector of Buildings shall proceed in accordance with the provisions of General Laws, Chapter 143, Section 6 to 12, inclusive, and any amendments thereof.

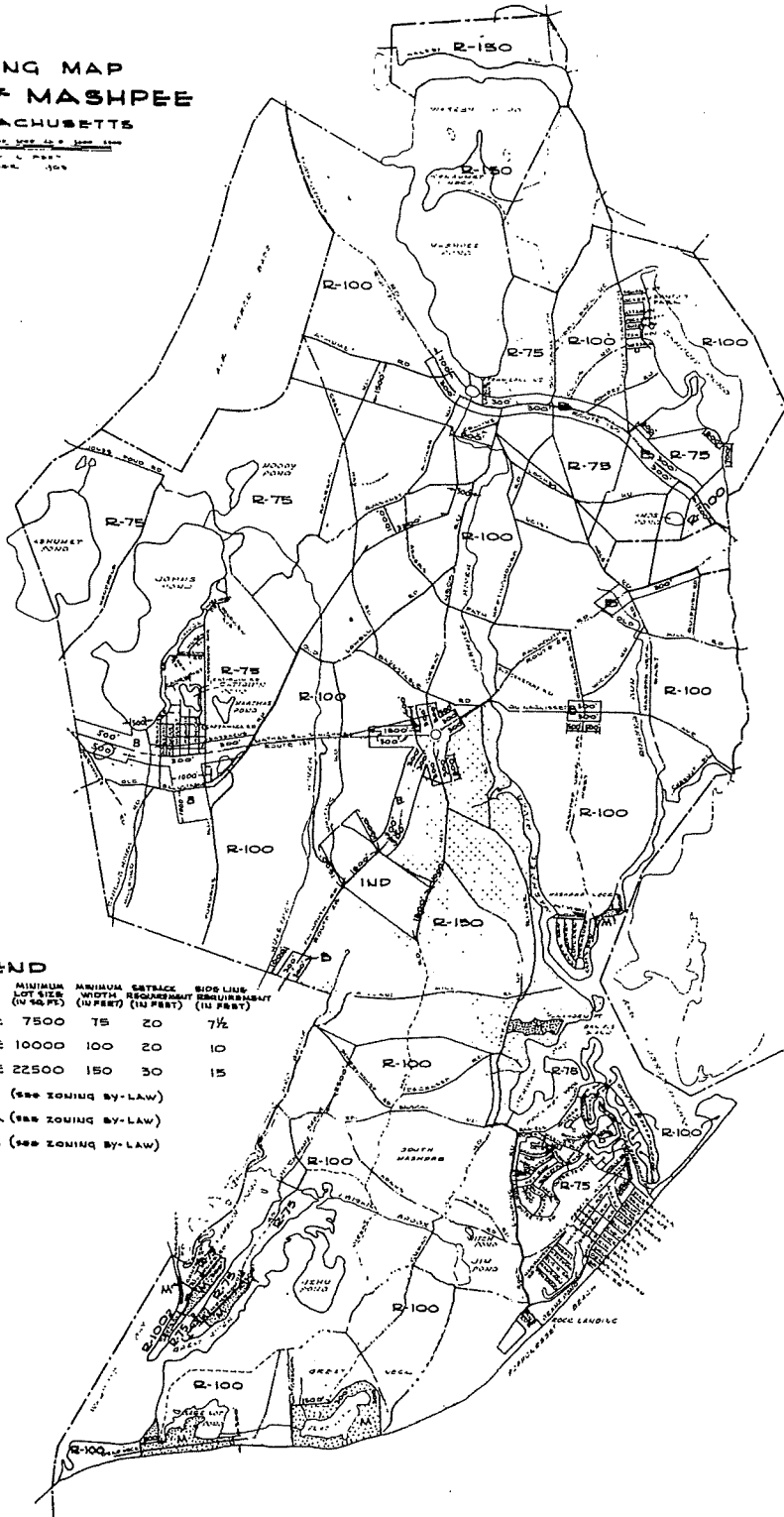
(If any provision of these zoning by-laws shall be declared unconstitutional or illegal by competent authority, the validity of the remaining provisions of the by-laws shall not be affected thereby.)

M. AREA REGULATIONS

1. Filled Land. No person shall fill any area in the Town of Mashpee with earth, concrete, or other material to a depth in excess of five (5) feet without a permit from the Board of Selectmen.

ZONING MAP TOWN OF MASHPEE MASSACHUSETTS

Scale: 1" = 1000'
 Date: 1954
 Author: [illegible]
 Revision: 1954



LEGEND

SYMBOL	DESIGNATION	MINIMUM LOT SIZE (IN SQ. FT.)	MINIMUM WIDTH (IN FEET)	SETBACK (IN FEET)	SIDE LANE REQUIREMENT (IN FEET)
[Symbol]	R-75 RESIDENCE	7500	75	20	7 1/2
[Symbol]	R-100 RESIDENCE	10000	100	20	10
[Symbol]	R-150 RESIDENCE	22500	150	30	15
[Symbol]	D BUSINESS	(see zoning by-law)			
[Symbol]	M MARINE AREA	(see zoning by-law)			
[Symbol]	IND INDUSTRIAL	(see zoning by-law)			

REPLACED BY [illegible] 1954

**RULES AND REGULATIONS GOVERNING
THE SUBDIVISION OF LAND
IN MASHPEE, MASSACHUSETTS**

November, 1965

After the required public hearing the Planning Board of the Town of Mashpee at a regular meeting held November 18, 1965 unanimously voted: That, under the provisions of General Laws (Tercentenary Edition), Chapter 41, Section 81-A to 81-GG inclusive, as amended, and the General By-laws and Zoning By-laws of the Town of Mashpee with amendments thereto, the following Rules and Regulations are established and amended covering the submission and approval of subdivision plans.

PLANNING BOARD
Town of Mashpee, Massachusetts

RICHARDSON JONAS, Chairman
MINOR PEDERSON
HARRY W. TABB
ROBERT McNUTT
OTTO DORRER

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Section I

PURPOSE

The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage and other requirements where necessary in a subdivision; and for co-ordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

Section II

PREAMBLE

These subdivision regulations have been adopted pursuant to sec. 81Q of Ch. 41 of the general laws and are published to assist landowners and developers in complying with the provisions of the subdivision control law. (Ch. 41, sec. 81K - 81GG). Reference should be made to that statute, to the zoning enabling act (Ch. 40A) and to the zoning by-law of the Town of Mashpee for applicable provisions not set out in these regulations.

Section III

DEFINITIONS

For the purpose of these Rules and Regulations, the following words and terms used herein and hereby defined or the meaning thereof is explained or limited as follows:

1. **Applicant**—The person who applies for the approval of a plan of a subdivision and his administrators, executors, heirs, devisees, successors and assigns. The applicant or applicants must be the owner or owners of all the land included in the proposed subdivision.

2. **Board**—The Planning Board of the Town of Mashpee.

3. **Definitive Plan**—A plan of a proposed subdivision or re-subdivision prepared by a registered land surveyor and registered engineer.

4. **Final Approval**—Approval by the Board of a definitive plan of a subdivision.

5. **Lot**—An area of land in one ownership, with definite boundaries, used or available for use, as the site of one or more buildings complying with the area, frontage and other requirements of the Zoning By-laws of the Town of Mashpee.

6. **Owner**—The owner of record as shown by the records in the Barnstable County Registry of Deeds or Land Registry District.

7. **Person**—An individual, two or more individuals, a partnership, association or corporation.

8. **Preliminary Plan**—A plan of a proposed subdivision or re-subdivision of land drawn on tracing paper, or a print thereof, submitted for tentative approval.

9. **Registered Mail**—Registered Mail shall mean registered or certified mail.

10. **Registry of Deeds**—The Registry of Deeds of the County of Barnstable, Barnstable County Court House, Barnstable, Mass. and when appropriate, shall include the Land Court.

11. **Street**—Street is that area of land in an existing or proposed way between sidelines and shall include the area intended for vehicular use, curbing, planting strips and median strips, if any.

13. **Subdivision**—A subdivision is described in Section 81-L of Ch. 41 of the General Laws as follows: "Subdivision shall mean the division of a tract of land into two or more lots and shall include re-subdivision, and, when appropriate to the context, shall relate to the process of subdivision of the

land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way, or (b) a way shown on a plan theretofore approved in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision."

14. **Subdivision Control Law**—Sections 81-K to 81-GG, inclusive of Ch. 41 of the General Laws, and any acts in amendment thereof, in addition thereto, or in substitution therefor.

15. **Tentative Approval**—Approval by the Board of a preliminary plan of a proposed subdivision.

16. **Town Engineer**—A Registered Professional Engineer and Registered Land Surveyor designated by the Board.

17. **Profile**—A complete and accurate representation of the finished vertical profile of a road or roads to be constructed within a subdivision, drawn on profile (gridded) drawing (not tracing) paper, generally in pencil, and copies or prints thereof, not suitable or intended to be recorded.

Section IV

1. **General**—Any person wishing to record at the Registry of Deeds a plan of land within the Town of Mashpee shall first submit a plan of such land to the Planning Board, so that the Planning Board may determine whether or not its

approval under the provisions of the subdivision control law is required, and if determined not to be required to endorse such determination on a definitive plan.

2. **Subdivision to be approved**—No person shall make a subdivision (within the meaning of the statute) of any lot, tract or parcel of land within the town, or proceed with the platting, improvement or sale of lots in a subdivision, without first submitting to the Planning Board for approval a definitive plan of such subdivision.

3. **Building permits only on approved lots**—No building permit shall be issued for any building unless the building inspector determined that the lot on which such building is to be erected is not within a subdivision or is shown on a plan endorsed by the Planning Board.

4. **Only one building per lot**—Not more than one building for dwelling purposes shall be erected or converted to such use on any lot within a subdivision, or elsewhere in the town without the consent and approval of the Planning Board.

Section V

PROCEDURE FOR THE SUBMISSION AND APPROVAL OF PLAN BELIEVED NOT TO REQUIRE APPROVAL AS A SUBDIVISION

1. Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan of land and who believes that his plan does not require approval under the subdivision control laws, may submit his plan and application, Form A, to the Board accompanied by the necessary evidence to show that the plan does not require approval. Plans indicating a non-conformance with any provision of the zoning by-law will not be finally acted upon unless or until the plan has been modified to eliminate such non-conformance or a variance has been obtained from the Board of Appeals. Said person shall file, by delivery or registered mail, a notice with the Town Clerk stating the date of submission for such determination and accompanied by a copy of said application. The plan shall be drawn in ink on tracing cloth and shall show:

- a. The existing and/or proposed boundary lines.
- b. North point, date of survey and scale.
- c. Name of record owner and registered land surveyor.
- d. Names of all abutters from the most recent tax list.
- e. Existing lines of streets, ways and easement.
- f. Plans should be drawn to a scale satisfactory to the board.
- g. Whether the street is a public or private way.

h. Any other information necessary for the board's determination.

2. If the board determines that the plan does not require approval as a subdivision, it shall, without a public hearing and within fourteen days of submission, endorse on the plan the words, "Planning Board approval under the subdivision control law not required." Said plan shall be returned to the applicant and the board shall notify the Town Clerk of its action.

3. If the Board determines that the plan does require approval under the subdivision control law it shall, within fourteen days of submission of said plan, so inform the applicant and return the plan. The Board shall also notify the Town Clerk of its determination.

Section VI

PROCEDURE FOR THE SUBMISSION AND APPROVAL OF PRELIMINARY PLAN

1. No plan of a subdivision of land for residential use shall be approved unless, after adequate investigation, the Board determines that the land can be used for residential purposes without danger to health, life or property, and that the plan is compatible with neighboring conditions. Any person, before submitting his definitive plan for approval (Under provisions of sec. 81-S) may submit to the Board and the Board of Health a preliminary plan showing the proposed subdivision in a general manner. The submission of such a plan will enable the applicant, the Board and other Town agencies to discuss and clarify the problems of the subdivision before a definitive plan is prepared. It is strongly recommended, therefore, that a preliminary plan be filed in every case.

2. Applicant shall:

a. Prepare Form B in triplicate:

- (1) Original of Form B and one copy to the Board with two copies of preliminary plan.
- (2) Duplicate of Form B to the Board of Health with one copy of preliminary plan.

b. Give written notice to the Town Clerk by delivery or registered mail, postage prepaid, that he has submitted such a plan.

c. Prepare preliminary plan on tracing paper with pencil at a suitable scale, showing:

- (1) The subdivision name, if any, boundaries, north point, date, scale, legend, and title "Preliminary Plan".

- (2) The names of the recorded owners and the applicant and the name of the registered engineer or registered land surveyor.
- (3) The name of all abutters, as determined from the most recent local tax list.
- (4) The existing and proposed lines of streets, ways, easements, and any public areas within the subdivision, in a general manner.
- (5) The approximate boundary lines of proposed lots, with approximate areas and dimensions.
- (6) The names, approximate location and widths of adjacent streets.
- (7) The proposed system of drainage, including adjacent existing natural waterways and marshes, in a general manner.
- (8) The topography of the land in a general manner or, if requested by the Board, the applicant shall furnish an accurate topographic map at a contour interval suitable to the Board showing also major site features such as buildings, ponds, streams, large trees (over 12 inch caliper) or heavily wooded areas, etc.
- (9) Profiles of proposed streets showing existing and proposed grades along the centerlines. (May be submitted on separate sheets.)

3. Where the applicant owns or controls unsubdivided land adjacent to that shown on the preliminary plan, it is suggested that the applicant submit a sketch plan showing a possible or prospective street layout for all such adjacent land owned or controlled by the applicant or subdivider. This sketch plan, and items (7) through (9) above, may be submitted separately from the preliminary plan, but the preliminary plan will not be deemed to be before the Board until they are presented.

4. The Board shall, within sixty days of the date of submission of the preliminary plan:

- a. Tentatively approve plan with or without modifications suggested by it or agreed upon by the person submitting the plan, noting thereon its action and any changes that should be made, or
- b. Disapprove plan stating its reason therefor in reasonable detail.
- c. The Board shall notify the Town Clerk of its action.

5. A definitive plan evolved from a preliminary plan shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

6. a. Centerline on accurate stations.
- b. Typical cross section must be shown for proposed street or streets in subdivision.

Section VII

PROCEDURE FOR THE SUBMISSION AND APPROVAL OF DEFINITIVE PLAN

1. Any person who submits a definitive plan for the subdivision of land to the Board for its approval shall file with the Board the following at the regularly scheduled meeting and give written notice to the Town Clerk by delivery or by registered mail, postage prepaid, that he has submitted such a plan. Such notice shall describe the land to which the plan relates sufficiently for identification and shall state the date when such plan was submitted to the Board and the name and address of the owner of such land:

- a. An original of the definitive plan drawn with waterproof ink on tracing cloth and three contact prints thereof, dark line on white background and three prints of the road profiles. The original drawing will be returned after approval or disapproval.
- b. Properly executed Application Form C in triplicate.

2. Before approval of the definitive plan is given, a public hearing shall be held by the Board, notice of which shall be given at the expense of the applicant. Said notice shall give the time and place of the hearing and the subject matter sufficient for identification by advertisement in an official publication of, or in a newspaper of general circulation, in the Town of Mashpee in each of two successive weeks. The first publication being not less than fourteen days before the day of such hearing. Copies of such notice shall be mailed by the applicant by registered mail, return receipt requested, to all owners of land abutting upon the land included in said plan as appearing upon the most recent tax list.

3. When a definitive plan of a subdivision is submitted to the Board, a copy thereof shall also be filed with the Board of Health by the applicant.

4. Contents: The definitive plan shall be prepared by a registered engineer and registered land surveyor and shall

be clearly and legibly drawn in black india ink on tracing cloth. The plan should be drawn to a scale satisfactory to the board and sheet sizes conforming to one of the following sizes where applicable: 11" x 16"; 18" x 24"; 24" x 36"; and preferably not to exceed 30" x 40". A margin of $\frac{3}{4}$ " shall be allowed. If multiple sheets are used they should be accompanied by an index sheet showing the entire subdivision. Profiles shall have a reference to permanent bench marks on mean sea level datum, and shall be indicated and described on the plan. The definitive plan shall contain the following information:

- a. Subdivision name, boundaries, north point, date, scale, legend, proposed names of streets (in pencil) and the zoning classification.
- b. Name of record owner with address, subdivider, registered engineer or registered land surveyor.
- c. Names of all abutters, as determined from the most recent tax list.
- d. Lines must be indicated by bearings referred to the Massachusetts Co-ordinate system where control points on that system are available within 1000' of locus.
- e. Existing and proposed lines of streets, ways, lots easements, and public or common areas within the subdivision.
- f. Sufficient data to determine the location, direction and length of every street and way line, lot line and boundary line and to establish these lines on the ground.
- g. All dots or other divisions of land are to be designated numerically and in sequence, or in case of registered land a numbering system approved by the land court is to be used.
- h. The plans for each project must give information satisfactory to the Board to accurately locate proposed streets as well as their accurate connection with other existing streets in the vicinity.
- i. The plans must show the length and direction of streets and boundary lines, the length and radii, tangents and angles of all curves, together with the width of streets and ways.
- j. The Board may require a general plot plan to a suitable scale showing the relation of the proposed subdivision to adjoining property within a radius of $\frac{1}{4}$ mile or to the nearest existing streets on all sides.

- k. Location of all permanent monuments properly identified as to whether existing or proposed.
- l. Proposed layout of storm drainage, water supply and sewer systems, their appurtenances and all easements thereto.
- m. Location of all swamp, marsh, low land and other low-lying areas, and when the subdivision is adjacent to or affected by tidewater it shall show five (5) and ten (10) foot contours with mean high water.
- n. Title block—Definitive Plans shall have and other plans may have the following title block in the lower right hand corner of the drawing. (See type of plan)
- o. A certificate by the registered land surveyor that the plan has been prepared in accord with these regulations and the accuracy standard prescribed by the Massachusetts Land Court for comparable property in substantially the following form:

"I hereby certify that this plan was made in accord with the Mashpee Subdivision regulations, with Land Court standards of accuracy, and that the permanent points shown on the plan are in existence on the ground."

Date

.....
Registered Land Surveyor

- p. All profile plans shall contain the following:
 - (1) A horizontal scale of 1" equals 40'.
 - (2) A vertical scale of 1" equals 8'.
 - (3) Existing centerline in fine black solid line.
 - (4) Existing right side line in fine black long dash line.
 - (5) Existing left side line in fine black short dash line.
 - (6) Proposed center line grade in heavy .04 line. Proposed grade elevation at every 50' station.
 - (7) All existing intersecting walks and driveways shown on both sides.
 - (8) Elevations and bench marks referred to mean sea level datum to be furnished by the Town Engineer and so shown on profile.
 - (9) Rates of gradient shown by figures.
 - (10) Size and location of existing and proposed surface drains and their appurtenances.

- q. Existing and proposed contours shall be submitted with the definitive plan as deemed necessary by the Board.
 - r. Lots on the definitive plan shall be numbered the same as on the preliminary plan insofar as possible.
5. Applicant shall file with the Board the following:
- a. A filing fee of one dollar (\$1.00) per lot shown on the definitive plan but not less than Twenty-five dollars (\$25.00) payable to the Town of Mashpee.
 - b. Written acceptance by the Town Engineer of the locations, sizes and grades of existing streets, rights-of-ways, easements, water mains, sewer mains, and storm drainage facilities as shown on the definitive plan.
 - c. Written acceptance by the Town Engineer of estimates of the cost of construction of ways and the installation of municipal services as provided by the subdivider.

Note: The expense of obtaining the above approval and acceptances is chargeable to the applicant by the Town Engineer. An Engineer or his associate may not approve his own plans. Cost not to exceed \$100.00.

6. Board of Health Review: The Board of Health shall, within forty-five days after the plan has been filed with the Board of Health, report to the Board in writing approval or disapproval of said plan.
- a. In the event of disapproval, the Board of Health shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health and include such specific findings and the reasons therefor in such report and, where possible, shall make recommendations for the adjustment thereof. Failure so to report shall be deemed approval by the Board of Health.
 - b. A copy of the report of the Board of Health shall be made available to the applicant.
7. a. The definitive plan filed by the applicant shall comply with the design standards and required improvements detailed in Section IX and Section X unless the Board decides to lower or waive any of the conditions and in the judgment of the Board, such action is in the public interest and not inconsistent with the subdivision control law.

- b. All plans shall also comply with the Zoning By-law of the Town of Mashpee in all respects, in addition to the conditions of the subdivision control law.
8. Before approval of a plan, the Board shall:
- a. In proper cases, require the plan to show parks and/or beaches suitably located for playground or recreation purposes or for providing light and air and not unreasonable in area in relation to the area of the land being subdivided and the prospective uses of such land, and if so determined shall by appropriate endorsement on the plan require that no building may be erected on such parks and/or beaches for a period of not more than three years without its approval.
 - b. Require provision for the construction of ways and the installation of municipal services by a Performance Guarantee in accordance with the rules and regulations of the Board. The delivery of said Performance Guarantee shall be after the vote of approval but before the endorsement of approval of the plan.
9. The Board, within sixty days of submission of a plan or such future time as is requested by the applicant in writing and agreed to by the Board, shall:
- a. Approve, modify and approve, or disapprove plan. In event of disapproval, the Planning Board shall state in detail wherein the plan does not conform to the rules and regulations of the Board or to the recommendation of the Board of Health, and shall revoke its disapproval and approve a plan which as amended conforms to such rules and regulations or recommendations.
 - b. File certificate of its action with the Town Clerk.
 - c. Send notice of its action by hand delivery or registered mail, postage prepaid, to the applicant at his address stated on the application.
 - d. If an extension of time is requested by the applicant in writing, approval may be granted by the Board and the Board shall have sixty days plus the period of time approved by the Board. The Board shall forthwith file the notice of approval of an extension of time with the Town Clerk.
 - e. In case of approval of the plan by the Board, after expiration of twenty days without notice of appeal to the Superior Court, the Board shall cause to be made upon the plan a written endorsement of its approval if the Performance Guarantee has been delivered.

Section VIII

SUITABILITY OF STREET SYSTEM

No plan of a subdivision shall be approved unless the ways and streets shown on the plan comply with the following requirements:

1. Location and Alignment:
 - a. The street system shall conform to the master plan, if any, of proposed principal streets as adopted in whole or part by the Board.
 - b. Streets shall be continuous and in alignment with existing streets, insofar as practicable.
 - c. Provisions shall be made for the proper projection of streets, if adjoining property is not subdivided.
 - d. The minimum center-line radii of streets shall be 100 feet except in cases where the planning board believes a lesser radius is adequate; greater radii may be required for principal streets. All curved streets must be designed to permit safe vehicular travel.
 - e. Turnarounds for dead-end streets of a minimum radius of forty feet shall be provided when deemed advisable by the Board.
2. Width:
 - a. The minimum width of street rights-of-way shall be forty feet (40), except in cases of minor right-of-way which serve merely as access ways to a few lots and which will be maintained by lot owners and so recorded on the plan.
 - b. Street lines at intersections shall be cut back so as to provide for curb radii of not less than twenty feet (20), except in cases where the planning board considers it unnecessary.
3. Grade:
 - a. Grades of all streets shall be the reasonable minimum, but shall not be less than 0.5% nor more than 6% for principal streets, or more than 12% for minor streets.

Section IX

PERFORMANCE BOND TO GUARANTEE IMPROVEMENTS

Before approval of a definitive plan of a subdivision, the Board may require that a bond be filed by the subdivider, in an amount determined by the Town engineer to be sufficient

to cover the cost of the improvements specified below, and approved as to form and sureties by the Town Treasurer, conditioned on the satisfactory completion of such improvements within such period of time, if any, as the Board may specify in the bond. A total or partial release from the bond referred to in the previous paragraph may be obtained when the required improvements are complete, in whole or in part, as provided by Ch. 41, Sec. 81U and as set forth in the bond. In the event that the developer fails to perform satisfactorily the requirements set forth in the bond within the specified period of time, if any, the then outstanding principal amount (penal sum) of the bond shall be payable to the town as provided by law, to the extent of the reasonable cost to the town of the completion of the improvements required under the bond. In such case the approval by the planning board of the definitive plan of the subdivision may be rescinded.

Section X

ROAD CONSTRUCTION REQUIREMENTS

Each street or portion thereof necessary to serve adequately each lot within the subdivision shall be constructed to finish grade as indicated on the definitive plan and supplemental plans or profiles filed and approved therewith, in accordance with the following specifications:

1. Where the sub-soil within the road layout consists of peat or similar spongy material, this shall be excavated over a width not less than four feet more than the width of the finished surface, and replaced with solid fill as necessary to support the finished roadway.
2. The road base shall consist of not less than six (6) inches of good binding gravel or hardening, properly shaped and compacted.
3. The width of the finished surface shall be not less than twenty (20) feet, and its center line shall coincide with the center line of the full right-of-way insofar as possible, but in no case shall it vary by more than four (4) feet in either direction.
4. The finished surface shall consist of one of the following, as specified by the Board. Construction shall be in accordance with standard engineering practice.
 - a. Two and one-half (2½) inches of bituminous concrete, type I.
 - b. Three (3) inches of bituminous roadmix, type C-I.
 - c. Two applications of bituminous material applied directly on the base material, each covered with sand to form a true surface.

- d. The road base itself, as in paragraph 2 above, without further treatment.
5. When required by the Board, on either side of the finished surface there shall be constructed shoulders not less than two feet wide, of road base material properly shaped and compacted. The slope of the shoulders away from the center line shall not be more than 15°.
6. The areas between the finished surface and the outer boundaries of the right-of-way shall be cleared of all brush, stumps and debris, and all trees or shrubs not suitable for retention for shade or ornamental purposes.
7. The slopes of any cuts and fills required in the construction of the roadway shall not be greater than 70%, and shall be properly seeded and protected to prevent erosion. The foot of the slope of any cut shall be not nearer than four feet to the edge of the finished surface of the roadway.
8. Sufficient drainage shall be established and constructed to dispose adequately of surface water on all streets in such a manner as not to erode the shoulders or slopes or to inundate abutting residential lots. As physical conditions may require, culverts and/or gutters or waterways of bituminous material shall be provided. The finished surface of the roadway shall be so constructed that it will hold no standing water deeper than one quarter inch or greater in area than ten square feet.
9. The Board may also require that proper electric service of not less than 220 volts, with amperage capacity of not less than 100 amps per lot be provided in all ways within the subdivision, or as an alternative thereto, that documentary evidence of a building contractual obligation between the subdivider and the utility company ensuring such minimum electric service be presented to the Board.
10. Concrete monuments of at least 5" x 5" cross section and at least 34" in length shall be set at the beginning and end of each curve and at each angle on both sides of each street in the subdivision.
11. When the road surface and grading are completed a street or road sign, black letters on white board, not exceeding 6" x 24" shall be installed on a post at the intersection of any new road or way with existing town ways and at all intersections within the subdivision. The Fire and Police Departments shall be notified in writing of the names and locations of all new ways by the subdivider.

12. Where feasible, shade trees twelve (12) inches in diameter or larger shall not be removed. Where, in the opinion of the Board, existing woodlands or suitable individual trees are not retained, at least two trees, 2" in diameter or larger, of a species approved by the Tree Warden, shall be placed five (5) feet from the property street lines.

Section XI
VARIATIONS

A variation of the requirements of these regulations may be permitted when, in the opinion of the Board, topography or other consideration necessitate such variation.

Section XII
VALIDITY AND REFERENCE

1. The invalidity of any section or provision of these by-laws shall not invalidate any other section or provision thereof.
2. For matters not covered by these Rules and Regulations, reference is made to section 81-K to 81-GG inclusive of Chapter 41 of the General Laws.

Section XIII
FORMS

As indicated in these rules and regulations the filing of Forms is required for a number of steps in the process of having plans approved. These forms may be obtained at the Planning Board Office. The following list of forms are available and are required for the action or approvals indicated. Unless otherwise stated in the rules and regulations, all forms shall be filed in triplicate.

1. For an applicant who wishes to file a plan but does not believe that said plan is a subdivision—Form A. If said plan is not a subdivision this is the only form required.
2. For an applicant who wishes to receive approval of a subdivision plan the following forms should be filed at the time indicated in these rules and regulations:
 - a. Application for approval of a Preliminary Plan—Form B. This step is not required by law but is strongly recommended by the Planning Board.
 - b. For filing a Definitive Plan—Form C.