

**EXISTING MASHPEE ZONING RE: DEVELOPMENT PROPOSED BY MASHPEE
COMMONS FOR THE EAST STEEPLE / TROUT POND / NORTH MARKET WEST
NEIGHBORHOODS**

SUMMARY / DISCUSSION

Based on existing Mashpee zoning provisions, **the project proposed by Mashpee Commons for the East Steeple, Trout Pond and North Market West neighborhoods can be developed as envisioned with no significant amendment needed to Mashpee zoning.** The applicable zoning provisions noted below were virtually written, and amended on numerous occasions, with the Mashpee Commons development in mind.

The entire proposed project area is zoned C-1 Commercial, and given its size and proposed commercial and mixed uses, **the project would be permitted under Section 175-45.1, the Commercial Center zoning by-law, taking advantage of the residential unit transfer of development rights provided under Section 174-46.H. of the Open Space Incentive Development (OSID) by-law and Section 175-45.1.G of the Commercial Center by-law.**

Under the provisions of the Commercial Center zoning by-law, particularly Subsection I, **the Planning Board,** within any commercial center located on a parcel of land greater than 200,000 square feet in the C-1 district, **may approve subdivision lots of any size** pursuant to the provisions of the special permit issued for said center, "provided that each lot shall have at least 20 feet of frontage on a street approved by the Board under the subdivision control law or on a Town or State highway."

The creation of such "non-conforming" lots may be done only if the "lot is serviced by a public wastewater treatment plant approved by the Planning Board under the center's special permit and to which all such proposed lots may be legally connected after sale to multiple individual owners. No building permit may be issued for a building on said lots unless the required wastewater plant has been completed, with capacity specifically allocated to said lots, and has received all required state and local permits." It is possible, and has been seriously considered in the past, that the Mashpee Commons treatment plant may become part of a municipally owned / public system. However, as it is not now, this "public" treatment plant requirement is the only impediment to using the Commercial Center by-law "as-is" to create whatever lot configuration is proposed by Mashpee Commons and approved by the Planning Board. This issue can obviously be dealt with either through municipal acquisition of the plant prior to the creation of the proposed lots, or an amendment to the by-law. The "public" requirement in the by-law has two purposes: 1) To ensure that any lots sold off can legally be tied into the treatment plant and be legally required to pay the applicable costs for operation and maintenance of the plant. Traditionally, the only means acceptable to Mass DEP for tying separately owned properties into a private sewer system has been the inclusion of all properties into a condominium, which has the legal power to force owners to pay their condo fees toward the treatment plant costs. Municipal systems obviously have the power to enforce their charges for sewer costs. 2) The requirement was included to help avoid the "Balkanization" of sewer facilities in the Town through multiple private systems interspersed with other unsewered areas, making ultimate development of municipal facilities (as will clearly be required in Mashpee given EPE/DEP Nitrogen targets set for Popponesset and Waquoit Bays) extremely difficult and expensive if only the unsewered areas become the Town's responsibility.

In addition, also under Subsection I, within any commercial center located in the C-1 district, the Planning Board, as part of its approval of the special permit for said center, may approve a specific schedule of dimensional controls, including setbacks, required buffer areas, frontage and lot size, but not including height, except as provided below or specifically authorized elsewhere in the by-law, or overall commercial center lot coverage, which differs from that required in the underlying zoning district. This gives the Board total flexibility with setback, frontage and lot size issues.

With regard to lot coverage by buildings, **maximum lot coverage with buildings** is required to be as allowed for the applicable zoning district. This area **may be calculated in one of two ways: either on an individual lot basis for each lot created within the development, or as an overall average for the development.** In the latter case, total area of lot coverage by buildings shall be calculated for the project and specified in the special permit decision. The applicant shall devise a method by which building coverage area may be allocated to each lot and said method shall require the approval of the Planning Board as part of its special permit decision.

With regard to building height, where residential units are to be transferred into the commercial center under the provisions of Subsection 174-46.H.(4), the Planning Board, as part of its approval of the special permit for said center, may authorize an increase in building height to three (3) stories and up to forty-five (45) feet to accommodate said residential units only. Therefore, either purely residential, or mixed use buildings with commercial on the lower floors and residential on the third (or second) floor, are allowed to be up to 3 stories in height.

In addition, under the provisions of footnote 21 of the Land Space requirements table of the Zoning By-law, hotels and motels approved by the Planning Board under the provisions of Section 174-45 may be increased to 3 stories and 45 feet, if approved by the Board, provided that there is adequate access for Fire Department vehicles and equipment and that all Fire Protection Construction Documents required by 780 CMR Subsection 903.1.1 of the Massachusetts State Building Code, have been submitted to the Planning Board and Fire Department as part of the special permit application and the Board is satisfied that the standards of said Subsection will be met.

Other purely commercial buildings are limited to the 2 stories and 35 feet applicable in the C-1 zoning district.

As provided by the transfer of development rights allowed by Section 174-46.H. for mixed use developments, the proposed project could include any form of residential use, including apartments or multi-unit condos, as well as single family or townhouse lots with either one residence, or a residence and accessory residence.

Based on the applicable incentive bonus provisions applicable under Section 174-46.H. for mixed use in a Commercial Center project, and on a review of land controlled by Mashpee Commons with potential for such residential transfer, up to 404 residential units could be transferred into this proposed mixed-use development, depending on what properties Mashpee Commons chooses to set aside as open space, who owns the open space and what type and number of residential units they prefer in the project (see analysis of incentive bonus calculations below).

Under Section 174-45.1. H. the Commercial Center zoning by-law, **the project can be approved as a single-phase project or may be approved as a master plan involving multiple phases.** Under the same Section, unless specific building, signage and landscape designs are submitted for all portions of the project, the Planning Board can instead require that **a schedule of architectural, signage and/or landscaping controls be adopted for the development, enforceable by the Town's special permit authority as well as deed restrictions on the development and any lots to be sold.** Such controls are intended to promote design that is in keeping with the character of the Town and of Cape Cod. This is very similar to the approach that has been taken for the Jobs / Whittings project, except that the Town would have a larger role in implementing and enforcing the architectural etc. controls.

Parking may be on-street, off-street or in garages. Where a commercial center will be divided into lots under Section 174-45.1.I., parking requirements may be met in one of two ways. Either each lot will be required to provide off-street parking based on the requirements for individual uses, "or **an overall shared parking scheme may be developed** which conforms with parking space requirements for commercial centers specified by Section 174-43. In the latter case, the applicant shall specify how shared parking areas are to be owned, constructed, operated and maintained and provide the Board with proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms for ensuring the same. On-street parking spaces shall be at least twenty-three (23) feet in length. Parking structures may be permitted."

The Planning Board has considerable flexibility in determining parking requirements and how they can be met, using the best available information. Section 174-43 specifies the required number of parking spaces for commercial centers with over 50,000 square feet of leasable area (assumed for this project). That section provides a table of parking requirements for the five general categories of retail, food service, office, theatre and residential uses that are tied to the size of the project and requires that they be met "unless it can be demonstrated to the satisfaction of the permitting authority by means of data and studies from similar projects, that shared parking, staggered hours of operation or peak parking use and multi-purpose trips justify a reduced number of required spaces." Section 174-39 of the zoning by-law also provides that "parking in excess of these requirements shall be prohibited unless specific evidence justifying additional parking is provided and the permitting authority approves such excess parking. Where required spaces for any use are not specified here, they shall be determined by the permitting authority based on similarity of the proposed use to those listed here, on the most recent edition of *Parking Generation* by the Institute of Transportation Engineers, on studies and surveys done by qualified persons regarding parking usage for similar facilities, on parking requirements and use for similar facilities on Cape Cod or on other appropriate information."

With regard to road construction requirements, the Board's Rules and regulations regarding the Subdivision of Land apply to any proposed streets. However, the Board has the authority to waive any of its regulations upon a majority vote if appropriate or necessary.

In summary, based on the available provisions of the Mashpee zoning by-law, with the possible exception of the requirement that undersized lots in a commercial center be tied into a "public" wastewater treatment plant, and the Board's ability to waive its Subdivision Regulations as appropriate, the proposed East Steeple / Trout Pond / North Market Street West neighborhoods can be developed essentially as envisioned and presented by Mashpee Commons with no new zoning required.

**POTENTIAL RESIDENTIAL TDR UNITS FOR MASHPEE COMMONS
BASED ON COMMERCIAL CENTER BYLAW
WITH RESIDENTIAL UNITS TRANSFER UNDER OSID SECTION 174-46.H.**

OSID BONUS MULTIPLIERS PER SECTION 174-46.D.

LOCATION:

- 2.0 if on navigable salt water or on freshwater pond over 100 acres
- 1.5 if on unnavigable salt water, salt water wetlands or fresh water ponds over 10 acres
- 1.3 if within 300 feet of pond over 10 acres or of Mashpee, Quashnet, Santuit or Childs Rivers, Red Brook or Quaker Run and their adjacent wetlands
- 1.2 if on prime farmland soils as listed by county soil survey

CONSISTENCY WITH OPEN SPACE INCENTIVE PLAN (OSIP):

- 1.4 if Primary Conservation Area
- 1.2 if Secondary Conservation Area

PUBLIC ACCESS:

- 1.6 if transferred in fee to Town of Mashpee
- 1.2 if transferred to recognized non-profit conservation organization
- 1.0 if kept private or homeowners association

WASTEWATER TREATMENT:

- 1.5 if all units serviced by a public or private wastewater treatment plant

POTENTIAL MASHPEE COMMONS TRANSFER PROPERTIES

Great Neck Road South

50.1 ac. upland = 2,182,356 sf/40,000 sf R-3 zoning = 54.56 units

2.12 ac. wetland = 92,347 sf /10/40,000 sf R-3 zoning = 0.23 units

Total 54.79 "base" residential units

Location Multiplier is 1.0 (no bonus)

OSIP Multiplier is 1.4 (site is in Primary Conservation Area)

Access Multiplier would be 1.6 if transferred in fee to Town of Mashpee

Wastewater Multiplier is 1.5 assuming units serviced by MC WWTP

Available units for transfer: $54.79 \times 1.0 \times 1.4 \times 1.6 \times 1.5 = 184.46$ residential units

"Keeter" Property

8.67 ac. upland = 377,665 sf/40,000 sf R-3 zoning = 9.44 "base" residential units

Location Multiplier is 1.0 (no bonus)

OSIP Multiplier is 1.4 (site is in Primary Conservation Area)

Access Multiplier would be 1.6 if transferred in fee to Town of Mashpee

Wastewater Multiplier is 1.5 assuming units serviced by MC WWTP

Available units for transfer: $9.44 \times 1.0 \times 1.4 \times 1.6 \times 1.5 = 31.72$ residential units

Route 151 Map 73 Blocks 6 and 12

Each assumed to be one buildable lot = 2 "base" residential units

Location Multiplier is 1.3 (within 300 feet of Quashnet River)

OSIP Multiplier is 1.4 (site is in Primary Conservation Area)

Access Multiplier would be 1.6 if transferred in fee to Town of Mashpee

Wastewater Multiplier is 1.5 assuming units serviced by MC WWTP

Available units for transfer: $2 \times 1.3 \times 1.4 \times 1.6 \times 1.5 = 8.74$ residential units

Trout Pond Primary Conservation Area per OSIP Map

Total area per GIS 925,223 sf minus Pond 106,038 sf = 819,185 sf

Area of additional wetlands is unknown, so assumed as zero here

C-1 Commercially Zoned land credited at 1 base unit per 20,000 sf

$819,185 \text{ sf} / 20,000 \text{ sf} = 40.96$ "base" residential units

Location Multiplier is 1.3 (within 300 feet of pond under 10 acres)

OSIP Multiplier is 1.4 (site is in Primary Conservation Area)

Access Multiplier would be 1.6 if transferred in fee to Town of Mashpee

Wastewater Multiplier is 1.5 assuming units serviced by MC WWTP

Available units for transfer: $40.96 \times 1.3 \times 1.4 \times 1.6 \times 1.5 = 178.91$ residential units

Total potential residential unit transfer into Mashpee Commons commercial areas based on these properties is 403.83 residential units.

DEFINITION AND USE OF TRANSFERRED RESIDENTIAL UNITS

Under the incentive bonus provisions of section 174-46 D, a "residential unit" is defined as a dwelling unit for use by one (1) family or a group of up to five (5) unrelated individuals which contains only one (1) kitchen and two and two-tenths (2.2) bedrooms. Based on health codes, "bedroom" is defined as a room providing privacy, intended primarily for sleeping and having floor space of no less than seventy (70) square feet, a ceiling height of no less than seven feet three inches (7'3"), an electrical service, ventilation and at least one window which is other than a living room [one (1) allowed], dining room [one (1) allowed], kitchen [one (1) allowed], hall, utility (boiler, water heater, laundry, etc.) room or bathroom. Unfinished cellars and unheated storage areas over garages are not considered bedrooms. Actual dwelling units within the project (except any accessory dwelling units) may contain any number of bedrooms, but the aggregate total of bedrooms allowed in the project, excluding any lots created under the provisions of §174-46B(1)(a) or (b) of the OSID by-law, shall not exceed two and two-tenths (2.2) times the maximum number of residential units allowed by this subsection.

§174-46B(1)(a) or (b) of the OSID by-law, which, through the §174-46D reference in §174-46H, would be applicable to a Commercial Center project developed using the transfer provisions of §174-46H, provides that the TDR residential units may be used not only as apartments or in other multifamily arrangements, to which the 2.2 bedrooms per unit rule noted above applies, but may also be used to create individual residential lots with no bedroom limits. It allows one-family detached dwellings and detached accessory dwellings, or one-family townhouses located on individual lots, pursuant to the following provisions:

(a) One (1) lot for use by one (1) one-family detached dwelling only, or one (1) one-family townhouse only, may be created for each one and five-tenths (1.5) residential units allowed by Subsection D, provided that said lot shall be serviced by a public or private wastewater treatment plant. Once created, said lot shall have no limit on number of bedrooms.

(b) One (1) lot for use by one (1) one-family dwelling and one (1) accessory dwelling may be created for each two (2) residential units allowed by Subsection D, provided that said lot shall be serviced by a public or private wastewater treatment plant. Once created, said lot shall have no limit on number of bedrooms.

Applicable Zoning for a Commercial Center with Residential Mixed Use via OSID §H TDR

§174-45.1 Commercial centers.

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

- A. Any such use shall require the issuance of a special permit by the Planning Board. In issuing such special permit, the Board shall ensure that the design of approved projects is in keeping with the character of the town and of Cape Cod.

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

- B. Unless an alternate schedule of dimensional requirements is approved by the Planning Board under subsection I. below, there shall be required front, rear, and side building setbacks at the perimeter of the site at least as great as those normally required within the zoning district, and at least ten feet greater than the depth of any open space buffer required under subsection C below, except that the front setback shall be seventy-five (75) feet along Routes 28 and 151.

History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

No structure within a commercial center may be located, and no clearance of natural vegetation may occur, within three hundred (300) feet of any fresh or salt water body of more than ten (10) acres, or within three hundred (300) feet of the Mashpee, Santuit, Quashnet or Childs Rivers or Red Brook, or within one hundred (100) feet of any active or recently active (within 10 years) cranberry bog, pond under ten (10) acres, or any wetlands as defined by MGL Chapter 131, Section 40 or the Mashpee Wetlands Bylaw. The provisions of this section regarding building setbacks or clearance of vegetation shall not apply to any artificial water body or watercourse created (i.e. as an entirely new water body, not by dredging or enlargement of an existing water body, watercourse or wetland) in conformance with any applicable local, state or federal regulations.

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

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

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

History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

- D. No space within the required front setback area may be used for parking unless approved by the Planning Board. Where a commercial center will be divided into lots under section I. below, parking requirements may be met in one of two ways. Either each lot will be required to provide off-street parking based on the requirements for individual uses contained in Article VIII, or an overall shared parking scheme may be developed which conforms with parking space requirements for commercial centers specified by Section 174-43. In the latter case, the applicant shall specify how shared parking areas

are to be owned, constructed, operated and maintained and provide the Board with proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms for ensuring the same. On-street parking spaces shall be at least twenty-three (23) feet in length. Parking structures may be permitted provided that the Planning Board determines that their design, placement and operation will not adversely impact public health or safety or the character of the area and that their design will be compatible with the existing and proposed architectural character of the area. Said structures will not be counted toward maximum developable area and may not exceed thirty (30) feet in height.

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

History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

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

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

Streets and drives within the development shall be constructed in accordance with the Planning Board's subdivision and special permit regulations, except that the Board may require additional sidewalks, traffic lanes, turn lanes, traffic signals or other items as necessary. Projected traffic may be calculated on the basis of firm projections of uses and floor areas when available, on the basis of 166 average weekday trip ends per 1000 square feet of gross leasable floor area, or on shopping center vehicle trip generation rates contained in the latest edition of *Trip Generation* by the Institute of Transportation Engineers. In performing such calculations where there is no firm estimate of gross leasable floor area, estimated area shall be calculated based on twice the maximum lot coverage allowed for the project.

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

History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

- G. The applicant shall submit a list of proposed uses within the commercial center as part of his application. These may include any uses allowed within the zoning district, *as well as any residential units transferred under the provisions of Subsection 174-46.H(4)*. However, only those uses will be permitted which are approved by the Planning Board as part of its special permit decision. Once said list of uses has been approved, no further special permit shall be required to occupy any space within the commercial center, but each such occupancy shall require review under the plan review process described in §174-24B, to ensure compliance with the special permit and other bylaws and regulations.

History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

- H. A commercial center may be approved as a single-phase project or may be approved as a master plan involving multiple phases. Prior to construction or installation of structures, signage and landscaping plans shall be submitted to the Design Review Committee for its review at a public meeting. Upon receiving the recommendations of the Design Review Committee, the Planning Board may approve said plans, approve with modifications or deny approval and require resubmission to the Design Review Committee. Until the Planning Board has finally approved said plans, no building permits may be issued nor shall any of the proposed work be begun. The Planning Board shall require that a schedule of architectural, signage and/or landscaping controls be adopted for the development, enforceable by the Town's special permit authority as well as deed restrictions on the development and any lots to be sold, unless specific building, signage and landscape designs are submitted for all portions of the project. Such controls shall have the effect of promoting design that is in keeping with the character of the Town and of Cape Cod.

Any proposed schedule of architectural, signage and landscaping controls shall require review by the Design Review Committee and its report to the Planning Board prior to approval of the special permit application for the development. If such a schedule of architectural, signage and / or landscaping controls is required, it shall be recorded as a deed restriction on the property at the same time as the special permit is recorded and the Planning Board shall be provided forthwith a copy of the recorded documents indicating the registry book and page at which each is recorded.

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

- I. Within any commercial center located on a parcel of land greater than 200,000 square feet in the C-1 district, the Planning Board may approve subdivision lots of any size pursuant to the provisions of the special permit issued for said center, provided that each lot shall have at least 20 feet of frontage on a street approved by the Board under the subdivision control law or on a Town or State highway. However, no lot may be created which does not meet the minimum lot area and frontage requirements of the zoning district unless said lot is serviced by a public wastewater treatment plant approved by the Planning Board under the center's special permit and to which all such proposed lots may be legally connected after sale to multiple individual owners. No building permit may be issued for a building on said lots unless the required wastewater plant has been completed, with capacity specifically allocated to said lots, and has received all required state and local permits.

Within any commercial center located in the C-1 district, the Planning Board, as part of its approval of the special permit for said center, may approve a specific schedule of dimensional controls, including setbacks, required buffer areas, frontage and lot size, but

not including height, except as provided below or specifically authorized elsewhere in the by-law or overall commercial center lot coverage, which differs from that required in the underlying zoning district. Unless such a schedule is adopted, no structure within a commercial center may be built closer to the street line, side line or rear line of a lot than the minimum requirements of the underlying zoning district. However, in no case may one 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 except in conformance with any applicable state and local building and fire codes or regulations. As part of its project review, the Planning Board will request a written recommendation from the Fire Department and Building Inspector regarding structures proposed to be set back from each other by less than the above required distances.

History: Amended 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

Maximum lot coverage with buildings shall be as allowed for the applicable zoning district. This area may be calculated in one of two ways: either on an individual lot basis for each lot created within the development, or as an overall average for the development. In the latter case, total area of lot coverage by buildings shall be calculated for the project and specified in the special permit decision. The applicant shall devise a method by which building coverage area may be allocated to each lot and said method shall require the approval of the Planning Board as part of its special permit decision. In addition, the provisions of Section 174-80.H. regarding impervious surface coverage within Groundwater Protection Districts shall apply.

In addition to the provisions of its special permit, the Planning Board shall require that the applicant establish deed restrictions or other legal mechanisms to ensure that the dimensional or other provisions of the special permit are adhered to by subsequent lot owners within the development.

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

Where residential units are to be transferred into the commercial center under the provisions of Subsection 174-46.H.(4), the Planning Board, as part of its approval of the special permit for said center, may authorize an increase in building height to three (3) stories and up to forty-five (45) feet to accommodate said residential units only.

History: Added 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

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

History: Added 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

- J. In addition to any other application materials required for special permits, applications for Commercial Centers shall include:
1. A calculation of maximum allowed lot coverage with buildings, in square feet, and a discussion of the proposed method of allocating building coverage area to any proposed or future lots. If the development lies wholly or partly in a

groundwater protection district, the requirements of Article XIII shall also be addressed.

2. A plan of the proposed parking facilities, including proposed parking space layout, drainage, lighting, landscaping and bicycle racks or similar facilities and a description of the proposed means of ownership, construction, operation and maintenance of such facilities, including copies of any proposed deeds, deed restrictions, association bylaws or other legal documents or mechanisms required. In addition, the applicant shall provide his calculations of the number of required off-street parking spaces and a description of any additional on-street parking proposed.
3. Any proposed schedule of architectural, signage and landscaping controls, along with a written record of any review and comments by the Design Review Committee. Where such a schedule is not proposed, the applicant shall submit architectural elevations and other architectural plans, along with samples or descriptions of exterior materials proposed to be used, and landscaping plans for all structures, for entrance ways and for major signs, along with a written record of any review and comments by the Design Review Committee. Where development is to be done in phases, these items shall be submitted for at least the first phase, along with typical plans for later phases. All of the above-required plans shall be submitted at the time approval is sought to construct such later phases.

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

§174-46. Open space incentive development (OSID).

H. Mixed-use developments.

- (1) As part of an open space incentive development, the Planning Board may allow the development of residential units within a commercial or industrial zone, as part of a residential development or in conjunction with the uses otherwise allowed in that district as part of a coordinated mixed-use development. Such mixed-use development shall comply with the requirements of this section except with regard to permitted uses (Subsection B) and except that there shall be at least a one-hundred-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 (1) unit per twenty thousand (20,000) square feet of land so preserved [excluding ninety percent (90%) of any wetlands as defined by MGL C. 131, §40] shall be credited in calculating incentive bonuses under Subsection D. For those portions of such OSID within residential zones, the requirements of Subsections A through G shall apply.

History: Amended 10-5-1998 ATM, Article 32, Approved by Attorney General on 1-4-1999.

- (2) Where residential uses are proposed to be combined with nonresidential uses in the same structure, any such structure shall require the approval of the Mashpee Fire Chief and Board of Health in addition to any other required permits and approvals.
- (3) For any OSID developed under this subsection, copies of all application materials required by Subsection G to be submitted to the Conservation Commission, Design Review Committee and Board of Health shall also be submitted to the Board of Appeals and the preapplication conference [Subsection G(1)], special permit review [Subsection G93] and other items related to review of the OSID by those agencies shall also be required for the Board of Appeals.
- (4) *As an alternative to the above provisions, residential units may be transferred from other parcels that will be preserved as open space to land within a commercial or industrial zone as part of a mixed-use commercial center development permitted under the provisions of Section 174-45.1. The maximum number of units so transferred shall be determined by reference to the incentive bonus provisions contained in Subsection 174-46.D. Any land set aside as open space as part of a transfer of residential units under this subsection shall also be subject to the bounding requirements described in Subsection 174-46.C.(3), the permanent dedication requirements of Subsection 174-46.C.(4), the declaration of choice and filing requirements of Subsection 174-46.C.(5) and the maintenance requirements of Subsection 174-46.C.(6).*
History: Added 5-3-2004 ATM, Article 12, approved by Attorney General on 8-18-2004.

§174-46.D.

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 MGL C. 40A, §9. Such increase in density, in the form of bonuses allocated for transfer of development rights from portions of parcels within an OSID, which will be preserved as open space, to those portions of parcels of the OSID which will be developed, shall require approval by the Planning Board as part of its approval of a special permit for the OSID in conformance with the following guidelines:

- (1) For the purposes of this section, a “residential unit” shall be defined as a dwelling unit for use by one (1) family or a group of up to five (5) unrelated individuals which contains only one (1) kitchen and two and two-tenths (2.2) bedrooms. A “bedroom” shall be defined as a room providing privacy, intended primarily for sleeping and having floor space of no less than seventy (70) square feet, a ceiling height of no less than seven feet three inches (7’3”), an electrical service, ventilation and at least one window which is other than a living room [one (1) allowed], dining room [one (1) allowed], kitchen [one (1) allowed], hall, utility (boiler, water heater, laundry, etc.) room or bathroom. Unfinished cellars and unheated storage areas over garages are not considered bedrooms. Actual dwelling units within the OSID (except any accessory dwelling units) may contain any number of bedrooms, but the aggregate total of bedrooms allowed in the OSID, excluding any lots created under the provisions of §174-46B(1)(a) or

(b), shall not exceed two and two-tenths (2.2) times the maximum number of residential units allowed by this subsection.

History: Amended 10-5-1998, Article 31, approved by Attorney General on 1-4-1999.

(2) The base number of residential units allowed within an open space incentive development shall be calculated as follows:

(a) Any previously approved and recorded subdivision lot which meets current zoning and health requirements and regulations or which would otherwise be buildable if developed, due to protection from current zoning and health regulations by reason of statute of local bylaw or regulations shall count as one and five-tenths (1.5) residential units [such lot shall not qualify for any bonus multiplier unless it contains at least ten thousand (10,000) square feet of upland area]; otherwise it shall be treated as unsubdivided and undeveloped land as in Subsection D(2)(c) below.

History: Amended 5-8-1989 STM, Article 8, approved by Attorney General on 8-10-1989.

(b) Any dwelling unit previously approved under a current valid (unexpired) special permit, except cluster subdivision lots covered in Subsection D(2)(a) above and motel units (which shall not qualify as dwelling units under this bylaw for any purpose), shall count as one (1) residential unit, and such units shall not qualify for any bonus multipliers. [Also see Subsection D(4).

History: Amended 5-8-1989 STM, Article 8, approved by Attorney General on 8-10-1989.

(c) For undeveloped unsubdivided land, the base number or residential unit shall equal the area of the land, excluding ninety percent (90%) of any wetlands as defined under MGL C. 131, §40, divided by the minimum lot size within the applicable zoning district(s) at the time of the OSID special permit application, except that if all dwellings and other uses in the proposed OSID are to be serviced by a public or private wastewater treatment plant, said base number may be multiplied by one and five-tenths (1.5).

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

(3) Where land is permanently dedicated as open space in conformance with the requirements of Subsection C, the residential units [as defined in Subsection D(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 C). Depending on the level of environmental, scenic and public value and on the ultimate level of public access to or ownership of the land so dedicated, the residential units transferred may be subject to the following bonus multipliers:

(a) On the basis of location, one (1) of the following multipliers may be applied:

History: Amended 5-8-1989 STM, Article II, approved by Attorney General on 8-10-1989.

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

[2] One and five-tenths (1.5) for lands or existing subdivision lots fronting on unnavigable salt-water, saltwater or tidal wetlands or freshwater pond over ten (10) acres or for subdivision lots not fronting on a water body but having over fifty percent (50%) of their area lying within three hundred (300) feet of the high-water mark of any saltwater body, saltwater wetland or freshwater pond over ten (10) acres, where the entire lot (including the adjacent portion of a paper street) or all of the unsubdivided land with three hundred (300) feet from the mean high-water mark or the edge of the wetland is preserved as open space.

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

[4] One and two-tenths (1.2) for lands having prime farmland soils as listed by the United States Department of Agriculture Soil Conservation Service and as mapped in its *Soil Survey of Barnstable County, Massachusetts*, issued March 1993.

History: Amended 10-5-1998, Article 31, approved by Attorney General on 1-4-1999.

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

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

- [2] One and two-tenths (1.2) for lands located in Secondary Conservation Areas or within the authorized acquisition boundaries of the Mashpee National Wildlife Refuge as defined by the Plan.
History: Amended 10-7-1996, Article 30, approved by Attorney General on 12-9-1996.
- (c) On the basis of public access and benefit to the inhabitants of the town, one (1) of the following multipliers may be applied:
- [1] One and six-tenths (1.6) for lands transferred in fee to the town in conformance with Subsection C(4)(a).
- [2] One and two-tenths (1.2) for lands transferred in fee to a recognized nonprofit conservation organization, not to include an association of landowners within the development, in conformance with Subsection C(4)(b).
- [3] One and zero-tenths (1.0) for lands dedicated in conformance with Subsection C(4)(c). The bonus multipliers allowed by Subsection D(3)(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 ($a \times b \times c = \text{total units allowed for transfer of each unit}$). That number is in lieu of the base unit, not in addition to it.
- (4) Where residential units approved under a special permit as specified in Subsection D(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 requirements of Subsection C(1), provided that it otherwise meets the criteria of Subsection C.
- (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, or lie within the authorized acquisition boundaries of the Mashpee National Wildlife Refuge in which case the upland area of such land may be divided by the minimum lot size applicable at the time and multiplied by a factor of five-tenths (0.5) 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 D(2)(c). Such previously dedicated open space shall not be counted

toward the minimum requirements of Subsection A or C, buy any residential unit calculated under this subsection shall be subject to the bonus multipliers or Subsection D(3)(a) and (b).

History: Amended 5-8-1989 STM, Article 8, approved by Attorney General on 8-10-1989.

History: Amended 10-7-1996, Article 30, approved by Attorney General on 12-9-1996.

§174-46.C. Open space requirements.

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

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

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

(a) **Public ownership.** The open space shall be conveyed in fee to the Town of Mashpee and accepted by it for park or open space use.

(b) **Ownership by a nonprofit organization.** The open space shall be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space. The nonprofit 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 this section in minimum open space areas. The nonprofit 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 nonprofit 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 this section 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.

- (5) The developer's declaration of his choice of the three (3) methods described in Subsection C(4) above shall be included in his application to the Planning Board for a special permit to develop an OSID, along with the required maps and plans describing the open space areas and the proposed uses within said areas. Before 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 nonprofit organization. Approval of the OSID shall require approval by the Planning Board of said covenants and restrictions after consultation with the Town Attorney.

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

year thereafter. The decision of the Planning Board of the Town of Mashpee in any such case shall constitute a final administrative decision subject to review in accordance with any applicable statute of the Commonwealth of Massachusetts. The cost of such maintenance by the Town of Mashpee shall be assessed pro rata against the properties within the open space residential development that have a right to enjoyment of the open space. Such assessment shall become a lien on the properties. The Town of Mashpee, at the time of entering upon the open space for a purpose of maintenance, shall file a notice of such entry with the Town Clerk and at the principle office of the corporation, trust or association owning the open space, which notice shall contain a statement that the individual owners within the open space residential development may become subject to an assessment and lien for their pro rata share of the total cost of the maintenance.

