



ZONING BY-LAW TOWN OF MASHPEE

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, 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

1.2.1 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-Law the provisions of this By-Law shall prevail.

1.2.2 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 tenses the present. All singular terms shall include the plural and the plural the singular.

- 2.1 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.
- 2.2 Apartment
- a) Unit: any room or suite of rooms forming a habitable 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.
- 2.3 Build
- The word "build" shall include the words "erect", "construct", "alter", "enlarge", "move", "modify", "excavate", "fill", and any others of like significance.
- 2.4 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.
- 2.5 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).
 - f) Mixed Residential Use: Dwellings built above the ground floor in buildings which contain retail or office uses on the ground floor.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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 Manufactured Home
- a) A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.
 - 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 Manufactured Home Park or Subdivision
A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- 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 laid out by the Town under Chapter 82, Section 21 of the General Laws or other authority, or laid out by the State or County, which is open to travel by the general public and is on record at the Registry of Deeds, or a public or private way duly approved by the Planning Board under the subdivision control statute, or a way on record at the Registry of Deeds which is approved by the Planning Board as a principal means of adequate access to abutting property.
- 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-3 R-5

Commercial Districts
C-1 C-1-SV Incentive Zone
C-2 C-1-O Incentive Zone

Industrial Districts
I-1

Flood Plain Districts
F

Mashpee River and Quashnet River Protective Districts
Primary Conservation Areas
Secondary Conservation Areas
Groundwater Protection Districts
Areas of Critical Environmental Concern
Otis A.N.G.B. Accident Prevention Zone

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

4.2 When a lot lies in part within the Town of Mashpee 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 shall be applicable to the larger part by area of such lot and 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 residential lot, except as allowed under this By-Law. For the purpose of adequate access to a parcel of land proposed for sub-division or division, there shall be required direct access from the parcel or lot to a paved Town, County or State road, or a street for which a road covenant has been released by the Planning Board, or a street having a right-of-way layout and construction meeting at least the minimum layout width, pavement, drainage and other street requirements of the Mashpee Subdivision Regulations and Planning Board for subdivision streets.

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 it is reasonable.

4.8 In the C-1-SV Incentive Zoning District and C-1-0 Incentive Zoning District, lot owners shall have the option to elect, accept and adopt and therefore have a right to either all uses and benefits available to all lot owners in the underlying C-1 Commercial District as designated

in the "Table of Use Regulations of the Zoning By-Laws", or in the alternative to elect, accept and adopt the uses and benefits available to lot owners in the newly created C-1-SV or C-1-0 Incentive Zoning District designated in said "Table of Use Regulations."

Lot owners must elect to adopt entirely within any qualifying lot the provisions of the incentive zone in which their property lies, or the underlying C-1 Commercial Zoning District Provisions. The two sets of provisions cannot be mixed within any qualifying lot. This election and/or decision must be made before an application for the required special permit, and submitted to the Town of Mashpee. A letter notifying the Town of the decision must accompany any application for a special permit.

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 or structure 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 non-conforming 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 Non-Conforming Lots: Non-Conforming lots may be developed as allowed by M.G.L. Chapter 40A, Section 6 or in conformance with the following:

5.5.1 Definitions, for the purpose of this section:

Non-Conforming Lots: A lot which was lawfully laid out by a plan or deed duly recorded in the Registry of Deeds which complied with all zoning requirements, if any, in effect at the time of recording, but which, through subsequent adoption or amendment of a zoning by-law imposing minimum area, frontage, width, depth or yard requirements, or more than one such requirement, in excess of those in effect at the time of recording, no longer meets the requirements of this by-law with regard to those items.

Undeveloped Lot: A lot upon which no building exists.

5.5.2 Where one undeveloped non-conforming lot was held in ownership separate from that of all adjoining undeveloped lots on February 11, 1985, or at the time it became non-conforming, whichever is later, one single-family residential building and its permitted accessory buildings

and improvements may be built on that lot, provided that the lot contains at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.

5.5.3 Where two or three adjoining non-conforming lots were held in common ownership on February 11, 1985 or at the time they became non-conforming, whichever is later, one single-family residential building and its permitted accessory buildings and improvements may be built on such lots, provided that the lot contains at least ten thousand (10,000) square feet of area and seventy-five (75) feet of frontage. Where the area of one or more of said lots is less than ten thousand (10,000) square feet or lot frontage is less than seventy-five feet, said lots may be combined and a single-family residential building and its permitted accessory buildings and improvements may be built on each remaining lot which meets those area and frontage requirements, provided that in no case may the number of remaining lots be greater than that of the original number of non-conforming lots which contained at least two thousand, five hundred (2,500) square feet of area.

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

5.5.5 Where four or more adjoining non-conforming lots were held in common ownership on February 11, 1985 or at the time they became non-conforming, whichever is later, such lots shall be combined so that the resulting lot or lots conform with current by-law requirements before any building permit may be issued, except that where the combination of all of the four or more such lots will not result in a lot which would conform to the current by-law requirements, one single-family residential building and its permitted accessory buildings and improvements may be built on the combined lots, provided that the resulting lot contains at least ten thousand (10,000) square feet of area and seventy-five (75) feet of frontage.

5.5.6 Nothing in this section shall be construed to apply to lots in a commercial or industrial district or to allow any building or improvement which is prohibited or limited by any regulation, finding or order of the Board of Health or any other Town, State or Federal agency. Nothing in this section shall be construed to allow any residential density or type of residential or other use which was allowed by a special permit where (a) said special permit has expired under any provisions of these by-laws, or (b) the use allowed has been discontinued for a period of more than two years.

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

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.

6.1.1 Prior to the authorization of any new building, the Building Inspector shall require a performance bond of not less than \$4.00 per foot of lot frontage against possible costs due to erosion or damage within street rights-of-way, and a bond or cash security may be required by the Building Inspector for other construction, such bond or cash security to be held by the Town Treasurer until an occupancy permit is granted in the case of a building or a release of the security is executed by the Building Inspector. In the event of erosion or damage within streets rights-of-way caused by the construction, the owner of the land shall make repairs to restore the road lay-out not later than 10 days after being directed to do so by the Building Inspector or the security posted will be forfeited and applied to the cost of said repairs and the owner will be responsible for any cost in excess of the security. The Building Inspector shall have the right, for cause, to extend the 10 day time limit imposed hereunder for additional 10 day periods.

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.

A use which is denoted in Section 6.3 by the letters "PR" may be permitted as of right subject to the provisions of Subsection 6.2.1 and to such other requirements as may be specified elsewhere in this By-Law.

A use which is denoted in Section 6.3 by the letters "SP" is permitted as a special exception only if a Special Permit is granted by the Planning Board or Board of Appeals as applicable pursuant to the provisions of Subsection 6.2.2 and is furthermore subject to such other requirements as may be specified elsewhere in this By-Law.

A use which is denoted in Section 6.3 by the letters "PR/SP" shall be permitted as a special exception only if a Special Permit is granted by the Board of Appeals, except that if such use does not involve construction of a building or addition containing more than 1000 square feet of gross first floor area it shall be permitted as of right subject to the provisions of Subsection 6.2.1 and such other requirements as may be specified by this By-Law. However, construction, additions

or land alteration involving a non-conforming use may be allowed only as a special exception by the Board of Appeals.

Absence of any designation on the table in Section 6.3 means that the use listed is not permitted.

6.2.1

Where a use is denoted in Section 6.3 by the letters "PR", it shall be subject to a Plan Review as follows or, at the choice of the applicant, it shall otherwise require a Special Permit subject to the procedures of Subsection 6.2.2.

(a) The applicant shall submit a request for a Plan Review to the Building Inspector on an application form determined by the Building Inspector, along with sufficient plans and documentation to fully describe the proposed use and/or structure and its site. A minimum of seven (7) copies of such plans and documentation shall be submitted, along with any fees which may be established by the Board of Appeals for such Plan Review. The applicant shall also transmit by registered mail a notice of said application to any abutters (as they appear on the most recent applicable tax assessment list) within 300 feet of that portion of the structure or site which is the subject of the Plan Review.

(b) The Building Inspector shall forthwith transmit copies of such application, plans and documentation to the Health Agent, Town Planner, Conservation Officer, Fire Chief, Police Chief and Director of Public Works and shall secure a receipt from each indicating the date on which said items were received.

(c) Within fourteen (14) days of receiving such applications, plans and documentation from the Building Inspector, the Health Agent, Town Planner, Conservation Officer, Fire Chief, Police Chief and Director of Public Works, or their appointee, shall review said plans to determine whether they are consistent with applicable State and Town regulations, by-laws and plans and will not adversely affect public health or safety, will not significantly decrease surface or ground water quality or air quality, will not have a significant adverse impact on wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties and will not destroy or disrupt any species listed as rare, endangered or threatened by the Massachusetts Natural Heritage Program or any known historic or archaeological site. A determination shall be made by each of the above officers regarding those items related to their field of expertise and they shall submit a recommendation based on those items to the Building Inspector that the application may be approved, that the application may be approved subject to certain specified conditions or changes, that the application should be denied for certain specified reasons, or that additional specific information is required. Failure to submit each recommendation to the Building Inspector within fourteen (14) days of receiving an application, plans or

documentation from the Building Inspector shall be deemed to be a recommendation that the application may be approved with no conditions or changes.

(d) Where it is determined that additional specific information is required, the Building Inspector shall forthwith notify the applicant that said information is required. The applicant shall submit such information to the Building Inspector who shall transmit it to the appropriate official(s) and again secure a dated receipt. Within fourteen (14) days of such receipt, said official(s) shall again transmit their recommendation to the Building Inspector or be deemed to have recommended approval of the application with no conditions or changes. The applicant is encouraged to confer directly with any of the above agencies requiring additional information to ensure the sufficiency of any response thereto.

(e) Any building permit, occupancy permit or other applicable permit for the use, structure or site which is the subject of the Plan Review application may be approved by the Building Inspector only if it is consistent with this Zoning By-Law, the building code and other applicable codes and regulations and if all of the officials listed in (b) above recommend approval of the Plan Review application without conditions or changes or approve by default. Where conditions, changes or denial are recommended, the applicant shall be provided an opportunity to amend the application to comply. When any application is amended, it shall again be transmitted for review by the officials listed in (b) above following the procedures of (c) above and no application may be approved and no permits may be issued until all of the said officials recommend approval of the amended application.

(f) Should an application be denied or should the applicant choose not to comply with any recommended conditions or changes, the applicant may choose to apply instead for a Special Permit from the Board of Appeals subject to the procedures of Subsection 6.2.2.

6.2.2 Where a use is denoted in Section 6.3 by the letters "SP", or for uses and developments allowed by Section 9, such use or development shall be permitted as a special exception only if the Planning Board so determines and grants a Special Permit therefor, except that for non-residential uses not involving new structures containing more than 25,000 square feet of gross first floor area and not involving a previously undeveloped site greater than five acres in area, or residential conversions under Section 6.3.A.8, or for other uses specified by the General Laws for review by the Board of Appeals, such use shall be permitted as a special exception only if the Board of Appeals so determines and grants a Special Permit therefor.

A Special Permit may be issued only following the procedures specified by the General Laws and may be approved only if it is determined that the proposed use or development is consistent with applicable State and Town regulations, statutes, by-laws and plans, will not adversely affect public health or safety, will not cause excessive demand on community facilities, will not significantly decrease surface or ground water quality or air quality, will not have a significant adverse impact on wildlife habitat, estuarine systems, traffic flow, traffic safety, waterways, fisheries, public lands or neighboring properties, will not cause excessive levels of noise, vibration, electrical disturbances, radioactivity or glare, will not destroy or disrupt any species listed as rare, endangered or threatened by the Massachusetts Natural Heritage Program or any known historic or archaeological site, will not produce amounts of trash, refuse or debris in excess of the Town's landfill and waste disposal capacities, will properly dispose of stumps, construction debris, hazardous materials and other waste, will provide adequate off-street parking, will not cause excessive erosion or cause increased runoff onto neighboring properties or into any natural river, stream, pond or water body, and will not otherwise be detrimental to the Town or the area.

In all cases involving a Special Permit, the application shall include a site plan showing at least the location of buildings on the site (meaning the entire lot on which the proposed use or development is located) and within 100 feet of the site, existing and proposed wells and septic systems, existing roadways, wetlands, water courses and significant slope or other natural features, proposed parking, drainage, utilities, and landscaping and other proposed features. For applications to the Planning Board, a plan showing topography at a maximum of two (2) foot contour intervals shall also be required. In addition, traffic studies, water quality impact reports, environmental impact reports, fiscal impact reports and similar items may be required along with those other specific items required by Sections 9.3 and 9.4.

For applications to the Board of Appeals, at least three (3) copies of all application materials shall be submitted, of which one (1) shall be transmitted to the Design Review Committee. Where the application involves any land within 100 feet of a wetland, water body or watercourse, a fourth copy shall be submitted for review by the Conservation Commission. Where the application involves tidal areas or waterways, copies shall also be submitted for review by the Shellfish Commission, Harbormaster and Waterways Committee. The Board of Appeals shall consider any comments of the Design Review Committee, Conservation Commission, Shellfish Commission, Harbormaster and other Town officials and boards in making its decision provided that such comments are received at or before the required public hearing.

For applications to the Planning Board, at least fifteen (15) copies of all application materials shall be submitted, unless additional copies are required elsewhere in this By-Law. Where additional copies are not otherwise required by Section 9 to be submitted by an applicant to Town officials, the Board shall transmit copies to the Board of Health, Design Review Committee, Conservation Commission, Town Planner, Superintendent of Streets, Building Inspector, Fire Chief, Police Chief and Parks and Recreation Director, and where the application involves tidal areas or waterways, shall also submit copies to the Shellfish Commissioner, Harbormaster, and Waterways Committee and the applicant shall supply such additional copies. In addition, for mixed-use or commercial developments or projects which will involve a variance request, a copy shall be provided for review by the Board of Appeals. The Planning Board shall consider any comments received from the above-named officials and boards in making its decision, provided that such comments are received at or prior to the required public hearing.

Special Permits shall only be issued following a public hearing held within sixty-five (65) days, but not less than forty-five (45) days after the filing of an application with the Planning Board or Board of Appeals at a regular or special meeting, a copy of which shall forthwith be given to the Town Clerk by the applicant after having been signed and dated by the Board chairman.

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

Any special permit hereinafter granted shall lapse within two years from the grant thereof, or within a shorter period of time if specified in the decision of the approval-granting authority, which shall not include such time required to pursue or await the determination of an appeal under Chapter 40A, Section 17 of the General Laws, 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."

- 6.2.3 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.
- 6.2.4 Plan Review approvals issued under section 6.2.1 shall not expire until such time as the project is altered or, if zoning is changed before a building permit is issued, for one year from the date of the zoning change.
- 6.2.5 Changes in plans approved under 6.2.1 may be authorized by the Building Inspector without re-filing provided they do not include a change of use and provided deviations do not include building footprint increases or increases in impervious cover of more than 10% or 100 sq. feet, whichever is less, and provided that, in the opinion of the Building Inspector, they are in substantial conformance with the originally approved proposal.
- 6.2.6 Notwithstanding any other provisions of this By-law, no new school, hospital, theater, or places of public assembly shall be erected or permitted within the Otis A.N.G.B. Accident Prevention Zone as shown on a map entitled "Otis A.N.G.B. Accident Prevention Zone" and dated January 1987, which map is on file in the office of the Town Clerk and which shall be considered part of this Zoning By-law. In addition, no portion of any structure located within said Zone may exceed thirty-five (35) feet in height, measured from the highest natural grade of the site at the foundation line.
- 6.3. Land Use Regulations: See following page.

TABLE OF USE REGULATIONS

PRINCIPAL USES

A. RESIDENTIAL USES

	<u>RESIDENTIAL</u>		C1	<u>COMMERCIAL</u>			<u>INDUSTRIAL</u>
	R-3	R-5		C-1-D	C-1-SV	C2	I-1
1. Detached dwelling on a separate lot occupied by not more than one family.	Y	Y					
2. Two-family or duplex dwelling (allowed under Section 9.3 Open Space Incentive Development and under 8 below).	SP	SP	SP	SP	SP	SP	SP
3. Attached dwelling or Town House (allowed only under Section 9.3 Open Space Incentive Development).	SP	SP	SP	SP	SP	SP	SP
4. Mixed Residential Use (Allowed only under Section 9.3 Open Space Incentive Development).			SP	SP	SP	SP	SP
5. Apartment Building or Garden Apartments (allowed only under Section 9.3 Open Space Incentive Development).	SP	SP	SP	SP	SP	SP	SP
6. Motels & Hotels (See Sect. 9)			SP	SP	SP	SP	
7. Renting of not more than two rooms in an existing dwelling to not more than four (4) persons provided there are not separate cooking facilities.	Y	Y	Y	Y	Y	Y	
8. Conversion of an existing dwelling to accommodate not more than two (2) families provided there is not 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					
9. 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.			PR	PR			
10. Manufactured Home Park or Subdivision.							
11. Manufactured home on a lot of land for residence only by the owner and							

	<u>RESIDENTIAL</u>		C1	<u>COMMERCIAL</u>			<u>INDUSTRIAL</u>
	R-3	R-5		C-1-D	C-1-SV	C2	I-1
occupier of a residence destroyed by fire situated on said lot for a period not to exceed twelve (12) months from the date of the fire while the residence is being built.	Y	Y					
B. INSTITUTIONAL, RECREATIONAL AND EDUCATIONAL USES							
1. Place of Worship	Y	Y	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	Y	Y
3. Governmental buildings and related or supporting facilities, and uses.	Y	Y	Y	Y	Y	Y	Y
4. Cemeteries.	PR	PR	PR	PR	PR	PR	PR
5. Public park or playground, public recreational building or facility.	PR	PR	PR	PR	PR	PR	PR
6. Public Utilities	PR	PR	PR				
7. Private non-profit libraries or museums.	PR	PR	PR	PR	PR	PR	
8. Private non-profit community center building, settlement house, adult education center or 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.	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP
9. Hospital, infirmary, nursing home, convalescent home.				SP	SP	SP	SP
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.	PR		PR	PR	PR	PR	PR

	<u>RESIDENTIAL</u>		C1	<u>COMMERCIAL</u>			<u>INDUSTRIAL</u>
	R-3	R-5		C-1-0	C-1-SV	C2	I-1
11. Trade, professional or other school conducted as a private business for gain.			PR/SP	PR/SP	PR/SP	PR/SP	Y
12. Private non-profit membership or social club or lodge.	SP		SP	SP	SP	SP	Y
13. Country club, miniature golf, swimming, tennis or another recreational facility of a similar nature not operated as a business gain.	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	PR/SP	
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	SP	SP	
C. AGRICULTURAL USES							
1. Farms - agricultural, orchard, horticultural or silvicultural.	Y	Y	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	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	Y	Y
D. OFFICES AND LABORATORIES							
1. Business, financial, professional or governmental offices, but no retail business, no manufacturing and no processing.			PR/SP	PR/SP	PR/SP	PR/SP	PR/SP
2. Offices and clinics for medical, psychiatric or other health services for the examination or treatment of persons as outpatients - including							

	<u>RESIDENTIAL</u>		C1	<u>COMMERCIAL</u>			C2	<u>INDUSTRIAL</u>
	R-3	R-5		C-1-0	C-1-SV	I-1		
laboratories that are part of such offices or clinics.				PR/SP	PR/SP	PR/SP	PR/SP	PR/SP
3. Laboratory or research facility.				PR/SP	PR/SP	PR/SP	PR/SP	PR/SP
4. Radio or television studio.				PR/SP	PR/SP	PR/SP	PR/SP	PR/SP
5. Radio or television transmission facility, but not studios.				SP	SP	SP	SP	SP
E. RETAIL BUSINESS AND 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.				PR/SP	PR/SP	PR/SP	PR/SP	
2. Eating places serving food and beverages to be consumed within the building.				PR/SP	PR/SP	PR/SP	PR/SP	
3. Stores for sale of marine supplies and associated items including boats and trailers.				PR/SP			PR/SP	
4. Service business serving local needs, such as barber shops, beauty shops, shoe repair, self-service laundry or dry cleaning or pickup agency.				PR/SP	PR/SP	PR/SP	PR/SP	
5. Marinas including sales and repair of boats and related supplies.		SP	SP				SP	
6. Mortuary, undertaking or funeral establishments.				PR/SP		PR/SP	PR/SP	
7. Veterinary establishments, kennel, or similar establishment provided that in business zone, animals are kept wholly indoors.				SP		SP	SP	
8. 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								

	<u>RESIDENTIAL</u>		C1	<u>COMMERCIAL</u>			C2	<u>INDUSTRIAL</u>
	R-3	R-5		C-1-0	C-1-SV	I-1		
any abutting street or abutting property at the property line where such materials are stored.			SP				SP	
9. Outdoor Flea Market.			SP	SP	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	
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.			PR/SP				PR/SP	
6. Drive-in banks.			SP	SP	SP		SP	
7. Drive-in eating places and other consumer service establishments where the motorist does not have to leave his car or where food is normally consumed outside the building.			SP					
8. Place for exhibition, lettering, or sale of gravestones.			PR/SP				PR/SP	
G. INDUSTRIAL, WHOLESALE AND TRANSPORTATION USES								
1. Laundries and dry cleaning plant.								SP
2. Printing, binding, publishing and related arts and trades.								SP
3. Bottling of beverages.								SP
4. Plumbing, electrical or carpentry shop or other similar service or repair establishment.			PR/SP					PR/SP

RESIDENTIAL
R-3 R-5

C1

COMMERCIAL
C-1-0 C-1-SV C2

INDUSTRIAL
I-1

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.

SP

6. Wholesale business and storage in a roofed structure.

SP

SP

SP

7. Trucking terminals.

SP

8. Extractive industries.

SP

9. Wholesale business and storage.

SP

10. Processing and packaging coffee.

SP

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.

4. Any use hazardous to health because of danger of flooding, inadequacy of drainage or inaccessibility to fire-fighting apparatus or other protective service.

5. The stripping of loam, peat, sand or gravel or other material except for reuse on the same property.

SP

SP

SP

SP

SP

SP

6. Any other uses determined by the Zoning Board of Appeals to be substantially similar in their

RESIDENTIAL
R-3 R-5

C1

COMMERCIAL
C-1-0 C-1-SV C2

INDUSTRIAL
I-1

construction; operation, traffic and environmental impact to other uses allowed as of right or by special permit in a district and which are substantially dissimilar in those respects from uses prohibited in a district. Where the Zoning Board of Appeals cannot make a clear determination, such uses shall be considered prohibited. No use specifically listed in the Table of Use Regulations shall be allowed by the Zoning Board of Appeals in any district where it is prohibited. In reviewing an application for determination under this sub-section, the procedure applicable for a Special Permit shall be followed by the applicant and the Zoning Board of Appeals.

SP SP SP SP SP SP SP

I. ACCESSORY USES

1. Private garage for use of the residents. Y Y
2. Not more than one (1) commercial vehicle per lot not to exceed two (2) tons capacity. Y Y
3. Private greenhouse, stable, tennis court, swimming pool or other similar building or structure for domestic use. Y Y
4. The raising or keeping of animals, livestock or poultry, but not swine, as pets or for use by residents of the premises provided that no building or enclosure for any animal may be less than forty (40) feet from side or rear lot line, nor nearer than fifty (50) feet to any front lot line. Y Y
5. Customary home occupation or the office of a resident physician, dentist, attorney-at-law, architect, engineer, or member of other recognized profession similar to the aforementioned provided that not more than three (3) persons shall

	<u>RESIDENTIAL</u>			<u>COMMERCIAL</u>			<u>INDUSTRIAL</u>
	R-3	R-5	C1	C-1-0	C-1-SV	C2	I-1
practice or be employed on the premises at any one time.	PR	PR	PR	PR	PR	PR	
6. The use of a portion of a dwelling or accessory building thereto by a resident builder, carpenter, painter, plumber, mason, or other artisan or by a resident tree surgeon or landscape gardener for incidental work and storage in connection with their off-premises occupation provided there is no external change which alters the residential appearance of the buildings.	PR	PR	PR	PR	PR	PR	
7. Restaurants, beauty shop, barber shop or newsstand inside a building for the use of the primary occupants of the building, provided there be no exterior evidence of same, and further provided that an apartment complex contain not less than fifty (50) rental units or in the case of a condominium, not less than fifty (50) units.	SP	SP	Y			Y	Y
8. Private ways for access through Commercial District C-2 to Industrial District I-1 subject to compliance with applicable laws and regulations.							SP
9. Fixed and floating piers, wharves, docks, boardwalks, both seasonal and year-round, with a total length not to exceed 70 ft. measured from high tide mark, including salt marsh defined in 310 CMR 10.32, subject to securing of all necessary permits from the Town, State and Federal government agencies having jurisdiction over inland and/or coastal waterways and wetlands. The applicant shall, at the time of filing a plan with the Board of Appeals submit copies of said plan to the Conservation Commission, the Shellfish Commission, the Inland and Coastal Waterways Committee, and the Harbor-							

RESIDENTIAL
R-3 R-5

C1

COMMERCIAL
C-1-0 C-1-SV C2

INDUSTRIAL
I-1

master. Prior to the granting of any such special permit, the Board of Appeals shall consider comments and recommendations from the Conservation Commission, the Shellfish Commission, the Inland and Coastal Waterways Committee and the Harbormaster. Failure by any of the aforementioned to comment may be interpreted as approval of the proposal. The Board shall not grant the special permit if the structure will unduly interfere with free passage of travel by water or land or cause or contribute to the substantial disruption or degradation, through direct or indirect impacts, including uses allowed by said structure, on the marine or coastal environment. The applicant shall bear the burden of proof when questions exist about the proposal's contribution to environmental damage.

SP SP

SP

10. Outdoor dining shall be allowed in commercial districts as an accessory use to an allowed eating place serving food and beverage, provided that visual screening shall be required in any area abutting a residential zone. Such screening shall consist of a solid fence, wall or mature hedge or other screen-type planting of such a height as to screen any diners from view from the said residence zone.

PR PR PR PR

11. Premises within non-residential zones may be used for parades, carnivals, fairs, or festivals provided that (a) such uses shall not be conducted for any period in excess of 10 consecutive days, and (b) all necessary licenses and permits are obtained from the Board of Selectmen and other applicable government officials in accordance with town, state and federal law.

Y Y Y Y

RESIDENTIAL
R-3 R-5

C1

COMMERCIAL

C-1-0 C-1-SV C2

INDUSTRIAL

I-1

12. Manufactured home as construction office. Upon issuance of a special permit, a manufactured home or trailer may be used at a construction site for a period of not more than six months, except that the Building Inspector may extend the permission for additional six month successive periods while construction is continuing. The manufactured home or trailer may be used and occupied by a resident guard or caretaker provided it is connected to a septic system and water supply as approved by the Board of Health.

PR

PR

PR

PR

PR

PR

PR

13. Christmas Tree sales. Upon approval of a special permit from the Board of Appeals, premises within non-residential zones may be used for temporary sales of Christmas Trees provided that (a) sales shall not be conducted before Thanksgiving or after December 31st, and (b) all trees, signs and temporary structures shall be set back a minimum of 40 feet from all streets and shall be removed within 10 days after the close of the sale.

PR

PR

PR

PR

14. Common Driveways. The Planning Board may issue a special permit for a driveway to be used by two or more primary structures or lots, including structures in attached residential developments, provided that no more than four lots may be accessed by such common driveway, that no common driveway may be used to, or considered to, satisfy zoning frontage requirements where useable practical access is not available across the approved or proposed street frontage of said lots, or is otherwise not permitted, that no common driveway to separate lots may exceed 200 feet in length, or such greater length as may be approved by the Planning Board, that no common driveway may be less than 14 feet in width and that it otherwise conform to all of the standards established for streets in the Subdivision Regulations adopted by the Planning Board unless waived by said Board. The length, width and other

<u>RESIDENTIAL</u>			<u>COMMERCIAL</u>			<u>INDUSTRIAL</u>
R-3	R-5	C1	C-1-0	C-1-SV	C2	I-1

construction standards specified above shall apply only to that portion of a driveway which is used in common by more than one lot, primary structure or residential unit.

SP	SP	SP	SP	SP	SP	SP
----	----	----	----	----	----	----

(Added as of STM 5/9/88-Approved by AG 7/28/88)

6.4 Growth Management

6.4.1 Development Phasing

6.4.1.1 Within any year, building permits may be issued for new dwellings on no more than twenty (20) percent of the lots in any subdivision approved by the Mashpee Planning Board under the Massachusetts Subdivision Control Law (the most recent such plan applicable to the lot shall apply), or twenty (20) percent but at least one of the lots shown on a plan of land not requiring subdivision approval recorded after May 11, 1987, or twenty (20) percent of the approved dwelling units in any other type of residential or mixed use development under a special permit. Such limit shall not apply to any other pre-existing and otherwise buildable lot. In the case of fractional numbers greater than 1/2, the number of permits issued may be rounded upward. (App.STM 5/9/88-App.AG 7/28/88)

6.4.2 Building Permit Limits

6.4.2.1 Notwithstanding the provisions of Subsection 6.4.1, within any year the number of new dwelling units for which building permits may be issued shall not exceed 2 1/2 percent of the total of the number of existing dwelling units in the Town on, plus any uncompleted dwelling units for which building permits have been issued and have not expired by, December 31 of the previous year, except that permits for 300 dwelling units may be issued in 1987, permits for 250 dwelling units may be issued in 1988 and permits for 200 dwelling units may be issued in 1989.

6.4.2.2 Within any calendar month, building permits for new dwelling units may be issued for not more than ten (10) percent of the number of new dwelling units allowed during that year under Subsection 6.4.2.1. Within said limit, the actual number of permits issued shall be at the discretion of the Building Inspector provided the annual limit specified by Subsection 6.4.2.1 is not exceeded.

6.4.3 Exemptions

6.4.3.1 The provisions of Subsections 6.4.1 shall not apply to 1) Open Space Incentive Developments approved under Section 9.3, 2) developments approved prior to May 11, 1987 under an unexpired special permit which included a specific annual phasing schedule, 3) public housing developed by the Mashpee Housing Authority, or 4) low or moderate income housing units as defined by the Massachusetts Department of Communities and Development (or a successor agency) for this area, provided that sufficient written documentation is submitted as part of the building permit application showing that said units are to be restricted by a recorded document to sale, lease or rental at such low or moderate income rates (as updated by the above agency) for a period of not less than twenty (20) years, and

except that this exemption shall apply only to the first one hundred (100) of such units for which building permit applications are made in any year. The provisions of Section 6.4 shall also not apply to special permits protected, or lots in subdivisions temporarily protected, from the provisions of this section by Massachusetts General Laws Chapter 40A, Section 6.

6.4.3.2 The provisions of Section 6.4 shall not apply to non-residential structures or foundations, accessory structures, or alterations, reconstruction or additions which do not create a new dwelling unit, but shall apply to residential foundation permits.

6.4.4 Administration

6.4.4.1 The Building Inspector shall compile and keep up-to-date a listing of all subdivisions, special permit projects and other lands which are exempt or protected temporarily from the provisions of Section 6.4 either under Subsection 6.4.3 or under any applicable provisions of Massachusetts General Laws and the date on which any temporary protection will expire.

6.4.4.2 The Building Inspector shall determine prior to January 15 of any calendar year the number of existing dwelling units in the Town on, plus any dwelling units for which building permits were issued by, December 31 of the previous year which have not expired. On the basis of that information and the provisions of Subsection 6.4.2.1 he shall determine the number of dwelling units not exempted by Subsection 6.4.3 which may be issued permits during said calendar year.

6.4.4.3 Applications for building permits for new dwelling units may be filed only during the first fifteen (15) days of any month. However, no such permits will be approved until after the fifteenth day of the month to allow proper review and determination of the order of priority in which they may be issued. Permits which are exempted by Subsection 6.4.3 or temporarily protected by Massachusetts General Laws from the provisions of this section may be applied for or issued at any time.

6.4.4.4 In issuing building permits, the Building Inspector shall first determine that the application and proposed structure conforms with the rules and regulations of the Board of Health, with any applicable building codes and with this Zoning By-Law, including the provisions of Subsections 6.4.1. For those applications which are in conformance and may otherwise be issued, building permits shall be issued, within the monthly limit, in the following order of priority:

First - Provided that the annual limit has not been exceeded, in the order of their receipt by the Building Inspector, applications for individual single-family dwell-

ings by the legal owner of any lot on January 1 of the previous year who has not received a permit for a new residence in Mashpee during the previous 24 months and who has documented in writing to the Building Inspector his intention to be the exclusive resident on the premises for at least one year (residence being defined as occupation by the members of one family for at least 30 days in said year with no occupation or rental by other persons during that period).

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

Third - Provided that the monthly and annual limits have not been exceeded, permits for any dwelling units for which permits were applied in previous months but were not approved based on the provisions of Section 6.4 may be approved, in the order of their receipt by the Building Inspector, up to the monthly and annual limits, except that among such applications, structures not located within a Primary or Secondary Conservation Area shown on the most recently adopted Open Space Incentive Plan shall be approved first, then any others may be approved.

Fourth- If after permits have been issued to all applicants in the first through third categories and the monthly and annual limits have not been reached, building permits may be issued to other applicants up to the limits, in the order of their receipt by the Building Inspector, except that structures not located within a Primary or Secondary Conservation Area shown on the most recently adopted Open Space Incentive Plan shall be approved first, then any others may be approved.

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

6.4.4.6 If in any month building permits for fewer dwelling units are issued than are allowed by the limits of Subsection 6.4.2.2,

the difference between the limit and the actual number of dwelling units for which permits were issued may be added to the limit for the following month, except at the end of the calendar year.

- 6.4.4.7 Where a building permit is to expire, no more than one (1) six-month extension may be granted by the Building Inspector before an applicant shall be required to file for a new permit following the rules and procedures of Section 6.4 and other applicable laws and regulations.

6.5 WATER QUALITY REPORT

- 6.5.1 As a part of any application for approval of a Definitive Subdivision Plan (excluding plans which would divide any parcel shown on the 1985 Mashpee Assessors' Maps into 5 or fewer lots or where proposed density of residential development would be less than one unit per two acres) or of a Special Permit requiring approval by the Planning Board, the applicant shall submit ten (10) copies of a Water Quality Report regarding the proposed development. Said report shall be completed by a qualified firm, experienced in groundwater and surface water quality evaluation and in determining the impacts of land uses on receiving waters. One copy of the Report shall be transmitted for review and comment to the Board of Health.
- 6.5.2 The Water Quality Report shall contain, at a minimum, the following information:
- (a) Whether or not the development lies within a Groundwater Protection District (see Section 11), within a previously defined "Zone II" recharge area of an existing or proposed public water supply well, within 300 feet of the Santuit, Mashpee, Quashnet or Childs Rivers, Quaker Run south of Route 28, Red Brook, or any pond, bay or other surface water body or any adjacent wetlands as defined by Massachusetts General Law Chapter 131, Section 40, or within the ground water recharge zone of any great pond or bay or other surface water body over one acre. (With regard to the groundwater recharge zones of Santuit Pond, Mashpee-Wakeby Pond, Johns Pond and Moody Pond, Jehu Pond, Ockway Bay and Hamblin Pond/Red Brook, reference shall be made to maps produced by K-V Associates of Falmouth, Mass. which are on file in the office of the Town Planner. For other great ponds or bays and surface water bodies over one acre a map of the groundwater recharge zone shall be produced as part of the Water Quality Report.)
 - (b) Whether or not the development will produce any hazardous or toxic materials (as defined in 314 CMR Section 3.02 (21), (22) and (48)) or if such materials will be stored (upon completion of the development) on the site. If so, the Report shall specify how such materials are proposed to be handled, stored or disposed and a determination of

whether or not such materials will have any impact on public health or safety.

- (c) Whether or not the development will cause any runoff of roadway drainage, or runoff of sediment due to erosion, into any surface water body, watercourse or wetland and if it will adversely affect any fishery, shellfish bed or other wildlife or aquatic vegetative resources.
- (d) A determination of the levels, in total pounds and in pounds-per-acre, of nitrogen and phosphorus which could be generated by the development. In making such determination, the following standards shall be used unless the applicant demonstrates to the satisfaction of the Board that other standards are applicable:
1. Loading per person: 5 lbs. nitrogen per person per year; .25 lbs. phosphorus per person per year. Persons per dwelling unit = 3.
 2. For commercial and industrial developments, nitrogen and phosphorus calculations shall be derived from expected waste water generation as specified by Title V of Mass. General Laws Chapter 21A, Section 13.
 3. Loading from lawn fertilizer: 3 lbs. nitrogen per 1000 square feet per year (with a minimum of 15 lbs. per lot in a single-family subdivision), .17 lbs. phosphorus per 1000 square feet per year (with a minimum of .85 lbs. per lot in a single-family subdivision).
 4. Loading from road runoff: .38 lbs. nitrogen per road mile per day; .12 lbs. phosphorus per road mile per day.
- (e) The existing condition of the receiving water body, or water supply (existing or proposed), including physical characteristics and water chemistry. Measurement of existing surface water quality must be completed during summer (peak population) conditions. Measurements shall specifically include concentrations of total phosphorus in fresh water bodies and total nitrogen in salt water bodies.
- (f) The expected change in the condition of the water body or water supply as a result of the proposed development.
- (g) The comparison, on a total pounds and a pounds-per-acre basis, of the total nutrient loading from the proposed development with the existing and potential loading from all other developments and acreage within the recharge area (under existing basic zoning) of any receiving surface water body or water supply well.

- (h) A comparison, on a per-acre basis, of the total nutrient loading from the proposed project with the loading rate which would be expected to produce critical eutrophic levels in a water body (.02 mg/litre total phosphorus in fresh water bodies, .75 mg/litre total nitrogen in salt water bodies) or, in the case of a water supply, the loading rate which would produce nitrate-nitrogen levels in excess of five (5) parts per million. Where the per-acre loading rate from the proposed project will equal or exceed the critical loading rate when combined with existing and potential development within the recharge area of the water body or water supply well, the Report shall specify measures to reduce nutrient loading such as sewage treatment, reduction of development density, elimination or reduction of lawn areas and other appropriate measures.
- (i) Test well completion reports and logs, including 1) elevation of top of casing and static groundwater elevation based on U.S.G.S. datum, 2) surveyed location based on the Mass. Coordinate Plane or true north and tied to an established roadway or property bound, 3) water quality reports on levels of sodium, iron, manganese, chloroform, benzene, phosphorous, total coliform bacteria, pH, conductivity, nitrate-nitrogen, carbon tetrachloride, lead, phenolics, PCB(1254), PCB(1260), trichloroethylene, tetrachloroethylene and 1,1,1-Trichloroethane, and 4) depth ranges of the various soils and sediment layers found in development of each well. Unless the Board of Health recommends otherwise, such information shall be provided for at least two test wells per 10 proposed lots or units, or per 10 acres of commercial or industrial land to be developed (with one well installed to a depth of 6 feet below the ground water table and one installed to a depth of 100 feet below the ground surface), with such wells to be installed using PVC or other casing approved by the Board of Health with a protective locking cover grouted in place. No wells will be required for less than 10 lots or units or 10 acres of commercial or industrial land unless the Board of Health determines that there is sufficient cause to believe that there may be significant groundwater contamination present at the site. Such wells shall be installed at locations approved by the Board of Health and shall be left permanently in place for future water quality monitoring.
(Approved at STM 5/9/88-App. by AG 7/28/88)

6.5.3 No Definitive Subdivision Plan or Special Permit subject to the provisions of Section 6.5 may be approved by the Planning Board unless it has determined, after reviewing the Water Quality Report and any comments from the Board of Health, that the proposed project will not have a significant adverse affect on public health or safety, aquatic vegetative resources, any fisheries or shellfish beds or other wildlife due to hazardous or toxic materials, roadway drainage or sedimentation or ex-

cessive nutrient levels. Where feasible, the Board shall ensure that the nutrient contribution of the proposed development, when added to the existing and potential nutrient level of other development and acreage within the specific recharge area, will not result, on a pounds-per-acre basis, in nutrient levels that exceed the receiving surface waters' critical eutrophic level or, in the case of well recharge areas, nitrate-nitrogen concentrations in the well in excess of five (5) parts per million. It shall be the responsibility of the applicant to demonstrate that any proposed mitigating measures required to produce a negative determination regarding the above items will work as designed, and the Planning Board may require, as a condition of any approval, that the applicant or his successor demonstrate on an annual basis that said mitigating measures are operating satisfactorily. The Board may also require the submission of an appropriate performance bond to guarantee satisfactory operation of said mitigating measures.

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.
- 7.1.1 Prior to the proceeding with any new construction above the foundation, a Registered Land Surveyor shall certify to the Building Inspector that the structure has been located on the lot in compliance with all land space requirements.
- 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, nor shall it include any water or wetlands as defined by Section 40, Chapter 131 of the General Laws.
- 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' ft. 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.
- (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. Other than for those items excepted above, height shall be measured from the

"LAND SPACE REQUIREMENTS TABLE"

ZONING DISTRICT (Footnotes)	MINIMUM LOT SIZE SQ. FEET (12)	MINIMUM LOT FRONTAGE (1, 2, 13)	MINIMUM BUILDING SETBACK TO LOT LINES FRONT REAR (3,5,6) (3,5)		SIDE (3,5)	MAXIMUM BUILDING HEIGHT STORIES FT. (4)	MAXIMUM OF LOT COVERAGE
<u>Residence Districts</u>							
R-3	40,000	150'	40'	15'	15'	2½	20% (5)
R-5	60,000	150'	40'	25'	25'	2½	20% (5)
<u>Commercial Districts</u>							
C-1	40,000	200'	40'	40'	20'	2	20% (5)
C-2	40,000	200'	75'	20'	20'	2	20% (5)
C-1-SV	348,480 (8 acres)	600'	40'	40'	40'	2½	25% (5)
C-1-0	40,000	200'	40'	40'	40'	2½	25%
<u>Industrial Districts</u>							
I-1	40,000	200'	*150'	50'	30'	2 (7)	25%

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

average original grade of the land adjacent to the foundation line of any proposed structure (prior to the clearance of the natural vegetation from said site) to any applicable point on a structure. (Approved at STM 5/9/88 - App. AG 7/28/88)

- (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' ft. 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.
 - (12) Only upland areas and land not included in a roadway right-of-way or easement or overhead utility easement may be counted toward minimum lot size requirements. Any water or wetland, as defined by Section 40, Chapter 131 of the General Laws, or any roadway or utility right of way or easement may not be counted toward minimum lot size requirements.
 - (13) Minimum lot frontage for lots fronting only on Routes 28 and 151 shall be 600 feet.
 - (14) Minimum front building setback from Routes 28 and 151, and Great Neck Road South and North, shall be 75 feet, and no parking area, internal driveway or other use other than natural vegetation, landscaping, allowed signs or one access driveway per lot running generally perpendicular to the layout sideline of said roads may be located within 50 feet of said layout sideline. (App. STM 5/9/88-AG App. 7/28/88)
- 7.5 In the C-1-SV Commercial District no building may cover more than 8000 sq. ft. of ground area.
- 7.6 Fire Protection. To insure that all buildings shall be accessible to fire department apparatus by way of access roadways capable of supporting fire fighting apparatus with an all-weather surface roadway, there shall be an unobstructed, paved access roadway of not less than 20' ft. with a vertical clearance of not less than 13'6" with all corners and curves having a minimum inside radius

of not less than 28' and a minimum outside radius of not less than 46'. Said access roadway shall be constructed to a point not less than 150' from the furthest point of any building on the lot.

- 7.7 Any building or structure, exclusive of fixed or floating piers, wharfs, docks, bridges or boardwalks, shall be set back at least fifty (50) feet from any water or wetland as defined by Section 40, Chapter 131 of the Massachusetts General Laws.
- 7.8 Any habitable building or structure shall be set back at least one hundred fifty (150) feet from any active (within the previous five years) cranberry bog or cranberry meadow. (Added by STM 5/9/88 - Approved by AG 7/28/88)

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 (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 requirements.)

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	1 1/2 spaces for each rental unit + 1 1/2 spaces for each 20 square feet of floor area available for meeting or functions + 1 space for each

employee.

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 4 seats or 1 space for each 4 persons as shown on the certificate of occupancy issued by the Building Inspector for the premises at the time of maximum use, whichever is greater.

Bowling Alleys

Four (4) spaces for each alley.

Offices

1 space for each two hundred (200) square feet of gross floor area.

Warehouses and other commercial or industrial buildings

1 space for each 900 square feet of gross floor area + 1 space for each 2 employed persons on the larger shift + 1 space for each company owned and operated vehicle. The gross floor area shall not include fixed gondolas, corridors and restrooms.

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

8.6 (Deleted by voter approval at STM 5/9/88)

8.7 In the C-1, C-1-SV and C-1-0 Commercial District no accessway for parking may be closer than 200 feet from another accessway or the right of way line of a road intersection. No accessway for

parking may enter into a main road leading into Mashpee Circle (Pine Tree Corner) at a point closer than 600 feet from the center of Mashpee Circle, provided that all existing uses and accessways may be maintained in their current condition.

- 8.8 All marinas in all zoning districts shall provide one automobile parking space for each boat storage and mooring and docking space, whether such boat spaces are to be provided on land or water.
- 8.9 All outdoor Flea Markets shall provide on site parking spaces; one space shall be provided for each 100 sq. feet of ground area in the area of display.
- 8.10 For shopping centers, defined as a group of architecturally unified commercial establishments built on a site which is planned, developed, owned and managed as an operating unit and containing at least 50,000 square feet of gross leaseable floor area, parking requirements shall be computed as follows:

	<u>Use</u>	<u>Spaces</u> required for
Shopping Centers with more than 50,000 s.f. but less than 100,000 s.f.	Retail	5 every 1000 s.f. of GLA*
	Food Service	10 " " " " "
	Office	4 " " " " "
	Theatre	3/100 seats
	Residential	2 spaces per unit required for
Shopping Centers in excess of 100,000 s.f.	Retail	4 every 1000 s.f. of GLA*
	Food Service	6 " " " " "
	Office	3 " " " " "
	Theatre	0/450 seats plus 3/100 over 450
	Residential	2 spaces per unit

*Gross leaseable floor area.

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.
- 9.2.1 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.
- 9.2.2 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.
- 9.2.3 A space not less than twenty (20) feet shall be maintained open with grass, bushes, flowers or trees all along each side, 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.
- 9.2.4 No space within the required front yard depth shall be used for parking except as a temporary nature such as for registering.
- 9.2.5 Each motel site shall be provided with no more than two (2) motor vehicle driveways for each abutting street which shall intersect the abutting street or streets at ninety (90) degrees.
- 9.2.6 Each rental unit shall contain not less than two hundred sixteen (216) square feet of habitable floor area.
- 9.2.7 Height restrictions as set forth in Section 7 may be waived subject to Board of Appeals for motels containing 100 or more units.
- 9.2.8 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 INCENTIVE DEVELOPMENT (OSID)
For the purposes of preserving critical open space and natural resource areas within the Town of Mashpee, of promoting an efficient pattern of land development, and of promoting the health, safety and general welfare of the inhabitants of the Town, an Open Space Incentive Development (OSID) may be allowed by Special Permit from the Planning Board in any residential district (except as provided under Subsection 9.3.8) in accordance with the following procedures and standards.
- 9.3.1 SITE ELIGIBILITY AND STANDARDS - An OSID shall include a parcel or parcels of land containing a total of at least twenty (20) acres, of which no developable parcel may be less than five (5)

acres in size (land covered by tidal water, pond, lake, stream or river or any wetlands as defined by M.G.L. Chapter 131, Section 40 not to be included in calculating either total). The developed portion of the OSID shall be required to have frontage on Route 28, Route 151, Cotuit Road, Route 130, Great Neck Road North and South, Quinaquisset Avenue, Great Oak Road, Mashpee Neck Road or Red Brook Road in a location which will allow for a safe entrance onto such road or shall have access to such road as specified in Subsection 9.3.5.5. The developed portion of an OSID shall not be located in any Primary or Secondary Conservation Area designated by the "Mashpee Open Space Incentive Plan" dated January, 1987, which is on file in the office of the Town Clerk. No structure within the developed portion of an OSID may be located, and no clearance of natural vegetation, except as provided elsewhere in Section 9.3, may occur, within three hundred (300) feet of any fresh or salt water body of more than ten (10) acres or within three hundred (300) feet of the Mashpee, Santuit, Quashnet or Childs Rivers or Red Brook or within one hundred (100) feet of any active or recently active (within 10 years) cranberry bog, pond under ten (10) acres, or any wetlands as defined by M.G.L. Chapter 131, Section 40. The provisions of this section regarding building setbacks or clearance of vegetation shall not apply to any artificial water body or watercourse created (i.e. as an entirely new water body, not by dredging or enlargement of an existing water body or watercourse) as part of the OSID in conformance with any applicable local, state or federal regulations. A permit shall not be approved for an OSID where the Planning Board determines that the design of the project, or any clearance or removal of natural vegetation within the previous five (5) year period, or any land division or transfer within the previous five (5) year period, was intended to or has the effect of subverting or avoiding the purposes or requirements of Section 9.3.

9.3.2 PERMITTED USES - Within an OSID only the following uses shall be permitted:

9.3.2.1 Single-family detached structures.

9.3.2.2 Any other type of residential structure, including attached single-family dwellings, townhouses, apartment buildings, two family dwellings, clustered units, etc. but not including mobile homes or trailers, provided that

- (a) there shall be an overall average within the OSID of not more than 2.2 bedrooms per unit,
- (b) no building or series of attached structures may contain more than twenty-four dwelling units,
- (c) no structure shall exceed three stories or forty (40) feet in height,

- (d) no structure within 300 feet of the perimeter of the OSID or of the permanently dedicated open space required by Subsection 9.3.3 or of any other dedicated conservation land or natural water body shall exceed two and one-half stories or thirty-five (35) feet in height,
- (e) the length of any single building wall or plane shall not exceed 100 feet measured between the two farthest points along the same horizontal wall plane (including wall indentations or protrusions and any wall planes which are visually substantially the same) and
- (f) such structures shall require written commentary by the Mashpee Fire Chief or his authorized designee for compliance with the fire and safety regulations before a special permit may be granted for the structure or a building permit may be issued.

9.3.2.3 A community building and recreational facilities for the use of the residents of the OSID and their non-paying guests;

9.3.2.4 Buildings and uses ordinarily incidental to the construction, operation and maintenance of a planned residential community, such as buildings for the maintenance and administration of the OSID and for the storage of equipment and supplies therefor, model dwellings, offices for the sale or rental of dwelling units within the OSID, and buildings and facilities for providing to the OSID sewage collection, treatment and disposal, potable and other water, temporary trash storage (in structures less than 200 square feet in floor area) and other utilities, and for the operation and maintenance thereof, but not including restaurants, golf course clubhouses, real estate offices and the like except under the provisions of Subsection 9.3.2.7 below. No sewage treatment or disposal facility or trash storage structure may be located less than three hundred (300) feet from developed or developable residentially zoned property outside the OSID.

9.3.2.5 Where an OSID includes more than two hundred (200) residential units and contains a total area of more than 100 acres, the Planning Board, as part of the OSID Special Permit, may allow commercial uses permitted in the C-2 district to be constructed within the OSID if it finds that such uses are appropriate within the OSID, will serve only residents of the OSID and guests staying in residences within the OSID, and that the proposed use will have no significant adverse effect on neighboring properties outside the OSID, on residents within the OSID or on the Town's environment and natural resources. In no case shall the Board allow more than ten (10) square feet (gross first floor area) of such uses per residential dwelling unit within the OSID and in no case may such uses be located less than three hundred (300) feet from the property line of the OSID.

9.3.3 OPEN SPACE REQUIREMENTS - A minimum of fifty (50) percent of the upland area of the parcel or parcels included within the OSID shall be permanently dedicated as open space.

9.3.3.1 This minimum required open space shall lie within a primary or secondary conservation area shown on the "Mashpee Open Space Incentive Plan" and shall be left in essentially its undisturbed natural state, except for pedestrian, equestrian or bicycle trails, minor clearing for passive recreation purposes, such as picnicking, areas disturbed for water wells, pumphouses and related access, provided that such uses may disturb no more than five (5) percent of such open space. In no case shall such area be used for roads, parking, playgrounds, golf course, tennis courts or other uses requiring significant amounts of clearing, structures or paving. In any OSID, all upland within three hundred (300) feet of the mean high water line of great ponds or the rivers listed in subsection 9.3.1, as well as any upland within one hundred and fifty (150) feet of other water bodies, streams, bogs or wetlands as noted in subsection 9.3.1 above shall be included within such dedicated undisturbed natural open space, except that where the developed portion of the OSID exceeds one hundred (100) acres, upon approval of the OSID Special Permit by the Planning Board in consultation with the Conservation Commission, Shellfish Commission and Harbormaster, and upon approval of any permits required from the Conservation Commission, up to one hundred (100) feet of the shoreline, and a corresponding one hundred (100) foot wide corridor roughly perpendicular to the shoreline through any open space, may be developed for use as a dock, marina, boat launch or other water-related facility, such as a waterfront park or picnic area not involving active recreation facilities, enclosed structures or paved areas covering more than ten percent of such corridor area. The area of such corridor and facilities shall not count toward the required 50% open space or be credited for bonus units under section 9.4. In addition to the minimum required open space in primary and secondary conservation areas, other undisturbed natural open space is encouraged adjacent to the required buffer areas from water and wetlands, and/or adjacent to existing or proposed conservation areas on the site or on neighboring properties where such are present, or otherwise in areas which the Planning Board determines would best serve the purposes of Section 9.3. All of the required open space shall be composed of large unified areas rather than small strips or lots. No open space area whose width or other horizontal dimension is less than one hundred (100) feet shall be counted toward the requirements of this subsection, except in the case of previously approved and valid subdivision lots in a primary or secondary conservation area which are proposed to be converted to preserved natural open space.

9.3.3.2 In addition to the required dedicated open space described in Subsection 9.3.3.1 there shall be a fifty (50) foot buffer strip along the perimeter of the site (except where

required buffer strips from water and wetlands under Subsection 9.3.3.1 are present), preferably left in its natural undisturbed state except for required access roads and except that it shall be additionally landscaped or shall be increased in width if in the opinion of the Planning Board such landscaping or additional width is necessary to protect the privacy of adjoining landowners or the aesthetic quality of important views from public ways. Said buffer may not be used for parking or active recreational activities. In addition, all wetlands as defined by M.G.L. Ch. 131, Section 40 shall be permanently preserved under the same ownership as the majority of the minimum open space required under Subsection 9.3.3.1. All other land uses not allowed in the open space area described by Subsection 9.3.3.1 shall be considered part of the developed area of the OSID.

9.3.3.3 Any open space required to meet the minimum provisions of Subsection 9.3.3 shall be a surveyed and bounded area of land shown on a definitive plan recorded at the Barnstable County Registry of Deeds. Said plan shall be recorded within six months of the approval of the OSID special permit by the Planning Board, along with the covenants and restrictions required by Subsection 9.3.3.4 below. Any transfer of the fee title to property to the Town or a non-profit organization shall be completed within one year of the approval of the OSID special permit.

9.3.3.4 Any open space required to meet the minimum provisions of Subsection 9.3.3 shall be permanently dedicated in one of the following ways:

- (a) Public Ownership - The open space shall be conveyed in fee to the Town of Mashpee and accepted by it for park or open space use.
- (b) Ownership by a 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 on for residential use or developed for accessory uses such as parking or roadway or any other uses not allowed by Subsection 9.3 in minimum open space areas. The non-profit organization shall own and shall 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 open space to the Town of Mashpee for acceptance by it for park or open space use.
- (c) Ownership by a corporation or trust - The open space shall be conveyed to a corporation or trust owned or to be owned

by the owners of the lots or residential units within the development. Ownership of the corporation or trust shall pass with conveyance of the lots or residential units. The corporation or trust shall execute a restriction enforceable by the Town of Mashpee which shall be recorded at the Barnstable County Registry of Deeds. Said restriction shall provide that such land shall be kept in an open and natural state and not be built on for residential use or developed for accessory uses such as parking or roadway or any other uses not allowed by Section 9.3 in minimum open space areas. 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.

9.3.3.5 The developer's declaration of his choice of the three methods described in Subsection 9.3.3.4 above, shall be included in his application to the Planning Board for a Special Permit to develop an OSID, along with the required maps and plans describing the open space areas and the proposed uses within said areas. Before final approval of the OSID, or of any definitive subdivision of land within the OSID, by the Planning Board, the developer shall also file with the Board a copy of the covenants and restrictions necessary to secure the permanent legal existence of the common open space and a copy of any proposed deed for transfer in fee to the Town or to a non-profit organization.

Approval of the OSID shall require approval by the Planning Board of said covenants and restrictions after consultation with the Town Attorney.

9.3.3.6 In the event that the organization established to own and maintain the open space, or any successor organization, shall at any time after establishment of the open space residential development fail to maintain the open space in reasonable order and condition in accordance with the plan, the Town of Mashpee will serve written notice upon such organization or upon the residents of the open space residential development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof, and shall state the date and place of hearing hereon which shall be held within fourteen (14) days of the notice. At such hearing the Town of Mashpee may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty (30) days, the Town of Mashpee in order to preserve the taxable values of the properties within the open space residential development and to prevent the open

space from becoming a public nuisance, may enter upon said open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any right to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the Town of Mashpee shall upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing upon notice to such an organization, or to the residents of the open space residential development, to be held by the Town of Mashpee Planning Board, at which hearing such organization or the residents of the open space residential development shall show cause why such maintenance by the Town of Mashpee shall not, at the election of the Town of Mashpee, continue for a succeeding year. If the Planning Board of the Town of Mashpee shall determine that such organization is ready and able to maintain said open space in reasonable condition, the Town of Mashpee shall cease to maintain said open space at the end of said year. If the Planning Board of the Town of Mashpee shall determine such organization is not ready and able to maintain said open space in reasonable condition, the Town of Mashpee may, in its discretion, continue to maintain said open space during the next succeeding year and subject to a similar hearing and determination, in each year thereafter. The decision of the Planning Board of the Town of Mashpee in any such case shall constitute a final administrative decision subject to review in accordance with any applicable statute of the Commonwealth of Massachusetts. The cost of such maintenance by the Town of Mashpee shall be assessed pro rata against the properties within the open space residential development that have a right of enjoyment of the open space, such assessment shall become a lien on 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 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.

- 9.3.4 INCENTIVE BONUS PROVISIONS - In order to encourage the preservation of critical open space and natural resource areas within the Town of Mashpee for the benefit of the inhabitants of the Town, certain increases in density of residential units within an Open Space Incentive Development may be allowed in accordance with M.G.L. Chapter 40A, Section 9. Such increase in density, in the form of bonuses allocated for transfer of development rights from portions or parcels within an OSID which will be preserved as open space to those portions or parcels of the OSID which will be developed, shall require approval by the Planning Board as part of its approval of a special permit for the OSID in conformance with the following guidelines:

9.3.4.1 For the purposes of this section, a residential unit shall be defined as a dwelling unit for use by one family or group of up to five unrelated individuals which contains only one kitchen and not less than one (1) bedroom nor more than three (3) bedrooms (subject to the restrictions of Subsection 9.3.2). A bedroom shall be defined as any habitable room exceeding sixty (60) square feet in area which is other than a living room, dining room, kitchen, utility (boiler, water heater, laundry, etc.) room or bathroom. Where a proposed dwelling contains four or more bedrooms so defined, it shall be counted as two residential units.

9.3.4.2 The base number of residential units allowed within an Open Space Incentive Development shall be calculated as follows:

- (a) any previously approved, recorded, currently valid and buildable subdivision lot shall count as one residential unit (such lot shall not qualify for any bonus multiplier unless it contains at least 10,000 square feet of upland area);
- (b) any dwelling unit previously approved under a currently valid (unexpired) special permit shall count as one residential unit, (such units shall not qualify for any bonus multipliers - see Subsection 9.3.4.4);
- (c) for undeveloped and unsubdivided land, the number of residential units allowed shall equal the total area of the land, excluding ninety (90) percent of any wetlands as defined by M.G.L., Chapter 131, Section 40, divided by the current minimum lot size within the applicable zoning district(s). Where such land does not have adequate access as defined by Section 4.4, it shall be credited for one-half of the otherwise applicable base number of residential units.

9.3.4.3 Where land is permanently dedicated as open space in conformance with the requirements of Subsection 9.3.3, the residential units (as defined in Subsection 9.3.4.2 above) which would otherwise have been allowed on such specific area of land may be transferred to another portion or parcel of the OSID (subject to the conditions listed in Subsection 9.3.3). Depending on the level of environmental, scenic and public value and on the ultimate level of public access to or ownership of the land so dedicated, the residential units transferred may be subject to the following bonus multipliers:

- (a) On the basis of location, one of the following multipliers may be applied:

1.4 for lands fronting on salt water or salt water wetland (including any water body subject to tidal action) where a minimum of three hundred (300) feet back from the

water or wetland are preserved (only lands within 300 feet back from the water or wetland may qualify for this bonus);

1.3 for lands fronting on fresh water ponds over ten (10) acres, on non-tidal portions of the Mashpee, Quashnet, Santuit or Childs Rivers, Red Brook or Quaker Run (below Route 28), or on adjacent fresh water wetlands where a minimum of three hundred (300) feet back from the water or wetland are preserved (only lands within 300 feet back from the water or wetland may qualify for this bonus).

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

1.4 for lands located in Primary Conservation areas as defined by the Plan;

1.2 for lands located in Secondary Conservation areas as defined by the Plan.

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

1.6 for lands transferred in fee to the Town in conformance with Subsection 9.3.3.4 (a);

1.2 for lands transferred in fee to a recognized non-profit conservation organization (not to include an association of land owners within the development) in conformance with Subsection 9.3.3.4 (b);

1.0 for lands dedicated in conformance with Subsection 9.3.3.4 (c);

The bonus multipliers allowed by (a), (b) and (c) for any particular residential unit may be multiplied to determine the maximum number of units available for transfer from the portion of the preserved open space where that unit could otherwise have been built ($a \times b \times c =$ total units allowed for transfer of each unit). That number is in lieu of the base unit, not in addition to it.

9.3.4.4 Where residential units approved under a special permit as specified in Subsection 9.3.4.2 (b) are to be transferred, a minimum of fifteen thousand (15,000) square feet of land, or the total area of the site covered by the special permit divided by the number of units so approved, whichever is larger, shall be permanently preserved per each residential unit to be transferred. Such units shall not qualify for any bonus multiplier, but the land from which they are transferred shall be counted toward the minimum open space requirement of Subsection 9.3.3.1, provided it otherwise meets the criteria of Subsection 9.3.3.

9.3.4.5 No units may be credited for transfer from lands previously shown as open space on an approved definitive subdivision plan or special permit, or lands subject to Otis Air Base easements or utility easements unless the ownership of such land is transferred in fee to the Town of Mashpee and unless such lands are shown as primary or secondary conservation areas on the "Mashpee Open Space Incentive Plan", in which case the area of such land may be divided by the minimum lot

size applicable at the time and multiplied by a factor of .5 to determine the number of residential units which may be transferred to a developable site or parcel within an OSID, except that where a previously approved definitive subdivision plan or special permit is legally abandoned in its entirety it may be treated as undeveloped and unsubdivided land under Subsection 9.3.4.2 (c). Such previously dedicated open space shall not be counted toward the minimum requirements of Subsection 9.3.1 or 9.3.3.

9.3.5 DEVELOPMENT STANDARDS - Any Open Space Incentive Development shall be designed and constructed in conformance with the following standards.

9.3.5.1 Any special permit for an Open Space Incentive Development shall be conditioned upon approval of all necessary permits from the Board of Health, Planning Board, Board of Appeals, Conservation Commission, Massachusetts Department of Environmental Quality Engineering and other Town, state and federal agencies. No clearing, grading, filling, construction or other development activity will be permitted until the necessary permits for such activities have been approved.

9.3.5.2 All dwelling units except garden apartment buildings or buildings allowed under Subsection 9.3.2.4 shall have a ground floor with direct outside entrance from that floor.

9.3.5.3 No structure within an Open Space Incentive Development may be built closer to the street line, side line or rear line than the minimum requirements of the underlying zoning district, except where the Planning Board, as a part of its approval of the special permit for the OSID, has approved a specific schedule of dimensional controls which differ from those requirements. However, in no case may one or two story primary structures be located less than twenty (20) feet from each other, or may structures containing more than two (2) stories be located less than thirty (30) feet from any other habitable structure without specific approval from the Mashpee Fire Chief. Access to, and the location of, any multi-family structure or structure containing three stories shall also require the approval of the Mashpee Fire Chief before any special permit or building permit may be granted. In no case shall setbacks be less than twenty five (25) feet from the right-of-way or easement line of any street except where greater set-backs are required by other provisions of this section.

9.3.5.4 All development within an OSID shall conform with the parking requirements of Section 8.

9.3.5.5 Access to the OSID shall only be directly from a street listed in Subsection 9.3.1 or from a road which (a) intersects such arterial street within two thousand (2000) feet of the entrance onto it from the OSID, (b) is reconstructed by

the developer to a standard, including sidewalks, bikeways and signalization where required by the Planning Board, which is sufficient to carry the traffic from the OSID plus all other traffic projected to use such road at the time of the completion of the OSID, except that the Planning Board may allow for a pro rata sharing of such reconstruction costs with other major developments requiring special permits which will generate more than two hundred (200) trips per day on the road in question, and (c) does not provide direct driveway access to any single-family residence or school on that portion between the OSID access and the street listed in Subsection 9.3.1 at the time of filing of the OSID special permit application.

9.3.5.6 Streets and drives within the OSID shall be constructed in accordance with the standards adopted by the Planning Board for subdivision streets except that:

- (a) Streets serving up to five residential units or carrying fewer than fifty (50) vehicles per day may be built to reduced standards of paving and right-of-way upon approval of the Planning Board, but in no case shall they provide a paved width of less than 16 feet for two-way traffic.
- (b) Streets which will carry more than two hundred (200) vehicles per day (average annual daily traffic) shall be constructed in conformance with item (c) below. Projected traffic shall be based on a factor of 9.5 trips per day for single-family residences, 7.2 trips per day for town-houses and condominiums, 6.7 trips per day for apartments and 4.5 trips per day for age-restricted retirement communities and on the best available information for other uses.
- (c) The following design standards shall apply to streets which will carry 200-1000 trips per day, and over 1000 trips per day (including streets adjacent to the site of the developed parcels or portions of the OSID or providing access to the OSID from the roads listed in Subsection 9.3.1):

	200-1000	1000+
Trips	30 m.p.h.	40 m.p.h.
Design speed	125 ft.	600 ft.
Intersection separation	11 ft.	12 ft.
Width of lanes	250 ft.	460 ft.
Min. curve radius	9%	8%
Maximum grade		

In addition, (a) no on-street parking shall be allowed on such streets unless eight (8) foot wide parking lanes are constructed, (b) any gutters, beams or other drainage facilities shall be in addition to the required lane width, (c) four (4) foot wide paved sidewalks shall be

required on one side of streets having 500-1000 trips per day, and on both sides of streets having over 1000 trips per day, (d) where required by the Planning Board, bicycle facilities shall be constructed along such streets in the form of two five (5) foot wide paved shoulder bike lanes or an eight (8) foot wide paved bikeway, and (e) pavement thickness and structure, sub-grade design, roadway drainage and other related design features shall require the approval of the Planning Board.

9.3.5.7 No drainage from streets, parking areas, roofs or other impervious surfaces may be directed into any natural water body, stream, river, marsh, bog or other wetland as heretofore defined. Drainage shall be to retention ponds, "M.D.C. - type" drains and similar facilities which allow for evaporation of hydrocarbons and related pollutants before percolation into the soil. Application of nitrogen and other fertilizers, as well as road salt, shall be minimized to reduce impacts on ground water quality. Any recommendations of the Board of Health regarding drainage and ground water quality shall be incorporated into the conditions of any OSID special permit and into the subdivision review process of the Planning Board.

9.3.6 PHASING, EXPIRATION AND EXTENSION - An Open Space Incentive Development may be subdivided, developed and constructed in phases according to a phasing schedule approved by the Planning Board as part of the OSID special permit. Within any OSID, no more than fifty (50) residential units, or twenty (20) percent of the total number of residential units approved under the special permit, whichever is greater, may be constructed during any calendar year and building permits shall not be issued for more than that number of units. The phasing schedule shall be included in the master plan of the OSID and shall indicate the surveyed and bounded open space area required by subsection 9.3.3.3, the approximate boundaries of each phase for which subdivision approval will be sought (if subdivision is to be done in phases) and the proposed year of such subdivision application, the general location of all roads projected to carry over two hundred (200) vehicles per day and the proposed year of their construction, the general location of any proposed recreation facilities, road improvements, sewage treatment plants, commercial uses and similar major structures and amenities and the year in which they are proposed to be built, and a general master plan showing the clusters or areas of residential development and the number and type of residential units approved for development within each area. Where the developer of an OSID continues to file definitive plans of each phase, constructs required improvements, and performs all other actions required by the special permit and this by-law in conformance with the phasing schedule, the special permit shall remain in effect.

Otherwise, a special permit for an Open Space Incentive Development shall become void if the developer has not applied for a building permit for or constructed the proposed improvements contained in the phasing schedule and conditions of the permit within two years of the dates specified on the phasing schedule excluding any time required to pursue or wait the determination of an appeal. If the permit does become void, there shall be no effect on the ownership and location of the required open space areas or on the number of units originally approved under the bonus provisions of this Section. However, the developer shall resubmit plans for the developed portion of the OSID, and any such plans shall be reviewed by the Conservation Commission, Board of Health, Planning Board and any other agencies having applicable regulatory powers under the regulations in effect at the time of resubmission.

The developer may also apply to the Planning Board for a one year extension on the two year expiration date for any element of the OSID, and the Board may grant such request after a properly advertised public hearing if it determines that there is a reasonable justification for the extension, that the developer is acting in good faith regarding the provisions of the OSID special permit, and that there will be no adverse impact on the public health, safety and welfare or on the Town's environment and natural resources. No more than two (2) such extensions may be granted by the Board for any element of the OSID. Failure to complete such element after the expiration of the second extension shall cause the OSID special permit to become void as noted above.

9.3.7 APPLICATION AND REVIEW PROCEDURES FOR OSID - Any Open Space Incentive Development shall be reviewed in conformance with the following procedures. In general, the basic OSID master plan regarding bonuses, site plan, roads, open space areas and phasing, along with any preliminary or definitive subdivision plans, shall be the responsibility of the Planning Board. Design and specific layout of the structures and other detail elements within the overall master site plan shall require review and approval by the Design Review Committee and the Planning Board. Revisions of approved elements of the OSID shall require approval by the Board or committee which issued the original approval, following the same review and hearing procedures.

9.3.7.1 Pre-Application Conferences - Prior to the submission of a formal application for a special permit to develop an Open Space Incentive Development, the applicant shall confer at a public meeting with the Planning Board, Conservation Commission, Design Review Committee and Board of Health to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of detailed plans, surveys and other data, to present to each board a preliminary master plan of the development and to allow each board to make comments on the proposal in order to mini-

mize potential problems at later stages of the application process. In addition to such pre-application conference, the applicant should arrange for site visits by members of each board.

The following items shall be submitted to each board at least fourteen (14) days prior to each pre-application conference and to the Town Planner, the Superintendent of Streets, the Fire Chief, Police Chief and the consulting engineer to the Planning Board at least fourteen (14) days prior to the first of such conferences:

- (a) A topographic plan of the entire site, including all parcels proposed for open space or for development, showing topography at five (5) foot contour intervals or less, all existing paved and improved roads, ways and trails and all existing structures.
- (b) A natural resource map or maps, on a copy or copies of the topographic plan, indicating all wetlands as defined by M.G.L. Chapter 131, Section 40 or otherwise referenced in this Section, generalized vegetation types and location, soil types based on the latest information available from the USDA Soil Conservation Service or on more detailed information obtained by the applicant, and depth to ground water table based on exploration by the developer or on other reliable data acceptable to the Board of Health.
- (c) A sketch plan of the proposed development showing the approximate boundaries of areas proposed as open space as required by Subsection 9.3.3.1, the general location of streets referenced in Subsection 9.3.5.6 (b), the general location of any clusters or areas of residential development, the location of any wellfield or sewage treatment facility, and the general location of any recreation facilities, commercial structures or other major features of the development.

9.3.7.2 Special Permit Application - After pre-application conferences have been completed, the applicant may submit an application (containing all of the items required below) for a special permit for an Open Space Incentive Development to the Planning Board at a regularly scheduled meeting, a copy of which shall forthwith be given to the Town Clerk by the applicant. Within sixty-five (65) days but no less than forty (40) days after the filing of such application with the Board, the Board shall hold a public hearing for which proper notice has been given by publication or posting as required by M.G.L. Chapter 40A Section 11, and by mailing to all parties in interest, including the owners of all real property within three hundred (300) feet of such development.

The following items shall be required as part of the applica-

tion for a special permit under this section, along with receipts indicating that items (c) through (h) and item (k) have been submitted to the Board of Health, Design Review Committee, Conservation Commission, Town Planner, Superintendent of Streets, Fire Chief, Police Chief and Parks and Recreation Director:

- (a) Any required fees established by the Planning Board along with any application forms established by the Board for the purpose, signed by the owner or owners of the parcel or parcels of land to be included in the OSID. If the application is not signed by the owner, it shall be accompanied by a notarized letter signed by the property owner authorizing the agent signing the application to act in his behalf in all matters relative to the application and to legally bind the owner regarding any conditions or requirements of the special permit. More than one party may be named as an applicant for a special permit. However, the special permit is not transferable to other parties not named in the application without specific written permission from the Planning Board.
- (b) A copy of the latest recorded deed or deeds to all property included within the proposed OSID along with a copy of any currently valid recorded subdivision plan or special permit applicable to the site of the proposed OSID.
- (c) A master site plan showing existing and proposed topography at two (2) foot intervals, all proposed roads as referenced in Subsection 9.3.5.6 (b) with plan and profile drawings as required by the Board for definitive subdivision plans, and all existing paved and unpaved roads, ways and trails to remain or proposed to be moved or removed, proposed general locations for structures other than detached single-family residences on subdivision lots, the location of any proposed recreational facilities or other amenities, the location of any wetlands as heretofore defined, the general boundary of any areas to be subdivided into single-family residence lots showing the approximate number of such lots proposed and the location of future road access points from such subdivision onto the roads referenced in Subsection 9.3.5.6 (b) and required to be shown on this plan, the items required by Subsection 9.3.6 to show any proposed phasing of the development, the general location of any bikeways or pedestrian facilities and the specific location of the surveyed and bounded areas to be set aside as open space in conformance with Subsection 9.3.3. (Scale and size of plans etc. shall conform with the Planning Board regulations for definitive subdivision plans unless a waiver is granted by the Board prior to the submission of the Special Permit application).

- (d) Accurate calculations of the area within the OSID of wetlands, of open space to be preserved or transferred to the Town or to a non-profit organization, and of areas proposed for roadways and other development along with the applicant's calculation of allowed dwelling units based on the provisions of Subsection 9.3.4.
- (e) The developer's declaration of his choice of method or methods of dedicating the required open space of the three methods described in Subsection 9.3.3.4, along with proposed covenants and restrictions to secure the permanent legal existence of the preserved open space and the proposed wording of any deed for transfer in fee to the Town or to a non-profit organization.
- (f) A plan indicating the general location of any proposed well field, sewage treatment plant, major water or sewer lines, fire hydrants and any other significant utility element.
- (g) Generalized architectural plans and landscaping plans for all structures other than single-family residences, including treatment of a typical structure, entrance ways and major signs (where development is to be done in phases, only typical plans are required at this stage of review).
- (h) Copies of the minutes of the pre-application conferences held with the, Design Review Committee, Conservation Commission and Board of Health as well as any other letters or comments by those boards or by the Town Planner, Superintendent of Streets, Fire Chief, Police Chief and the consulting engineer to the Planning Board regarding the pre-application proposal for the development.
- (i) A list of the names as certified by the assessors maintaining any applicable tax list, and most recent available mailing addresses of the owners of all real property within three hundred (300) feet of the proposed development notwithstanding that the land of any such owner is located in another town.
- (j) The developer's proposed phasing plan as required by Subsection 9.3.6.
- (k) Any other items requested by the Conservation Commission, Planning Board or Board of Health at the pre-application conferences.

9.3.7.3 Special Permit Review - Upon submission of the required application materials to the Board of Health, Design Review Committee and Conservation Commission; the applicant shall arrange to attend a regularly scheduled meeting of each in order to discuss the application and to solicit their com-

ments. As part of its' presentation at the Planning Board hearing on the OSID special permit, the applicant shall present the minutes of such hearings, (unless fourteen days have elapsed since a hearing and no minutes have become available) any letters or other comments issued regarding the development and any letters or comments received from the other Town Officials noted in Subsection 9.3.7.2. The agencies receiving copies of the plans shall submit written recommendations and comments on the proposed project within 35 days of filing. Failure to comment shall be deemed lack of objection.

In reviewing the OSID application, the Planning Board shall make written findings regarding the following items:

- (a) Does the site meet the eligibility standards of Subsection 9.3.1?
- (b) Are the proposed uses permitted under Subsection 9.3.2?
- (c) Does the proposed open space meet the requirements of Subsection 9.3.3 and conform with the "Mashpee Open Space Incentive Plan"?
- (d) Are the proposed covenants, restrictions or deeds regarding the open space adequate to ensure its protection under the standards of this section and are they legally acceptable to the Town Counsel?
- (e) Is the proposal generally in conformance with the requirements and comments of the Conservation Commission, Board of Health, Design Review Committee and the other Town officials and agencies noted in Subsection 9.3.2.?
- (f) Should the development qualify for the full bonuses allowed by Subsection 9.3.4 because it preserves critical open space and natural resource areas for the benefit of the inhabitants of the Town? (Unless there are serious problems regarding the layout of the development, proposed or existing uses on or adjacent to the proposed open space, or serious potential adverse effects on public health, safety and welfare, open space which meets all of the requirements of Section 9.3.3 should normally qualify for the full bonus allowed.)?
- (g) Does the proposed development conform with the standards of Subsection 9.3.?
- (h) Will the project have a safe and adequate access to a road listed in Subsection 9.3.1?
- (i) Have the location of structures, building heights and setbacks between buildings been approved (where required) by the Fire Chief?

- (j) Does the proposed development conform with the requirements of Subsection 9.3.6?
- (k) Will the proposed development be superior to alternative plans in preserving open space for conservation and public recreation, in its use of the natural features of the land and in allowing for more efficient provision of public services?
- (l) Is the proposed development in the best interests of the public health, safety and general welfare?

No special permit for an OSID may be issued by the Planning Board unless the Board finds in the affirmative with regard to all of the above items.

The Planning Board shall act regarding an OSID special permit application within ninety (90) days of the public hearing. Approval of the special permit shall require a four-fifths (4/5) vote of the Board.

9.3.7.4 The Board may either approve the application as submitted, approve subject to modifications and conditions, or deny the application. If modified or denied, the Board shall include written reasons for such action in its decision. Unless an extension of time is requested in writing by the applicant, if the Board fails to make its decision within ninety (90) days from the public hearing the plan shall be deemed approved. However, no building permit shall be issued until the Special Permit, signed by the majority of the members of the Board, has been recorded in the Registry of Deeds and until any appeal period has passed. Adjustments to roadway locations and design or similar items shown on the master plan which the Board determines are of a minor nature and will not impact on neighboring properties or public interests may be made at a public meeting, but the Board may otherwise modify its special permit decision, phasing and other conditions only by a favorable vote of at least four members of the Board after holding a public hearing as specified in Subsection 9.3.7.2. A notice of the Board's vote shall be delivered within twenty (20) days to the applicant, Building Inspector and Town Clerk. (Addition approved by STM 5/9/88 - Approved by AG 7/28/88)

9.3.7.5 If the project is denied, the developer shall not submit substantially the same proposal for two (2) years, except as provided under M.G.L. Chapter 40A, Section 11.

9.3.7.6 Contents of the Special Permit - If a special permit is approved by the Board, it shall include the following items:

- (a) The Board's written findings regarding Subsection 9.3.7.3;
- (b) The Board's decision regarding the number of bonus

residential units to be allowed, the total number of units to be allowed, and any commercial uses to be allowed;

- (c) Any other conditions imposed by the Board regarding the development, including any required road improvements, bonding, etc.;
- (d) A copy of the master site plan and phasing plan as approved for the development including all items required by Subsection 9.3.7.2 (c);
- (e) Copies of the approved covenants, restrictions and deeds to be recorded under Subsection 9.3.3.3;
- (f) Any other items the Board deems necessary to ensure an adequate legal public record of its findings and decision.

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

9.3.7.7 Subdivision within the OSID - Upon approval of an OSID special permit, definitive subdivision plans shall be submitted to the Planning Board in conformance with the phasing schedule of the special permit and with the normal subdivision regulations of the Town. Subdivision plans shall show any streets included in Subsection 9.3.5.6(b) and any other roadways deemed significant by the Planning Board and shall show street addresses for all proposed buildings within the OSID. (App STM 5/9/88 + AG 7/28/88) No preliminary plans shall be required for subdivisions within an approved OSID which conform with the requirements and conditions of the OSID Special Permit. The definitive plan for the required open space area noted by Subsection 9.3.3.3 shall be filed with the Board no later than thirty (30) days from the date of approval of the OSID special permit.

9.3.7.8 Construction and Development Within the OSID - The construction of buildings or signs within the OSID as well as the construction of any other facility or structure requiring significant disturbance of natural topography or vegetation,

other than detached single-family residences shall require review and approval by the Design Review Committee and concurrence by the Planning Board prior to the issuance of any building permit, special permit or other permit required by this By-Law prior to such construction. Application, review and approval procedures shall be as follows:

- (a) Application shall be made to the Design Review Committee, said application to include, along with any required forms and fees, specific building locations, generalized architectural plans, utilities, vehicular and pedestrian facilities, parking areas, proposed drainage facilities, proposed landscaping and any other materials required by the Committee. Submission of large segments of the OSID phases, or an entire phase, is encouraged.
- (b) Within thirty-five (35) days of the receipt of the application, the Committee shall review the application at an advertised public meeting with regard to conformance with the provisions and conditions of the OSID special permit, any other applicable Town by-laws and regulations, and the attractiveness and appropriateness of the design.
- (c) Within ninety (90) days of said meeting, unless an extension of time is requested in writing by the applicant, the Committee shall make a written decision and conditions regarding the application and transmit them forthwith to the Planning Board along with copies of the plans required under (a) above, as approved, denied or modified.
- (d) Said decision and conditions shall be reviewed by the Planning Board along with the items required under (a) above, at a public meeting held within thirty-five (35) days of their receipt from the Design Review Committee in order to determine their conformance with the provisions and conditions of the OSID special permit and the requirements of this Zoning By-Law.
- (e) Within ninety (90) days of such meeting, the Board shall vote to 1) concur with said decision and conditions, 2) require amendments or add conditions to said decision, 3) reverse said decision with an explanation of the reasons for such action, or 4) remand said decision to the Design Review Committee for re-hearing with an explanation of the reasons for said action. A notice of the Board's action shall be delivered within twenty (20) days to the applicant, the Design Review Committee and the Town Clerk. The Board may require only one remand for rehearing by the Design Review Committee.
- (f) After final approval by the Design Review Committee and Planning Board, the applicant may apply to the Building Inspector to construct any structures so approved. The Building Inspector shall require that prior to the

issuance of any building permit, the applicant show proof that any permit is in conformance with the OSID Special Permit, any conditions imposed by the Design Review Committee and Planning Board, the OSID phasing schedule, if any, and that all required permits have been obtained from the Board of Health, Conservation Commission and other applicable Town, state and Federal agencies.

- (g) The Building Inspector may revoke a building permit issued under this section in case the builder or developer fails to conform to the plans and schedules as approved.
- (h) Changes in the location or design of buildings, signs or other facilities or structures or landscaping approved under Subsection 9.3.7.8 may be made by the Board by a majority vote at a public meeting. A notice of the Board's action shall be delivered within twenty (20) days to the applicant and to the Design Review Committee, Building Inspector and Town Clerk. (Addition voted by STM 5/9/88 - Approved by AG 7/28/88)

9.3.8 MIXED-USE DEVELOPMENTS - As part of an Open Space Incentive Development, the Planning Board may allow the development of residential units within a commercial or industrial zone, except single-family detached structures, as part of a residential development or in conjunction with the uses otherwise allowed in that district as part of a coordinated mixed-use development. Such mixed-use development shall comply with the requirements of Section 9.3 except with regard to permitted uses (Subsection 9.3.2) and except that there shall be at least a 100 foot buffer strip providing a vegetated visual buffer between any residential development in an industrial zone and any other industrially zoned land. There shall be no base residential density credited for developed sites within the commercial or industrial zone. Where land in a commercial or industrial zone is shown on the "Mashpee Open Space Incentive Plan" within a primary or secondary conservation district it may not be included in the developed area of an OSID developed under this subsection but it may be included in preserved open space, for which a base residential density of one unit per 20,000 square feet of land so preserved (excluding 90 percent of any wetlands as defined by M.G.L. Chapter 131, Section 40) shall be credited in calculating incentive bonuses under Subsection 9.3.4. For those portions of such OSID within residential zones, the requirements of Subsection 9.3.1 through 9.3.7 shall apply.

Where residential uses are proposed to be combined with non-residential uses in the same structure, any such structure shall require the approval of the Mashpee Fire Chief and Board of Health in addition to any other required permits and approvals.

For any OSID developed under this subsection, copies of all application materials required by Subsection 9.3.7 to be sub-

mitted to the Conservation Commission, Design Review Committee and Board of Health shall also be submitted to the Board of Appeals and the pre-application conference (Subsection 9.3.7.1), special permit review (Subsection 9.3.7.3) and other items related to review of the OSID by those agencies shall also be required for the Board of Appeals.

9.4 Exception for Cluster Development.

9.4.1 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.

9.4.2 The Planning Board may grant a Special Permit approving a cluster development in any residential zoning district for a tract of land 10 acres or more in which some or all of the lots do not conform to the upland lot area, frontage, setback (except from water or wetlands), or yard requirements of Section 7 of this By-law, provided that the Planning Board 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 and shall be superior to a conventional plan in preserving natural open space, utilizing natural features of the land, and allowing more efficient provision for public services. Where applicable, the Open Land shall be located in Primary or Secondary Conservation Areas designated by the Mashpee Open Space Conservation and Recreation Plan.

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 upland area of the tract, in square feet, exclusive of water, wetlands as defined by Section 40, Chapter 131 of the General Laws, and existing and proposed streets is wholly divisible by the minimum lot size, in square feet, normally required for the zoning 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 continuous.

4. Each lot shall have a minimum frontage of seventy-five (75) feet on a public or private street except as provided for under footnote number 1 of Subsection 7.4.

5. The minimum lot width at the required minimum setback 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 the 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 of developed or 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 uses.

7. Provisions shall be made, by way of a deed restriction enforceable by the Town of Mashpee, so that the required Open Land shall be:

- a) Restricted to agricultural, open space or park uses and, except for agricultural uses, shall be left in essentially its undisturbed natural state, except for pedestrian, equestrian or bicycle trails, minor clearing for water wells, pumphouses and related access, provided that such uses or activities may disturb no more than ten (10) percent of such Open Land;
- b) Open to such allowed uses by at least the owners and occupants of the lots in the tract in the case of ownership under criterion 6.c above, and to the general public in the case of ownership under criteria 6.a and 6.b above;
- c) Restricted so that no structure, road, parking area, ten-

nis court or similar development shall be erected thereon, except for pumphouses and similar minor public utility structures, and so that no such structure shall be more than fifteen (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. All wetland areas as defined in Section 40, Chapter 131 of the General Laws, plus a minimum of thirty-five percent (35%) of the total upland area of the tract (excluding roads, street layouts and other travelled ways), including all land within one hundred (100) feet of said wetland areas, shall be preserved as Open Land as described in criteria 6 and 7 above.

9.4.3 The application to the Planning Board for a special permit for a Cluster Development shall include all materials required by the Subdivision regulations for a Preliminary Plan, plus the required application forms, fees and any other materials required by the Board, and shall be filed at a regular meeting of the Board, along with receipts from the Board of Health, Conservation Commission, Town Planner, Recreation Commission, Superintendent of Streets, Fire Department and Police Department indicating that copies of the required application materials have been received by those agencies and a list of the names and most recent available addresses of all persons owning land within three hundred (300) feet of the proposed Cluster Development tract. After submission of the required materials to the Board, the applicant shall forthwith deliver a copy of said materials, along with written notice that the application materials have been submitted to the Board, to the Town Clerk.

Within 65 days, but no less than 40 days, after the required application materials have been submitted, the Board shall hold a public hearing, notice of which shall be published and sent by mail to all parties in interest in conformance with Section 11, Chapter 40A of the General Laws.

The Planning Board shall, within ninety (90) days following the public hearing, take final action to approve, approve subject to modifications, or deny the special permit application. Failure by the Board to take final action upon the application for a special permit within said ninety days following the date of the public hearing shall be deemed to grant the permit applied for.

Approval of the special permit shall require a four-fifths (4/5) vote of the Planning Board based on the application materials, any comments received from other Town agencies or at the public hearing, the criteria contained in Subsection 9.4.2 and on the best judgment of the Board regarding the accomplishment of the purpose of this Section and the protection of the public health, safety and welfare. The Board may require any reasonable conditions to ensure that the criteria and purpose are met and that public interests are protected.

Special permits granted under this Subsection 9.4 shall lapse within two (2) years, which shall not include such time required to pursue or await the determination of an appeal under Section 17, Chapter 40A of the General Laws, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause. Construction of streets and utilities shall constitute substantial use for the purpose of the paragraph.

9.4.4 After a special permit for a Cluster Development has been approved by the Planning Board, an application may be filed for a Definitive Subdivision Plan based on the special permit approval and conditions and following the normal procedures specified in the Subdivision Regulations for Definitive Plans. No Preliminary Plan submittal will be required.

9.5 Deleted

9.6 DESIGN REVIEW COMMITTEE - A Design Review Committee shall be established to advise the Building Inspector, Planning Board and Board of Zoning Appeals on matters of architectural and design concern in the review of applications for special permits and sign permits in the R-5, R-3, C-2, I-1, C-1, C-1-SV Incentive, and C-1-0 Incentive Zoning Districts. Architectural and design concern shall include but not be limited to: site planning, building placement, building size, design compatibility, exterior appearance, construction materials and finishes, parking and roadways, landscaping and site grading, building entrance and exit placement and signs.

The Design Review Committee will sit with the Planning Board and Board of Zoning Appeals in any public meetings dealing with development proposals in the R-5, R-3, C-2, I-1, C-1, C-1-SV Incentive, and C-1-0 Incentive Zoning Districts. The Design Review Committee may call special meetings of its own to review applications. Findings of the Design Review Committee shall be advisory to the Planning Board and Board of Zoning Appeals. Full power for granting or denial of applications for special permits shall remain with these Boards.

Membership of the Design Review Committee shall consist of four persons, one each from the Planning Board and Board of Zoning Appeals and two members to be appointed by the Board of Selectmen. The Planning Board member shall be appointed by the Plan-

ning Board Chairman, and the Board of Zoning Appeals member shall be appointed by the Chairman of the Board of Zoning Appeals. One of the two members appointed by the Board of Selectmen shall be an architect, landscape architect, or civil engineer. In the event that no such person is available the Design Review Committee may retain, with prior approval of the Board of Selectmen, the services of an architect, landscape architect, or civil engineer.

SECTION 10: SIGNS

10. Intent

It is the intent of this by-law to protect, conserve, and improve the visual quality of the Town of Mashpee while providing reasonable regulations and control of the erection and maintenance of signs and advertising devices without restricting the conduct of lawful enterprise.

10.1 No sign 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 permitted by this section.

10.2 Plans, Specifications and Permits

10.2.1 Owner's consent: Before any permit is granted for the erection of a sign, plans and specifications shall be filed with the building inspector showing the dimensions, materials and required details of construction, including loads, stresses and anchorage, where required. The application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected.

10.2.2 New signs: A new sign shall not hereafter be erected, constructed, altered or maintained except as herein provided and until after a permit has been issued by the building inspector, and the bond, if required, shall have been filed in accordance with Section 10.8. Signs of over twenty (20) square feet, existing as of the effective date of this by-law, shall have their continued use subject to the issuance of a permit from the building inspector. The deadline for obtaining such a permit is Sept. 1, 1985. Any sign over six (6) square feet in a commercial or industrial zoning district, or for a commercial, office or industrial use in a residential zoning district, shall require review and comment by the Design Review Committee prior to the issuance of a permit for said sign by the Building Inspector.

10.2.3 Alterations: A sign shall not be enlarged or relocated except in conformity to the provisions of this article for new signs, nor until a proper permit has been secured. The changing of movable parts of an approved sign that is designated for such changes, or the repainting or reposting of display matter, shall not be deemed an alteration; provided the conditions of the original approval and the requirements of this article are not violated.

10.2.4 New signs exceeding twenty (20) square feet require a special permit from the Board of Appeals, in accordance with Section 6.

10.3 Prohibitions

- 10.3.1 Moving or flashing signs: No sign, any part of which is designed intentionally to move, and no sign illuminated by or including any flashing or oscillating light shall be permitted. Strings of pennants or so-called whirlygigs and the like shall be included in this prohibition, which shall also apply to window signs, as defined herein. A sign which is designed, for structural reasons, to align itself with the direction of the wind shall not be considered a moving sign.
- 10.3.2 Overhanging signs: No signs shall be permitted which overhang public ways, however, this provision shall not apply to street name signs nor to signs or devices erected by the Town, County or Commonwealth for the direction and control of traffic, nor shall this provision apply to signs permitted under Section 10.3.4.
- 10.3.3 Signs on trees, etc.: Except for signs warning of danger or prohibiting trespass or the like, no sign shall be printed on or affixed to any tree, fence, utility pole, rock or ledge, nor painted or posted on any wall without an intermediary removable surface.
- 10.3.4 Private signs on Town property: Unless a permit for such a sign is authorized by the Board of Selectmen, no such signs are permitted. No such authorization shall be given until after a duly advertised public hearing. Any such signs shall conform in all respects to all other provisions of this section. All permits issued hereunder shall be subject to the provisions of 10.8. Permits for such signs may be revoked at any time by the Board of Selectmen.
- 10.3.5 Portable signs, including portable signs attached to a permanent post or installed on any portable vehicle, are not permitted.
- 10.3.6 Independent stand signs advertising products are not permitted.
- 10.3.7 Window neon-type signs advertising products are not permitted.

10.4 Maintenance

- 10.4.1 All signs, whether erected before or after the effective date of this by-law, shall be maintained in a safe condition to the satisfaction of the building inspector.
- 10.4.2 When any sign becomes insecure, in danger of falling, or otherwise unsafe, or poorly maintained as evidenced by illegibility or excessive defacement or missing sections; or if any sign shall be unlawfully installed, erected or main-

tained in violation of any of the provisions of this by-law, the owner thereof or the person or firm maintaining same, shall upon written notice of the building inspector, forthwith in the case of immediate danger and in any case within not more than ten (10) days, make such sign conform to the provisions of this article or shall remove it. If within ten (10) days the order is not complied with, the building inspector may remove such sign at the expense of the owner or lessee thereof. Any sign existing in a commercial or industrial district shall be removed within sixty (60) days or such further period as allowed by written letter of the building inspector, following the permanent closing of the commercial or industrial operation. Any sign not removed in compliance herewith may be removed by the building inspector.

10.5 Residential Districts

- 10.5.1 One sign displaying the street number or name of the occupant of the premises or both, not exceeding four (4) square feet in area is permitted. Such sign may be attached to a building or 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.
- 10.5.2 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 is permitted. 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 sign shall be located nearer a street than one-half the required front yard depth.
- 10.5.3 On the premises with a lawfully non-conforming non-residential use, one sign not more than four (4) square feet signboard area is permitted.
- 10.5.4 One "For Sale" or "For Rent" sign, not more than three (3) square feet signboard area and advertising only the premises on which the sign is located is permitted.
- 10.5.5 One real estate sign, not more than three (3) square feet signboard area is permitted. Such sign shall be removed forthwith upon signing of a legally binding purchase and sales agreement or lease agreement.
- 10.5.6 One building contractor's sign on a building while actually under construction, not exceeding four (4) square feet signboard area is permitted. Such sign shall be removed forthwith upon completion or occupancy of the structure.
- 10.5.7 In Residential Districts all sign or advertising devices shall be stationary and shall not contain any visible moving or mov-

able parts. No sign or advertising device in such Districts shall be of neon, neon-type or illuminated tube-type. Lighting or 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 eleven (11) p.m., except as permitted by the Board of Selectmen, upon application to them for a permit, citing reasons for the exceptions.

10.5.8 Subdivisions: One subdivision name sign, not to exceed twenty (20) square feet, may be permitted for each entry to a subdivision from a public way.

10.5.9 Political Signs: Not more than two political signs, not to exceed 2' x 3', may be erected in a residential district with the owner's permission for a period of thirty (30) days immediately preceding any election. Such signs shall be removed within 24 hours after the election day."

10.6 Commercial and Industrial Districts

Signs shall relate to the premises on which they are located and shall only identify the occupancy of such premises or advertise the articles and services available within said premises, except with special permit.

10.6.1 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, except by permit from the building inspector.

10.6.2 On each lot in a Commercial or Industrial District there is permitted one sign affixed to the exterior of each building for each business therein. 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. The maximum area of the sign shall be 5 percent of the area of the wall upon which the sign is located. In addition, an identification sign at each building entrance will be exempted which shall be up to four (4) square feet in area or 3 percent of the area of wall upon which the sign is located if approved by Special Permit by the Board of Appeals.

10.6.3 In an Industrial District one free standing sign is permitted on each lot, provided that it does not exceed forty (40) square feet in signboard area, does not exceed five (5) feet in height, and is located closer than fifty (50) feet to a lot line. In Commercial Districts one free standing sign per road access point is permitted. Such signs may not exceed forty (40) square feet in signboard area and may not be closer than

twelve (12) feet to any lot line. 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.

10.6.4 Advertising signs or other devices of any kind advertising products or services for sale shall not be permitted to be affixed to the outside or inside windows of any structure, so as to be visible from outside of the structure except that such signs or devices advertising seasonal products or sale items may be permitted, but in no event shall more than ten (10) percent of the area of the window be covered by said sign or device.

10.6.5 No free standing sign shall have signboard area (or display area if no signboard) exceeding the dimensions allowed under 10.6.3 above, measured from the tops of the topmost display elements, and including in such measurements any blank space between display elements. No display or signboard dimensions shall exceed forty (40) feet for a free-standing sign.

10.6.6 Illuminated signs are permitted, subject to the following conditions:

a) No sign shall be intermittently illuminated, internally illuminated, nor of a traveling light, animated or flashing light type. No exposed neon-type signs shall be permitted in the Town of Mashpee. (Approved STM 5/9/88 - App. AG 7/28/88)

b) Sign illumination is permitted only between the hours of seven (7) o'clock in the morning and eleven (11) o'clock in the evening, except the signs of commercial or industrial establishments may be illuminated during any hours these establishments are open to the public or in operation. Illuminated signs on public buildings and land are exempt from this provision.

10.6.7 Illumination: Except as otherwise prohibited herein, signs may be illuminated by any fixed steady light source, of such nature and in such manner that the brightness of the sign face does not exceed one hundred (100) lumens per square foot. Except for non-exposed neon-type signs, where permitted, such illumination shall be so arranged that its exterior source is not directly visible from any way or occupied building, and no illumination shall be of any color that might be confusing to traffic. Holiday lights shall not be deemed as coming within the provisions of this paragraph, but this paragraph shall apply to window signs.

10.6.8 In all zoning districts, for safety reasons, any private outdoor lighting fixture, exclusive of street lights, 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.

- 10.6.9 Where a group (three or more) of business buildings are built as a "Plaza", "Mall", "Village", or "Shopping Center", and it is desired to identify the groupings as such, in addition to signs permitted for individual buildings or businesses, there may be permitted one free-standing sign, set back not less than twenty-five (25) feet from each major street, and not to exceed eighty (80) square feet in area, nor the maximum building height permitted in the zoning district in which the sign is located.
- 10.6.10 Gasoline stations: Standard pump head signs of gasoline filling stations shall not be included in the total area of signs permitted, and no permit shall be required therefor, but they shall conform to the provisions of Section 10.6.7. One free-standing sign, not to exceed four (4) square feet in signboard area, displaying gasoline prices may be placed along the front lot line of each gasoline station.
- 10.6.11 Contractors and Developers: For each construction or development project, there may be issued a temporary permit for one standing sign not to exceed sixteen (16) square feet in signboard area, setting forth facts and names pertinent to the subject. Such signs shall be removed forthwith when the project is completed.

10.7 Violations and Penalties

- 10.7.1 Anyone who shall violate a provision of Section 10 of the by-law shall be punishable by a fine of not more than \$200 for each violation. Each day during which any portion of a violation continues shall constitute a separate offense. Violations shall be considered to begin on the first day after the time allowed for correction of the violation has elapsed. Official notice of violations and time allowed for correction shall be given in writing by the Town of Mashpee.

10.8 Bonds and Liability Insurance

- 10.8.1 Filing: A person shall not erect, install, remove, rehang or maintain over public property any sign for which a permit is required under the provisions of this by-law until approved bond or liability insurance shall have been filed in accordance with the requirements of the Board of Selectmen.
- 10.8.2 Conditions: Such bond or insurance policy may provide that the Town shall be protected and held harmless from any and all claims or demands for damages by reason of any negligence of the sign hanger, contractor or his agents, or by any reason of defects in the construction or damages resulting from the collapse, failure or combustion of the sign or parts thereof.

10.8.3 Notice of cancellation: Any such obligation shall remain in force and effect during the lifetime of every such sign and shall not be cancelled by the principal or surety until after thirty (30) days notice to the building inspector,

SECTION 11: FLOOD PLAIN ZONE PROVISIONS

Permits for^o new construction, alteration of structures, or other development (any man-made change to improved or un-improved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations), at or below the Base Flood Elevation as specified within the A and V zones (in unnumbered A zones, in the absence of Flood Insurance Administration data, the base flood elevations shall be determined by obtaining, reviewing and reasonably utilizing any existing base flood elevation data from Federal, State, local or other sources) as designated on special F.I.A. Flood Insurance Rate Maps dated June 5, 1985, as amended and the Flood Insurance Study, dated December 5, 1984 (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 containing 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 non-residential structures shall either be similarly elevated or, together with attendant utility** and sanitary facilities, be flood proofed to not less than base elevations.

*

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

**

(Utilities include electrical, heating, ventilation, plumbing, air conditioning equipment and sanitary and other service facilities.)

2. Where flood-proofing 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 744.0 as amended. The Building Inspector shall (a) review all proposed development within the floor 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, review, and reasonably utilize any base flood elevation and floodway data available from a Federal,

State, local or other source, as criteria for requiring that new construction, substantial improvements, or other development in Zone A meet floodplain zone provisions.

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 application to be located landward of the reach of the mean high tide. Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code, all new construction and substantial improvement within the V zones shall be (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) Manufactured homes (except in existing manufactured home parks and existing manufactured home subdivisions).

5. The Zoning Board of Appeals 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.

- (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, AH, and AE, for new manufactured home parks and manufactured home subdivisions, and for existing manufactured home parks and manufactured 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, (1) lots are to be elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level, (2) adequate surface drainage and access for a hauler must be provided, and, (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 pilings more than 6 feet above the ground level.
8. Notwithstanding the applicable provisions of the Massachusetts Uniform Building Code in all manufactured homes to be placed within Zones A1-30, but not into a manufactured home park or manufactured home subdivision:
 1. Lots must be elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level.
 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 11A: MASHPEE RIVER AND QUASHNET RIVER
PROTECTIVE DISTRICTS

1. Purpose: The purpose of this by-law is the preservation of the Mashpee River and Quashnet River and the protection of wildlife resources.
2. The area affected shall be the Mashpee River and Quashnet River marshes and uplands up to 100 horizontal feet from the natural bank of the Mashpee River and Quashnet River as delineated on the plan entitled, Mashpee River Protective Zoning By-Law. All distances shall be measured in horizontal feet. In tidal areas the area affected shall be measured from a line which is 2.8 feet above the National Geodetic Vertical Datum (formerly known as mean sea level). In freshwater wetland areas, this shall mean the landward edge of the freshwater marsh as defined in M.G.L. Ch. 131 Section 40. The area subject to this by-law shall be: the source of the Mashpee River beginning at the northern point, thence running in a southerly direction along the natural bank to a depth of 100 feet on both sides of the Mashpee River terminating on the western bank of the river on the southern point of Parcel No. 8 located on Assessor's Map 95, now or formerly of Herbert Stenberg, thence running southerly and terminating on the east side of the Mashpee River bounded by Parcel No. 24 located on Assessor's Map No. 90, also known as the northerly boundary of Pirate's Cove. The area known as Pirate's Cove and all areas south of Pirate's Cove shall be excluded from the provisions of the by-law. The following area shall also be subject to this by-law. The intersection of Quashnet River with the southern right-of-way boundary of State Route 151, thence running in a southerly direction along the natural bank, to a depth of 100 feet on both sides of the Quashnet River to its southern point at the intersection with the boundary between the Towns of Mashpee and Falmouth.
3. PROHIBITED USES IN ANY AREA AFFECTED BY THIS BY-LAW:
 - (A) No structure of any kind may be located within the area subject to this by-law with the exception of docks which may be constructed in keeping with the state and local law.
 - (B) No dumping, filling, removing of material or dredging, except for maintenance dredging of the Mashpee River and Quashnet River, may be done except as subject to the requirements of M.G.L. Ch. 131, Sec. 40, and all other applicable laws, by-laws and regulations.
4. EXISTING USES: Any existing structure or use of such structure lawful at the effective date of this by-law may continue although such structure or use does not conform to this by-law. Any existing structure may be repaired, maintained

and improved but in no event made larger. Any non-conforming structure which is destroyed, may be built on the same location but no larger than the original overall square footage.

5. **HARDSHIP:** To avoid undue hardship, nothing in this by-law shall be deemed to require a change in the design, construction or intended use of any structure with respect to which a building permit was legally granted prior to the effective date of this by-law. Such construction must be substantially completed within a period of two years from the effective date of this by-law, or such construction shall be required to conform to this by-law.
6. **EXCEPTIONS:** Any owner of a lot which is buildable at the time of the effective date of this by-law but which is made unbuildable due to said by-law, may apply to the Board of Appeals for a variance.
7. **POWERS:** Nothing contained in this by-law is intended to override, restrict, impede or otherwise invalidate any of the rules, regulations, laws or by-laws, etc. of the Mashpee Conservation Commission, the Town of Mashpee, or the Commonwealth of Massachusetts which pertain to the subject matter of this by-law. Unless otherwise indicated, this Mashpee River and Quashnet River Protective District zoning by-law shall govern and supersede all other provisions of the zoning by-law.

SECTION 11B: GROUNDWATER PROTECTION DISTRICT

1. AUTHORITY

This by-law is adopted by the Town of Mashpee under its home rule powers, its police powers to protect the public health, safety and welfare, and under powers authorized by Mass. Gen. Laws, Ch. 41A, as amended.

2. PURPOSES

The purposes of this by-law are to protect public health from the contamination of existing and potential public and private water supplies and to protect the general welfare by preserving limited water supplies for present and future use.

3. DEFINITIONS

3.1 "Animal feedlot" means a plot of land on which twenty-five or more livestock per acre are kept for the purposes of feeding.

3.2 "Aquifer" means a geologic formation, group of formations or part of a formation which contains sufficient saturated permeable material to yield significant quantities of potable groundwater to public or private wells.

3.3 "Disposal" means the deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material into or on any land or water so that such hazardous material or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

3.4 "Groundwater" means all the water beneath the surface of the ground.

3.5 "Hazardous materials" means any substance or combination of any substances, not including any liquid petroleum product, that, because of quantity, concentration or physical, chemical or infectious characteristics, poses a significant present or potential hazard to water supplies or to human health if disposed of into or on any land or water in this Town. Any substance deemed a "hazardous waste" in Mass. Gen. Laws, Ch. 21C shall also be deemed a hazardous material for purposes of this by-law.

3.6 "Impervious" means impenetrable by water.

3.7 "Leachable wastes" means waste materials, including solid wastes, sewerage, sludge and agricultural wastes, that are capable of releasing water-borne contaminants to the surrounding environment.

- 3.8 "Mining of Land" means the removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores and bedrock.
- 3.9 "Recharge area" means any area of porous, permeable geologic deposits, especially, but not exclusively, deposits of stratified sand and gravel, through which water from any source drains into an aquifer, and includes any wetland or body of surface water surrounded by or adjacent to such area, together with the watershed of any wetland or body of surface water adjacent to such area.
- 3.10 "Solid wastes" means useless, unwanted or discarded solid materials with insufficient liquid content to be free flowing, including, for example, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.

4. DELINEATION OF GROUNDWATER PROTECTION DISTRICT

- 4.1 For the purposes of this by-law there is hereby established within the Town of Mashpee an overlay district consisting of certain groundwater protection areas, including aquifers and recharge areas, which are delineated on a map dated January, 1988 entitled "Groundwater Protection District, Town of Mashpee" and which shall be considered as superimposed over other districts established by the zoning by-laws of this town. This map, as it may be amended from time to time, is on file with the office of the Town Clerk, and, with any explanatory material thereon, is hereby made a part of this by-law.
- 4.2 Uses otherwise not permitted in the portions of a zoning district superimposed by this district shall not be permitted in this district.
- 4.3 Where the bounds of the Groundwater Protection District, as delineated on the Groundwater Protection District map, are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located. At the request of the owner(s), the Town may engage a professional hydrogeologist or soil scientist to determine more accurately the location and extent of an aquifer or recharge area and may charge the owner(s) for all or part of the cost of the investigation.
- 4.4 The Groundwater Protection District shall include all of the land within the lines described in Section 11B.4.4.1 through Section 11B.4.4.5.
- 4.4.1 Including all of the land within the following described lines.

Beginning at the point where the southern shore line of Ashumet Pond intersects the Mashpee/Falmouth Town Line;

Thence southeasterly and easterly along the Mashpee/Falmouth Town Line to the westerly sideline of Falmouth Road (Route 28);

Thence northerly and westerly by the eastern property line of the 1987 Mashpee Assessors' Map 87, Plots 4 and 5, Map 88, Plot 40 and Map 81, Plot 1 to the southerly line of the New Bedford Gas and Electric Light Company easement where it intersects the western property line of Map 81, Plot 6;

Thence westerly 1567 feet, more or less, to the easterly sideline of existing Whittings Road;

Thence northerly by the easterly sideline of existing Whittings Road to its intersection with the south sideline of the Nathan S. Ellis Highway (Route 151);

Thence westerly by the southern sideline of the Nathan S. Ellis Highway (Route 151) to its intersection with the Childs (Herring) River;

Thence northerly along the centerline of the Childs River and westerly and northerly along the shore line of John's Pond to its intersection with the northern property line of Assessors' Map 57, Plot 44A;

Thence northwesterly along the northern property line of Assessors' Map 57, Plot 44A a distance of 609 feet, more or less to its intersection with the eastern sideline of Hooppole Road;

Thence west-northwesterly in a straight line to the intersection of the northern property line of Assessors' Map 57, Plot 42 and the shore line of Ashumet Pond;

Thence westerly along the shore line of Ashumet Pond to the point of beginning at the Mashpee/Falmouth Town Line. (Feb.'88 STM, AG Approv. 3/16/88)

4.4.2 Including all of the land within the following described lines.

Beginning (sic) at a point at the centerline of Route 130 where it intersects with the centerline of existing Great Hay Road as shown on Assessors' Sheet 13 in the 1985 Mashpee Map Volume;

Thence westerly along the centerline of Great Hay Road at a distance of 1852 feet more or less to the intersection with the property line of Otis Air Force Base;

Thence southerly along the Otis Air Force Base property line as shown on Assessors' Sheet 19 at a distance of 480 feet more or less;

Thence easterly along the easterly Otis Air Force Base property line at a distance of 80 feet more or less;

Thence easterly and southerly along the southeasterly Otis Air Force Base property line at a distance of 380 feet more or less;

Thence southerly along the eastern Otis Air Force Base property line at a distance of 570 feet more or less;

Thence westerly and southerly along the southwesterly Otis Air Force Base property line at a distance of 241 feet more or less;

Thence southerly and easterly along the Otis Air Force Base property line as shown on Assessors' Sheet 26 at a distance of 357 feet to the southerly sideline of Ashumet Road;

Thence westerly and southerly along the Otis Air Force Base property line at a distance of 785 feet more or less;

Thence southerly along the Otis Air Force Base property line at a distance of 640 feet more or less;

Thence easterly along the Otis Air Force Base property line at a distance of 240 feet more or less to the intersection of Plot 2 as shown on Assessors' Sheet 26;

Thence easterly and southerly along the western property line of Plot 2 at a distance of 219 feet more or less to the intersection with Plot 1 as shown on Assessors' Sheet 26;

Thence easterly and southerly along the western boundary of Plot 1 at a distance of 219 feet more or less to the intersection of land owned by William and Venice Spreaggs and shown as Plot 12 on Assessors' Sheet 34;

Thence easterly and southerly along the westerly boundary of Plot 12 as shown on Assessors' Sheet 34 at a distance of 1700 feet more or less to the intersection of the northwest boundary of Plot 9 as shown on Assessors' Sheet 34;

Thence westerly and southerly along the northeasterly property line of Plot 9 as shown on Assessors' Sheets 34 and 43 at a distance of 600 feet more or less to the northwest boundary of Plot 3 on Assessors' Sheet 43;

Thence westerly and southerly along the northwesterly property line of Plot 3 at a distance of 190 feet more or less;

Thence southerly along the westerly property line of Plot 3 at a distance of 730 feet more or less to the centerline of existing Grafton Pocknett Road as shown on Assessors' Sheet 43;

Thence easterly and then southerly along the centerline of Grafton Pocknett Road at a distance of 1609 feet more or less to

the northwesterly bound of Plot 5 as shown on Assessors' Sheet 43;

Thence southerly along the westerly property line of Plot 5 at a distance of 156 feet more or less;

Thence westerly and southerly along the northwesterly property line of Plot 5 as shown on Assessors' Sheets 43 and 51 at a distance of 730 feet more or less to the northwest bound of Plot 3 as shown on Assessors' Sheet 51;

Thence southerly along the westerly property line of Plot 3 as shown on Assessors' Sheet 51 at a distance of 2339 feet more or less to the westerly bound of Plot 4 as shown on Assessors' Sheets 51 and 59;

Thence easterly and southerly along the southerly property line of Plot 4 as shown on Assessors' Sheets 51 and 59 at a distance of 1668 feet more or less and continued in a generally southerly direction at a distance of 2339 feet more or less to the southwest property line of Plot 46 as shown on Assessors' Sheet 44;

Thence southerly at a distance of 35 feet more or less to the southwest bound of Plot 46 as shown on Assessors' Sheet 44;

Thence easterly and northerly along the southerly property line of Plot 46 as shown on Assessors' Sheet 44 at a distance of 584 feet more or less to the centerline of Lowell Road as shown on Assessors' Sheet 44;

Thence easterly and northerly along the centerline of Lowell Road to the intersection with the centerline of Ashers Path;

Thence northerly along the centerline of Ashers Path to the intersection of the centerlines of William Mingo Road and Lovells Lane;

Thence northerly and easterly along the centerline of Lovells Lane to the intersection with the centerline of Route 130;

Thence northerly and westerly along the centerline of Route 130 to the intersection with the centerline of Great Hay Road and point of origin.

4.4.3 Including all of the land within the following described lines.

Beginning (sic) at a point at the southern sideline of Route 130 at the northwest bound of Plot 68 as shown on Assessors' Sheet 37 in the 1985 Mashpee Map volume;

Thence southerly and westerly along the westerly property line of Plot 68 as shown on Assessors' Sheet 37 at a distance of 1209 feet more or less to the northwest bound of Plot 66 as shown on Assessors' Sheet 46;

Thence southerly and westerly along the westerly property line of Plot 66 at a distance of 675 feet more or less to the southwest bound of Plot 66 as shown on Assessors' Sheet 46;

Thence southerly and easterly along the southwesterly property line of Plot 66 at a distance of 835 feet more or less to the southwest bound of Plot 65 as shown on Assessors' Sheet 46;

Thence southeasterly along the southwesterly property line of Plot 65 at a distance of 375 feet more or less to the northwest bound of Plot 64 as shown on Assessors Sheet 46;

Thence southerly and easterly along the southwesterly property line of Plot 64 at a distance of 1585 feet more or less to the Mashpee/Barnstable Town Line;

Thence easterly along the Mashpee/Barnstable Town Line at a distance of 2430 feet more or less to the intersection with the southern sideline of Route 130;

Thence northerly and westerly along the southern sideline of Route 130 at a distance of 5000 feet more or less to the northwest bound of Plot 63 as shown on Assessors' Sheet 37 and point of origin.

4.4.4 Including all of the land within the following described lines.

Beginning (sic) at a point on the western bound of Plot 9 as shown on Assessors' Sheet 38 in the 1985 Mashpee Map volume;

Thence southerly along Santuit Pond to the mouth of the Santuit River;

Thence northerly and westerly from the mouth of the Santuit River along Santuit Pond to the northeast boundary of Plot 9 as shown on Assessors' Sheet 38;

Thence westerly and southerly along the northerly property line of Plot 9 at a distance of 1172 feet more or less to the western bound of Plot 9 and point of origin.

4.4.5 Including all of the land within the following described lines.

Beginning (sic) at a point at the northwest bound of Plot 5 as shown on Assessors' Sheet 16 in the 1985 Mashpee Map volume;

Thence from the easterly sideline of existing Tobey's Road as shown on Assessors' Sheet 13 to the intersection of the easterly sideline of Cotuit Road;

Thence southerly along the easterly sideline of Cotuit Road at a distance of 300 feet more or less to the southwest bound of Plot 4 as shown on Assessors' Sheets 16 and 22;

Thence easterly and northerly along the southerly property line of Plot 4 as shown on Assessors' Sheets 16 and 22 to Santuit Pond;

Thence northerly, easterly and southerly along the shoreline of Santuit Pond to the northwestern corner of the 1987 Mashpee Assessors' Map 30, Plot 138;

Thence northeasterly along the northern property line of Map 30, Plot 138 to the Mashpee-Barnstable Town Line;

Thence northwesterly along the Mashpee-Barnstable Town Line to the intersection of the Mashpee, Barnstable and Sandwich Town Lines;

Thence westerly along the Mashpee-Sandwich Town Line to the northwest bound of Plot 5 as shown on the 1985 Mashpee Assessors' Map 16, Plot 5 and the point of beginning. (Feb.'88 STM, AG Approv. 3/16/88)

4.4.6 Including all of the land within the following described lines:

Beginning at a point at the intersection of State Route 28 and Noisy Hole Road, which is also on the Town line between Mashpee and Barnstable;

Thence northerly along the Town line as it follows Noisy Hole Road a distance of 1050 feet, more or less;

Thence northeasterly and easterly along the Town line a distance of 2050 feet, more or less, to the southwest corner of Assessors' Map 46, Plot 64;

Thence northwesterly 2795 feet, more or less, along the western property lines of Assessors' Map 46, Plots 64, 65 and 66;

Thence northeasterly along the northwestern property line of Map 46, Plot 66 and Map 37, Plot 68 a distance of 1894 feet, more or less, to the south line of Route 130;

Thence westerly along the south line of Route 130 to its intersection with Great Neck Road North;

Thence southerly along the east line of Great Neck Road North to its intersection with Meetinghouse Road;

Thence southerly along the east line of Meetinghouse Road to the northerly property line of Assessors' Map 61, Plot 3;

Thence easterly a distance of 1716 feet, more or less, along the northerly property line of Assessors' Map 61, Plot 3;

Thence southeasterly along the eastern property line of Assessors' Map 61, Plot 3, to State Route 28;

Thence westerly along the southern side line of State Route 28 a distance of 430 feet, more or less, to the easterly property line of Assessors' Map 62, Plot 6;

Thence southerly 642 feet, more or less, along the easterly property lines of Assessors' Map 62, Plots 6, 148, 149 and 151 to the northwestern corner of Assessors' Map 62, Plot 67;

Thence southerly a distance of 1485 feet along the western property line of Assessors' Map 62, Plot 67;

Thence easterly and northerly along the center line of Mashpee Neck Road to its intersection with Simons Road;

Thence northerly along the center line of Simons Road, as shown on Assessors' Maps 62 and 54, across State Route 28 to the point of beginning.

4.4.7 Including all of the land within the following described lines:

Beginning at a point in the southern sideline of Nathan S. Ellis Highway (Route 151) at its intersection with the centerline of Job's Fishing Road as shown on a plan entitled "Plan of Land in Mashpee, Mass., Petitioner: Fields Point Corporation" dated August 13, 1986;

Thence southeasterly by the centerline of Job's Fishing Road to the centerline of Falmouth Road (Route 28);

Thence easterly by the centerline of Donna's Lane as shown on Land Court Plan No. 32122C to the centerline of Great Neck Road South;

Thence southerly along the centerline of Great Neck Road South to its intersection with Timber Landing Road;

Thence easterly and southerly by the centerline of Timber Landing Road to River Road;

Thence southerly by the centerline of River Road to its intersection with the centerline of Great Neck Road South;

Thence southerly by the centerline of Great Neck Road South to a point opposite the southern property line of Mashpee Assessors' Map 99, Plot 35;

Thence westerly by the southern property lines of Mashpee Assessors' Map 99, Plot 35, Map 99, Plot 1 and Map 98, Plot 12 to the centerline of Great Hay Road;

Thence northwesterly in a straight line to the intersection of the western sideline of Falmouth Road (Route 28) with the southern property line of 1985 Mashpee Assessors' Map 87, Plot 5;

Thence northerly and westerly by the eastern property lines of 1985 Assessors' Map 87, Plot 5 and Map 81, Plot 1 to the southern line of the New Bedford Gas and Electric Light Company easement where it intersects the western property line of Map 81, Plot 6;

Thence westerly 1567 feet, more or less, to the eastern sideline of existing Whiting Road to its intersection with the southern sideline of Nathan S. Ellis Highway (Route 151);

Thence easterly by the southern sideline of the Nathan S. Ellis Highway to Job's Fishing Road and the point of beginning. (Art. 27, STM 7/27/87, Approved by Attn.Gen. 10/87.)

- 4.4.8 All land boundaries, lot lines, property lines and roads referenced in sections 11B.4.4.1 to 4.4.6 have been taken from the Mashpee Assessors' Maps known as the "1985 Mashpee Map Volume" unless otherwise indicated.

5. PERMITTED USES

- 5.1 Within the Groundwater Protection District, the following uses are permitted subject to the provisions of Section 6, provided that all necessary permits, orders and approvals required by local, state and federal law are also obtained;
- (a) conservation of soil, water, plants and wildlife;
 - (b) outdoor recreation, not involving the use of motor vehicles or motor boats, including boating, fishing, nature study and hunting where otherwise legally permitted;
 - (c) foot, bicycle and horse paths and bridges;
 - (d) maintenance and repair of any existing structure, provided there is no increase in impervious pavement;
 - (e) normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
 - (f) residential development, permitted in the underlying district, provided that no more than 15 percent of a building lot, or 2000 sq. ft., whichever is greater, may be rendered impervious by buildings or pavement;
 - (g) farming, gardening, nursery, conservation, forestry, harvesting and grazing uses, provided that fertilizers, herbicides, pesticides, manure and other leachable materials are not stored outdoors;

- (h) industrial development not involving the use and/or storage of hazardous materials as defined in Chap. 21C Mass. General Laws, commercial and office development permitted in the underlying district, provided that no more than thirty percent of a building lot may be rendered impervious by buildings or pavement.

6. PROHIBITED USES

6.1 Within the Groundwater Protection District, the following uses are prohibited:

- (a) storage of liquid petroleum products of any kind in excess of fifteen gallons except for storage in a free standing container within a building or fuel for the heating of that building;
- (b) disposal of hazardous materials;
- (c) storage of hazardous wastes, as defined in Mass. Gen. Laws Chap. 21C, as amended;
- (d) disposal of solid wastes other than brush or stumps;
- (e) or from sewage treatment plants which are designed to discharge domestic waste effluent meeting D.E.Q.E. drinking water standards at the point of discharge;
- (f) storage of road salt or other deicing chemicals;
- (g) disposal of snow that contains deicing chemicals and that has been brought in from outside the District;
- (h) industrial uses that discharge process wastewater on site;
- (i) outdoor storage of fertilizers, herbicides and pesticides, and outdoor uncovered storage of manure;
- (j) animal feedlots;
- (k) dry cleaning establishments;
- (l) boat and motor vehicle service, washing and repair establishments;
- (m) junk and salvage yards;
- (n) the rendering impervious of more than 10% of any lot except as provided in 11B.5.1(f) and 11B.5.1(h);

- (o) mining of land except as incidental to a permitted use.

7. SPECIAL PERMIT USES

7.1 The following uses, unless prohibited by a specific provision of Section 6, may be permitted by a special permit from the Board of Appeals, under such conditions as the Board of Appeals may require.

- (a) commercial and industrial activities permitted in the underlying district and involving the manufacture, storage, transportation or use of any hazardous material other than hazardous wastes as defined in Mass. Gen. Laws Chap. 21C;
- (b) the application of pesticides for uses that are non-domestic and non-agricultural, provided that all necessary precautions shall be taken to prevent hazardous concentrations of pesticides in the water and on the land within the Groundwater Protection District as a result of such application, such precautions to include, but not be limited to, erosion control techniques, the control of run-off water (or the use of pesticides having low solubility in water), the prevention of volatilization and redistribution of pesticides and the lateral displacement (i.e. winddrift) of pesticides; and
- (c) the application of fertilizers for uses that are non-domestic and non-agricultural provided that such application shall be made in such a manner as to minimize adverse impacts on surface water and groundwater due to nutrient transport and deposition or sedimentation.

7.2 Any application for a special permit shall be made, reviewed and acted upon in accordance with the following procedures:

- (a) each application for a special permit shall be filed in writing with the Board of Appeals and shall contain a complete description of the proposed use, together with any supporting information and plans which the Board of Appeals may require. The Board of Appeals shall refer copies of the application to the Board of Health, Planning Board, Conservation Commission and Town Engineer or Department of Public Works, which shall review, either jointly or separately, the application and shall submit their recommendations to the Board of Appeals. Failure to make recommendations within thirty-five days of the referral of the application shall be deemed lack of opposition. The Board of Appeals shall hold a pub-

lic hearing on the application, in conformity with the provisions of Mass. Gen. Laws Chap. 40A, within sixty-five days after the filing of the application with the Board of Appeals. After notice and public hearing, and after due consideration of the reports and recommendations of the local boards/departments, the Board of Appeals may issue such a special permit provided that it finds that the proposed use:

- (i) is in harmony with the purpose and intent of this bylaw and will promote the purposes of the Groundwater Protection District;
- (ii) is appropriate to natural topography, soils, and other characteristics of the site to be developed;
- (iii) will not, during construction or thereafter, have an adverse environmental impact on the aquifer or recharge area; and
- (iv) will not adversely affect an existing or potential water supply.

8. BURDEN OF PROOF

- 8.1 The burden of proof shall be upon the applicant for a special permit to demonstrate that the applied for use shall not result in a use inconsistent with the intent of the creation of the Groundwater Protection District.

SECTION 11C: AREAS OF CRITICAL ENVIRONMENTAL CONCERN (ACEC)

1. PURPOSE

The purpose of this section is the protection of areas of Critical Environmental Concern, areas of significance for flood control or the prevention of storm damage, waters containin shellfish and fisheries, and other public interests identified by the "Wetlands Protection Act" (M.G.L., Chapter 131, Sections 40 and 40A and the Town's Wetland Protection By-Laws.

2. GEOGRAPHICAL APPLICABILITY

This section shall apply to all areas within the Waquoit Bay Areas of Critical Environmental Concern (ACEC) as designated by the Massachusetts Executive Office of Environmental Affairs on November 26, 1979 in accordance with M.G.L., Chapter 21A, Section 2 (7) and to a buffer zone extending twenty five feet landward from the edge of the ACEC. For those lots or land parcels totally encom- passed by the ACEC, this article's applicability will be limited to one hundred (100) feet landward of the edge of wetlands as defined by M.G.L., Chapter 131, Section 40. In case of any dispute regard- ing the boundary of the areas defined under this section, the Conservation Commission will be consulted making the final determination based on the best available data.

3. REGULATION OF CONSTRUCTION AND LAND ALTERATION

- (A) Within the above-described area, no construction of dwellings, or any other primary or accessory buildings or structures, except those permitted under Section 6.3.I (9) or Section 11C.3.(D), is permitted.
- (B) Within the above-described area, no clear cutting of vegeta- tion or wildlife habitat, except for a path no more than twenty (20) feet wide to provide access to structures allowed under Section 6.3.I(9) or for trail or other passive recrea- tion uses operated by the Town, state or other public agency, is permitted.
- (C) No dumping, fill, paving, removing of material or dredging may be done, except as permitted under the requirements M.G.L., Chapter 131, Section 40 and 40A and any other applicable laws, by-laws and regulations.
- (D) Any structure which lies wholly or partly within the above- described area and which was lawfully in existence, or for which a building permit was legally granted, prior to the publication date of the Town Meeting Warrant Article adopting this Section may be continued, repaired, maintained, improved or enlarged, or replaced in case of its destruction, provided

that no improvement, enlargement or other new construction may extend more than ten (10) feet closer to any open water, watercourse, marsh or other wetland as defined by M.G.L., Chapter 131, Section 40 (and in no case into such areas) than its location prior to the above date.

- (E) Repair and maintenance of any road, bikeway or trail within the above-described area is permitted. Construction of any new road, bikeway or other way requiring paving, fill or other significant construction is prohibited except for roads, bikeways or other ways constructed by the town, state or other public agencies or where the Board of Appeals has granted a variance from these requirements in order to allow access to areas not included in the above-described area to which access would otherwise be impossible. Any construction, repair, maintenance, improvement or enlargement of such roads, bikeways or other ways shall be in conformance with the requirements of M.G.L., Chapter 131, Sections 40 and 40A and all other applicable laws, by-laws, and regulations.
- (F) Any owner of a lot which is buildable at the time of the effective date of this Section, but which is made unbuildable due to its requirements, may apply to the Board of Appeals for a variance from the requirements of this Section. The Board of Appeals shall consult the Conservation Commission in making its decision, and in no case shall the grant of relief be more than the minimum necessary to allow a reasonable use of the lot. The Board of Appeals, in considering applications hereunder, shall give primary importance to the protection of the environment.
- (G) No provisions of this Section are intended to supercede or otherwise limit the authority of the Conservation Commission under M.G.L., Chapter 131, Sections 40 and 40A or the Town's Wetlands Protection By-Law.

SECTION 11.D: TEMPORARY RESTRICTED AREAS

11.D.1 The town of Mashpee prohibits the approval or the creation of any new building lots, prohibits the issuance of any special permits for new construction and land development, and prohibits the Building Inspector from issuing any building permits, except permits for additions, alterations, accessory structures on single-family residential lots, one single-family residence for the owner of any lot on January 1, 1987 who has not received a permit for a new residence in Mashpee during the previous 24 months and who has given written notice to the Building Inspector of his intention to reside on the premises, or other structures otherwise protected by Massachusetts statute in the areas described below and identified on a map on file with the Town Clerk entitled "'Ground-water Protection District, Town of Mashpee' dated January 1987". That map is hereby made a part of this bylaw. The following land boundaries, lot lines, property lines and roads constitute a more specific identification of the areas included in the above referenced map and have been taken from the Mashpee Assessors' Maps known as "1985 Mashpee Map Volume" unless otherwise indicated. These prohibitions are to continue from their effective date until August 1, 1988 or such earlier date that the town, by Town Meeting vote elects to discontinue them on any or all of the sites covered by this bylaw.

Including all of the land within the following described lines.

Beginning (sic) at a point in the southerly sideline of Nathan Ellis Highway (Route 151) at the Mashpee/Falmouth Town Line as shown on the zoning map of the Town of Mashpee dated May 1985;

Thence southeasterly along the Mashpee/Falmouth Town Line at a distance of 4750 feet more or less to the westerly bank of the Childs River;

Thence easterly and southerly along the Mashpee/Falmouth Town Line at a distance of 6175 feet more or less to the westerly sideline of Falmouth Road (Route 28);

Thence northerly and westerly by the westerly sideline of Falmouth Road (Route 28) at a distance of 6000 feet more or less to the southerly bound of the New Bedford Gas Company and Edison Light Company easement line at a distance of 2000 feet more or less to the easterly sideline of existing Whittings Road;

Thence northerly by the easterly sideline of existing Whittings Road at a distance of 4250 feet more or less to the intersection of the southerly sideline of Nathan S. Ellis Highway (Route 151);

of 584 feet more or less to the centerline of Lowell Road as shown on Assessors' Sheet 44;

Thence easterly and northerly along the centerline of Lowell Road to the intersection with the centerline of Ashers Path;

Thence northerly along the centerline of Ashers Path to the intersection of the centerlines of William Mingo Road and Lovells Lane;

Thence northerly and easterly along the centerline of Lovells Lane to the intersection with the centerline of Route 130;

Thence northerly and westerly along the centerline of Route 130 to the intersection with the centerline of Great Hay Road and point of origin.

Including all of the land within the following described lines.

Beginning (sic) at a point at the southern sideline of Route 130 at the northwest bound of Plot 68 as shown on Assessors' Sheet 37 in the 1985 Mashpee Map Volume;

Thence southerly and westerly along the westerly property line of Plot 68 as shown on Assessors' Sheet 37 at a distance of 1209 feet more or less to the northwest bound of Plot 66 as shown on Assessors' Sheet 46;

Thence southerly and westerly along the westerly property line of Plot 66 at a distance of 675 feet more or less to the southwest bound of Plot 66 as shown on Assessors' Sheet 46;

Thence southerly and easterly along the southwesterly property line of Plot 66 at a distance of 835 feet more or less to the southwest bound of Plot 65 as shown on Assessors' Sheet 46;

Thence southeasterly along the southwesterly property line of Plot 65 at a distance of 375 feet more or less to the northwest bound of Plot 64 as shown on Assessors' Sheet 46;

Thence southerly and easterly along the southwesterly property line of Plot 64 at a distance of 1585 feet more or less to the Mashpee/Barnstable Town Line;

Thence easterly along the Mashpee/Barnstable Town Line at a distance of 2430 feet more or less to the intersection with the southern sideline of Route 130;

Thence northerly and westerly along the southern sideline of Route 130 at a distance of 5000 feet more or less to the northwest bound of Plot 68 as shown on Assessors' Sheet 37 and point of origin.

Including all of the land within the following described lines.

Beginning (sic) at a point on the western bound of Plot 9 as shown on Assessors' Sheet 38 in the 1985 Mashpee Map Volume;

Thence southerly and easterly along the southwesterly property line of Plot 9 at a distance of 639 feet more or less to the westerly bound of Plot 55 as shown on Assessors' Sheets 37 and 38;

Thence southerly and easterly along the southwesterly property line of Plot 55 at a distance of 461 feet more or less to the southwest bound of lot 9 as shown on Assessors' Sheets 37 and 38;

Thence southerly and easterly along the southwesterly property line of Plot 9 at a distance of 234 feet more or less to the southern bound of Plot 9 as shown on Assessors' Sheets 37 and 38;

Thence easterly along the southwesterly property line of Plot 9 at a distance of 100 feet more or less to the western bound of Plot 5 as shown on Assessors' Sheets 38 and 47;

Thence southerly and easterly along the southwesterly property line of Plot 5 at a distance of 1099 feet more or less to the southern bound of Plot 5 as shown on Assessors' Sheets 38 and 47;

Thence easterly along the southerly property line of Plot 5 as shown on Assessors' Sheets 38 and 47 at a distance of 708 feet more or less to the northeast bound of Plot 26 on Assessors' Sheet 47;

Thence southerly along the easterly property line of Plot 26 as shown on Assessors' Sheet 47 at a distance of 330 feet more or less to the easterly bound of Plot 26 as shown on Assessors' Sheet 47;

Thence easterly and northerly along the southerly property line of Plot 6 as shown on Assessors' Sheets 38 and 47 at a distance of 120 feet more or less to the Mashpee/Barnstable Town Line;

Thence northerly and easterly along the Mashpee/Barnstable Town Line at a distance of 4243 feet more or less to the northeast bound of Plot 116 as shown on Assessors' Sheet 30;

Thence westerly along the northerly property line of Plot 116 at a distance of 1055 feet more or less to the meeting of Plot 116 as shown on Assessors' Sheet 30 at its northwest boundary and Santuit Pond;

Thence southerly along Santuit Pond to the mouth of the Santuit River;

Thence northerly and westerly from the mouth of the Santuit River along Santuit Pond to the northeast boundary of Plot 9 as shown on Assessors' Sheet 38;

Thence westerly and southerly along the northerly property line of Plot 9 at a distance of 1172 feet more or less to the western bound of Plot 9 and point of origin.

Including all of the land within the following described lines.

Beginning (sic) at a point at the northwest bound of Plot 5 as shown on Assessors' Sheet 16 in the 1985 Mashpee Map Volume;

Thence from the easterly sideline of existing Tobey's Road as shown on Assessors' Sheet 16 to the intersection of the easterly sideline of Cotuit Road;

Thence southerly along the easterly sideline of Cotuit Road at a distance of 800 feet more or less to the southwest bound of Plot 4 as shown on Assessors' Sheets 16 and 22;

Thence easterly and northerly along the southerly property line of Plot 4 as shown on Assessors' Sheets 16 and 22 to Santuit Pond;

Thence northerly and easterly along Santuit Pond to the southwest bound of Plot 6 as shown on Assessors' Sheet 16;

Thence easterly along the southern property line of Plot 6 as shown on Assessors' Sheet 16 at a distance of 90 feet more or less to the southwest bound of Plot 7 as shown on Assessors' Sheet 16;

Thence easterly and northerly along the southerly property line of Plot 7 at a distance of 120 feet more or less to the southwest bound of Plot 8 as shown on Assessors' Sheet 16;

Thence easterly and southerly along the southerly and westerly property line of Plot 8 as shown on Assessors' Sheet 16 along Santuit Pond at a distance of 1050 feet more or less to the southwest bound of Plot 1 as shown on Assessors' Sheets 17, 22, and 23;

Thence southerly and easterly along Santuit Pond at a distance of 843 feet more or less to the southeast bound of Plot 1 as shown on Assessors' Sheets 17, 22, and 23;

Thence northerly and easterly along the southeasterly property line of Plot 1 as shown on Assessors' Sheets 17, 22 and 23;

Thence westerly to the centerline of Santuit Pond Road;

Thence northerly and westerly along the centerline of Santuit Pond Road to the centerline of Wakeby Road to the Mashpee/Sandwich Town Line;

Thence westerly along the southern sideline of the Mashpee/Sandwich Town Line to the northwest bound of Plot 5 as shown on Assessors' Sheet 16 and the point of origin.

Beginning at a point at the intersection of State Route 28 and Noisy Hole Road, which is also on the Town line between Mashpee and Barnstable;

Thence northerly along the Town lines as it follows Noisy Hole Road a distance of 1050 feet, more or less;

Thence northeasterly and easterly along the Town line a distance of 2050 feet, more or less, to the southwest corner of Assessors' Map 46, Plot 64;

Thence northwesterly 2795 feet, more or less, along the western property lines of Assessors' Map 46, Plots 64, 65 and 66;

Thence northeasterly along the northwestern property line of Map 46, Plot 66 and Map 37, Plot 68 a distance of 1894 feet, more or less, to the south line of Route 130;

Thence westerly along the south line of Route 130 to its intersection with Great Neck Road North;

Thence southerly along the east line of Great Neck Road North to its intersection with Meetinghouse Road;

Thence southerly along the east line of Meetinghouse Road to the northerly property line of Assessors' Map 61, Plot 3;

Thence easterly a distance of 1716 feet, more or less, along the northerly property line of Assessors' Map 61, Plot 3;

Thence southeasterly along the eastern property line of Assessors' Map 61, Plot 3, to State Route 28;

Thence westerly along the southern side line of State Route 28 a distance of 430 feet, more or less, to the easterly property line of Assessors' Map 62, Plot 6;

Thence southerly 642 feet, more or less, along the easterly property lines of Assessors' Map 62, Plots 6, 148, 149 and 151 to the northwestern corner of Assessors' Map 62, Plot 67;

Thence southerly a distance of 1485 feet along the western property line of Assessors' Map 62, Plot 67;

Thence easterly and northerly along the center line of Mashpee Neck Road to its intersection with Simons Road;

Thence northerly along the center line of Simons Road, as shown on Assessors' Maps 62 and 54, across State Route 28 to the point of beginning.

11.D.2 Severability: The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

11.D.3 Exemption for public housing projects: Notwithstanding the provisions of Section 11D above, the provisions of Section 11D shall not apply to any division of land, permit or approval required for development of public housing by the Mashpee Housing Authority. (Changed from "11C" to "11D" by STM on 5/9/88-App. AG 7/28/88)

11.D.4 Exemption for certain other uses: Notwithstanding the other provisions of Section 11.D, they shall not apply to temporary outdoor storage of items not prohibited by Section 11.B and otherwise allowed by Section 6.3, to government owned facilities or to public utilities other than wastewater treatment facilities. (App. STM 5/9/88 - App. AG 7/28/88)

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 Selectmen by 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.

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 who, 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 is alleged to exist. The Building Inspector, after review and inspection as aforesaid, shall make a determination as to whether or not a violation exists. If the Building Inspector determines that a violation exists, he shall give written notice of such violation to the owner and to the occupant of such premises and shall demand that such violation be abated within a reasonable time as designated in the written notice. Such notice and demand may be given either in person or by mail addressed to the owner at the address appearing on the most recent assessing records of the Town and to the occupant at the address of the premises where the violation has occurred."
- 14.4 If the Building Inspector, after being requested in writing to enforce the zoning by-law against any violation thereof, declines to act, he shall notify, in writing, the party requesting such enforcement of any action of refusal to act, and the reasons therefore, within 14 days of receipt of such written

request for enforcement. Any person aggrieved by reason of inability to obtain enforcement action from the Building Inspector may appeal the decision not to act to the Board of Appeals. The Board of Appeals shall, at a public meeting, review the allegation of violation of the zoning by-law, the Building Inspector's reasons for refusal to act, and any other information it deems necessary and relevant, and it may, by majority vote, decide to issue a notice of violation and demand for abatement in the same manner as prescribed for the Building Inspector in Subsection 14.3.

14.5 If the Building Inspector or the Board of Appeals issues a notice of violation and demand for abatement and if such alleged violation has not been abated within the time specified in the written notice, the Building Inspector or the Board of Appeals, as appropriate, shall institute legal action or proceedings on behalf of the Town to prevent, correct, restrain, abate, or punish any violation of this by-law. The provisions of this by-law shall be enforceable by injunctive action as provided for in the General Laws in addition to all other remedies available at law or in equity. All officials, departments, boards, commissions, or employees of the Town vested with the authority or duty to issue permits, certificate, licenses, or approvals shall comply with the provisions of this by-law and shall not issue any such permit, certificate, license or approval regarding any such structure, use, development, or site which is not in conformance with the provisions of this by-law or which is the subject of any violation enforcement proceeding initiated by the Building Inspector or other agent to the Town. Any person, owner, agent or other legal entity, against whom such violation enforcement procedure has commenced, shall not be permitted to apply for a permit to construct or for a variance for any matter related to the alleged violation until the violation enforcement proceedings have been finally determined by the proper authority."

14.6 Any person found guilty by a Court of violating any of the provisions of this by-law shall be punished by a fine of not more than \$300.00 per violation. Each day that any violation continues after the issuance of a notice of violation and demand for abatement shall constitute a separate offense. (Changed to \$300.00 by STM 5/9/88 - App. AG 7/28/88)

14.7 In addition to any other remedy or punishment provided for in this by-law, any type of permit or variance may be revoked by the body which originally approved it, if the same is not inconsistent with any provision of the General Laws, upon a determination and finding that any of the provisions of this by-law or any condition of approval has been violated. Hearing procedures for revocation shall be as prescribed for issuance of the permit or variance, including any written or published notice before a hearing.

Anthony E. Ferragamo, Chairman
Scott McAskill, Vice Chairman
Judy Mills, Clerk
Louise V. Behrman
Richardson Jonas

MASHPEE PLANNING BOARD