

drainage and other street requirements of the Mashpee Subdivision Regulations and Planning Board for subdivision streets.

**§174-13 Land within Street Lines:**

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

**§174-14 Land Taken by Eminent Domain:**

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

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

Construction or operations under a Building Permit or Special Permit shall conform to any subsequent amendment of the Zoning Bylaw unless the use or construction is commenced within a period of not more than twelve (12) months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

History: Amended 10-16-2017 ATM, Article 14, approved by Attorney General 2-21-2018.

**§174-16 Reserved:**

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

## **ARTICLE V - Nonconforming Buildings and Uses**

**§174-17 Continuance; Extensions; Alterations**

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

History: Amended 10-4-1993 ATM, Article 24, approved by Attorney General 10-18-1993.

History: Amended 10-17-2005 ATM, Article 22, approved by Attorney General 3-7-2006.

**§174-17.1 Raze and Replace**

History: Added 10-15-2018 ATM, Article 16, approved by Attorney General 1-9-2019.

No pre-existing, non-conforming single or two (2) family dwelling structures shall be torn down and rebuilt on any lot unless there is an issuance of a Special Permit from the Zoning

Board of Appeals. Such a Special Permit may be granted only if the Zoning Board of Appeals finds that any changes, extensions, alterations or reconstruction of the pre-existing non-conformities are not substantially more detrimental than exists prior to removal of the existing structure and that there is adequate land area to provide sufficient parking. In no case shall new non-conformities be permitted without the issuance of a Variance.

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

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

**§174-19 Abandonment of Nonconforming Use:**

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

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

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

**§174-20.1 Rebuilding Historic Structures:**

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

History: Added 10-2-2000 ATM, Article 31, approved by Attorney General 1-12-2001.

**§174-21 Nonconforming lots:**

History: Amended 5-7-1990 STM, Article 7, approved by Attorney General 11-19-1990.

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

History: Amended 10-16-2006, ATM, Article 22, approved by Attorney General 2-13-2007.

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

- C. If a lot obtains its legal frontage on or requires access via a road shown on a subdivision plan as defined in MGL C. 41, §81, which plan has been approved by the Planning Board, no building may be constructed on said lot unless the roads shown on such plan have been installed in accordance with Planning Board requirements, if any, in effect at the time the plan was submitted to the Planning Board where a release of the road covenant or release of other security has been obtained from the Board or, in accordance with current Planning Board requirements, where no road covenant or security has been so released.
- D. Building lots in cluster subdivisions created under previous provisions of the Mashpee Zoning By-Law not requiring a Special Permit may be developed pursuant to the lot size, frontage and setback regulations applicable to the original approval of said subdivision, but subject to any other currently applicable provisions of this by-law.  
History: Amended 10-16-2006, ATM, Article 23, approved by Attorney General 2-13-2007.

## **ARTICLE VI - Land Use Regulations**

### **§174-22 Compliance of Use Required:**

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

### **§174-23 Performance Bond:**

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

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

#### **A. Explanations.**

1. A use listed in §174-25 is permitted as of right in any district under which it is denoted by the letter "Y," subject to such requirements as may be specified elsewhere in this chapter.
2. A use or change of use which is denoted in §174-25 by the letters "PR" may be permitted as of right subject to the provisions of Subsection B and to such other requirements as may be specified elsewhere in this chapter.  
History: Amended 10-18-2004 ATM, Article 42, approved by Attorney General 12-16-2004
3. A use which is denoted in §174-25 by the "SP" is permitted as a special exception only if a Special Permit is granted by the Planning Board or Board of Appeals, as applicable, pursuant to the provisions of Subsection C and is furthermore subject to such other requirements as may be specified elsewhere in this chapter.