



**TOWN OF FALMOUTH  
BUILDING AND ZONING DEPARTMENT**

**NON-CONFORMING**  
(AREA, LOT WIDTH OR STREET FRONTAGE)

Prior to the issuance of a building permit for a single family dwelling on an undersized lot, documentation must be provided showing that the lot is protected. Therefore, a single letter of detailed explanation along with copies of research/documentation is required on order to process the application. **The burden of proof that the lot is protected is on the applicant, not the Town.** Please provide full and documented proof, including the applicable section(s) of the zoning by-law and/or Chapter 40A of the Massachusetts General Laws, which provides protection to the lot in question. **If the lot in question abuts a commonly owned lot on which a house is built a certified plot plan must be provided for both lots showing the location of the septic system and all structures.**

The following information is provided to assist you in researching the lot: To begin, it is necessary to go to the Planning Board for a copy of the subdivision plan, which created the lot. Please be sure the dates and signatures relative to the Planning Board Approvals are included on the copy. Once you have determined the date of the subdivision plan and have located the lot in question read through the list below of possible ways the lot may be protected. When you find one that you feel applies to the lot you must provide the necessary documentation or explanation as to why the Section protects your lot. If the lot is protected under number 5, 6, or 7, which refers to lots shown on a plan prior to 1/1/81, you must complete the entire work sheet on page 5 of this packet. A list of the 1/1/81 property owners, as well as the Assessor's map, section and parcel information, is available in the Building/Zoning Department or through the Assessor's office. If you feel your lot is protected under number 3 then the schedule of requirements prior to April 2, 1984 is on page 4 of this packet. You must state the zoning district and the required lot area, width and frontage based on the 1984 schedule on the worksheet on page 5. **All research must be done by the applicant.** A letter of explanation stating which section of the zoning bylaw provides protection for the lot, a copy of the subdivision plan with dates and signatures, the worksheet on page 5 with applicable sections filled out. The following information may assist you in this research.

**SOME WAYS A RESIDENTIAL LOT MAY BE "GRANDFATHERED" OR PROTECTED**

1. If the lot meets the Schedule of Requirements in Section 240-67 (per Town of Falmouth Code) it is conforming. See Schedule of Requirements on page 3.
2. If the lot has at least 5,000 square feet of area and 50 feet of street frontage (street as defined in the Falmouth Code) and was **not** held in common ownership with an adjoining land at the time of a zoning increase, it may be protected per Massachusetts General Law, Chapter 40A, Section 6 (MGL C.40A, Sec. 6). **This protection only applies to a lot shown on a plan and in single Ownership prior to 1926.**
3. If the lot was shown on a plan endorsed by the Planning Board as of April 2, 1984 **and conformed** to zoning requirements in existence on that date, it may be protected per Section 240- 67A. See 1984 Schedule of Requirements on Page 4.

4. If the lot is in a subdivision, it is protected for eight (8) years from when the definitive subdivision plan was endorsed by the Planning Board, per MGL C.40A, Sec. 6.

5. If the lot was **not held in common ownership** with adjoining land as of 1/1/81, it shall be eligible if the lot has at least (per Section 240-66C(2)):

- (a) 40,000 square feet of area in an AGAA/RAA District
- (b) 20,000 square feet of area in an AGA/RA/PU District
- (c) 10,000 square feet of area in an AGB/RB District
- (d) 7,500 square feet of area in an RC/GR District, for single-family construction only.

6. If the lot was **not held in common ownership** with adjoining land as of 1/1/81 and has at least 7,200 square feet of area, application may be made to the Zoning Board of Appeals for a Special Permit per Sec. 240-66C(3).

7. If the lot was held in common ownership with adjoining land on 1/1/81, it may be treated as not held in common ownership if, as of 1/1/81, a dwelling was in existence on all other commonly held, contiguous lots, or if, after 1/1/81, the lot was no longer held in common ownership and a dwelling was permitted by Special Permit on each of such adjoining lots per Sec. 240-66C(4). The minimum lot area required is 7,500 square feet.

8. Section 240-66C(6) allows for lots not protected by 240-66C(4) to apply to the Planning Board for a Special Permit to construct a single-family residence if the lots are on roads which have been constructed as of April 1, 1982 and if the lots are re-subdivided so that the total area of the commonly held lots, when divided by the number of building permits to be requested, results in an area of land per single-family residence that equals at least seventy-five percent (75%) of the existing requirements for that zoning district.

9. Any lot in RB or AGB Districts recorded in the BCRD before 1/1/75 may be eligible if it has at least 20,000 square feet of area and the lot width is 100' wide, or greater, per Sec. 240-66C(7).

10. Section 240-121 provides for Planned Residential Development a/k/a cluster zoning. Dwellings of different types may be erected on lots of less than the minimum areas, setbacks, widths, coverage or frontage specified in Section 240-67. The designation of Planned Residential Development requires a Special Permit from the Planning Board. Since this type of development has a Special Permit, there is no expiration, thus the undersized lots are **protected indefinitely**. Provide a letter of explanation for any lot that is protected by Special Permit in a Planned Residential Development.

SCHEDULE OF REQUIREMENTS PRIOR TO APRIL 2, 1984 (SECTION 240-67A(4))

District	Minimum Lot Area (square feet)	Minimum Lot Width (feet)	Minimum Frontage (linear feet)
Single Residence AA	80,000	200	100
Single Residence A	40,000	150	100
Single Residence B	20,000	125	50
Single Residence C	15,000	100	50
General Residence	15,000	100	50
Public Use	40,000****	150****	100**
Agricultural AA	80,000	200	100
Agricultural A	40,000	150	100
Agricultural B	20,000	125	50
Marine	15,000	100	50
Business 1			
Business 2	40,000	200	100
Business 3 * * *			
Light Industrial A** *	40,000	150	100
Light Industrial B	80,000	200	100

\* Requirements are those of the nearest residential district

\*\* No requirements for building on lots owned separate from all abutting property on 2/1/79

\*\*\* No requirements for building on lots owned separate from all abutting property and zoned Light Industrial A, as of 1/1/81.

\*\*\*\* Increase from 15,000, 100 and 50 feet respectively at 1982 A.T.M.

**CURRENT SCHEDULE OF REQUIREMENTS (SECTION 240-67)**

District	Minimum Lot Area (square feet)	Minimum Lot Width (feet)	Minimum Frontage (linear feet)
Single Residence AA	80,000	200	1504
Single Residence A	45,000 <sup>4</sup>	150	100
Single Residence B7	40,000 <sup>4,c</sup>	125	100 <sup>a</sup>
Single Residence C7	40,000 <sup>4,c</sup>	100	100 <sup>a</sup>
General Residence	20,000 <sup>4</sup>	125 <sup>4</sup>	100 <sup>a</sup>
Public Use	45,000 <sup>4</sup>	150	100
Agricultural AA	80,000	200	1504
Agricultural A	45,000 <sup>4</sup>	150	100
Agricultural B	40,000 <sup>4,8,d</sup>	125	100 <sup>4,a</sup>
Marine	20,000 <sup>4</sup>	100	100 <sup>a</sup>
Business 1			
Business 22	40,000	200	200
Business 3	Note 1	Note 1	Note 1
Light Industrial A3	40,000	150	100
Light Industrial B	80,000	200	100
Water Resource Overlay	80,000	200	150
Coastal Pond Overlay		(Refer to Article XXI)	
Wildlife Corridor Overlay		(Refer to Article XX)	
Accident Prevention Overlay		(Refer to Article XVI)	

**NOTES:**

- <sup>1</sup> Requirements are those of the nearest Single Residence, General Residence or Agricultural District, whichever is closest. [Amended ATM 4-1-1985, Art. 65]
- <sup>2</sup> No requirement for building on lots owned separate from all abutting property on February 1, 1979.
- <sup>3</sup> No requirements for building on lots owned separate from all abutting property and zoned Light Industrial A. as of 1 January 1981. [Added ATM 4-8-1981, Art. 53]
- <sup>4</sup> Corrected Subsection A shall not apply to any residential lot shown on a plan endorsed by the Planning Board as of April 2, 1984, if the lot conforms to the zoning requirements in existence on that date. Corrected Subsection A also shall not apply for the purpose of special permit applications under § 240-66C(6), provided that the provisions of this sentence shall not apply to more than three (3) adjoining lots in common ownership. This protection shall not restrict the Planning Board from considering alternatives to issuance of any special permit under § 240-66C(6). [Amended ATM 4-6-1987, Art. 62]
- <sup>5</sup> Frontage for all lots along Route 151 extending from Route 28A to the Mashpee Town line and along Route 28 from the Bourne Town line to the Mashpee Town line shall be five hundred (500) linear feet minimum for all zoning districts. This restriction shall not apply to lots endorsed by the Planning Board as of October 1, 1985 [Added STM 10-8-1986, Art. 69]
- <sup>6</sup> Corrected Subsection A shall not apply to any residential lot shown on a preliminary or definite plan submitted to the Planning Board between March 1, 1983, to April 2, 1984, and subsequently approved between April 2, 1984, and December 31, 1984. [Added AFTM 11-17-1992, Art. 13, approved 7-16-93]
- <sup>7</sup> Corrected Single Residence B and Single Residence C shall not apply to any lot shown on a plan endorsed by the Planning Board prior to April 1, 1993, or to any lot shown on a plan submitted for approval to the Planning Board prior to April 1, 1993, and subsequently endorsed after that date. [Added ASTM 4-5-1993, Art. 13, approved 7-16-1993]
- <sup>8</sup> Corrected Agricultural B shall not apply for any lot shown on a plan endorsed by the Planning Board prior to April 1, 1993, and subsequently endorsed after that date. [Added AFTM 11-30-1993, Art. 4, approved 2-25-1994]
- <sup>a</sup> [Amended STM 11-1-1988, Art. 61]
- <sup>b</sup> [Amended STM 4-5-1989, Art. 47]
- <sup>c</sup> [Amended ASTM 4-5-1993, Art. 13, approved 7-16-1993]
- <sup>d</sup> [Amended AFTM 11-30-1993, Art. 4, approved 2-25-1994]

NONCONFORMING LOT WORKSHEET

Date the Planning Board endorsed a plan showing the lot on it: \_\_\_\_\_

*\*\*Attach a copy of the plan showing the date of endorsement and the subject lot.*

Lot area in square feet \_\_\_\_\_ Street frontage in linear feet \_\_\_\_\_

Zoning District \_\_\_\_\_ Address \_\_\_\_\_

SUBJECT LOT				
ASSESSOR'S INFORMATION:	MAP	SECTION	PARCEL	LOT
1/1/81 OWNER OF SUBJECT LOT: _____				

CONTIGUOUS LOT				
ASSESSOR'S INFORMATION:	MAP	SECTION	PARCEL	LOT
1/1/81 OWNER OF SUBJECT LOT: _____				

CONTIGUOUS LOT				
ASSESSOR'S INFORMATION:	MAP	SECTION	PARCEL	LOT
1/1/81 OWNER OF SUBJECT LOT: _____				

CONTIGUOUS LOT				
ASSESSOR'S INFORMATION:	MAP	SECTION	PARCEL	LOT
1/1/81 OWNER OF SUBJECT LOT: _____				

CONTIGUOUS LOT				
ASSESSOR'S INFORMATION:	MAP	SECTION	PARCEL	LOT
1/1/81 OWNER OF SUBJECT LOT: _____				

Letter addressed to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone number: \_\_\_\_\_

Person making request if different from above: \_\_\_\_\_

\*\*\*I believe this lot is protected under Section(s) 240-\_\_\_\_\_