

ZONING BY-LAW
OF THE
TOWN OF MASHPEE
1980



As approved at Special Town Meeting
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Compiled and edited by
The Mashpee Planning Board

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SECTION 1: PURPOSE AND VALIDITY

1.1 Zoning Purposes

For the purposes set forth in Massachusetts General Laws, Chapter 40A and all Acts in amendment thereof, and in addition thereto, and 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 May, 1979 as amended, on file with the Town Clerk, which map is hereby made a part of this By-Law.

1.2 Conflict of Laws, Validity, Severability

1.21 In general, this By-Law is supplementary to other Town By-Laws affecting the use, height, area and location of buildings and use of premises, but where this By-Law imposes a greater restriction in any respect than is imposed by other Town By-Laws, the provisions of this By-Law shall prevail.

1.22 The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision.

SECTION 2: DEFINITIONS

For the purposes of this By-Law the following words and phrases shall have the meanings or limitations of meanings herein defined. All present tenses shall include past and future tenses and all past tense the present. All singular terms shall include the plural and the plural the singular.

2.01 Accessory

- a) Accessory building: a building devoted exclusively to a use accessory to the principal use of the lot on which it is located.
- b) Accessory use: a use incident and subordinate to and on the same lot as a principal use.

2.02 Apartment

- a) Unit: any room or suite of rooms forming a habit-

able unit for one 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.

- b) Apartment building: a building containing four or more apartment units.
- c) Garden apartment: an apartment building containing four or more apartment units with no portion of the building below the first story or above the second story used for dwelling purposes.
- d) Town House apartment: a group of attached one-family dwellings.

2.03 Build

The word "build" shall include the words "erect", "construct", "alter", "enlarge", "move", "modify", "excavate", "fill", and any others of like significance.

2.04 Building

The word "building" shall include the word "structure" unless the context unequivocally indicates otherwise. "Building" shall also mean any three dimensional enclosure by any building materials 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 above ground except fences and field or garden walls or embankment retaining walls.

2.05 Dwelling

- a) Dwelling Attached: A building designed for or occupied as a residence and separated from another attached dwelling on one or both sides by a vertical party wall.
- b) Dwelling Detached: A building designed for or occupied as a residence and separated from any other building except accessory buildings by side yards.
- c) Unit: (Same as Apartment Unit)
- d) One Family Dwelling: A building designed for or occupied by one family.
- e) Two Family Dwelling: A free standing building, designed or intended exclusively for residential use containing two dwelling units. (This can be two attached dwelling units).

2.06 Family

Any number of individuals, including domestic employees, living together in a dwelling unit and living as a single non-profit housekeeping unit; provided that a group of five 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.

2.07 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 barber shop, beauty shop, 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.

2.08 Hotel-Motel

A structure containing 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.

2.09 Lot

The whole area of a single parcel of land undivided by a street under one ownership, with ascertainable boundaries established by deed or deeds of 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.

2.10 Lot Line, Front

A line dividing a lot from a street. On any lot bounded on more than one side by a street, the street boundary that is to be the lot "Front" shall be so designated in any application for a permit to build on such lot.

2.11 Lot Line, Rear

Except for a triangular lot, the lot line opposite the "Front lot line."

2.12 Lot Line Side

Any lot line not a front or rear lot line.

2.13 Lot Frontage

The lot frontage shall be measured along a straight line connecting point of intersection of the side lot lines with the front lot line.

2.14 Lot Width

The width of any lot shall be measured wholly within such lot as the shortest distance between side lot lines at the required front yard depth.

2.15 Lot Area

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

2.16 Lot Coverage

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

2.17 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.

2.18 Mobile Home - Trailer

- a) Mobile home: A transportable, single family dwelling unit suitable for year round occupancy, and containing the same water supply, waste disposal, and electrical conveniences as immobile housing.
- b) 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 body width not exceeding 8 feet and a body length not exceeding 32 feet.
 - 2. Pick-up 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.

2.19 Mobile home or Trailer Park: A parcel of land which has been planned and improved for the placement of mobile homes or trailers for transient or non-transient use and is designed to accommodate two or more mobile homes or trailers.

2.20 Non-conforming

A. Lot

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

B. Use

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

2.21 Occupied

"Occupied" shall include the words "designed, arranged, or intended to be occupied."

2.22 Parking Space

An area containing not less than 300 square feet to be used exclusively as a parking stall for one motor vehicle.

2.23 Signs

A sign shall mean and include any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag or representation used as or which is in the nature of an advertisement, announcement or direction or is designed to attract the eye by intermittent or rapid motions or illumination.

2.24 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 of such portion vertically is below the average natural grade of the ground adjoining such building.

2.25 Half-Story

That portion of a building next beneath a sloping roof

and in which there are less than 4 feet vertically between the top of the floor and the intersection of the bottoms of the rafters with the interior faces of the wall.

2.26 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.

2.27 Street

A public way or private way on record at the Registry of Deeds which affords a principal means of adequate access to abutting property and open to travel by the general public or a way shown on a subdivision plan duly approved by the planning board under the subdivision control statute.

2.28 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.

2.29 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.

2.30 Yard

A. Front Yard

An open space extending the entire width of a lot from lot sideline to lot sideline between the front lot line or lines and the nearest point of a building.

B. Rear Yard

An open space extending the entire width of a lot line from sideline to sideline between the rear lot line or the corner of a triangular lot farthest from the front lot line and the nearest point of the building.

C. Side Yard

An open space extending along a sideline of a lot (between the front yard and the rear yard on such lot) and extending between the sideline of such lot

to the nearest point of the building.

2.31 Special Permit Granting Authority — shall be the Board of Appeals unless specifically designated in any section of this By-Law to another authorized Board or Agency as allowed under Chapter 808 of the Acts of 1975, as amended.

2.40 Other words and Phrases

Words and phrases not defined in this section but defined in the building code of the Town of Mashpee which have the meanings given in said building code unless a contrary intention clearly appears.

SECTION 3:

ESTABLISHMENT OF ZONING DISTRICTS

3.1 The Town of Mashpee is hereby divided into zoning districts designated as follows:

Residence Districts

R-1

R-2

R-3

Commercial Districts

C-1

C-2

Industrial Districts

I-1

Flood Plain Districts

F

3.2 Except for Flood Plain Districts, the location and boundaries of these districts are hereby established as shown on a map entitled "Zoning Map of the Town of Mashpee," dated May 9, 1979, 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 is declared to be a part of this By-Law.

- 3.3 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 the By-Laws thus amended.
- 3.4 Where a district boundary is indicated as within or parallel to a street, highway, railroad right-of-way, water course or town municipal boundary such district boundary shall be construed as the centerline or being parallel to the centerline of such street, highway, railroad right-of-way, water course or town municipal boundary.
- 3.5 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.

SECTION 4:

APPLICATION OF REGULATIONS

- 4.1 No buildings shall be erected or used, and no land shall be used or divided unless in conformity with the regulations of this By-Law. 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 By-Law become lawfully non-conforming.
- 4.3 When a lot is transected by a zoning district boundary, and in part in the adjacent municipality, the provisions of this By-Law 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.
- 4.3 When a lot is transected by a zoning district boundary, the regulations of the By-Law applicable to the larger part by area of such lot may also at the option of the lot owner be deemed to govern in the smaller part beyond such zoning district boundary but only to an extent not more than thirty (30) linear feet in depth beyond such zoning district boundary.

- 4.4 No building shall be erected except on a lot fronting on a street and there shall be not more than one principal building on any lot, except as allowed under this By-Law.
- 4.5 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 By-Law even though the fee to such land may be in the owners of abutting lots.
- 4.6 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 By-Law.
- 4.7 Construction or operations under a building permit or special permit shall conform to any subsequent amendment of the Zoning By-Law unless the use or construction is commenced within a period of not more than six 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.

SECTION 5:

NON-CONFORMING BUILDINGS AND USES

- 5.1 Any lawful use of any structure or land or both may be continued although not conforming with the provisions of this By-Law, but no such lawfully non-conforming use shall be changed, intensified, extended or enlarged in any manner except as permitted by the Board of Appeals and such permission shall be based on the same conditions as set forth in Section 6.2 of this By-Law and further provided the board finds there is adequate land area to provide sufficient parking and setbacks as may be required, and further provided that the Board finds that such change, intensification, extension or enlargement shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

- 5.2 If any non-conforming use of any structure or land or both is changed to a conforming use it shall not thereafter be put into any non-conforming use.
- 5.3 If any non-conforming development or use of land or of a building be discontinued for a period of not less than twenty-four (24) consecutive months, which in the terms of this By-Law shall be evidence of abandonment of a non-conforming usage, such land or building shall thereafter be used or developed only in accordance with the terms of this Zoning By-Law for the zoning district in which such property is located.
- 5.4 Any non-conforming 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 Section 6.2 of this By-Law.
- 5.5 Any lot shown on a plan and lawfully in existence in compliance with the provisions of the Subdivision Control Law (Chapter 41 of the General Laws), as of January 1, 1977, may thereafter be built upon for residential use.

SECTION 6: LAND USE REGULATIONS

- 6.1 Except as provided by law or in this By-Law 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, Section 6.3.
- 6.2 A use listed in Section 6.3 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 By-Law. If designated in the Tables by the letters "SP" the use may be permitted as a special exception only if the Board of Appeals so determines and grants a special permit therefor as provided in Section 9 subject to such restrictions as set forth elsewhere in this By-Law and/or such restrictions as said Board may establish, or if Section 9 is not applicable

then such permit shall be granted if deemed by the Board of Appeals in the best interest of the community. Such permit shall set forth any restrictions the Board of Appeals deems appropriate and the granting of said permit shall be made after the Board of Appeals determines it is not detrimental to the town or the area by reason of excessive traffic noise or demand on community facilities. In all cases involving a special permit a site plan showing location of buildings, drainage, and utilities shall be submitted in duplicate and the Board of Appeals shall submit one (1) copy to the Planning Board for its review and comments. The Planning Board shall submit a written report to the Board of Appeals within thirty (30) days of the receipt of said site plan. Where the decision of the Board of Appeals differs from the recommendations of the Planning Board the reasons therefor shall be clearly stated in writing.

- 6.21 Any Special Permit granted by the Board of Appeals shall be issued only following a public hearing which shall be held within 65 days after the filing of an application therefor with the Town Clerk, a copy of which shall forthwith be given to the Board of Appeals by the applicant.
- 6.22 Any special permit hereinafter granted by the Board of Appeals shall lapse within two years from the grant thereof, including such time required to pursue or await the determination of any appeal, 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 by such date except for good cause.
- 6.23 Any use, whether or not on 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 the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.
- 6.3 Land Use Regulations: See following pages.

TABLE OF USE REGULATIONS

Principal Uses	Residential			Commercial		Indus-
	R1	R2	R3	C1	C2	I
A. RESIDENTIAL USES						
1. Detached dwelling on a separate lot occupied by not more than one family.	Y	Y	Y			
2. One two family or one duplex dwelling on a separate lot.						
3. Attached dwelling occupied by not more than one family in each unit between side walls, provided that no row of such units shall consist of more than eight (8) such units nor less than four (4) units (see Section 9).	SP	SP	SP			
4. Garden apartments (see Section 9).	SP	SP	SP			
5. Motels & Hotels (see Section 9).					SP	SP
6. Renting of not more than two rooms in an existing dwelling to not more than four (4) persons provided there are no separate cooking facilities.	Y	Y	Y	Y	Y	Y
7. Conversion of an existing dwelling to accommodate not more than two (2) families provided there is no external evidence of occupancy by more than one family, and further provided that each dwelling unit resulting from such conversion shall have not less than 750 sq. ft. of habitable floor space.	SP	SP	SP			
8. The storage of one 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.	SP	SP	SP			
9. Trailer park or mobile home park.						
B. INSTITUTIONAL, RECREATIONAL AND EDUCATIONAL USES						
1. Place of Worship.	Y	Y		Y	Y	Y
2. Religious, sectarian and non-sectarian denominational, private or public school not conducted as a private business for gain.	Y	Y		Y	Y	Y
3. Governmental buildings and related or supporting facilities, and uses.	Y	Y		Y	Y	Y
4. Cemeteries.	Y	Y		Y	Y	Y
5. Public park or playground, public recreational building or facility.	Y	Y		Y	Y	Y
6. Public utilities.	SP	SP		SP	SP	Y
7. Private non-profit libraries or museums.	Y	Y		Y	Y	

	Residential		Commercial		Indus-
	R1	R2	C1	C2	I
8. Private non-profit community center building, settlement house, adult education center or other similar facility provided 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.	SP	SP	SP	SP	
9. Hospital, infirmary, nursing home, convalescent home.			Y	Y	
10. Day nursery, nursery school, kindergarten, or other agency giving day care to children, provided 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 reason of noise.		SP	SP	SP	
11. Trade, professional or other school conducted as a private business for gain.			Y	Y	Y
12. Private non-profit membership or social club or lodge.	SP	SP	Y	Y	
13. Country Club, miniature golf, swimming, tennis, or another recreational facility of a similar nature not operated as a business gain.	SP	SP	Y	Y	
14. Entertainment and recreational facilities operated as a business for gain including but not limited to country club, miniature golf, swimming, tennis, bowling alleys, skating rink, theatre, sports arena or concert hall provided that the neighborhood is protected from inappropriate noise in any season.			SP	SP	
C. AGRICULTURAL USES					
1. Farms — agricultural, orchard, horticultural or silvicultural.	Y	Y	Y	Y	Y
2. Farms — livestock or poultry but not swine, provided that any building housing livestock or poultry be not less than one hundred fifty (150) feet from the property boundary.	Y	Y	Y	Y	Y
3. One roadside stand per farm for the sale of agricultural or horticultural products the major portion of which are grown or produced on the premises	Y	Y	Y	Y	Y
D. OFFICES AND LABORATORY					
1. Business, financial, professional or governmental offices, but no retail business, no manufacturing and no processing.			Y	Y	Y

	Residential		Commercial		Indus-
	R1	R2	C1	C2	I
2. Offices and clinics for medical, psychiatric, or other health services for the examination or treatment of persons as outpatient, including laboratories that are part of such office or clinic.			Y	Y	Y
3. Laboratory or research facility.			Y	Y	Y
4. Radio or television studio.			Y	Y	Y
5. Radio or television transmission facility but not studios.					Y
E. RETAIL BUSINESS & CONSUMER SERVICE ESTABLISHMENTS					
1. Store for retail sale of merchandise, provided all display storage and sales of materials are conducted within a building and there be no manufacturing or assembly on the premises.			SP	SP	
2. Eating places serving food and beverages to be consumed within the building.			SP	SP	
3. Stores for sale of marine supplies and associated items including boats and trailers.			SP	SP	
4. Service business serving local needs, such as barber shops, beauty shops, shoe repair, self-service laundry or dry cleaning or pick-up agency.			SP	SP	
5. Studios for arts & handicrafts provided personnel is limited to not more than five (5) persons at any one time on the premises.	SP	SP	SP	SP	
6. Marinas including sales and repair of boats and related supplies.	SP	SP			
7. Mortuary, undertaking or funeral establishments.			SP	SP	
8. Veterinary establishment, kennel, or similar establishment provided that in business zone, animals are kept wholly indoors.	SP	SP	SP	SP	
9. Store for retail sale of merchandise such as but not limited to lumber yards 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	
F. 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	

	Residential		Commercial		Indus-
	R1	R2	C1	C2	trial
3. Automobile repair shops, provided all work is carried out within the building.				SP	SP
4. Car washing establishments.				SP	
5. Sales places for flowers, garden supplies, agricultural produce partly or wholly outdoors including commercial greenhouses.				SP	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.				SP	SP
G. INDUSTRIAL, WHOLESALE AND TRANSPORTATION USES					
1. Laundries and dry cleaning plant.					Y
2. Printing, binding, publishing and related arts and trades.					Y
3. Bottling of beverages.					Y
4. Plumbing, electrical or carpentry shop or other similar service or repair establishment.				SP	Y
5. Place for manufacturing, assembly or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor be effectively confined to the premises or be disposed of in a manner that does not create a nuisance or hazard to safety or health.					Y
6. Wholesale business and storage in a roofed structure.				SP	SP
7. Trucking terminals.					Y
8. Extractive industries.					SP
9. Wholesale business and storage.					SP
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 or excessively bright light, refuse matter or electromagnetic radiations.					
2. Signs or advertising devices except as permitted by this by-law.					
3. Open lot storage or sale of junk or salvaged materials.					

8. Private ways for access through Commercial District C-2 to Industrial District I-1, subject to compliance with applicable subdivision control laws and regulations.

SP

SECTION 7: LAND SPACE REQUIREMENTS

- 7.1 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 By-Law 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 By-Law.
- 7.2 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.
- 7.3 If more than one building (other than a one, two or three 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.
- 7.4 Land Space Requirements Table: See following page.

LAND SPACE REQUIREMENTS TABLE FOOTNOTES

- (1) Frontage may be measured at the front yard set back line if the street is an arc of a curve with a radius of 300' or less provided there be in any event not less than sixty (60) feet width of such frontage at the street.
- (2) Not less than the frontage requirements shall be maintained throughout the front yard depth, except as provided for in (1) above.

LAND SPACE REQUIREMENTS TABLE

Footnotes — see following page

Zoning District	Minimum Lot Size	Minimum Lot Frontage (1) (2)	Minimum Lot Depth (3)	Minimum Yard Front (5, 6)	Minimum Yard Rear (5)	Side (5)	Maximum Building Height (4) Stories Feet	Maximum % of Lot Coverage
Residence Districts								
R-1	15,000	100'	15'	25'	15'	15'	2½ 35'	20% (5)
R-2	22,500	125'	15'	40'	15'	15'	2½ 35'	20% (5)
R-3	40,000	150'	15'	40'	15'	15'	2½ 35'	20% (5)
Commercial Districts								
C-1	40,000	200	40'	100' (5)	40' (5)	20' (7, 5)	2 30	20% (5)
C-2	20,000	125	20'	75' (5)	20' (5)	20' (7, 5)	2 30	20% (5)
Industrial Districts								
I	40,000	200	150'	150*	50' (8)	30' (8)	2(7) 35	25%

*The first one-hundred (100) feet shall be left wooded or suitably landscaped with trees. No parking is permitted within this one-hundred (100) foot area.

- (3) On lots abutting streets or public ways on more than one side, the front yard requirements shall apply to each of the abutting streets and public ways. In the case of undefined ways, the measurements shall be taken from the center of the road and an additional twenty feet shall be required
- (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.
- (5) See Section 9 regarding motels, attached dwellings and apartments.
- (6) A dwelling need not be set back more than the average of the set backs of dwellings on the lots adjacent to either side. If a vacant lot exists on one 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 50' when abutting a residential zone.
- (9) Flood Plain restrictions are set forth in Section 11.
- (10) All land space requirements shall apply to accessory uses.
- (11) Where private subdivision roads serve only industry, minimum front yard depth may be seventy-five (75) feet, twenty-five (25) feet of which shall be left wooded or suitably landscaped and not to be used for parking.

SECTION 8: OFF-STREET PARKING

- 8.1 No land shall be used and no building or structure shall be erected, enlarged or used unless the off-street parking space requirements are provided as specified in this section. For the purpose of this section an enlargement of any building shall require the provision of off-street parking for the existing building as if it were newly constructed.
- 8.2 Where the computation of required parking space results in a fractional number, only the fraction of one-half ($\frac{1}{2}$) or more shall be counted as one.
- 8.3 Required off-street parking facilities for non-residential purposes and apartments shall be provided on the same lot as the principal use they are designed to

serve and all parking spaces shall be paved.

- 8.4 Each required car space shall be not less than nine (9) feet in width and twenty (20) feet in length exclusive of drives and maneuvering space and the total area of any parking facility for more than five (5) cars shall average at least three hundred (300) square feet per car exclusive of driveways.
- 8.5 Where one building is used for more than one use, parking requirements shall be computed for each use (a motel with a restaurant would be required to provide parking for both rental units and for seating capacity of the restaurant, a professional office in a residence must provide the space for both office use in addition to the residential requirement.)

Principal Use	Number of spaces
One and two family dwellings	2 spaces per dwelling unit.
Apartments	2* spaces per dwelling unit.
Rooming Houses & Lodging Houses	3 spaces + 1 space for each rental unit over 2.
Nursing Homes	1 space for each 2 beds.
Motels, Hotels, & Inns	2 spaces + 1½ spaces for each rental unit + 1½ spaces for each 20 square feet of floor area available for meetings or functions.
Permitted Offices in Residences	3 spaces + 3 spaces for each non-resident employee.
Retail Stores and Services	1 space for each one hundred fifty (150) square feet of gross floor area.
*Apartments built under housing for the elderly	1 space per dwelling unit.
Restaurants, theatres and other places of assembly exclusive of churches	1 space for each four (4) seats.
Bowling Alleys	Four (4) spaces for each alley.
Offices	1 space for each two hundred (200) square feet of gross floor area.

Principal Use	Number of spaces
Warehouses and other commercial or industrial buildings	1 space for each nine hundred (900) square feet of gross floor area.

For any home occupations permitted which are not covered in Section 8.5, adequate off-street parking shall be provided.

SECTION 9: SPECIAL PROVISIONS

- 9.1 The following uses may be permitted as designated in Section 6.3, Table of Use Regulations, provided they meet the following requirements in addition to any other requirements.
- 9.2 Motels.
- 9.21 No motel shall be constructed on a lot having less than two hundred (200) feet frontage, nor less than forty thousand (40,000) square feet of lot area.
- 9.22 On each lot used for motel purposes there shall be provided front, rear and side yards each not less than fifty (50) feet in depth.
- 9.23 A space not less than twenty (20) feet shall be maintained open with grass, bushes, flowers or trees all along each side lot, rear lot and front lot, except for entrance and exit driveways and such open space shall not be built on, not paved, nor used for parking.
- 9.24 No space within the required front yard depth shall be used for parking except as a temporary nature such as for registering.
- 9.25 Each motel site shall be provided with not more than two (2) motor vehicle driveways for each abutting street which shall intersect the abutting street or streets at ninety (90) degrees.
- 9.26 Each rental unit shall contain not less than two hundred sixteen (216) square feet of habitable floor area.
- 9.27 Height restrictions as set forth in Section 7 may be waived subject to Board of Appeals for motels contain-

ing 100 or more units.

- 9.28 Subject to Board of Appeals uses such as but not limited to restaurants, convention facilities, health clubs, retail shops, beauty and barber shops are permitted within motels containing 100 or more units.

9.3 Open Space Multi-Family Development

An Open Space Multi-Family Development may be allowed in R-1 and R-2 zoning districts in accordance with the following procedures and standards.

- 9.31 **Site Eligibility** — A parcel of land located in zoning districts R-1 and R-2 containing at least twenty (20) acres, (land subject to seasonal or periodic flooding or covered by tidal water, pond, lake, stream or river not to be included), with at least 200' frontage on a public way or on a way 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 utilities, to serve such land and the buildings erected or to be erected thereon, shall be eligible for open space multi-family development.

9.32 Density

- 9.321 One half of the total area shall be developed for single family residential use under the Cluster Development Section as set forth in section 9.4 herein.

- 9.322 The remaining one half of the total area shall be developed for multi-family dwelling at a density not to exceed four units per acre, provided none of the dwelling units contain more than two (2) bedrooms.

- 9.323 Any provision above as to density requirements notwithstanding each multi-family development up to fifty (50) dwelling units may have one dwelling unit containing three (3) bedrooms and one additional three bedroom dwelling unit for each additional fifty dwelling units.

- 9.324 In determining the total area to be used in making the above computation, not more than ten

(10) per cent of any land comprising the parcel subject to seasonal or periodic flooding shall be included nor shall any area covered by tidal water, pond, lake, stream or river be included.

9.33 Permitted Uses — Within an open space multi-family development only the following uses with their customary accessory uses shall be permitted:

9.331 Single family detached structures

9.332 Structures consisting of attached dwelling units consisting of not less than three (3) or more than eight (8) units per structure;

9.333 Garden Apartment — no less than four (4) nor more than eight (8) apartment units with no portion of the building below the first story nor above the second story used for dwelling purposes;

9.334 A community building and recreational facilities for the exclusive use of the residents of the development and their guests;

9.336 A bedroom shall be deemed any habitable room providing such room exceeds sixty (60) square feet in area and is other than a livingroom, diningroom, kitchen, utility room or bathroom.

9.34 Phasing — The Board of Appeals shall determine the phasing of the construction of multi-family units, community buildings and recreational facilities so as to render the construction of the development in an orderly fashion and to protect the individual lot owners within the development. Building permits for construction shall be granted only in accordance with such phasing schedule. The project phasing schedule may be amended by the Board of Appeals to a less stringent schedule in cases where the Board of Appeals finds that individual lot owners are adequately protected.

9.35 Space Requirements

9.351 No single family or accessory use structure shall be built closer to the street line, sideline, or rear line than the minimum requirement of the underlying zoning district and no multi-family structure shall be built closer to the street line, sideline, or rear line than fifty (50) feet; 2

separate parking spaces shall be provided for each multi-family dwelling unit.

- 9.352 A Buffer strip of land equal in width to the front yard requirement of the underlying zoning district shall be created along the entire perimeter of the multi-family portion of the tract, the buffer strip shall be unbroken except for access roads. The buffer strip shall be considered part of the permanent open space. The buffer strip shall be retained in its natural state or landscaped if in the opinion of the Board of Appeals it is necessary to protect privacy of adjoining land owners and shall not be used for parking or organized recreational activities. The Planning Board may require a buffer strip in excess of the minimum requirement depending on the use of adjoining land.

9.36 Common Open Space

- 9.361 The common open space shall be a defined area of open land shown on the definitive development plan containing not less than thirty (30) percent of the total land area, and shall be designed and maintained in accordance with the following standards:

9.3611 Naturally existing woods, meadow and marshland shall be maintained and improved by customary good conservation practices.

9.3612 In cases where the land is scarred or barren, it shall be improved to grow back to the natural state of the surrounding countryside.

9.3613 It shall be planned in large units of land, continuous wherever possible, and shall be accessible to the open space residential development property owners, or to the public when owned by the Town of Mashpee.

9.3614 It is the intent that the common open space be developed for reasonable outdoor recreational uses. These may include, playing fields, tennis courts and

golf courses.

- 9.362 The common open space shall be permanently dedicated in one of the following ways: In either case the developer's declaration of this choice and the manner of dedicating the common open space shall be furnished with the definitive development plan, together with the covenants and restrictions necessary to secure the permanent legal existence of the common open space.
- 9.3621 PUBLIC OWNERSHIP — The common open space shall be conveyed to the Town of Mashpee and accepted by it for park or open space use.
- 9.3622 OWNERSHIP BY NON-PROFIT ORGANIZATION — The common open space shall be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space. The non-profit organization shall execute a restriction enforceable by the Town of Mashpee which shall be recorded at the Barnstable County Registry of Deeds providing that such land shall be kept in an open and natural state and shall not be built for residence use or developed for accessory uses such as parking or roadway. The non-profit 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 non-profit organization may offer to convey such common open space to the Town of Mashpee for acceptance by it for park or open space use.
- 9.3623 OWNERSHIP BY CORPORATION OR TRUST — The open space shall be conveyed to a corporation or trust owned or to be owned by the owners of 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 restriction enforceable by the Town of Mashpee which shall be recorded at the Barnstable County Registry of Deeds and said restriction shall provide that such land shall be kept in an open and natural state and not be built for residence use or developed for accessory uses such as parking or roadway. The corporation or trust 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 corporation or trust may offer to convey such common open space to the Town of Mashpee for acceptance by it for park or open space use.

9.363 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 conditions, 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 rights 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 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 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 of enjoyment of the open space, such assessment shall become a lien on said properties. The Town of Mashpee, at the time of entering upon the open space for the purpose of maintenance, shall file a notice

of such entry with the Town Clerk and at the principal 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.

9.37 Board of Appeals Approval — Provided the requirements, as set forth above, are met, the Board of Appeals may approve the use of land for an open space multi-family development provided the Board of Appeals finds that such use of the land.

9.371 Does not substantially derogate from the intent of the zoning by-law;

9.372 The proposed use of the land shall not be substantially detrimental to adjoining property;

9.373 The proposed development shall be superior to a conventional plan in preserving open space for conservation or recreation, utilizing natural features of the land, and allowing more efficient provision for public services.

9.374 The developer shall present the following to the Board of Appeals at the time of the application for the special permit;

9.3741 A topographic plan of the entire site showing 2-foot contour intervals and detailing existing structures and general vegetative cover masses;

9.3742 Sketch plan of the proposed development showing the following location and dispersement of multi-family structures within the parcel;

9.3743 Vehicular and pedestrian circulation patterns, roadways, and parking area locations;

9.3744 Open space including the locations of intended recreation facilities;

9.3745 Pertinent vegetation, soil and water condition:

9.3746 Proposed utility systems.

9.3747 Detailed architectural plans including floor plans.

9.375 The Board of Appeals shall transmit to the Planning Board and to the applicant the decision of the Board of Appeals within ninety (90) days of the date of hearing. Approval shall be conditioned upon approval of the Planning Board under the subdivision control law.

9.38 Planning Board Approval — Upon approval of the Board of Appeals the developer shall present the following to the Planning Board;

9.381 Subdivision plan in accordance with rules and regulations of the subdivision control law of the Town of Mashpee;

9.382 General development plans shall be required in addition to the subdivision plan for a project including multi-family housing and shall include the following documents;

9.3821 Site plan showing project location, building locations, roads, parking, grading, pedestrian circulation, and any other pertinent information required by the Planning Board;

9.3822 Building plan showing plans and elevation of proposed and existing buildings;

9.3823 Open space plan showing parks, recreation facilities, landscaping and proposed topography, and other pertinent information required by the Planning Board;

9.3824 Road profile plans and Engineering plans showing utilities including water supply, sewage disposal, electrical service, storm drainage (including capacity) and other pertinent information required by the Planning Board;

9.3825 Covenants or other documents satisfactory to the Planning Board to insure the open space will remain open and not built upon.

9.319 **Building Permits** — The developer shall submit to the Building Inspector prior to the issuance of a building permit with his application for a building permit a copy of the approved subdivision plan together with evidence that the project phasing schedule is being adhered to by the developer.

9.391 Changes or deviations from plans, schedules, and phasing may be made only with the unanimous approval of the Board of Appeals.

9.392 The Building Inspector may revoke by-law in case the builder or developer fails to conform to the plans and schedules as approved.

9.4 Exception for Cluster Development.

9.41 **Purpose:** To encourage the preservation of open space and promote the more efficient use of land, and to protect and promote the health, safety and general welfare of the inhabitants of the town.

9.42 Any provisions of Section 7 of this By-Law to the contrary notwithstanding, the Board of Appeals may grant a Special Permit approving a cluster development in a residential district for a tract of land 20 acres or more in which some or all of the lots do not conform to the lot area, frontage, set back, or yard requirements of Section 7 of this By-Law, provided that the Board of Appeals makes a finding that the public good will be served and further provided that the following criteria are met:

1. The proposed plan will promote the purpose of this section.
2. 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 area of the tract, in square feet, exclusive of roads, is wholly divisible by the minimum lot size, in square feet, normally required for the district in which the tract is located.
3. The lots for building purposes shall be grouped in a cluster or clusters, and within each cluster the lots shall be contiguous.
4. Each lot shall have a minimum frontage of seventy-

five (75) feet on a public or private way except as provided for under footnote number 1 of Section 7.4.

5. The minimum lot width at the building line shall be not less than one hundred (100) feet.
6. Provision shall be made so that Open Land shall be owned:
 - a) PUBLIC OWNERSHIP — The open land shall be conveyed to the Town of Mashpee and accepted by it for park or open space use.
 - b) OWNERSHIP BY NON-PROFIT ORGANIZATION — The open space shall be conveyed to a non-profit organization, the principal purpose of which is the conservation of open space. The non-profit organization shall execute a restriction enforceable by the Town of Mashpee which shall be recorded at the Barnstable County Registry of Deeds providing that such land shall be kept in an open and natural state and shall not be built for residence use or developed for accessory uses such as parking or roadway. The non-profit organization shall own and maintain the open space and shall not dispose of any of the open space by sale or otherwise, except that said non-profit organization may offer to convey such open space to the Town of Mashpee for acceptance by it for park or open space use.
 - c) OWNERSHIP BY CORPORATION OR TRUST — The open space shall be conveyed to a corporation or trust owned or to be owned by the owners of 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 restriction enforceable by the Town of Mashpee which shall be recorded at the Barnstable County Registry of Deeds and said restriction shall provide that such land shall be kept in an open and natural state and not be built for residence use or developed for accessory uses such as parking or roadway. The 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 space use.

7. Provisions shall be made so that Open Land shall be:
 - a) Restricted to any one or more of the following uses: recreational, agricultural, conservation or park.
 - b) Open to such uses by at least the Owners and occupants of the lots in the tract.
 - c) Restricted so that no structure shall be erected thereon except as an incident to the above uses, and no such structure shall be more than 15 feet in height.
 8. Provision shall be made so that each dwelling shall be set back from the public way or private way on which its lot is located not less than thirty (30) feet.
 9. Provisions shall be made so that each dwelling shall have two side yards each of at least fifteen (15) feet and a rear yard of at least twenty (20) feet.
 10. Each lot shall contain not less than 15,000 square feet.
 11. A minimum of twenty-five percent (25%) of the total tract, excluding sidewalks, roads, and ninety percent (90%) of wetlands, shall be common open space.
- 9.43 The Board of Appeals shall transmit to the Planning Board and to the applicant the decision of the Board of Appeals within ninety (90) days following the date of public hearing. Approval by the Board of Appeals shall be contingent upon approval of the Planning Board under subdivision control law and as provided for herein.
- 9.44 Planning Board Approval — The developer shall be required to comply with all of the provisions set forth in Section 9.38 upon approval by the Board of Appeals of the Special Permit.”
- 9.5 **Planned Retirement Community** — It having been de-

terminated that there is a need within the Town of Mashpee for Planned Retirement Communities which would be designed to meet the special needs and habits of older people, with sufficient safe-guards to guarantee the proper maintenance of the Planned Retirement Community upon its completion, therefore:

A Planned Retirement Community (hereinafter sometimes called a "PRC") is hereby defined as a self-contained retirement community constructed expressly for use by the elderly and which has a minimum age requirement for residency of at least fifty-five (55) years. Any provisions of Section 7 of this By-Law to the contrary notwithstanding, a Planned Retirement Community shall be allowed in R-1 and R-2 zoning districts in accordance with the following procedures and standards.

9.51 Site Eligibility — A PRC may only be developed on one or more lots of land having a contiguous minimum total area of 150 acres. For this purpose a lot shall be deemed to be contiguous to another lot if separated only by a public or private street or right of way, or by open space to be used in common by residents of the PRC. Any lot which is contiguous to a PRC for which approval hereunder has been obtained may be developed as a part of the PRC, and shall be subject to the restriction of this Section 9.5 as if said lot were originally part of the lot comprising the PRC as to which approval was granted.

9.52 Density.

9.521 The total number of dwelling units permitted in a PRC shall not exceed the total number of acres contained within the perimeter boundary lines of the PRC, as shown on the Master Site Development Plan, multiplied by six. Each dwelling unit shall contain not more than two (2) bedrooms and shall be for the accommodation of only one family.

9.522 In determining the total area to be used in making the above computation, not more than ten (10) per cent of any land comprising the parcel subject to seasonal and periodic flooding shall be included nor shall any area covered by tidal water, pond, lake, stream or river be included.

9.523 In addition to the aforesaid residential building

density, the aggregate lot coverage devoted to the uses permitted under Section 9.536 shall not exceed one (1) per cent of the total number of acres contained within the perimeter boundary lines of the PRC, as shown on the Master Site Development Plan.

9.53 Permitted Uses — Within a PRC only the following uses, together with uses customarily accessory thereto shall be permitted:

9.531 Single family detached dwelling structures;

9.532 Structures consisting of not more than eight (8) attached dwelling units per structure;

9.533 Garden Apartments — no less than four (4) nor more than eight (8) apartment units with no portion of the building below the first story nor above the second story used for dwelling purposes;

9.534 Community buildings and recreational facilities for the exclusive use of the residents of the PRC and their guests;

9.535 Buildings for uses ordinarily incidental to the construction, operation and maintenance of a Planned Retirement Community, including buildings for the maintenance and administration of the PRC and for the storage of equipment and supplies therefor; model dwellings; offices and facilities for the sale of dwelling units and furnishings therefor; and buildings and facilities for furnishing to the PRC sewage collection, treatment and disposal, potable or other water, and other utilities, and for the operation and maintenance thereof.

9.536 Any uses permitted under Section 6.3(D).

9.54 Height — All buildings and structures within a PRC shall be subject to the height restrictions for R-1 and R-2 zoning districts set forth in Section 7; provided that there shall be no restriction on the height of water tanks and mechanical equipment serving the PRC, or the height of towers located in the PRC.

9.55 Space Requirements — Recognizing that the PRC concept may not provide for the creation of standard building lots, but may instead require all or a portion of the land within the PRC to be owned in common as provided in Sections 9.5621 or 9.5622, notwithstanding the provisions of Section 7 of this By-Law all buildings in a Planned Retirement Community which has such common land ownership shall be situated in relation to streets and other buildings in a manner consistent with accepted engineering and design standards of multi-density residential land development, with due consideration being given to the access of each residential building to streets, parking areas, natural light and ventilation, as well as proximity to neighboring buildings, and with each building to be located in such a manner as to create a total community concept.

9.551 Where a PRC is to be developed pursuant to a plan as to which approval of the Planning Board under the Subdivision Control Law is required, no single family or accessory use structure shall be built closer to the street line, sideline or rear line than the minimum requirement of the underlying zoning district, and no multi-family structure shall be built closer to the street line, sideline or rear line than fifty (50) feet. Provided, however, that nothing herein shall be deemed to restrict the Board of Appeals and Planning Board from modifying such requirements for a PRC land subdivision in order to effectuate the PRC total community concept.

9.552 Parking shall be provided in accordance with the following requirements:

One off-street parking space, located within the PRC, shall be provided for each dwelling unit. Such parking may be open, enclosed or a combination thereof.

The aforesaid requirements shall be in lieu of any requirements set forth in Section 8.

9.553 The entire perimeter boundary lines of the PRC, as shown on the Master Site Development Plan, with the exception of areas for ingress to or egress from the PRC and areas contiguous to

natural bodies of water or other natural boundaries which serve to deny access to the PRC, shall be surrounded by a fence or hedgerow, or a combination thereof, which shall be not less than five (5) feet in height. All areas designed for access into the PRC by motor vehicle shall be served by a gatehouse or other access control facility.

9.554 Interior roads shall be owned and maintained by a homeowners' association as contemplated by Section 9.5622, and shall have a minimum right of way width of forty (40) feet and a minimum paved width of twenty (20) feet. Cul-de-sacs shall have a minimum radius at the curb line of forty (40) feet.

9.555 Adequate provisions shall be made for the removal of snow, trash and garbage, and for the general maintenance of the PRC, by the persons or association to which Common Space is dedicated under Section 9.562.

9.56 Common Space.

9.561 Common Space other than common space on which structures are situated (hereinafter called "Common Space"), shall be shown as defined areas of land on the Master Site Development Plan, and portions thereof may be designed, developed, and used for reasonable recreational purposes.

9.562 The Common Space shall be permanently dedicated in one of the two following alternatives. A statement of the developer's choice and the manner of dedicating the Common Space shall be furnished with the Master Site Development Plan, together with the covenants and restrictions necessary to secure the permanent legal existence of the Common Space in accordance with the developer's expressed intention.

9.5621 Ownership as tenants in common — The Common Space may be owned by the individual unit owners within the PRC as tenants in common.

9.5622 Ownership by homeowners' association — The Common Space may be owned by a corporation, trust or association organized by the developer for the benefit of the individual unit owners within the PRC. Each unit owner shall acquire an interest in the corporation, trust or association automatically upon acquiring title to a dwelling unit in the PRC. The corporation, trust or association shall own and maintain the Common Space, and shall not dispose of any of the Common Space, by sale or otherwise (except to an organization conceived and established to own and maintain the Common Space for the benefit of the unit owners).

9.563 The provisions of Section 9.363 shall apply to any organization established pursuant to Section 9.5622.

9.57 Health and Safety.

9.571 All dwelling units and other buildings in a PRC shall be served by potable water supply systems with no individual wells serving individual units to be permitted.

9.572 Fire hydrants shall be installed in the PRC.

9.58 Board of Appeals and Planning Board Approval.

9.581 If the requirements set forth above are met, and provided further that the provisions of Section 9.582 have been satisfied and such use does not substantially derogate from the main intent of the Zoning By-Law, the Board of Appeals may approve the use of the land for a Planned Retirement Community.

9.582 An application for use as a Planned Retirement Community as specified in this Section 9.5 shall be made to the Board of Appeals and shall be accompanied by a Master Site Development Plan. Such an application shall show the plans for the development of the area, including specifically:

A. The topography of the tract showing 2' contour intervals, the location of woodland, streams and water areas, and other significant features of the land;

B. The land use plan, showing the general location of all interior streets, and the approximate size and location of each land use permitted under this Section 9.5;

C. Such other features as the developer may consider to be of importance in the evaluation of the Master Site Development Plan.

In addition, the developer shall submit such other detailed plans, specifications and data as may be required by the Board of Appeals in order for the Board of Appeals to determine whether or not there will be compliance by the developer with the standards and regulations of this Section 9.5 so as to allow use of the land as a Planned Retirement Community.

9.583 The Board of Appeals shall render a decision within sixty (60) days of the date of hearing.

9.584 The Board of Appeals may, in approving a PRC, impose such terms and conditions as the Board of Appeals shall deem necessary to accomplish the reasonable application of the standards provided in this Section 9.5.

9.585 Upon the allowance of a PRC by the Board of Appeals under this Section 9.5:

A. The developer may develop the site in sections, and at or after submission to the Board of Appeals for approval of the Master Site Development Plan, the developer shall submit to the Planning Board for approval Final Site Development Plan(s) for the section(s) which it intends to develop. In connection with each Final Site Development Plan, there shall be submitted to and approved by the Planning Board the plans and information required by Section 9.3824. Certificate(s) of occupancy may be withheld until the construction as required in each section under Section 9.3824 and other parts of Section 9.5, where said Sections are applicable, has been completed or provided for.

B. The Final Site Development Plan(s) shall be approved by the Planning Board if in general conformity to the Master Site Development Plan, patterns and uses as theretofore approved by the Board of Appeals and if in conformity to the applicable rules and regulations of the Planning Board.

C. Each Final Site Development Plan shall show by metes and bounds the entire perimeter of the section of the PRC then proposed to be developed, and all buildings to be erected in said section of the PRC, together with the types of buildings to be erected therein with an identification key.

9.586 Where the developer proposes to develop a PRC Pursuant to a subdivision as to which approval of the Planning Board is required under the Subdivision Control Law, the developer shall comply with Section 9.38 of this By-Law in lieu of Section 9.585.

9.587 Approval of the Board of Appeals for use of land as a Planned Retirement Community under this Section 9.5 shall become void if the developer has not applied for a building permit with respect to a section of the land shown on the Master Site Development Plan within three (3) years from the date of such approval. Construction of the first section shall commence within one (1) year after all local, state and federal governmental permits and approvals with respect to the PRC have been obtained; provided, that there shall be excluded in computing said one (1) year period any period during which the granting of any such permit or approval is being appealed or otherwise contested. In the event construction of the PRC has not been substantially completed ten (10) years from the date that all such permits and approvals have been obtained, computed as set forth above, then the developer shall reapply for approval for the remaining undeveloped area under this Section 9.5.

9.59 Miscellaneous.

9.591 The Building Inspector may revoke a building permit issued under this By-Law in case the builder or developer fails to conform to the plans and schedules as approved.

9.592 If any provisions of this Section 9.5 shall be found to conflict with any other provision of this By-Law, such conflict shall be resolved in favor of this Section 9.5.

9.593 If any section, subsection, or other portion of this Section 9.5 shall be adjudged invalid, the remainder of this Section 9.5 shall be deemed not to be affected thereby and shall continue to be in full force and effect.

SECTION 10: SIGNS

10.1 No signs or advertising devices 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 specifically permitted by this Section.

10.2 Residential Districts.

10.21 One sign displaying the street number, or name of the occupant of premises, or both, not exceeding two (2) square feet in area. Such sign may be attached to a building or may be on a rod or post not more than six (6) feet high and not less than ten (10) feet from the street line. Such sign may include identification of an accessory studio or professional office in the dwelling or on the premises, or may identify other permitted accessory uses including customary home occupations.

10.22 One bulletin or announcement board or identification sign for a permitted non-residential building or use, not more than six (6) square feet signboard area. For churches and institutions, two (2) bulletin or announcement or identification signs are permitted on each building. Each such church or institution sign shall be not more than ten (10) square feet signboard

area. No such signs shall be located nearer a street than one-half the required front yard depth.

- 10.23 On the premises with a lawfully non-conforming non-residential use, one sign not more than six (6) square feet signboard area.
- 10.24 One "For Sale" or "For Rent" sign, not more than six (6) square feet signboard area and advertising only the premises on which the sign is located.
- 10.25 One Building Contractor's sign on a building while actually under construction, not exceeding six (6) square feet signboard area.
- 10.26 In Residence Districts all signs or advertising devices shall be stationary and shall not contain any visible moving or movable parts. No sign or advertising device in such Districts shall be of neon or illuminated tube type. Lighting of any sign or advertising device shall be continuous (not intermittent nor flashing nor changing) and shall be so placed or hooded as to prevent direct light from shining onto any street or adjacent property. No sign or advertising device shall be illuminated after 11 p.m.
- 10.27 **Subdivisions:** One subdivision name sign, not to exceed 20 square feet, may be permitted for each entry to a subdivision from a public way.
- 10.3 Commercial and Industrial Districts.
- 10.31 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.
- 10.32 There shall be no temporary or permanent special promotion signs, banners, streamers or placards erected, suspended, posted or affixed in any manner outdoors or on the exterior of any building except for public purposes.
- 10.33 On each lot in a Commercial or Industrial District, there is permitted one sign affixed to the exterior of a building, for each occupant. The top edge of each such sign shall be not higher than the roof ridge of the building, or the highest point of the roof, if no ridge pole, no higher than the plate of a flat roof.

- 10.34 Signs permitted in Commercial and Industrial Districts shall not be more than one hundred (100) square feet signboard area per sign, nor more than three fourths of the length of the face of the building on which the sign is affixed, nor more than ten (10) percent of the area of the face of the building, whichever is less.
- 10.35 In Commercial and Industrial Districts where buildings are set back forty (40) feet or more, one free-standing sign per lot is permitted. The top edge of any such free-standing sign shall be not higher than twenty-five (25) feet vertical measure above the average level of the ground between the supports of each sign. Any such free-standing sign may be located within the front yard space, if any on such lot, but not nearer than twelve (12) feet to any lot line. For traffic safety, the whole of the signboard or display elements of any free-standing sign shall be either below three feet height or above ten feet height above average ground level if located within 25 feet of the lot line.
- 10.36 No free-standing sign shall have signboard area (or display area, if no signboard) exceeding the dimensions allowed under 10.34 above measured from the tops of the topmost display elements and from exterior side to exterior side of display elements, and including in such measurements any blank space between display elements. No display or signboard dimension shall exceed sixteen (16) feet for a free-standing sign.
- 10.37 Illuminated signs are permitted, subject to the following conditions:
- a) No sign shall be intermittently illuminated, nor of a traveling light, animated or flashing light type. No gaseous type signs shall be permitted in the Town of Mashpee.
- 10.38 Sign illumination is permitted only between the hours of seven o'clock in the morning and eleven o'clock in the evening except that signs of commercial or industrial establishments may be illuminated during any hours these establishments are open to the public or in operation.
- 10.40 In all zoning districts, for safety reasons, any private outdoor lighting fixture, whether temporary or permanent, shall be so placed or hooded that no light beams

shall be directed at any point beyond the lot lines of the premises illuminated.

- 10.41 **Contractors, Developers:** For each construction or development project, there may be issued a temporary permit for one standing sign not to exceed 16 square feet in area, setting forth facts and names pertinent to the subject. Such signs shall be removed forthwith when the project is completed. Submitted by Mashpee Planning Board.

SECTION 11: FLOOD PLAIN ZONE 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 with 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 or other sources) as designated on special F. I. A. Flood Insurance Rate Maps, Page five and Page ten dated October 19, 1977, (which are on file with the Town Clerk, Planning Board and Building Inspector), shall be approved subject to other laws and by-laws applicable thereto and to the following:

1. New construction or substantial improvement* (repair, construction or alteration costing 50% or more of the market value of the structure before improvement, or if damaged, before 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 flood-proofed to not less than base flood elevations.

*(Substantial improvement will have been deemed to occur when the first alteration of any structural part of the building commences.)

2. Where floodproofing is required in accordance with Section 1, a registered engineer or architect shall certify that the flood-proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood.
3. Any new construction or substantial improvement to be undertaken within said zones shall be in accordance with the Massachusetts Uniform Building Code, Section 748.0 as amended. The Building Inspector shall (a) 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. (b) obtain and maintain records of elevation and floodproofing levels for new construction or substantial improvement within the flood zones.
4. No land within areas designed as V (velocity) Zones on the F. I. A. Flood Rate Maps shall be developed unless such development is demonstrated by the applicant 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 (a) 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 (b) 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 with 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) Mobile homes (except in existing mobile home parks and existing mobile home subdivisions).

5. The Zoning Board of Appeals may authorize a use variance within the flood areas, as in any other zoning district within the Town of Mashpee, and may vary the restrictions and requirements set forth in this section in the case of new structures or where there is to be substantial improvements or other development on a lot of one-half acre in size or less, contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided 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, and
 - (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.
6. 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 Flood Insurance Administrator in accordance with the Department of Housing and Urban Development guidelines.
7. Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code within Zones A1-30 for new mobile home parks and mobile home subdivisions, and for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, (i) lots are to be elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level, (ii) adequate surface drainage and access for a hauler must be pro-

- vided, and, (iii) 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 10 feet apart, and reinforcement must be provided for pilings more than 6 feet above the ground level.
8. Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code in all mobile homes to be placed within Zones A1-30, but not into a mobile home park or mobile home sub-division:
 1. Lots must be elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level.
 2. Adequate surface drainage and access for a hauler must be provided.
 3. 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 10 feet apart, and reinforcement must be provided for piers more than 6 feet above ground level.
 9. 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 Section 4 above.
 10. Where these flood area provisions impose greater or lesser restrictions or requirements than those of other applicable by-laws or regulations, the more restrictive shall apply.

**SECTION 12:
APPEALS AND BOARD OF APPEALS**

- 12.1 There shall be a Board of Appeals as provided for by the Massachusetts General Laws consisting of three members. The Board of Selectmen shall appoint the members annually to a term commencing July 1st. The members shall be appointed for a term of three years with the term of one member to expire each year. The Board of Selectmen may appoint up to six 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.

- 12.2 The Board of Appeals shall organize annually at the meeting next following July 1st by the election of a chairman and a clerk from within its own membership, and may, subject to appropriation, employ experts and clerical and other assistants.
- 12.3 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 in the event of a vacancy on the board until said vacancy is filled by action of the Board of Selectmen.
- 12.4 Any member or associate member of the Board of Appeals may be removed for cause by the Board of Selectmen but only after written charges have been made and delivered to the member and a public hearing has been held.
- 12.5 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 By-Law which are not inconsistent with the aforesaid General Laws.
- 12.6 The Board of Appeals shall have the power to authorize a use or activity not otherwise permitted in the district in which the land or structure is located, but only upon the application of the standards set forth in the General Laws of the Commonwealth for the grant of a variance.

SECTION 13: ZONING AMENDMENTS

- 13.1 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.
- 13.2 If geographic change of a zoning boundary description be proposed, words of 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 blackline prints of a diagram to

scale showing the area to be changed, stating pertinent dimensions in feet.

13.3 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 statute, the Planning Board shall hold a public hearing, of which notice shall be given by the Planning Board under the statutory zoning notice provisions.

13.4 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 be 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.

SECTION 14:

ENFORCEMENT AND PENALTIES

14.1 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 By-Law, except as may have been specifically permitted otherwise by action of the Board of Appeals, provided a written copy of the terms governing any such permission be attached to the application and to the resulting building permit issued. One 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.

14.2 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 By-Laws 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.

14.3 This Zoning By-Law shall be enforced by the Building Inspector of the Town. The Building Inspector, upon being informed in writing of a possible violation of this By-Law or on his own initiative shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. The Building Inspector, on evidence of any violations after investigation and inspection shall give written notice of such violation to the owner and to the occupant of such premises. The Building Inspector shall demand in such notice that such violation be abated within a reasonable time, designated therein by the Building Inspector. Such notice and demand may be given by mail addressed to the owner at the address appearing for him on the most recent real estate tax records of the Town and to the occupant at the address of the premises of such seeming violation.

14.5 If the Building Inspector after being requested in writing to enforce the Zoning By-Law against any person allegedly in violation of the Zoning By-Law declines to act, he shall notify, in writing, the party requesting enforcement of any action he takes or refusal to act, and the reasons therefor, within 14 days of receipt of the written request for enforcement.

EARLE M. MARSTERS, Chairman
RICHARD L. TERRY, Vice-Chairman
RICHARDSON H. JONAS
DONALD B. BLAKEMAN
HAROLD P. COLLINS
Mashpee Planning Board