

LOCAL LAW # _____ of the Year 2014

A local law amending Chapter 140 of the Code of the
Town of Rochester entitled “Zoning”

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ROCHESTER
AS FOLLOWS:

Section 1. Chapter 140 of the Code of the Town of Rochester is repealed in its entirety and replaced with the following new Chapter 140 to read as follows:

TOWN OF ROCHESTER ZONING LAW

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Article 1 General Provisions

- § 140-1 Authority, Interpretation, Conflict and Separability.

- A. Title. This Chapter shall be known as the Town of Rochester Zoning Law.
- B. Interpretation. The provisions of this Law, in their interpretation and application, shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
- C. Conflict. This Law is not intended to interfere with, abrogate, or annul any other law, rule or regulation statute or provision of law. Where any of the provisions of these regulations impose restrictions different than any other law, rule or regulation or other provision of law, whichever provisions are more restrictive or impose higher standards shall control. This Law, however, shall repeal and replace in its entirety the existing Town of Rochester Zoning Law.

- D. Jurisdiction. All complete applications filed prior to the effective date of this chapter shall be reviewed pursuant to regulations in effect prior to amendment. An application shall be considered complete for these purposes when a public hearing on the same has been scheduled or completed, or in the event no public hearing is required, when the Code Enforcement Officer determines the application is complete the requirements of the State Environmental Quality Review Act have been met.

§ 140-2 Purposes.

It is the legislative intent of this Chapter to provide standards and procedures to guide land use and new development. This Law is specifically intended to implement the Town of Rochester Comprehensive Plan, including but not limited to the following objectives:

- A. Directing growth by encouraging concentrations of new residential, nonresidential and mixed-use developments in areas that currently are or that can be conveniently served by roads, utilities, schools and other facilities.
- B. Directing large-scale or intensive development to areas with adequate infrastructure.
- C. Broadening housing opportunities in the Town of Rochester to provide housing for all populations including young families, senior citizens, working families and households, single adults and others.
- D. Offering incentives to encourage better site design and use of energy efficient principles in new development projects.
- E. Protecting historic resources.
- F. Protecting the quantity and quality of the water supply by strengthening measures to prevent groundwater contamination, assuring protection of surface waters, preserving wetlands and encouraging the provision of sewage collection and treatment to hamlets.
- G. Protecting important natural resources identified in the Town's Natural Resources Inventory.
- H. Minimizing disturbance to wildlife and vegetation from the effects of new development.
- I. Regulating flood plain development.
- J. Providing for continued commercial and industrial growth.
- K. Allowing for home-based occupations.
- L. Preserving productive farmlands as a viable industry resource and means for maintaining open space.
- M. Encouraging agri-tourism activities by farms and otherwise promoting and developing agriculture.
- N. Protecting the Catskills and the Shawangunk Ridge by limiting clearing and intensity of use so as to maintain existing character.

- O. Creating guidelines for new development and its landscaping that maintain a high-quality built environment while preserving and using natural beauty wherever possible.
- P. Recognizing historical neighborhoods and preserving small-scale mixed use development patterns in these areas.
- Q. Preventing intrusion of incompatible uses in residential areas so as to ensure privacy for residents and their freedom from nuisances.
- R. Ensuring signage in Town is both attractive and functional.
- S. Reducing traffic congestion and improve the safety of the roads in the Town.
- T. Requiring adequate setbacks and off-street parking for both residential and nonresidential uses.
- U. Encouraging alternatives to strip commercial development, by encouraging new development in hamlet areas and/or concentrated nodes that minimize the road frontage and curb cuts required.
- V. Ensuring new construction provides adequate access for emergency services.
- W. Encouraging the use of conservation subdivision, planned unit development, transfers of development rights and other flexible techniques for simultaneously preserving open spaces. protecting natural resources and accommodating new development.
- X. Protecting the community against unsightly, obtrusive and noisy land uses and operations.
- Y. Providing public access to trails and other recreational resources.

Article 2 Definitions

§ 140-3 Word Usage.

- A. Unless otherwise listed below, the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the most recent version of *Webster's Unabridged Dictionary*.
- B. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the singular include the plural; words used in the plural include the singular; the word "herein" means in this law; the word "requirements" means the minimum requirements necessary for the purposes set forth in Article 1; and the words "this law" shall mean this local law and the schedules and maps included herein as enacted or subsequently amended.

- C. The word "person" as used in this chapter, shall be defined to include, but not be limited to, an individual, a partnership, a joint venture, a corporation, an unincorporated association, a firm or any other form or entity, contractors, subcontractors, or journeymen.
- D. The word "lot" includes the word "plot."
- E. The term "occupied" or "used", as applied to any land or building, shall be construed to include the words "intended", "arranged", or "designed to be occupied or used."
- F. "Shall" is always mandatory.

§ 140-4 Specific Definitions.

The following are definitions of key terms used elsewhere in this Law. These definitions are supplemented by others applying to specific uses that are offered in the context of regulations applying to such uses. Where a definition references a specific law, code, or statute; any amendments to that law or code shall apply.

Access — The place, means, or way by which pedestrians and/or vehicles shall have safe, adequate and usable ingress and egress to a property, structure, or use.

Accessory Building or Structure — A building or structure incidental related, appropriate and clearly subordinate to and located on the same lot occupied by the main building or structure.

Accessory Use — A use incidental, related, appropriate and clearly subordinate to the main use of the lot or building, which does not alter the principal use of the subject lot or affect other properties in the district.

ADA — The "Americans with Disabilities Act"

Agricultural Building — A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products.

Agricultural Data Statement — A state required form identifying farm operations within a certified agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board, zoning board of appeals or town board pursuant to Article 16 of New York State Town Law.

Agricultural District — An official Agricultural District recognized by the County of Ulster and the New York State Department of Agriculture and Markets under Article 25-AA of the New York State Agriculture and Markets Law.

Agricultural Labor Housing — Structures used to house seasonal and/or full-time employees where such residences are provided by the farm landowner and/or operator, the worker is an essential employee of the farm landowner and/or operator employed in the operation of the farm, and the farm worker is not a partner or owner of the farm operation.

Agricultural Processing Facility — A commercial facility where raw agricultural products are processed into food or other products for animal or human consumption, distribution or use in other processes, including but not limited to cheese making, feed production, winemaking and fruit storage.

Agricultural Retail Sales – A commercial agricultural sales operation conducted in the manner of:

1. A permanent structure, that allows for agricultural producers to retail their products and agriculture-related items directly to consumers and enhance income through value-added agricultural products, services and activities.

and/or

2. A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, value added agricultural products, and handmade crafts. This shall include any “pick-your-own” types of retail agricultural activities.

Agricultural Tourism Enterprise — A commercial attraction where visitors are entertained and educated regarding agricultural and farm activities, including petting zoos, pumpkin patches, corn mazes, farm museums and other activities revolving around a central farming theme, including ancillary activities and uses (e.g. bed and breakfast lodging or cafe) that supplement the agricultural elements of the enterprise but retain it as the primary theme.

Agricultural Use — A use involving the production, keeping, or maintenance for sale, lease or personal use of plants and animals useful to man, including but not limited to forages, grain and seed crops, dairy animals, poultry, beef, sheep, horses, pigs, bees, fur animals, trees, food of all kinds, vegetables, nurseries, and lands devoted to soil conservation or forestry management programs. See also Farm Operation.

Alteration — As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

Animal Hospital — A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

Animal Sanctuary – A nonprofit facility operated as a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned or displaced domestic, farm, or wild animals are provided care for their lifetime or rehabilitated and released back to their natural habitat, and which does not engage in animal breeding, animal research, or the commercial sale, trade or barter of the animal or animal’s body parts, and which allows only supervised public access by means of a structured educational visitor program.

Applicant — The owner, or authorized agent of the owner; including but not limited to, any individual, partnership or corporation that undertakes any of the activities covered by this Law.

Auction Facility — A commercial establishment where property or items of merchandise are sold to the highest bidder.

Basement — A story in a building having a floor below the finished grade at any point on the periphery of the building and having a structural ceiling at least four feet above the average finished grade along each side of the building facing the street.

Bed and Breakfast — An owner-occupied new or existing residence that is used, in the manner of a home occupation, to provide overnight lodging with breakfast as part of the consideration and involving shared bath and dining facilities, as defined by the New York State Building Code; also including youth hostels.

Buffer — A part of a required setback area (yard) used to provide separation between incompatible uses to effect a visual barrier, block physical passage between uses or reduce noise, dust and litter. The separation may be effected by fencing, dense vegetative planting, and the provision of additional setback distances, earthen berms or a combination thereof.

Building Inspector — The person charged by the Town Board with responsibility for administration and enforcement of this Law. Also known as Code Enforcement Officer or Building Department.

Building — (See structure.)

Building Height — The vertical distance measured from the average elevation of the proposed finished grade to the highest point of the roof for flat roofs; to the decline of mansard roofs; and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

Building Permit — A permit issued by the Town of Rochester to permit the construction, expansion, removal, repair or replacement of any structure.

Bulk Fuel Storage — Any facility where fuel, including but not limited to kerosene, home heating oil, gasoline, and propane, is stored in tanks for distribution to wholesale establishments or individual users.

Camping — The use of a property as a site for sleeping outside, or; the parking of travel trailers or similar equipment, the erection of tents or other shelters, to serve as temporary residences.

Campground or Recreational Vehicle (RV) Park — The development or use of a lot, tract or parcel of land for the purpose of providing a site for travel trailers, truck campers, camper trailers, motor homes, tents, park model recreational vehicles (as defined by the Recreational Vehicle Industry Association) or permanent cabins of less than 500 square feet footprint size that represent less than 20% of such accommodations as are offered, that is owned and managed as a resort for camping purposes. "Campsites, "campgrounds" or "recreational vehicle parks," tent camping facilities and other similar facilities regardless whether rights to occupy a campground lot are conveyed by lease, rent, sale or any other means shall be included in this definition. Also, this definition shall include those situations where camping occurs with no specific rights of occupation offered but the use nonetheless permitted by the owner's direct or indirect action or lack thereof.

A. Transient Campground or Recreational Vehicle (RV) Parks — Publicly operated facilities or businesses offering 3 or more campground or RV park lots with or without the usual accessory recreational and service facilities, for use for tent camping and/or recreational vehicle camping by the public at large on a transient basis. Sites are rented on a daily or weekly basis or otherwise permitted by the owner to be used for camping on a temporary short-term basis.

- B. Non-transient Campground or Recreational Vehicle (RV) Parks — Planned private communities with recreational and service facilities, including central water and sewer facilities and usually a restaurant and/or bar, lounge, chapel and community hall, for use only by occupants of tent and/or recreational vehicle sites within the campground. Sites may be owned in common, or individually by membership or may be leased on an annual, monthly or other seasonal basis.

Campground Lot — A lot or space within a campground or RV park used for tent camping or as a site for recreational vehicles; or an area of land otherwise offered by the developer or operator through sale, lease, rent, membership or any other means for camping purposes regardless whether or not done for pecuniary gain.

Cemetery — A place used for burials, whether in the ground or in mausoleums.

Central Sewage or Water Supply — A sewage system or water supply system designed to serve more than one dwelling unit or building; not including the use of a single well or disposal system for two dwellings on the same parcel of land. See “On-Site Sewage or Water Supply” for further information.

Certificate of Occupancy— A document that is issued by a municipal government upon completion of a building or structure or the determination that a use is ready for occupancy and in compliance with municipal building and zoning codes and approved site plans.

Change of Use — A conversion of the use of land from one category on the Schedule of District Regulations to another (e.g., from an office to a restaurant).

Code Enforcement Officer — The person charged by the Town Board with responsibility for administration and enforcement of this Law. Also known as Building Inspector.

Commercial Events Facility — The business use of a parcel for conferences, banquets, festivals, weddings, or other similar celebratory or educational activities conducted ancillary to another approved or allowed use, subject to the standards of §140-35.

Commercial Recreation — Any and all amusement and recreation uses and associated facilities and structures used for sports and leisure activities on a fee basis, excluding uses which are defined elsewhere in the Chapter.

Commercial Sawmill — A stationary manufacturing facility in which logs are converted to lumber products and byproducts by running them through a series of saws or other equipment including but not limited to kilns and chippers.

Commercial Use — Any wholesale, retail or service business activity established to carry on trade for profit, which activity is specifically listed as a separate and distinct non-residential use on the Schedule of District Regulations.

Commercial Vehicle — Any motor vehicle that requires a Commercial Drivers License (CDL) to operate.

Community water supply - A public water system which serves at least five service connections used by year-round residents or regularly serves at least 25 year round residents.

Community Wastewater Facility – Wastewater facilities as regulated by the New York State Department of Environmental Conservation (NYSDEC). Any such facilities are to be constructed and approved by NYSDEC in accordance with NYSDEC regulations and guidelines.

Completed Application — An application for a permit that is in an approved form and is determined by the Town agency with approval authority to be complete for the purpose of commencing review of the application, but that may need to be supplemented during the course of review to enable the Town to make the findings and determinations required by law.

Conditional Final Approval — Approval by the planning board of a final plat Site Plan or Subdivision subject to the completion of specific criteria as set forth in a resolution conditionally approving the final plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the planning board and, in the case of Subdivision, recording of the plat in the office of the county clerk or register as herein provided.

Conservation Easement — A legally binding and recorded negative covenant or restriction that is deeded to a qualified third party to permanently limit certain development activities on real property, so as to protect conservation assets such as open space, water quality or wildlife habitat. The restriction stays with the property through successive owners.

Conservation Subdivision — A form of development for residential subdivisions that permits a reduction in lot area and other development standards to increase permanent open space.

Convenience Market — A one-story, retail store containing less than 5,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket"). It may also include the sale of gasoline and/or a car wash but shall not include the repair or service of vehicles.

County — The County of Ulster, State of New York, and its planning agency.

Day Care Center — Any establishment enrolling four or more children or adults in a supervised day-use program where tuition, fees, or other forms of compensation for the care of these individuals is charged...

DEC — The New York State Department of Environmental Conservation.

Density — The number of families, individual dwelling units or principal structures per unit of land.

Dismantling Operation — A facility where equipment, vehicles and other assembled materials are taken apart for purposes of recovery of valuables or disposal of wastes.

Driveway — A private vehicular access from a public or private road to a single lot.

Driveway, Shared — A private vehicular access from a public or private road which serves a maximum of two lots (three including the lot it has access over) and is granted by right-of-way.

Distribution Facility — A warehouse or other specialized building, often with refrigeration or air conditioning, which is stocked with products (goods) to be re-distributed to retailers, wholesalers or directly to consumers.

Driving Range — A golf practice facility consisting of a large, open field with teeing ground at one end, practice putting greens and/or areas for chipping, pitching and bunker practice plus ancillary services.

Dwelling — A building arranged, intended, designed, or used, as the living quarters including kitchen facilities for one or more families living independently of each other upon the premises. The term "dwelling" shall not be deemed to include a hotel, motel, bungalow, rooming house or tourist home, but shall include bed and breakfasts.

- A. Dwelling, Single-Family — A building arranged, designed and intended, for and occupied exclusively by, one family.
- B. Dwelling, Two-Family — A building arranged, designed and intended for and occupied by two families living independently.
- C. Dwelling, Multi-Family— A building arranged, designed and intended for and occupied by three or more families living independently and having no cooking or sanitary facilities in common with any other dwelling unit; including flats, apartments and townhouses.

Dwelling Unit — A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit.

EAF — The Environmental Assessment Form required pursuant to SEQRA.

Easement — A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public or private purpose, and within which the lessee or owner of the property shall not erect any permanent structure, but shall have the right to make any other use of the land which is not inconsistent with the rights of the grantee.

Education and Conference Center — A specialized facility with or without lodging accommodations designed and built almost exclusively to host educational conferences, exhibitions, large meetings, seminars or training sessions, including complementary office and leisure facilities for use of participants, not including camps.

Emergency Services — An organization that responds to and deals with immediate public health and safety needs; especially ambulance, emergency medical technicians, firefighters, and police officers.

Energy Efficient Building — Construction designs intended for the purposes of increasing the efficiency with which buildings and their sites use and harvest energy, water, and materials; and reducing building impacts on human health and the environment, through better siting, design, construction, operation, maintenance and removal during the complete building life cycle.

Environmental Impact Statement (EIS) — A written "draft" or "final" document prepared in accordance with § 617.9 and § 617.10 of SEQRA. An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. A draft EIS is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment. An EIS may also be a "generic" in nature to accommodate an anticipated range of future activities.

Equivalent Dwelling Unit — That amount of wastewater that is generated by a single-family residence, using New York State Department of Environmental Conservation guidelines or if not addressed by the State, another comparable authority.

Essential Services — The construction and maintenance of underground, surface or overhead electrical, gas, telephone, water and sewage collection systems along with normal accessory activities.

Existing Use — A land use already legally established at the time of this Law's enactment.

Family — Persons living together as a single, permanent and stable nonprofit housekeeping unit, using all rooms in the dwelling and housekeeping facilities in common and having such meals as they may eat at home generally prepared and eaten together with sharing of food, rent, utilities or other household expenses. Households of related individuals shall be presumed to be a family. Persons living together who are determined not to be families may present affirmative evidence to the Building Inspector the household or group meets the other criteria contained herein.

Farm Operation — As pertains to agricultural use within a certified county agricultural district as defined under Article 25-AA of the New York State Agriculture and Markets law. The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation, a timber operation, compost, mulch or other biomass crops, and commercial equine operation. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

Farm Stand — A building or structure for an agricultural producer to sell products directly to customers that is intended for the display and sale of primarily locally raised agricultural produce and products, and provided that such structure is for the benefit of an accessory use.

Fast Food Restaurant — An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises and which may include facilities that enable customers to obtain food while remaining in their vehicles.

FEMA — The Federal Emergency Management Agency; the federal agency which administers the National Flood Insurance Program.

Fence or Wall — An accessory structure enclosure composed of any substance that will present an adequate blockade around a field, yard, or other such expanse of land.

Fence, Agricultural — An accessory structure enclosure that has the ability to allow visibility through the enclosure to the opposite side and is constructed for the specific intention of keeping farm animals within or wildlife out of a field, yard, or other such expanse of land. This shall not include chain-link fences.

Final Approval — The approval of a site plan or subdivision plan in a form that reflects the as-built or financially guaranteed ready to build condition of the improvements. The approval qualifies the plan to be signed by a duly authorized officer of the planning board and recorded and qualifies the applicant to proceed with sales.

Flag Lot — A parcel of land shaped like a flag; a narrow strip of land providing vehicular and pedestrian access to a street, with the bulk of the property lying to the rear of another lot and the access serving both lots.

Flea Market (Swap Meet) — A commercial enterprise in a building or open area in which stalls or sale areas are set aside, rented, or otherwise provided, and intended for use by various unrelated individuals to sell articles that are either new, old, homemade, homegrown, handcrafted, obsolete, or antique and may include the selling of goods at retail by businesses or individuals who are generally engaged in retail trade. This definition does not include informal or private garage or yard sales.

Floodplain — Any area designated by the Federal Emergency Management Agency (FEMA) in its FEMA mapping.

Foot-Candle — A measurement of the amount of light falling upon an object at any given moment (illumination), called such as it refers to the amount of light falling on a square foot area located one foot away from a candle.

Floor Area — The sum of the gross horizontal areas of the several floors of the building or buildings on a lot measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings, excluding cellar and basement areas used only for storage or for the operation and maintenance of the building.

Front Yard — See “Yard, Front.”

Frontage — The portion of a lot abutting on a street ordinarily regarded as the front yard, but it shall not be considered as the ordinary side yard of a corner lot.

Garage, Private — An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space for more than one car leased to a nonresident off the premises.

Gasoline Filling Station — An area of land, including structures thereon or any building or part thereof, that is used primarily for the sale and direct delivery to the motor vehicles of gasoline or any other motor vehicle fuel or oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including auto bodywork, welding or painting.

Gift, Antique or Craft Shop — A relatively small retail store, typically less than 5,000 square feet of floor area, that sells miscellaneous articles appropriate as gifts including antiques, collectibles, crafts, novelties and souvenirs, but not including adult stores.

Golf Course — A large landscaped area for playing the sport of golf, including associated facilities such as a clubhouse or restaurant.

Greenhouse — An enclosed structure of a permanent or temporary nature within which is conducted a commercial agricultural operation, generally the propagation of one or more horticultural species from seeds or cuttings to a stage fit for transplanting elsewhere or sale, including retail as well as wholesale operations.

Group Housing — Dwellings intended for occupation by residents participating in a particular social program.

Health Care Institutions — Establishments primarily engaged in providing services for human health maintenance including hospital facilities, nursing and adult homes, personal care facilities and medical and dental clinics and offices whether publicly or privately operated. See also Low Impact Health Care Practice.

Helicopter Pad — A landing area for helicopters.

Home Occupation — Any use customarily conducted entirely within a principal structure and/or other structure accessory thereto and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the principal use and does not change the character thereof. See § 140-19 for further descriptions of home occupations by class.

Homeowners Association (HOA) — A legally established community association or trust organized in a development in which individual owners share common interests in open space or facilities.

Hotel/Motel — A building or group of buildings containing rooms used primarily for overnight accommodations of those in transit, or for a short-term business or personal stay and where meals and other services, including recreation facilities, are provided or offered for sale within the building or in an accessory building. Single-room occupancy residential projects shall be considered multi-family dwellings.

Hunting and Fishing Clubs — Meeting and non-commercial overnight lodging facilities associated with hunting and fishing recreational activities.

Industrial Use — A manufacturing or wholesale distribution activity, including associated research, development and office functions.

Infrastructure — Facilities that are necessary to support development within a community, including water and sewer, transportation, communications and power facilities.

Inn — A commercial building, similar in size to a residential dwelling, operating as a small hotel that provides lodging to travelers and may provide food and drink to registered guests.

Institutional Use — A complex of structures and uses providing a combination of educational, residential and social service support activities for designated groups of individuals with special needs, including rehabilitation centers and special schools.

Invasive Species — A non-native species whose introduction does or is likely to cause economic or environmental harm or harm to human health as defined in Federal Executive Order 13112 signed in 1999, as amended or superseded by Federal Executive Order or by designation of the Town Board.

Kennel — A commercial or non-profit establishment in which dogs or similar domesticated animals are housed on a temporary or permanent basis.

Library — A building in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, records, tapes, and other electronic media, are kept for reading, reference, and lending.

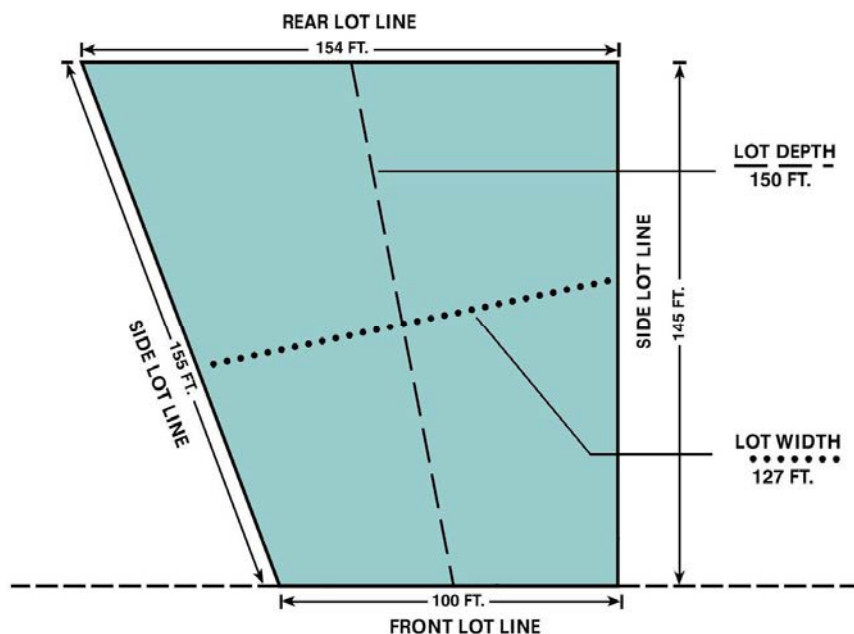
Lot — A tract or parcel of land held in single or joint ownership, not necessarily shown on a duly recorded map, which is occupied or capable of being occupied by buildings, structures and accessory buildings, including such open spaces as are arranged, designed, or required. The term lot shall also mean parcel, plot, site, or any similar term.

- A. Conforming — a lot having not less than minimum area and dimensions required by this law for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of State law to be adequate as a condition of the issuance of a building permit for a building on such land.
- B. Nonconforming — a parcel of land legally established prior to the adoption of LL #4 of 2009, owned individually and separately, and separated in ownership from any adjoining tracts of land, which has a total area and/or dimensions less than prescribed by this law for a lot in the district in which such land is situated.

Lot Area — The area of land contained within the limits of the property lines bounding that lot. Any portion of a lot included in a street right-of-way shall not be included in calculating lot area.

Lot Coverage — That portion of a lot covered by roads, walkways, pavement, structures or other improved surfaces that are generally impervious in nature.

Lot Depth — The average distance from the street line of a lot to the rear lot line of such lot, not to include the street or road right of way.



Lot Frontage — The width of a lot at the edge of the street right-of-way.

Lot Line — The edge of the street right-of-way in the case of the front of any lot; the property boundary generally opposite the street on which a parcel fronts in the case of the rear of any lot; and the property boundaries in the case of the sides of any lots.

Lot Width — The average of the distance between side lot lines as measured at the street right-of-way line and the rear lot line.

Low Impact Health Care Practice — An establishment of less than 2,500 square feet floor area and containing 4 or fewer patient examination or treatment rooms which is primarily engaged in providing licensed diagnosis and treatment services for human health and which may also incidentally offer for sale products associated with such diagnosis and treatment. This shall include doctor, dentist, optometrist, chiropractor, physical therapy, acupuncture, massage therapy, psychiatrist, psychologist, and other similar health care practices. This shall not include health care facilities where the use is primarily retail sales, such as an eye care center or pharmacy.

Low Impact Retail/Service Establishment — A retail or service enterprise of less than 2,500 square feet floor area that involves no outside storage of materials or supplies except for minor incidentals, employs a maximum of three vehicles used in everyday service on behalf of the business and generates no more than 50 vehicle trip ends per day, based on estimates provided by the Institute of Transportation Engineers.

Lumen — The unit of measure for the light energy which flows in air. The total light output from electric sources is expressed in lumens. A uniform source of one foot-candle of lighting power placed in a sphere emits 12.57 lumens.

Manufacturing, Light — An industrial use where all processing, fabricating, assembly, or disassembly of items takes place wholly within an enclosed building. Typical items for processing, fabricating, assembly, or disassembly under this use include but are not limited to apparel, food, drapes, clothing accessories, bedspreads, decorations, artificial plants, jewelry, instruments, computers, and electronic devices. Excluded are processes where raw natural materials such as stone are converted into finished products, except for small crafts such as jewelry.

Manufacturing, General — Industrial processes where products are created from raw materials or where several different products are combined to create large equipment, modular housing and similar items.

Manufactured (Mobile) Home — A factory manufactured structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit when affixed to a permanent foundation or placed on a concrete slab and connected to the required utilities. Manufactured home does not include a modular home or self propelled recreational vehicle.

Manufactured Home Park — A parcel of land under single ownership which has been planned and approved for the commercial renting of two or more manufactured home sites.

Maximum Density — The largest number of dwelling units, or the equivalent in the case of nonresidential uses, legally permitted on an adjusted tract area of land.

Mining — The excavation of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

Mixed Use — Any combination of residential dwellings and permitted nonresidential uses, typically residential and commercial/office, on the same lot or in the same building for use of owners, caretakers, security personnel or rented as apartments.

Modular Home — Factory-manufactured housing, subject to the requirements and regulations of the New York State Uniform Fire Prevention and Building Code, in which prefabricated components assembled at the plant are sent to a housing site in two or more pieces, depending on the size and style of said housing, to be joined together to form a complete house on a permanent foundation.

Motorized Racetrack — Any ground, area or track upon which races, contests, or demonstrations of skill or stunts involving motor vehicles are conducted, except for one day tractor and truck pulls.

Mulch or Compost Processing Facility — A facility that is operated for the controlled biological decomposition of organic wastes or which mechanically reduces the size of organic matter in which the active operation for processing exceeds four thousand (4,000) square feet of land area. Facilities engaged solely in the storage and sale of compost and mulch without on-site processing shall not be defined as a mulch or compost processing facility.

Multiple Permitted Uses — Two or more permitted land uses, exclusive of accessory uses, legally allowed within a given zoning district under this law, including Principal Permitted Uses and Special Uses.

Museums, Galleries and Performance Center — A place for display and exhibition of cultural items and the performance of cultural activities.

Natural Gas - Any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas and/or Petroleum Exploration - Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas and/or Petroleum Exploration and Production Materials - Any solid, semi-solid, liquid, semi-liquid or gaseous material used in the exploration or extraction of natural gas.

Natural Gas and/or Petroleum Extraction – The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

Natural Gas and/or Petroleum Extraction Support Activities - The construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a natural gas or petroleum storage facility, or a natural gas or petroleum gathering line, venting station, or compressor associated with the exploration or extraction of natural gas or petroleum.

Natural Gas Exploration and/or Petroleum Production Wastes - Any garbage, refuse, cuttings, sludge, flow-back fluids, produced waters or other discarded materials, including solid, liquid, semi-solid, or contained gaseous material that results from or is associated with the exploration, drilling or extraction of natural gas and/or petroleum.

Nonconforming Use, Building, or Structure — A use, building or structure lawfully in existence as of the effective date of this law and non-conforming with it or any subsequent amendment.

Nonprofit Club or Recreation Use — A meeting place and recreation center for a fraternal organization, which may include lodging and dining facilities, excluding adult uses and commercial restaurants and taverns.

Nursery — A place where trees, shrubs, vines and/or flower and vegetable plants are propagated or grown for a period of at least six months and/or where flowers and vegetables of an annual variety are germinated before being offered for sale and transplanting.

Occupancy —The purpose for which a building, or portion thereof, is utilized.

Offices — Buildings used primarily for conducting the administrative or professional functions of a business, profession, service, industry or government, or like activity, including law offices, insurance services, real estate offices, financial institutions, corporate offices and similar enterprises, excluding uses which are defined elsewhere in this Chapter.

On-Site Sewage or Water Supply — Any sewage system designed to; (1) treat sewage by subsurface means or (2) to provide water from a drilled well or spring; within the boundaries of an individual lot. See "Central Sewage or Water Supply" for further information.

Open Space — A portion of a lot, exclusive of required front and side yard areas, that is not covered by buildings, parking areas, streets or other non-recreational improvements (except as may be permitted by this Law).

Overlay Zone —A mapped zone that imposes a set of requirements in addition to those of the underlying zoning district In an area where an overlay zone is established, property is in two zones and the land may be developed only under the conditions and requirements of both zones.

Parcel — An area of land resulting from the division of a tract of land for the purposes of transfer of ownership, use or improvement.

Parking Area — An open area or structure, other than a street or other public way, used for the parking of automobiles and similar vehicles on a lot in connection with a separate principal use to which the parking is accessory.

Parking (Commercial) — An open area or structure, other than a street or other public way, used for the parking of automobiles and similar vehicles made available for a fee.

Parking (Municipal) — An open area or structure, other than a street or other public way, used for the parking of automobiles and similar vehicles.

Performance or Completion Guarantee (a/k/a Performance or Maintenance Bond) — A surety bond, certified check or other security meeting the requirements of Section 277 of the Town Law, and the terms of which are satisfactory to the Town Attorney, guaranteeing the developer will install all required or planned improvements.

Permitted Use — A land use legally allowed within a given zoning district under this Law, including a Principal Permitted Use, Special Use or Accessory Use.

Person — Any individual, firm, trust, partnership, public or private association or corporation, or other entity.

Places of Worship — A building where persons congregate to pray and conduct religious services, including religious education facilities, offices and other accessory uses connected with such religious activities.

Plan — A drawing, map, chart, plan or plotting, sometimes also referred to as a plat, indicating the proposed development (including subdivision) of land, which in its various stages of preparation can include the following:

- A. Sketch Plan — A general plan, identified as such with the title "Sketch Plan" on the map, indicating existing site features of a tract and its surroundings and the general layout of the proposed development, to be used as a basis for conceptual consideration by the Town, Planning Board site inspection and determining allowable density.
- B. Preliminary Plan — A complete plan usually prepared by a registered professional engineer or licensed land surveyor, identified as such with the wording "Preliminary Plan" in the title, accurately showing proposed streets and lot layout and such other information as required by this Law.
- C. Final Plan — A complete and exact plan, identified as such with the wording "Final Plan" in the title, with a professional engineer's or registered surveyor's seal affixed, and prepared for official recording with modifications as required during the review and approval of the Preliminary Plan.

Planned Unit Development — A comprehensive development plan for a large land area, where, to encourage innovation and the preservation of large blocks of usable open space, detailed development regulations are largely negotiated and on a project basis.

Planning Board — The Town of Rochester Planning Board.

Pre-application Conference— A discussion at a public meeting which may be requested by an applicant between the applicant and the Planning Board or Zoning Board of Appeals prior to filing an official application with either Board to discuss a zoning permit referral from the Code Enforcement Officer.

Principal Structure — The building where the primary activities associated with the approved major land use on a parcel is intended take place.

Principal Use — The approved or otherwise legally established primary land use connected with a parcel.

Private Air Strip — A facility for the landing, takeoff, storage, fueling or repair of aircraft limited to personal, non commercial use by the owner.

Private Educational Facility — A school for children or adults where instruction is provided by certified teachers or other professionals on an on-going basis, excepting camping or other facilities where the primary function is other than education.

Private Road — A mapped street built to town standards which provides access to more than two lots and is owned by an individual(s), association, or other private entity who share the use and maintain the road without help from a government agency.

Public Building — A Town, County, State or School District owned building or structure used for the conduct of the business of government, public education, or emergency services such as fire houses or rescue squads.

Public Park or Playground — A recreational facility managed by a government or nonprofit entity and open to the general public with no more than a nominal fee for services provided.

Public water supply - A community or noncommunity water system which provides piped water to the public for human consumption, if such system has at least five service connections or regularly serves an average of at least 25 individuals at least 60 days out of the year. Such term includes:

- (1) collection, treatment, storage and distribution facilities under control of the supplier of water of such system and used with such system; and
- (2) collection or pretreatment storage facilities not under such control which are used with such system.

Receiving Property — A lot(s) that is approved to permit a higher density than would otherwise be permitted as a condition of the restriction of development on the Sending Property through a Conservation Easement.

Recording Studio — A facility for conducting sound, film, or video recordings, editing, or broadcasting such as a radio or television station studio, but excluding adult uses.

Recreational Vehicle — A vehicular unit primarily designed as temporary living quarters for recreational camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper and motor home.

Residential Use — A land use, the primary purpose of which is to provide permanent dwellings for the use of individuals and households.

Resort — A parcel of land or commercial establishment providing lodging, recreation, meals, and entertainment primarily to vacationers but which may also offer the same services to non-registered guests. A primary place of residence, medical or other rehabilitative facility or a single-room occupancy residential project shall not be considered a resort.

Resource Recovery, Vehicle Junkyard or Wrecking Facility — See §140-33.D.

Restaurant — A business enterprise engaged in preparing and serving food and beverages selected from a full menu by patrons seated at a table or counter, served by a waiter or waitress and consumed on the premises, with takeout food (if any) as an accessory use, but excluding fast food establishments.

Retail and Service Establishments — Stores and shops where goods and services are sold primarily at retail. Such sales are primarily made directly to the consumer and include, but are not limited to, goods such as food and beverages; florists; shoes and clothing; hardware, paint and wallpaper; carpeting; hobby and crafts; books; furniture; antiques; art supplies; music; pharmacies; jewelry; photographic supplies; pets; gifts; stationery; sporting goods; fabrics; optical goods; launderette/laundromat, and appliances; hair and nail salons, barber shops; but excluding any use specifically defined elsewhere in this law.

Retail Establishments (Vehicle & Equipment) — The use of any building, land area or other premise for the display or sale of new and used automobiles or similar motorized vehicle equipment of operable condition. This use may or may not also include a repair and service component.

Right-of-Way (ROW) — Land reserved for use as a street, drainage facility, utility area or other public or community use or land reserved for the access to such use.

Road Maintenance Agreement (RMA) — A legally recorded agreement, approved by the Town Board on recommendation by the attorney for the Town if needed, between all property owners that abut a private road or shared driveway to maintain road, drainage facility, or other lot improvements.

Road Right-of-Way Line — The right-of-way perimeter line or plan lines of any road or street which shall establish the starting measuring point of any yard setbacks of a lot. In the case such right-of-way line cannot be established, the assumed edge of the right-of-way shall be measured from the centerline of roadway and established at a distance of 25 feet from such centerline.

Sawmills, Temporary Portable — A temporary lumber sawing operation using portable sawmill equipment that is not permanently enclosed.

Seasonal Lodging Units — Lodging accommodations such as cabins offered for rent to the general public on a seasonal basis in connection with other recreation opportunities on large areas of open space, including hunting and fishing, boating and farm visits.

Secretary — The clerk or secretary designated to accept applications, plans, fees and correspondence on behalf of the Town of Rochester Planning Board or Zoning Board of Appeals.

Sending Property — A lot(s) or portion of a lot that is restricted by a conservation easement or farmland preservation easement as a condition of approval of a higher density on the "Receiving Property" than would otherwise be permitted.

Self-storage Facility — A building containing independent, fully enclosed bays that are leased to individuals exclusively for long-term storage of household goods or personal property.

SEQRA — The New York State Environmental Quality Review Act and its requirements.

Service Establishment — A business, the primary activity of which, is the provision of assistance, as opposed to products, to individuals, business, industry, government, and other enterprises, not including any adult use as defined herein.

Service Establishment (Vehicle & Equipment) — The use of any building, land area or other premise for the painting, repair or service of new and used automobiles or similar motorized vehicle equipment of operable condition, including car washes and the like, but excluding junkyards and gasoline filling stations.

Setback — An open unoccupied space extending the full depth or width of a lot that may not be occupied except for specified accessory uses as provided hereunder. See "Yard."

Sign — Any device, facade, fixture, material, placard or structure that uses any color, form, graphic, picture, illumination, symbol or writing to advertise, announce, declare or identify a purpose or entity or to communicate information of any kind to the public outside of a building, including neon or fluorescent painted building outlines and similar devices.

A. Business, Commercial, or Institutional Identification Sign — A sign advertising a business or institution or identifying the business or profession of the owner or occupant of the property on which it is placed.

B. Commercial Directory — A combination, on a single structure not exceeding eight feet in height, of a sign identifying a business complex with other smaller uniform signs listing businesses on a property. Such signs shall replace freestanding signs which the advertisers would otherwise have rights to place on the property and use no more than 20 square feet in surface area on each side to identify a complex or more than 10 square feet on each side to identify a specific business or service.



C. Contractor Sign — A sign of a builder or contractor that is erected and maintained while such persons are working on a property and is immediately removed when the work is complete.

D. Freestanding Sign — A pole sign or ground sign.

E. Ground Sign — A sign rising from a ground foundation and not over eight feet in height. The entire bottom of such sign is in contact with or in close proximity to the ground.

F. Incidental Commercial Sign — An advertising sign on which is located a simple message directed only to persons on the lot, such as a gas pump sign, credit card sign or pricing sign placed in a window or on a door.

G. Off-premises Advertising Sign — A sign advertising a business or service located off the premises on which the sign is located.

H. Pole Sign — A sign supported by a poles(s) as a structure independent of any building. Pole signs are also separated from the ground by air.

I. Portable Sign — A sign not permanently attached to the ground or a structure and designed to be transported, including signs on wheels, A or T frames or any other movable device or vehicle.

J. Real Estate Sign — A sign which advertises the availability of land, buildings or spaces within buildings as being for sale or rent.

K. Temporary Sign — A nondurable sign not intended for permanent placement, including advertising pennants.

L. Traffic Direction Sign — An informational sign on which is located a simple traffic directive directed only to persons on the lot, such as a "no parking," "loading in rear," "one-way" or "office this way" sign.

M. Wall Sign — A sign painted on or attached flush with a structural wall of a building, including window signs occupying more than 50% of the window or door surface and projecting signs not extending out from the structural wall surface more than 18 inches.

Sign Height — The height of any sign shall always refer to the height of the topmost portion of the sign from grade level, unless the foundation for such sign shall be positioned below the adjoining road grade, in which case the height shall be measured from the road grade.

Sign Surface Area — The size of any sign, computed by multiplying its greatest length by its greatest height. Sign supports or foundations not bearing advertising material shall not be included. The surface area of signs with no definable edges (e.g., raised letters attached to a facade), shall be that area within the perimeter of a single line enclosing the advertising material. The reverse side of any sign may, however, be used without counting toward total sign area.

Site Plan — A detailed plan that depicts the location of improvements on a parcel of land and contains all the information required by this Law (see § 140-45 hereof).

Site Plan Review — The process, established by Section 274-a of the Town Law of the State of New York, for review of Special Uses, and other uses as may be designated by the Town Board, by the Planning Board.

Spa or Health Club — A commercial establishment providing day-use facilities devoted especially to health, fitness, weight loss, beauty, and relaxation which may, as an accessory use, offer associated products and/or food and drink for retail sale.

Special Use — A use which, because of its unique characteristics, requires individual consideration through a Site Plan Review process by the Planning Board as established by Sections 274-a and 274-b of the Town Law of the State of New York. Such a use may require the meeting of certain conditions and safeguards before being permitted.

Stable, Commercial — A building in which any horses are kept for remuneration, hire or sale.

Stable, Private — An accessory structure in which horses are kept for private use and not for hire, remuneration or sale.

State Building Code — Rules and regulations relating to building construction as promulgated by New York State.

Storm Drainage Facilities — Improvements made to implement a SWPPP.

Stormwater — That portion of precipitation that runs off the property and does not soak into the ground.

Stormwater Maintenance Agreement — A legally recorded document acting as a deed restriction which provides for the long-term maintenance of stormwater management practices through a preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances). This may or may not be a part of a SWPPP.

Story — That portion of a building, excluding a basement or cellar not used as living area, between the floor surface and the ceiling above it, having a height of not less than seven feet. Any portion of a building having a height of less than seven feet at five feet off center shall be considered a half-story.

Street — A mapped public highway or road intended primarily for the purposes of vehicular traffic, including the following:

- A. Street, Minor — A road, the primary purpose of which is, to collect vehicular traffic from individual dwellings or places of business.
- B. Street, Collector — A road, the primary purpose of which is, to collect vehicular traffic from minor streets and deliver it major traffic streets.
- C. Street, Major — A road, the primary purpose of which is, to collect vehicular traffic from collector streets and deliver it to destination points or arterial highways such Route 209.

Structure — Any combination of materials that is erected on the ground and permanently affixed thereto, and designed, intended or arranged for the housing, shelter, enclosure or structural support of persons, animals, or property of any kind.

Studio Apartment — A small, single-level living quarters intended for use by an individual, designed around a relatively large single room incorporating the features of a living room, dining room, bedroom and kitchen.

Subdivision — The division of any parcel of land into two or more lots, plots, sites or other division of land for the purpose, whether immediate or future, of transfer of ownership or building development, excepting lot improvements and natural subdivisions as defined in §125-18 of the Town Subdivision Law.

A. Minor Subdivision — A subdivision that does not involve improvements such as roads, recreational amenities or other common facilities and utilities.

B. Major Subdivision — A subdivision where such improvements are to be provided, subject to the standards provided herein for construction or the financial guarantee thereof.

SWPPP — A Storm Water Pollution Prevention Plan as defined by the State of New York.

Tavern — A commercial eating and drinking place with a license to dispense alcoholic beverages.

Temporary Structure — A structure without any foundation or footings which is intended to be removed, when the designated time period, activity, or use for which the structure was erected has ceased

TDR — Transfer of density rights (also known as transfer of development rights) as provided by § 140-34 hereof.

Through Lot — A lot extending from one street to another.

Tool Shed — An enclosure of less than 300 square feet in size used for the storage of home and garden tools and similar equipment.

Town — The Town of Rochester, Ulster County, New York.

Town Board — The elected governing body of the Town of Rochester.

Town Comprehensive Plan — The adopted Comprehensive Plan of the Town of Rochester.

Town Engineer or Planner — The professionals employed by the Town of Rochester to provide engineering and planning services in connection with the review of applications and inspection of improvements, as the case may be.

Town Law — The New York State Town Law that governs the operation of all Towns within the State.

Town Road Specifications — Standards adopted by the Town Board of the Town of Rochester regarding the construction and/or dedication of roads in the Town of Rochester.

Townhouse — A group of three or more attached single-family dwelling units in which each unit extends from foundation to roof and with open space on at least two sides.

Trip-ends — The total of the trips entering and leaving a specific land use or site over a designated period of time.

Trucking Services — Businesses primarily engaged in the hauling of goods, together with ancillary service, parking and repair facilities for trucks used in the hauling enterprise, excluding commercial truck stops.

Use — The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

Value-Added Products – Goods made from harvested crops that have been processed in order to increase their worth such as jelly made from berries or cheese made from milk.

Variance, Area —The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

Variance, Use —The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

Vehicle Junkyard — See “Resource Recovery, Vehicle Junkyard or Wrecking Facility.”

Veterinary Office — The place of business of a veterinarian, including ancillary facilities for boarding of animals under care.

Warehouse and Storage Facility — A facility used for the storage of goods and materials, excepting distribution and self-storage facilities as defined herein.

Watercourse — A discernible, definable natural course or channel along which water is conveyed ultimately to streams and/or rivers at lower elevations including intermittent streams but excepting drainage ditches, swales or diversion terraces.

Wetland — Swamps, marshes and hydric soil areas defined as wetlands by the New York State Department of Environmental Conservation, the Army Corps of Engineers or the U.S. Fish and Wildlife Service, not including any required buffers.

Wind Turbine (Small) — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

Wireless Telecommunications Facilities - See subsection 140-29 for definitions

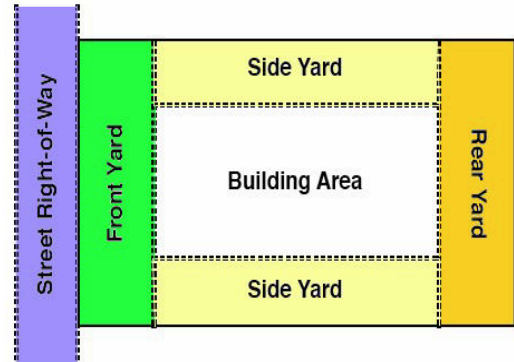
Wholesale Uses — Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Wrecking Facility — See “Resource Recovery, Vehicle Junkyard or Wrecking Facility.”

Yard — A required open space unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided however, that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitation and requirements limiting obstruction of visibility. Also known as the setback.

Yard, Front — A yard extending between side lot lines across the front of a lot adjoining a street. Front yards shall be provided on all road frontages, except that one frontage on a corner lot may be designated as a side yard.

Yard, Rear — A yard extending across the rear of the lot between inner side yard lines. In the case of through lots, there will be no rear yard, but only front and side yards.



Yard, Side — A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street. In the case of through lots, side yards shall extend from the rear lines of required front yards. In the case of corner lots, one of the yards remaining after the designation of front yards shall be considered the side yard, and the other the rear yard.

Yield Plan — A relatively detailed sketch plan used to determine the number of lots or dwelling units that would be permitted on a parcel if developed as a conventional single-family dwelling subdivision.

Zoning Board of Appeals — The Town of Rochester appeals board for adjudication of zoning matters as provided by New York State Town Law. Also known as the ZBA.

Zoning District — A division of land within a community into zones or districts that have specific land-use restrictions and controls regulating the existing and future development within those areas.

Zoning Permit — The required official determination by the Code Enforcement Officer as to how the laws of the Town of Rochester or New York State apply to a specific land activity, project, use, or structure application.

Article 3
Basic District Regulation

§ 140-5 Enumeration of Districts.

The Town of Rochester is hereby divided into the following zoning districts:

AR-3	Residential Agricultural District
AB-3	Agricultural Business District
R-1	Neighborhood Residential District
R-2	Low Density Residential District
R-5	Rural Conservation District
H	Hamlet District
I	Industrial District
NR	Natural Resource District
B	Business District
FD	Floodplain Overlay District (see Supplementary Regulations)
AP	Aquifer Protection Overlay District (see Supplementary Regulations)

§ 140-6 Zoning Map.

The location and boundaries of said districts are hereby established as shown on the Official Zoning Map of the Town of Rochester, as enacted this date or hereafter amended, which is attached hereto and made a part of this law.

§ 140-7 Interpretation of District Boundaries.

- A. Zoning district boundary lines are intended generally to follow, parallel or connect the center lines of rights-of-way; existing lot lines; the mean water level of rivers, streams and other waterways; contour lines; ridgelines or town boundary lines, all as shown on the Zoning Map; but where a district boundary line does not follow such a line, its position is shown on said Zoning Map by a specific relationship to such a line using the scale indicated on the Zoning Map. Where AB-3 and B District boundary lines parallel rights-of-way and divide properties, said boundaries are intended to be 600 feet from the edge of the right-of-way. The NR District line, where it varies from property lines, is intended to follow contour lines paralleling the ridgeline as depicted on the Zoning Map.
- B. Where a district boundary line divides a lot of record at the time such line is established, the Planning Board may allow the extension of activities permitted in one district to the other as a Special Use, provided that such extension shall increase the developable lot area for the more intensive use by no more than 25% or 100 feet, whichever is less. This is to permit more flexibility in the use of large parcels.
- C. When the specific location of a zoning district boundary line cannot be ascertained, the Building Inspector or Planning Board, as the case may be, shall request the Zoning Board of Appeals to render an interpretation which shall then be used as the basis for applying zoning standards.

§ 140-8 Schedule of District Regulations. (see also Appendix A)

The restrictions and controls intended to regulate development in each district are set forth in the Schedule of District Regulations which is then supplemented by other sections of this Law and other laws of the Town of Rochester. In the case of any inconsistencies found to exist between the Schedule of District Regulations and the written text of this code, the written text shall prevail. Although many Principal Permitted Uses shall be permitted as a matter of right, in compliance with these regulations, Some Permitted Principal Uses require Site Plan review by the Planning Board as indicated in the Schedule of District Regulation. All Special Uses are subject to Site Plan Review and, specifically, Planning Board approval as prerequisites to the Building Inspector issuing a permit for their establishment. Accessory Uses are permitted to accompany or, with Site Plan Review by the Planning Board to precede (except for home occupations), Principal Permitted and Special Uses. Permits for these Accessory Uses shall be issued directly by the Building Inspector. Any use proposed by the Town of Rochester for its own use on public land shall be considered a Principal Permitted Use in all districts.

- A. If a proposed use is not specifically listed in any category of uses or within any zoning district on the Schedule of District Regulations, the Town Board shall, following a public hearing, render a formal determination as to whether or not the use is permitted in a given district and, if the use is permitted, the Planning Board shall then process the application as a Special Use. The Town Board may consult the Planning Board for recommendations in this regard and shall make its determination on the basis of similarities of the use to other specifically listed uses within various districts, taking into consideration the impacts of the use on the community and the neighborhood in which it is proposed. This shall not permit the reclassification of uses that are already listed nor shall the Town Board permit any use that is not listed in a particular district if that use is already permitted in another district. Any determination made under this section shall be filed with the Town Clerk within 15 days and serve to establish the classification of this use for all future purposes. Any person aggrieved by the decision of the Town Board may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules.
- B. Multiple permitted uses, as defined herein, may be allowed as Special Uses upon a given lot provided all lot development standards are met.

§ 140-8A Prohibited Uses

- A. Prohibition against the Exploration for or Extraction of Natural Gas and/or Petroleum. No land in the Town shall be used: to conduct any exploration for natural gas and/or petroleum; to drill any well for natural gas and/or petroleum; to transfer, store, process or treat natural gas and/or petroleum; or to dispose of natural gas and/or petroleum exploration or production wastes; or to erect any derrick, building, or other structure; or to place any machinery or equipment for any such purposes.
- B. Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Materials. No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production materials.
- C. Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Wastes. No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production wastes.

- D. Prohibition against Natural Gas and/or Petroleum Extraction Support Activities. No land in the Town shall be used for natural gas and/or petroleum extraction support activities.
- E. Bulk Fuel Storage. No provision of this Local Law shall be deemed to regulate the use known as "Bulk Fuel Storage" as defined in Chapter 140, Zoning.

§ 140-9 Applicability of Regulations.

Whenever any owner or occupant of property in the Town of Rochester shall, for any purpose or in any manner;

- A. establish a new use,
- B. change an existing use,
- C. make permanent structural improvements to a property,
- D. erect a new building, or
- E. move, add to or enlarge any existing land use or building;

such owner or occupant shall first comply with the requirements of this Law. A zoning permit shall be required whenever a change in land use occurs, regardless whether any new construction is involved or not, excepting that agricultural and personal-use timber harvesting and tilling shall be exempt from all permit requirements.

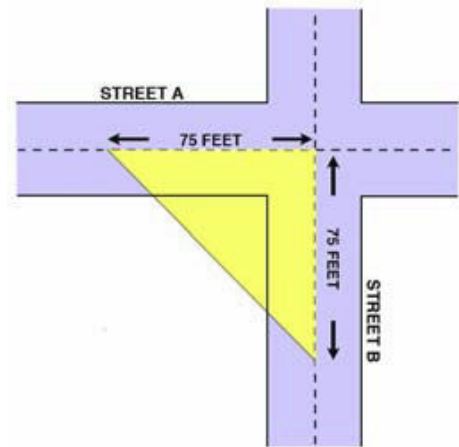
Upon a zoning permit determination by the Code Enforcement Officer of the requirement of a Site Plan approval, Special Use permit, subdivision approval, or a Use or Area variance, an applicant may request a pre-application conference with the Planning Board or Zoning Board of Appeals, as may be applicable.

§ 140-10 Lot Development Standards.

- A. Minimum development standards. The development standards contained in the Schedule of District Regulations are minimums and shall apply to each use, unless otherwise specifically provided.
 - (1) Multiple uses, as defined herein, are permitted on a given lot as a Special Use, provided development standards for the combined uses are met, including the combined lot area. Yard requirements shall apply to the lot perimeter in such cases, provided building separations meet State Building Code requirements.
 - (2) Lot area exceptions. (See also Article 5 of this law, "Supplementary Regulations Applicable to Particular Uses", for additional lot area exceptions applicable to specific uses). For lots located in the AB-3, R-1, H, and B zoning districts, where a mixed use, as defined herein, is proposed in the same structure, the required lot area shall be the larger lot area required for either use as set forth in the Schedule of District Regulations. Where a mixed use, as defined herein, is proposed in

separate structures, the required lot area shall be the sum of the minimum required lot area for each use as set forth in the Schedule of District Regulations.

B. Corner lots. No obstruction to vision (other than an existing building, post, column or tree) exceeding 30 inches in height above the established grade of the street at the property line shall be erected or maintained on any lot within the triangle formed by the street lot lines of such lot and a line drawn between points along such street lot lines 75 feet distant from their points of intersection.



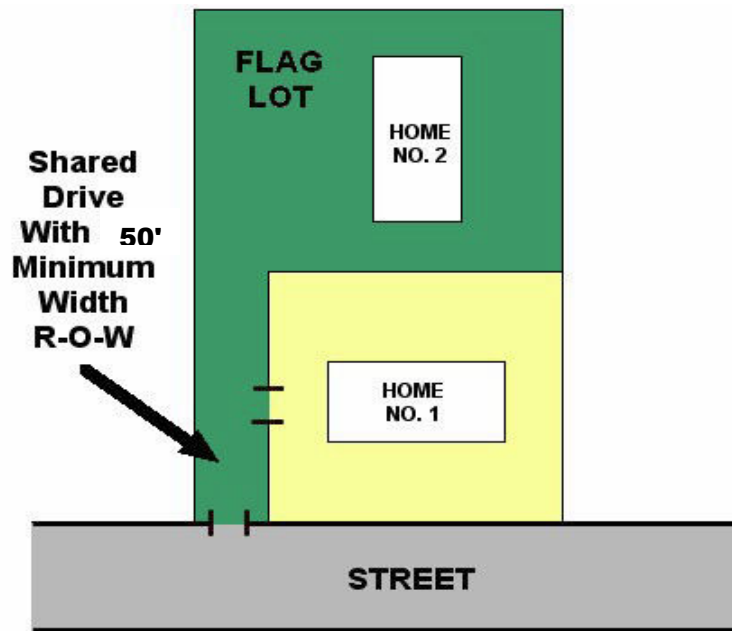
C. Through lot requirements. A through lot shall be considered as having two street frontages, both of which shall be subject to the front yard requirements. Other yards shall be considered side yards.

D. Minimum lot frontage.

- (1) All lots shall have a front lot line with a minimum length of 50 feet on a public or private road either existing or proposed.
- (2) Insufficient frontage with access via shared driveway. The Planning Board may grant a waiver from required lot frontage and other street requirements of this Law upon written request and application by the developer to the Planning Board to permit a subdivision which would result in access to no more than two single-family dwellings or lots which do not have the required minimum lot frontage and are proposed to gain access from a shared driveway through the establishment of a right-of-way. The shared driveway shall be utilized by no more than a total of three single-family dwellings or lots including the lot it has access over. The Planning Board shall review such application in the manner as prescribed under subsection § 140-10(D)(3), and no approval shall be granted unless a release has been given the Town and approved by the Town Board making clear that the Town is exempted from all responsibility for the maintenance of the same and the lots in question are not capable of being subdivided further or is so restricted. Evidence of satisfactory shared arrangements for ownership and maintenance of the shared driveway shall also be provided in the form of deed covenants and a road maintenance agreement. See also Town of Rochester Code § 125-28 R.
- (3) Private road frontage application review. The Planning Board, in review of such Site Plan or Subdivision which has or proposes lot frontage on or has access by a private road, shall refer such application to the Town Highway Superintendant for determination as to the condition of the private road and determination if such private road meets Town standards for private roadways. The Planning Board may impose conditions of approval stating the lot in question is not capable of being subdivided further or is so restricted, may impose restrictions on the issuance of building permits, may restrict the use of such parcels to single-family residential use, may require improvements be made to an existing private road, or any other conditions determined to be in the interest of health, safety, and welfare.

E. Flag lots. The development of interior lots with limited lot frontage consisting of only an access right-of-way shall be permitted provided:

- (1) The right-of-way is a minimum of 50 feet in width. See illustration.
- (2) The lot area shall be exclusive of that portion used as a right-of-way for purposes of meeting minimum lot area and all other development standards for the District.
- (3) No right-of-way shall be established over an existing parcel of land to reach a new lot to the rear which would reduce the length of the front lot line of the existing parcel to less than the minimum lot width for the applicable zoning district.



- (4) All flag lot access right-of-ways shall be titled in fee-simple ownership to the flaglot property owner and shall not be used to access any property not part of the original tract, provided that the Planning Board may waive this limitation to accommodate one adjoining lot for purposes of reducing additional curb cuts. Such owner shall bear responsibility for maintenance of the improvements. A road maintenance agreement (RMA) approved by the Town Attorney shall be required and included on the plat.



(5) No more than one such lot shall be created from an existing parcel, a cumulative total of three lots including the original. This restriction shall be incorporated in deed covenants and placed on the recorded plat map at the time any flag lot is created.

F. Conversions of seasonal residential communities. Existing seasonal residential communities may be converted to permanent single-family, two-family or multi-family dwellings subject to the following standards:

(1) Such applications shall be processed as Special Uses and also be subject to the applicable provisions of the Town of Rochester Subdivision Regulations.

(2) The number of new dwellings permitted shall be limited to 50% of existing seasonal residential units in the case of new single-family dwellings, 65% of existing seasonal residential units in the case of new two family dwellings and 80% of existing seasonal residential units in the case of new multi-family dwellings, provided that any such property shall be entitled to no less density than would otherwise be permitted within that zoning district for a new use of the same nature.

(3) New dwellings and other improvements shall not further violate any lot development standards of the zoning district in question along a given property line.

(4) All sewage and water supply systems for any such conversion shall meet current standards. Existing systems intended for re-use shall be inspected and certified as meeting current standards by a Professional Engineer and approved by the Town of Rochester. Should the conversion project be located on the Town of Rochester public sewer system and involve increased sewage flows, a certification from the Town Sewer District that adequate capacity exists to serve the new project shall be required.

§ 140-11 Height Restrictions.

No building or structure shall exceed in building height or maximum stories the number of feet permitted as a maximum on the Schedule of District Regulations for the district where such building or structure is located. These standards shall not apply to agricultural structures, communications towers, elevator shafts, similar unoccupied mechanical spaces and energy generation equipment connected with another otherwise permitted use. Such height exceptions shall, however, be subject to Site Plan Review and any specific regulations that may apply to such uses.

§ 140-12 Yard (Setback) Regulations.

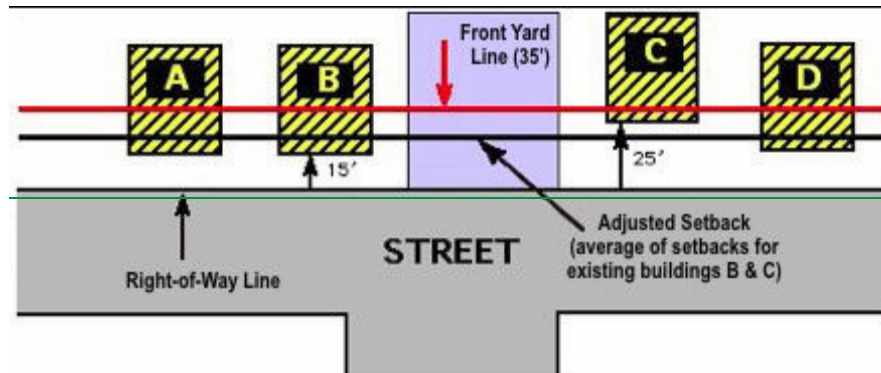
A. Front yard determination. Front yards shall be measured from the edge of the road right-of-way, which shall be assumed to be 50 feet in width in all cases where unknown. The assumed edge of right-of-way in such instances shall be measured from the centerline of pavement and established at a distance of 25 feet from such centerline.

B. Side yard exception. Where the side wall of a building is not parallel with the side lot line or is irregular, the side yard may be varied. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than one-half the otherwise required minimum width. The Building Department shall have

discretion to interpret and clarify this provision as it applies to individual structures of an irregular nature.

C. Front yard exceptions.

- (1) In the case of a non-residential use in the B or AB-3 District, a front yard may be reduced to 10 feet where parking is provided in the rear or side or reduced to 20 feet when facing another B or AB-3 zoned parcel.
- (2) In the case of a non-residential use in the I District, a front yard may be reduced to 20 feet when facing another I zoned parcel.
- (3) When an unimproved lot is situated adjacent to or between improved lots already having a principal building within the required front yard, the front yard for the unimproved lot may be reduced to the average depth of the front yards for the two nearest adjoining improved lots, but shall not be less than 10 feet.



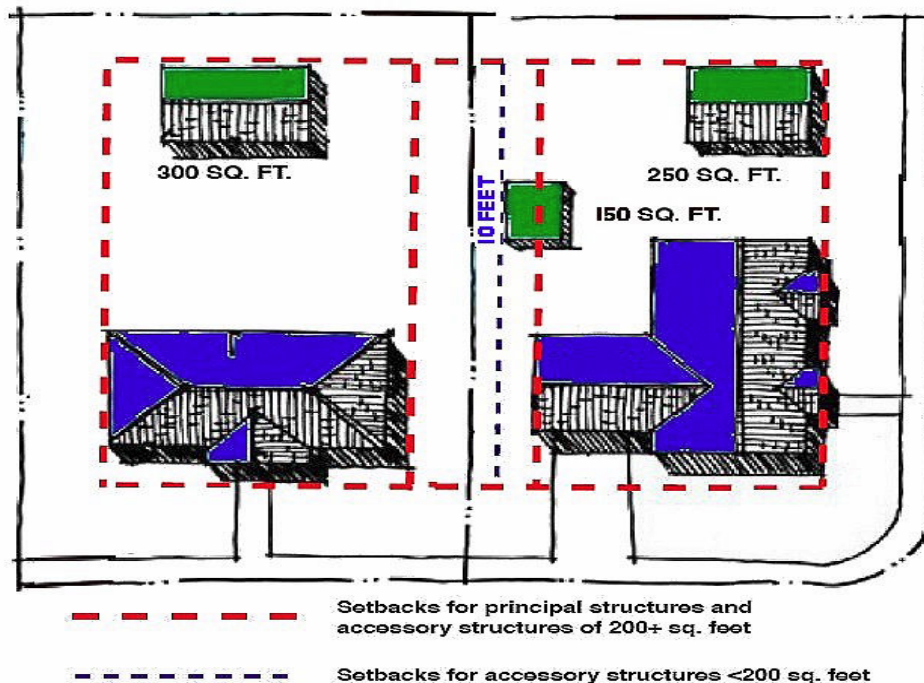
- D. Provision of yard or other open space. No yard or other open space provided about any buildings for the purpose of complying with the provisions of the law shall be considered as providing a yard or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- E. Waterfront yards. Each lot fronting on a named stream depicted on United States Geological Survey maps shall include a setback of 100 feet in depth from the high water mark of such stream. No principal structure shall be located within such setback. The Planning Board shall, however, be authorized to modify this requirement where necessary or to accommodate reasonable use of properties outside the floodplain, provided other mitigating measures such as deed covenants limiting clearing near the stream are employed to protect stream quality.
- F. Planned new streets. In the case where a road right-of-way line for future streets, for future extensions of existing streets or for future street widening is established on the Site Plan, buildings and structures shall be set back from such line as though it were a street line.

§ 140-13 Accessory Structures and Uses.

The location, limitation and coverage of accessory buildings and uses shall be as follows:

- A. No accessory building permitted by this law shall be placed in any required side or front yard (setbacks) except as provided in sub-section C below.
- B. The aggregate ground area covered by any accessory buildings in any rear yard shall not exceed 25% of the rear yard (setback) area.
- C. Accessory structures not attached to a principal structure shall:
 - (1) Be located not less than 10 feet from any side or rear lot line or in such a fashion as to prevent emergency firefighting access or to shade a residential structure on an adjoining lot. Any structure over 200 square feet in floor area shall meet setbacks for principal structures.
 - (2) Be no closer to the street than any principal structure on the lot, except in the case of agricultural buildings. Accessory buildings to principal structures located more than 100 feet from a lot line shall also be exempt. Accessory structures may, in these situations, be located in front of residences but not in required front yard setback areas.

See illustration following for examples of these principles.



- D. When an accessory structure, such as a garage, carport, workshop, porch, or deck is attached to the principal building, it shall comply with requirements for principal buildings. All unattached structures shall be separated by a minimum of 12 feet or one-half the average height of the two structures.

- E. Railroad boxcars, manufactured home units and recreational vehicles shall not be used for purposes of accessory or principal structures in connection with any use. The use of storage trailers or bulk/shipping containers as an accessory use in connection with a, commercial or institutional use shall be permitted with Site Plan Review where the trailers or containers can be substantially screened from view with evergreen plantings, fencing or earthen berms as may be required to accomplish the purpose. The use of storage trailers or bulk/shipping containers as an accessory use in connection with agricultural production shall be permitted as an accessory use provided all accessory use setbacks are met.
- F. Wind Turbines. The Planning Board may approve, approve with conditions, or disapprove small wind turbine applications designed for residential, agricultural, institutional and business use on the same parcel. Such applications shall be processed as Special Uses, but may be appropriately modified by the Planning Board to reflect the scale of the proposed facility. All small wind turbines shall comply with the following standards and, to the maximum extent practicable, with all other requirements of this law not in conflict herewith except wind turbines used to supply up to 110% of the electrical needs of any agricultural operation located within a State certified agricultural district shall be considered on-farm equipment and be exempt from these requirements, provided the equipment is located on the agricultural operation that it supplies with such electricity:
- (1) A system shall be setback from any property line by a distance no less than its height.
 - (2) Small wind turbine shall be used primarily to reduce the on-site consumption of electricity.
 - (3) Total heights shall be a maximum of 100 feet.
 - (4) The maximum turbine power output is limited to 100 kW.
 - (5) Tower-climbing apparatus shall be located no closer than 12 feet from the ground, a locked anti-climb device shall be installed on the tower or a locked, protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access.
 - (6) Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines.
- G. Solar Energy Structures. The Planning Board may, subject to Site Plan Review, approve, approve with conditions, or disapprove applications for accessory structures placed within otherwise required setbacks for accessory structures to accommodate solar energy systems. The Planning Board may also appropriately modify other development standards, including but not limited to building height, to accommodate solar and other energy efficient systems. No homeowner or property owner association shall prohibit solar energy systems, Covenants and restrictions connected with projects requiring Special Use permits, Site Plan Review or subdivision approval shall be reviewed for purposes of ensuring there are no such prohibitions.
- H. Fences and walls. Fences, walls, or retaining walls shall be classified as accessory structures subject to the following standards:

- (1) There shall be no minimum setback requirement, except in all cases, fences and walls shall be so constructed as to not impair the sight distance along any street or the sight triangle of a corner lot, as verified by the agency having jurisdiction over such street or the Town Highway Superintendent.
- (2) Shall not exceed a height of four feet when located in any front yard setback or eight feet when located in any side or rear yard setback in any zoning district, except the Planning Board may waive these height restrictions in the case of a commercial or industrial use or in the case of a residential property which is contiguous to a commercial or industrial use upon Site Plan review and a determination that such exception will create beneficial screening and not impact neighboring properties.
- (3) The use of agricultural fences, as defined herein, shall be exempt from any height restrictions. In no event shall any such fence impede highway sight distances.

§ 140-14 Animal Husbandry

- A. The keeping, grazing, feeding, and care of animals shall be permitted as an accessory use on improved lots pursuant to the Schedule of District Regulations.
- B. The following are exempted from regulation under this Chapter, are permitted by right, and do not require a permit:
 - (1) The keeping of customary household pets;
 - (2) The keeping of animals in conjunction with a farm operation, as defined herein;
 - (3) The keeping of animals in conjunction with a kennel or veterinary office;
 - (4) The keeping of animals by individuals involved in 4-H project(s), provided that proof of 4-H endorsement thereto or membership thereof is submitted to the Code Enforcement Officer.
- C. Animal Husbandry shall conform to the following standards:
 - (1) Animals shall in all instances be adequately sheltered, fenced and otherwise maintained so as not to create a nuisance to surrounding properties and shall be maintained in a sanitary manner. Handling, storage, disposal or removal of all animal waste shall be done to ensure minimum impact on the environment and to avoid any impact on neighboring residences, whether from odor, associated pests or water runoff. Such animal waste shall be stored at a distance in accord with any applicable laws from any wells, residences or wetland or watercourse buffer and must be screened from view from public roadways or neighboring residential properties,
 - (2) The minimum lot size for keeping large hoofed animals (such as horses, mules, llamas, cows, sheep, goats, and hogs) shall be three acres. The minimum lot size for keeping large birds (such as waterfowl, turkeys and peafowl) or small poultry (such as chickens) shall be 1 acre. In the case of keeping multiple animal types, the greater minimum lot size shall apply. There shall be no local restriction on the maximum quantity of animals allowed if a property meets minimum lot size requirements, however County or State regulations may apply.

- D. Animal husbandry on property not meeting the minimum lot size requirements shall be permitted only upon Site Plan approval obtained from the Planning Board. Such application shall be classified as a Type II action with regard to SEQRA. The Site Plan application fee shall be waived, however, the applicant shall be responsible to reimburse the Town for the actual incurred costs from the engagement of professional consultants and public hearings in connection with an animal husbandry application. The Planning Board shall review the specific circumstance of the property in the following manner and shall attach reasonable conditions to any approval.
- (1) Application requirements. Applicants shall submit a sketch plan as per § 140-45 showing locations of animal pens, fields, barns, fences, water sources, and manure piles in addition to all other natural features and improvements on the site. The applicant shall submit a narrative detailing the quantity and types of animals and any other such pertinent information to the application.
 - (2) The Planning Board may refer all applications to a qualified consultant such as Cornell Cooperative Extension, the Society for the Prevention of Cruelty to Animals, or the New York State Agriculture and Markets Department for review to determine the maximum numbers and types of animals for incorporation as a condition of Special Use approval.
- E. Animal husbandry in practice before the adoption of this zoning code shall be deemed a non-conforming use with respect to these minimum lot size requirements.

§ 140-14A Agricultural Use

- A. Findings. The Town recognizes that farming is an essential enterprise and an important industry which enhances the economic base, natural environment, and quality of life in the Town of Rochester as stated in the Comprehensive Plan and demonstrated with the adoption of § 75, Farming, of the Town Code. It is the policy of the Town to encourage agricultural use and farm operations, particularly in certified county agricultural districts, so as to promote production of food and other agricultural products on its agricultural lands and to preserve open space and the rural character of the town and to not unreasonably restrict or regulate such use.
- B. Applicability. Agricultural use of property shall be regulated to the degree that all provisions of the codes, laws, and regulations of the Town of Rochester and the State of New York; including but not limited to the New York State Uniform Fire Prevention and Building Code, New York State Agriculture and Markets law, New York State Environmental Conservation law, and Ulster County Board of Health requirements; shall be applicable excepting such regulations where exemption is specifically granted under the laws of the Town of Rochester or New York State. Some agricultural uses shall require Site Plan and/or Special Use approval by the Planning Board as provided for in the Schedule of District Regulations and this law.
- C. Non-animal agricultural use is a permitted use in all zoning districts by right.
- D. Agricultural buildings. All agricultural buildings shall require a zoning permit. Agricultural buildings shall be exempt from height restriction standards as detailed in § 140-11.

- E. Agricultural labor housing, as defined herein, shall be exempt from the minimum lot area requirements of the given zoning district, however setback requirements for residential use shall apply. Agricultural Housing shall not be used to house persons other than seasonal or fulltime employees.
- F. Commercial farm operations within a certified county agricultural district. All agricultural uses and the construction of on-farm buildings and structures to be used as part of a commercial farm operation located on parcels within a certified county agricultural district are a permitted use in any zoning district by right. All agricultural use permanent structures shall comply with the minimum setbacks of the district in which they are located. Accessory structures shall comply with § 140-13.

§ 140-15 Landscaping Standards.

- A. The Planning Board shall, to assure an acceptable buffer between adjacent residential and non-residential uses and create a healthy, safe and aesthetically pleasing environment in the Town, require a landscape plan be prepared as part of any Site Plan Review or Special Use application. Such a plan shall also be required whenever any non-residential use is proposed in any district so as to buffer parking areas and buildings from the highway, each other and other uses. Where it is determined a proposed use is naturally buffered or would not have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be modified by the Planning Board to fit the circumstances.
- B. The landscape plan shall specify locations, sizes and species of all mature shade trees or other species of six inch caliper or greater and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors, and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the highway or adjoining properties. Specific locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall, too, be provided as part of the plan.
- C. The Planning Board, in reviewing a landscape plan, may employ the assistance of design professionals. The Planning Board shall also specifically consider the following before approving, approving with modifications or disapproving the Special Use:
 - (1) The plan should promote attractive development, preserve existing vegetation to the maximum extent possible, enhance the appearance of the property and complement the character of the surrounding area.
 - (2) The plan should use landscaping to delineate or define vehicular and pedestrian ways and open space.
 - (3) The plant material selected should be of complementary character to buildings and structures. Native plant species shall be preferred and be of sufficient size and quality to accomplish their intended purposes. Invasive species shall be prohibited.
 - (4) The plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment.

- (5) The plan should be realistic in terms of maintenance and use materials which, as a minimum, are winter hardy to Zone 4. Consideration and determination of the adequacy of the above plan requirements are at the Planning Board's discretion.

D. Landscaping Guidelines. The following minimum specifications are suggested guidelines the Planning Board should apply when new landscaping is required:

- (1) The minimum branching height for all shade trees should be six feet.
 - (2) Shade trees should have a minimum caliper of three inches (measured 4 feet above grade) and be at least 12 feet in height when planted.
 - (3) Evergreen trees should be a minimum of six feet in height when planted.
 - (4) Shrubs should be a minimum of 24 inches in height when planted. Hedges shall form a continuous visual screen within two years after planting.
 - (5) A buffer screen at least 15 feet in width along any residential lot line should be provided. It may include an opaque wooden stockade fence six feet in height and one evergreen tree for every 15 linear feet of property line. An additional row of evergreens meeting these standards, and offset such that each row serves to place trees between the gaps of the other, should be permitted as a substitute for the stockade fence.
 - (6) A landscape strip at least 15 feet in width, that includes at least one deciduous tree for every 35 linear feet of perimeter lot line should be required for any non-residential use. Such deciduous trees should also be accompanied by smaller shrubs and ground cover as may be required to effectively separate and buffer the activity from the highway but still allow for visibility of the use. The width of this buffer may be reduced along the rear and side lot lines for good cause, but not along the front lot line.
 - (7) All lot areas (except where existing vegetation is preserved) should be landscaped with grass, ground cover, shrubs, or other appropriate cover.
 - (8) The preservation of mature shade trees should be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Building Inspector or Planning Board, as the case may be, determines the purpose of this section is achieved.
- E. A performance guarantee in a form acceptable to the Town Attorney in the amount of 125% of the cost of materials and installation may be required to assure that all landscaping survives in a healthy condition one full year following planting. The Building Inspector or Planning Board, as the case may be, shall determine the amount of the guarantee and consider financial impacts of this requirement on the project. The Building Inspector shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunned or infested plant materials.

- F. All applicable requirements of these landscaping regulations imposed by the Planning Board shall be fully met prior to the Building Inspector granting a Certificate of Occupancy for a new building or use subject to these regulations.

§ 140-16 [RESERVED]

Article 4
General Supplementary Regulations

§ 140-17 Parking, Loading, Access and Traffic Standards.

A. Off-street parking, loading and unloading facilities shall be provided as necessary in connection with every use. One-family and two-family residential uses shall be provided with two off-street parking spaces per dwelling unit. Multi-family dwelling parking standards are found in § 140-26. Parking needs with respect to all other uses shall be determined during Site Plan Review as follows:

(1) The following parking standards shall apply to all applications for new, expanded or modified land uses, and apply cumulatively in the case of mixed-use projects, provided that adjustments may be made by the Planning Board as detailed in this subsection. Standards as set by the New York State Uniform Fire Prevention and Building Code, Americans with Disabilities Act (ADA), and New York Vehicle and Traffic Code shall apply.

Basic Parking Requirements	
Land Use	Parking Requirement
Home-occupations	1 space per 100 sq. ft. of floor area devoted to use
Hotels/motels	1 space per rental room plus 1 for each 4 employees
Industrial uses	1 space per 400 sq. ft. floor area
Commercial uses	1 space per 175 sq. ft. floor area
Places of public assembly	1 space per 4 seats
Offices	1 space per 200 sq. ft. floor area
Restaurants	1 space per 50 sq. ft. floor area
Vehicle service establishments	4 spaces plus 1 per employee

(2) The Planning Board shall apply the following standards to determine parking needs in cases of uncategorized uses. For such uses where the above standards may be only partially are not directly applicable, parking requirements may be reduced or increased by the Planning Board based upon the following criteria. An applicant may similarly request, in writing, a modification of parking standards and the Planning Board shall make a determination using these same standards. The applicant shall identify the reasoning for the request and the Planning Board shall include this reasoning in their findings should the request be granted.

(a) Industry studies of parking needs for the type of use proposed or actual case-study comparisons for projects of similar character. The Planning Board may require the developer or applicant to gather and submit such data in support of its proposed parking provisions. The National Parking Association and the Urban Land Institute are examples of such industry sources.

(b) The characteristics of the proposed customers, residents, occupants or visitors to a given facility. Housing for the elderly would, for example, require fewer spaces per dwelling unit than time-shared recreational units, even though the number of dwelling units is the same.

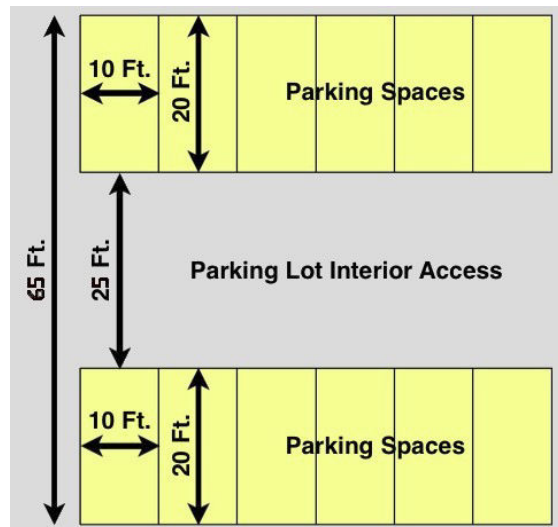
(c) The expected occupancy rates, traffic levels and numbers of employees in connection with any enterprise and the degree to which these directly relate to parking requirements.

- (d) Recommendations, if any, from Town consultants, other public agencies or information sources that suggest, based on experience, the appropriate amount of parking in connection with a given use.
- (e) The likelihood that parking will be shared with adjoining facilities, the impact of daily peak visitation or use periods on demand and the hours of operation as compared to other neighborhood activities.
- (f) The availability of reserve areas designated on the site plan for future parking development in the event of demonstrated need, as determined and directed by the Building Inspector or Planning Board.
- (g) The use of pervious surfacing to reduce storm water impacts.

(3) Parking shall be required to be provided for any public or commercial use for persons with physical disabilities using these standards to determine the number of spaces required. All spaces shall be ADA compliant.

Total Parking Spaces Required	Minimum Number of Accessible Spaces	Total Parking Spaces Required	Minimum Number of Accessible Spaces
1 to 25	1	201 to 300	7
26 to 50	2	301 to 400	8
51 to 75	3	401 to 500	9
76 to 100	4	501 to 1,000	2 percent of the total
101 to 150	5	1,001 and over	20 plus 1 for each 100 over 1,000
151 to 200	6		

B. Garages, carports, and driveways not in the public right-of-way may be considered parking spaces. Parking spaces shall be a minimum of 10 feet wide and 20 feet deep. Perpendicular parking spaces shall be accessed by an interior drive of no less than 25 feet in width for turning purposes (see illustration). This distance may be reduced to 20 feet for 60 degree angle parking, 15 feet for 45 degree angle parking and 13 feet for 30 degree angle parking. The Planning Board may modify these standards in conjunction with site plan review to fit the needs of particular enterprises.



C. Any lighting used to illuminate any off-street parking shall be so shielded as to deflect the light downward and away from adjoining premises and public right-of-ways and avoid light spillage onto adjacent properties.

D. All parking areas which are designed to accommodate 12 or more vehicles shall be landscaped using materials of sufficient growth and height to aesthetically balance the impact of the open paved area and provide effective stormwater control. The following are guideline standards the Planning Board may apply:

(1) No more than 12 parking spaces should be allowed in a continuous row uninterrupted by landscaping or other features. Maintenance guarantees may be required to ensure replacement of damaged or dead landscape materials.

(2) No parking areas should be designed such that a vehicle might directly back out onto a public highway or through road within the development. Traffic flows through a parking area should be minimized and limited to connections from one lot to another and to the public highway or through road. Circular drives shall be discouraged.



(3) Commercial parking areas, where possible, should generally be located in the side or rear yard of any use, with the principal building situated near the front lot line as permitted by Schedule of District Regulations. This is for the purpose of maintaining the continuity of the building line along any highway and avoiding the effective merger of parking areas along a highway into one mass of pavement where entrances and exits become difficult to identify.

E. Any building erected, converted or enlarged for commercial, office, manufacturing, wholesale, institutional or similar uses shall, in addition to the off-street parking space required above, provide adequate off-street areas for loading and unloading of vehicles, which shall generally be located along the side or rear of the building. Public rights-of-way shall, under no circumstance, be used for loading or unloading of materials. The minimum size loading space shall be 70 feet in depth and 14 feet in width, with an overhead clearance of 14 feet. An applicant may request a reduction from this dimensional standard using the same criteria as identified in subsection A above. The circulation of vehicles to access the loading/unloading area from the public right-of-way shall be adequate so as to allow clear passage and turning radius capabilities. The loading/unloading area shall be accessible by driving in and not require backing in from off the public right-of-way.

F. Access to and from all non-residential off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well defined separate or common entrances and exits and shall comply with the following provisions:

(1) Access drives shall comply with all requirements of the Town of Rochester. Access drives onto State and County highways shall be subject to New York Department of Transportation and Ulster County Department of Public Works standards, as the case may be.

(2) Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrance and exits.

(3) All access drives shall be subject to the requirement of obtaining a driveway permit from the Town of Rochester Highway Superintendent, the Ulster County Department of Public Works or the New York State Department of Transportation, as the case may be, and approval of any permits hereunder may be conditioned upon the application for and/or receipt of such permits from these

authorities. Existing access driveways, in the case of a change to a more intensive use of the property shall be required to submit written documentation from the jurisdictional agency certifying that the access is acceptable or detailing required access revisions.

- (4) The Town of Rochester Planning Board may, in conjunction with Site Plan Review, establish additional requirements pertaining to highway access permits on County and State roads, providing such additional requirements do not conflict with County or State requirements.
- (5) For reasons of traffic and pedestrian safety, both on and off the street, as well as to provide for possible future road widening or other improvements, all new driveways and sidewalk crossings entering onto any street shall comply with all the requirements of this chapter, including but not limited to obtaining the appropriate permits and the payment of any and all fees for said permits, and shall be subject to the approval of the Superintendent of Highways, except where such are part of a use subject to special permit or site development plan approval, in which case they shall also be subject to Planning Board approval.
- (6) No driveway center line shall intersect a street line less than 100 feet from the intersection of any two street lines, including intersections on the opposite side of the street, except by specific written approval of the jurisdictional agency.
- (7) The maximum grade for new driveways accessory to uses other than single-family dwellings and connecting the required off-street parking area to the street shall not exceed 15%. All driveways shall have a negative 2% grade within 50 feet of the center line of the traveled way of the street, or within 25 feet of the property line of the street, whichever distance is greater. The Planning Board may require increased platform areas of this type in situations where, because of the nature of the proposed use, substantial traffic volumes are anticipated.
- (8) Clear visibility shall be provided in both directions at all exit points so that the driver of an automobile stopped on the platform portion of any new driveway will have an unobstructed view of the highway for a reasonable distance (commensurate with the speed and volume of traffic on such highway) and so that there is a similar view of the automobile in the driveway.
- (9) The Planning Board shall have authority to require additional traffic safety improvements in conjunction with Site Plan Review for any project.

G. Access to State Route 44/55 and U.S. Route 209.

- (1) No tract shall be provided direct access to Routes 44/55 or 209 if adequate alternate access can be provided by way of another road, a frontage or parallel access drive or a cross access drive.
- (2) No driveway shall be permitted within 100 feet of a public highway intersection on Routes 44/55 or 209, provided that existing residential lots shall not be subject to this subsection G. Spacing between driveways on Routes 44/55 and 209 shall be as provided by State law.
- (3) Should a particular parcel lack sufficient frontage on Route 44/55 or 209 to accommodate adequate spacing, the landowner shall have the following options (in addition to the right to seek a variance from the Zoning Board of Appeals):

- (a) The landowner may establish a joint access driveway with an adjoining property. The driveway midpoint in such cases shall be the property line between the two parcels. Alternatively, the landowner may gain access from a cross access drive or frontage road that connects the subject property and the adjoining property or properties. A joint easement agreement shall, in either of these two cases, be executed and filed with the deed of the participating properties prior to a permit being granted.
 - (b) The landowner may seek an exception from these requirements when the above cannot be fulfilled at the time of application. The landowner shall, in such case, provide proof of an attempt to secure access from a common driveway or cross access drive. The Planning Board shall impose the condition in such instance that the approved driveway is a temporary driveway and the landowner shall submit a deed agreement with the Town of Rochester agreeing to close the driveway and to seek to establish a joint driveway or cross access driveway, if feasible, when an adjoining property is developed or redeveloped.
- (4) All land owners submitting a subdivision or site plan for property on Route 44/55 or 209 shall address the feasibility of the use of joint access driveways, cross access drives and linked or shared parking lots. Use of such techniques shall be required wherever feasible.
 - (5) Retail and service businesses subject to Site Plan Review shall, where practical, be required to provide vehicular and pedestrian connections to adjoining retail and service properties along the frontage of regulated routes.
 - (6) Any landowner of a tract adjoining the regulated routes who files a subdivision or site plan application shall submit, at the time of initial application, an overall development sketch plan. This sketch plan shall establish future access locations along Routes 44/55 and 209. Conditions of final approval shall establish the number of access ways permitted for the tract regardless of any future subdivision or development plan. No individual dwelling unit within any tract to be subdivided or developed for two or more dwelling units shall be provided with direct access to Route 44/55 or 209.
 - (7) Curbline openings shall conform to New York State Department of Transportation standards.
 - (8) Access points may be restricted to right-turn in, right-turn out if determined to be in the best interest of traffic operations. The Planning Board may require signs and barriers be installed to enforce such restrictions to the maximum degree practical.
 - (9) When two adjacent landowners agree to combine access points, the Planning Board may grant an incentive bonus. The total lot size and road frontage normally required may be reduced by 15% for both landowners. The required number of parking spaces may, in addition, be reduced by 15% for each development. However, if the adjoining land uses are determined to have the same peak hour for parking generation, the Planning Board may withdraw the incentive bonus or require the developer set aside land, clearly indicated on the site plan for future paving for parking, to meet statutory requirements if an analysis conducted within one year after occupancy determines parking is insufficient. Such analyses may be provided for as a condition of approval at the expense of the applicant.

- H. Separation from road. All non-residential parking and loading areas and parallel circulation and service lanes shall be separated from the paving edge of a public thoroughfare or adjoining property lines by a planting strip at least 20 feet in depth landscaped as required herein.
- I. Traffic study. The Planning Board, at its discretion, may require a traffic impact study by an independent engineer with any Special Use application involving an activity likely to generate more than five-hundred (500) tripends per day or create specific traffic issues. The study shall examine existing and projected traffic flows before and after development and generally follow the guidelines set forth for such studies by the Institute of Transportation Engineers. Its purpose shall be to ensure that proposed developments do not adversely affect the transportation network and to identify any traffic problems associated with access to the site from the network. It shall identify solutions to potential problems and any improvements needed. The scope of the study shall be approved in advance by the Planning Board with the final product incorporated in the SEQRA submission. This requirement shall apply in the case of County or State, as well as Town roads.
- J. No recreational vehicle or commercial vehicle shall be stored on any residential lot in any district, except in an existing driveway or the rear or side yard and not closer than the required side yard setback for accessory uses.

§ 140-18 Overlay Districts.

A. (AP) Aquifer Protection Overlay District.

There is hereby created a special zoning district identified as AP District on the Zoning Map. This district shall be an overlay zone, within which the normal provisions of the zoning districts as mapped on the Zoning Map shall apply, except that no development shall be permitted which does not comply with the following standards:

- (1) Impervious surface area for proposed uses and activities located outside the B Business Development, H Hamlet, I Industrial and R-1 Moderate Density Residential Districts shall not exceed 15% of lot area.
- (2) The following uses and activities shall be prohibited uses within the Aquifer Protection Overlay District.
 - (a) Hazardous waste treatment, handling, storage or disposal facilities
 - (b) Landfills, dumps or other solid waste management facilities
 - (c) Radioactive materials treatment, handling, storage or disposal facilities
 - (d) Regulated medical waste storage, treatment, disposal or destruction facilities
- (3) The following uses and activities, when proposed within the Aquifer Protection Overlay District shall be designated as Type I actions under SEQRA and be subject to mitigation as necessary to protect the water supply:

- (a) Asphalt, concrete or coal tar plants.
- (b) Chemical and biological testing or research laboratories.
- (c) Junkyards, salvage yards or impoundment yards.
- (d) Chemical or petroleum product manufacturing and bulk sales (e.g., gasoline station).
- (e) Wood preserving or treating facilities.

Hazardous waste treatment, handling, storage or disposal facilities; landfills, dumps or other solid waste management facilities; radioactive materials treatment, handling, storage or disposal facilities; and regulated medical waste storage, treatment, disposal or destruction facilities shall be prohibited within the district.

- (4) Any use or activity with projected on-site groundwater withdrawals and/or on-site sewage disposal flows averaging 2,000 gallons per day or more during any single 30-day period shall be subject to Site Plan Review by the Town of Rochester Planning Board regardless of its classification on the Schedule of District Regulations.
- (5) The following additional information shall be provided for a proposed non-residential new use or activity located partially or wholly within the Aquifer Protection Overlay District:
 - (a) A location map of the proposed use or activity in relation to the Aquifer Protection Overlay District boundaries.
 - (b) A map and report detailing the proposed conveyance, storage, distribution, generation, use or treatment of any wastes (except sewage) or hazardous substances.

B. (FD) Floodplain Development Overlay District.

There is hereby created a special zoning district, the boundaries of which shall be congruent with those areas identified as Special Flood Hazard Areas on the Flood Hazard Boundary Maps for the Town of Rochester, as issued by the Federal Insurance Administration or its successor. This district shall be an overlay zone, within which the normal provisions of the zoning districts as mapped on the Official Zoning Map shall apply, except that no development shall be permitted that does not comply with the provisions of the Town of Rochester Flood Damage Prevention Law, as amended. No planned unit developments, multi-family dwellings or single-family dwellings at a density of more than one dwelling unit per two acres shall be permitted within the FD District and no density bonuses or incentives of any kind shall apply in this overlay district.

§ 140-19 Home Occupation Regulations.

A. Home occupations are permitted in all districts subject to regulation by class. Classifications of home occupations and limitations applicable to each follow:

Home Occupation Classifications		
Class	Description	Requirements
Class I	A no-impact home-based business or commercial activity administered or conducted as an accessory use that is clearly secondary to the use as a residential dwelling and that involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use.	<ul style="list-style-type: none"> • No on-site employees other than family members residing in the dwelling • No display or sale of retail goods • No stockpiling of inventory of a substantial nature • No outside appearance of business (e.g., parking, signs or lights) • No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, detectable in the neighborhood. • No generation of any solid waste or sewage discharge, in volume or type, not normally associated with residential use in the neighborhood • Business activity conducted only within the dwelling • Shall not occupy more than 25% of the habitable floor area or 250 square feet of floor area, whichever is less
Class II	A low-impact home-based business or commercial activity administered or conducted as an accessory use that is clearly secondary to the use as a residential dwelling and does not significantly change the character thereof, involve the use of mechanical equipment other than that customarily used for domestic purposes and involves no retail or services resulting in other than occasional and limited numbers of visitors.	<ul style="list-style-type: none"> • No more than one on-site employee other than family members residing in the dwelling • No display or sale of retail goods • No stockpiling of inventory of a substantial nature • No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, detectable in the neighborhood. • No generation of any solid waste or sewage discharge, in volume or type, not normally associated with residential use in the neighborhood • Shall not occupy more than 25% of the habitable floor area of the dwelling or 500 square feet of floor area, whichever is less, regardless whether located in the dwelling or in an accessory structure • No display or parking of equipment or products, storage of goods or materials or signs visible from outside the building, except for a name or accessory use sign • No external evidence of the home occupation or alterations inconsistent with the residential use or appearance of the buildings
Class III	A home-based business or commercial activity administered or conducted as an accessory use that is clearly secondary to the use as a residential dwelling.	<ul style="list-style-type: none"> • No more than two on-site employees other than family members residing in the dwelling • No more than 150 square feet of floor area used for display or sale of retail goods • No stockpiling of inventory of a substantial nature • No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, detectable in the neighborhood. • No generation of any solid waste or sewage discharge, in volume or type, not normally associated with residential use in the neighborhood • Shall not occupy more than 25% of the habitable floor area of the dwelling or 750 square feet of floor area, whichever is less, regardless whether located in the dwelling or in an accessory structure • No display or parking of equipment or products, storage of goods or materials or signs visible from outside the building, except for a name or accessory use sign • No external evidence of the home occupation or alterations inconsistent with the residential use or appearance of the buildings

- B. A dwelling may have one non-illuminated accessory use ground sign not to exceed 12 square feet in area to identify a home occupation.
- C. No home occupation, having once been permitted or established, shall be added to, expanded, enlarged or otherwise increased or changed substantially in character without complying with this law and such permission or establishment shall not be a basis for a later application to establish a principal commercial use. Moreover, the conversion of a residence with a home occupation to a commercial use by the abandonment of the residence or sale, rent or transfer of the business to a party that does not reside on-site is strictly prohibited unless the business is then moved offsite, unless such commercial use is a permitted use in the given zoning district.
- D. Home occupations involving the use of contractor or other heavy equipment (e.g., lawn maintenance and landscaping businesses) and similar enterprises requiring storage of materials or equipment shall provide inside storage area for all such materials and equipment. The Planning Board, may also, under site plan review, permit outside storage that is fully screened.

§ 140-20 General Commercial and Industrial Standards.

Wherever new commercial, new industrial or new multi-family residential uses, with the exception of agricultural activities and home occupations, are proposed, the following performance standards shall apply. The Building Inspector shall ensure these standards are met prior to issuing Certificates of Occupancy for such uses and may require the applicant(s) to provide documentation of compliance.

A. Building design and location.

- (1) Building design and location should be suitable for the use intended and compatible with natural and manmade surroundings.
- (2) Building color, materials and design should be adapted to surroundings as opposed to adaptation of the site to the building or the building to a national franchise concept.
- (3) Building placement and site development layout should also incorporate the site's topography, existing vegetation and other unique features. On a lot with multiple buildings, those located on the interior of the site should front towards and relate to one another, both functionally and visually, and may be organized around features such as courtyards, greens or quadrangles. Smaller, individualized groupings of buildings are encouraged. Buildings should be sited to provide adequate and safe fire and emergency access. Accessory buildings shall, wherever possible, be located in the rear.
- (4) Buildings should relate in scale and design features to the surrounding buildings, showing respect for existing and neighborhood architecture. Buildings should avoid long, uninterrupted walls or roof planes. Building wall offsets, including projections, recesses, and changes in floor level or other comparable design features should be used in order to add architectural interest and variety, and to relieve the visual effect of a simple, long wall. Similarly, roof-line offsets should be provided, in order to provide architectural interest and variety to the massing of the building and to relieve the effect of a single, long roof. Commercial facades of more than 100 feet in length should incorporate design features of this nature.

- (5) All facades of such a building that are visible from adjoining streets or properties should exhibit features comparable in character to the front so as to better integrate with the community. Where such facades face adjacent residential uses, earthen berms planted with evergreen trees should be provided.
 - (6) Loading docks and accessory facilities should be incorporated in the building design and screened with materials comparable in quality to the principal structure. Dumpsters, outside storage (non-display) and drop-off boxes shall be limited to rear yards or screened side yards.
 - (7) Driveway, sidewalk/walkway and curb materials shall be functional and compatible with the style, materials, colors and details of the surrounding buildings. The selection and use of pavement and curb materials shall consist of a stable material.
 - (8) Developers are encouraged to preserve tree borders. Existing trees over 8" dbh shall be incorporated in the site design to the maximum extent practical, as shall be determined by the Planning Board, and none shall be removed prior to Site Plan Review and approval.
 - (9) New construction affecting existing buildings of historically traditional architectural design within the community should respect the existing height, bulk, scale and style of the existing architecture wherever practical. Materials used may be required to be of a similar color, texture and style of the existing architecture.
- B. Route 209 commercial design standard. Any Site Plan Review or Special Use application for a new commercial or industrial use fronting on or within 600 feet of Route 209 should be designed such that all front and side building facades are constructed using a minimum of two principal materials (e.g., stone and wood, metal and concrete, etc.) to create architectural variety consistent with existing character.
- C. Commercial/residential buffers. Where a commercial or manufacturing use is contiguous to an existing residential use (including those situated on the opposite side of a highway) or any approved residential lot, the Planning Board may require that the minimum front, side and rear yards be increased by up to 50%. The Board may also require, for purposes of separating incompatible uses or shielding the residential property from negative impacts, that a buffer consisting of a solid fence of wood, earthen berm and/or a 20 feet wide dense evergreen planting not less than six feet high be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded.
- D. Inflammables. All activities involving the manufacturing, production, storage, transfer or disposal of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Firefighting and fire suppression equipment and devices shall be provided pursuant to National Fire Protection Association guidelines. Burning of waste materials in open fires is prohibited. Details of the potential hazards and planned safety and accident response actions shall be provided by the applicant and the Planning Board may require greater front, side and rear yards and/or fencing.

E. Electrical disturbances. No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.

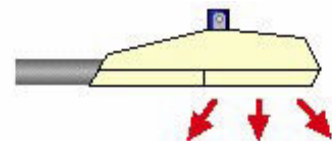
F. Noise.

- (1) All proposed new land uses shall not generate cumulative sound levels (SPL), at or beyond any lot line, that exceeds the ambient noise level by 10 or more decibels (dBA). Any sound of 5 to 10 decibels above the ambient noise level shall be attenuated or mitigated to the maximum degree practical, as shall be determined by the Planning Board during Site Plan Review. The Planning Board may, as a condition of Site Plan Review and approval, require additional setbacks, buffers and fencing, or reasonably limit the hours of operation to attenuate or mitigate any potential noise impacts of any proposed use.
- (2) The determination of noise levels shall be made using New York State Department of Environmental Conservation guidelines (see *Assessing and Mitigating Noise Impacts Program Policy*), as amended. The increase in ambient noise level shall be determined for all lot lines at the site where the project is to take place and any other locations as shall be specified by the Planning Board, taking into account existing noise generators.
- (3) The maximum permissible sound levels of this section shall not apply to emergency or security alarms, repair or construction work to provide public utilities, construction operations between the hours of 7:00 AM and 7:00 PM, emergency repairs, agricultural activities other than kennels, motor vehicles when used on public streets in accord with state regulations, aircraft, government authorized public celebrations, unamplified human voices or routine ringing of bells or chimes by a place of worship or similar facility.

G. Vibration. No vibration shall be permitted on a regular or continuing basis which is detectable without instruments at the property line.

H. Lighting.

- (1) Lighting for all commercial, multi-family residential, institutional and industrial uses shall be shielded and focused downward to prevent glare and spillover of light onto adjoining properties.



- (2) All lighting shall be designed so as to avoid unnecessary or unsafe spillover of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source.
- (3) No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or other sources, so as to be visible at the property line on a regular or continuing basis, shall be permitted.
- (4) Lighting contours shall be required on site plans for purposes of determining compliance with this section. Average foot-candles at the property line shall be less than 1.0 except at site entrances.

- (5) Globe lights shall ordinarily not be permitted, except for limited aesthetic and sidewalk lighting as part of a site plan subject to review by the Planning Board.
 - (6) Light pole heights shall not exceed building heights and none shall exceed 25 feet in height.
 - (7) All lighting over 2,000 lumens in strength shall meet the full cut-off standard of the Illuminating Engineering Society of North America (IESNA).
 - (8) All site activity areas, including parking lots and walkways, shall meet minimum IESNA standards and exceed those standards by no more than 25%.
 - (9) All gasoline canopy lighting shall be fully recessed and the average light level under the vehicular canopy shall not exceed 2.0 horizontal maintained foot-candles.
- I. Air pollution originating from new commercial or industrial uses. No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted on a regular or continuing basis which can cause any damage to health, to animals, vegetation, or other forms of property, or which can cause any excessive soiling. The Ringelmann Smoke Chart shall be used to determine the total smoke emitted. The emission of one smoke unit per hour and smoke with discernible density of No. 1 on the Ringelmann Smoke Chart shall be prohibited.
 - J. Water pollution originating from new commercial or industrial uses. All activities involving the possible contamination of surface or ground water shall be provided with adequate safety devices to prevent such contamination. Details of the potential hazards (including the groundwater characteristics of the area in which the use is proposed) and planned safety devices and contamination response actions shall be provided by the developer.

§ 140-21 Signs.

- A. Purpose. It is the purpose of this section to help residents and visitors find what they need without difficulty; improve the appearance of the Town; and promote public safety by regulating sign construction and placement.
- B. Application. All signs shall meet the standards herein and on the attached Schedule of Sign Regulations. Application for permits, where needed, shall be made to the Building Inspector together with any fees required. Written consent of property owners shall also be provided. Applications not requiring Planning Board review shall be acted upon within 30 days of receipt. Applications submitted to the Planning Board shall be acted upon within 45 days of receipt.
- C. Sign review criteria. Discretionary signs subject to Planning Board review shall be approved, approved with modifications or disapproved based on the following design criteria:
 - (1) Signs should not interfere with views of other enterprises, residences or signs;
 - (2) Whenever feasible, multiple signs should be combined to avoid clutter;
 - (3) Signs should be as close to the ground as possible;

- (4) Signs should be designed, sized and located to blend with buildings and landscapes.
- (5) Signs should be located so as to not interfere with clear views required for public safety.
- (6) Signs should not present an overhead danger or obstacle to persons below.
- (7) Sign sizes should achieve ready visibility without becoming an unnecessary distraction.
- (8) Large freestanding signs should be landscaped around the sign base.

D. General regulations. The following regulations shall apply to all signs:

- (1) No part of any sign shall project above the top or beyond the ends of the wall surface on which it is located. Signs shall also not extend above the roof line of the building to which they are attached.
- (2) Except for official traffic signs and signs in H Districts, those signs that exceed 24 square feet in surface area shall be setback at least five feet from the front and side lot lines.
- (3) No sign shall exceed a height equal to one-half its distance from a road right-of-way, regardless of other height limitations.
- (4) Advertising signs shall not be designed in a manner that could be interpreted by a motorist as being a public safety warning or traffic sign.
- (5) No sign shall be attached to a utility pole.
- (6) Portable signs, except as provided herein, shall be subject to all freestanding sign regulations.
- (7) Traffic directional signs shall be exempt from these regulations.
- (8) Signs shall be internally lighted or illuminated only by a steady, stationary (except for time and temperature reading) and shielded light source directed solely at the sign, with minimal spillover of light past the sign and without causing glare for motorists, pedestrians or neighboring premises.
- (9) Any sign located within the boundaries of the Catskill Park shall be subject to the provisions of the New York State Environmental Conservation Law.

E. Non-conforming signs. Existing non-conforming signs may be repaired or reconstructed on the same site, but shall not be relocated or increased in size except as provided herein. A non-conforming sign shall be considered a nonconforming structure.

F. Sign maintenance. No owner of any sign or lessee or owner of any land upon which the sign is located shall permit such sign to become unsafe, unsightly or in disrepair so as to endanger the public or to become a public nuisance as shall be determined by the Town Board following referral by the Code Enforcement Officer.

Town of Rochester Zoning Law § 140-21, Schedule of Sign Regulations

Prohibited Signs	Signs Allowed Without Permits	Signs Allowed with Permits from Enforcement Officer	Maximum Sign Surface Area Allowed for All Permitted Signs on a Lot Combined		Signs Permitted Upon Review by Planning Board
			Freestanding	Wall Signs	
<p>Animated, moving or flashing signs</p> <p>Projecting signs extending more than 15 inches from an exterior wall</p> <p>Roof signs</p> <p>Signs on vehicles parked to create a permanent sign effect</p> <p>Signs on utility poles</p> <p>Signs resembling traffic signals or official traffic signs</p> <p>Signs that emit sound, odor or smoke</p> <p>Signs within the cartway of a public road</p> <p>Signs within 10 feet of power and telephone and television cable lines</p> <p>Signs of more than 15 feet in height</p>	<p>Awning, canopy or marquee signs of 4 sq. ft. in aggregate per lot</p> <p>Bus shelter signs of 10 sq. ft. no more than two per shelter or lot</p> <p>Civic and religious signs of 4 sq. ft.</p> <p>Directional and instructional signs of 4 sq. ft. in aggregate per lot</p> <p>Non-commercial flags, emblems, insignia and temporary signs</p> <p>Governmental signs</p> <p>Holiday decorations</p> <p>Interior signs not classified as window signs</p> <p>Name and address plates and plaques of 2 sq. ft. each in area and 4 sq. ft. in aggregate per lot</p> <p>No trespassing, no dumping and similar signs of 2 sq. ft. in area</p> <p>Real estate, temporary construction and contractor signs of 12 sq. ft.</p> <p>Parking lot entrance/exit sign (1) of 4 sq. ft., no more than 5 feet high</p> <p>Parking lot directional signs of 8 sq. ft. (16 sq. ft. in aggregate), no more than 7 feet high</p> <p>Sports patron advertising signs of 32 sq. ft. in area</p> <p>Temporary signs of 32 sq. ft. more than 5 times or 45 days per calendar year aggregate</p> <p>Incidental signs of 2 sq. ft. each and 8 sq. ft. in aggregate per lot</p> <p>Warning of danger signs removed within 3 days of end of danger</p>	<p>Multi-family building signs of 4 sq. ft. each, no more than 1 per building.</p> <p>Residential development entrance ground signs (2 per road) of 24 sq. ft.</p>	<p>Fifty (50) sq. ft. in aggregate, or 1 sq. ft. per 5 feet of lot frontage (whichever is less), no individual sign to exceed 32 sq. ft. in area or 15 feet in height, with the exception of temporary and no trespassing signs</p>	<p>Five percent (5%) of any single building facade or thirty-two (32) sq. ft. per unit or lot in aggregate, whichever is less. Window wall signs shall not occupy more than 25% of any window.</p>	<p>Other on-premises non-residential use advertising signs for principal permitted, special and existing non-conforming uses subject to Maximum Sign Surface Area for all signs on the lot as set forth in the two columns to the left.</p>

Town of Rochester Zoning Law § 140-21, Schedule of Sign Regulations					
Prohibited Signs	Signs Allowed Without Permits	Signs Allowed with Permits from Enforcement Officer	Maximum Sign Surface Area Allowed for All Permitted Signs on a Lot Combined		Signs Permitted Upon Review by Planning Board
			Freestanding	Wall Signs	
<p>Animated, moving or flashing signs</p> <p>Roof signs extending above peak</p> <p>Signs on vehicles parked to create a permanent sign effect</p> <p>Signs on utility poles</p> <p>Signs resembling traffic signals or official traffic signs</p> <p>Signs that emit sound, odor or smoke</p> <p>Signs extending beyond the edge of a sidewalk or within the cartway of any public road, whichever is greater</p> <p>Signs within 10 feet of power and telephone and television cable lines</p> <p>Signs of more than 15 feet in height</p>	<p>Awning, canopy or marquee signs of 4 sq. ft. in aggregate per lot</p> <p>Bus shelter signs of 10 sq. ft. no more than two per shelter or lot</p> <p>Civic and religious signs of 4 sq. ft.</p> <p>Directional and instructional signs of 4 sq. ft. in aggregate per lot</p> <p>Non-commercial flags, emblems, insignia and temporary signs</p> <p>Governmental signs</p> <p>Holiday decorations</p> <p>Name and address plates and plaques of 2 sq. ft. each in area and 4 sq. ft. in aggregate per lot</p> <p>No trespassing, no dumping and similar signs of 2 sq. ft. in area</p> <p>Parking lot entrance/exit sign (1) of 4 sq. ft., no more than 5 feet high</p> <p>Parking lot directional signs of 8 sq. ft. (16 sq. ft. in aggregate), no more than 7 feet high</p> <p>Real estate, temporary construction and contractor signs of 16 sq. ft.</p> <p>Sandwich board or A-frame sign (1) of 10 sq. ft., placed no more than 10 feet from principal building entrance</p> <p>Sports patron advertising signs of 32 sq. ft. in area</p> <p>Temporary signs of 32 sq. ft. more than 5 times or 45 days per calendar year aggregate</p> <p>Incidental signs of 4 sq. ft. each and 12 sq. ft. in aggregate per lot</p> <p>Warning of danger signs removed within 3 days of end of danger</p>	<p>Multi-family building signs of 4 sq. ft. each, no more than 1 per building.</p> <p>Residential development entrance ground signs (2 per road) of 24 sq. ft.</p> <p>Awning, canopy or marquee signs of 16 sq. ft. each provided no more than 50% of awning, canopy or marquee is used for signage</p> <p>One permanently mounted changeable letter or fuel price sign of 36 sq. ft.</p> <p>Non-governmental flags of 24 sq. ft. suspended from poles of up to 36 feet in height</p> <p>One freestanding sign of 32 sq. ft., or one projecting sign of 32 sq. ft. 10 feet above the sidewalk or the ground, for non-residential use identification purposes</p> <p>Wall signs subject to the Maximum Sign Surface Area limitations to the right for such signs</p>	<p>Seventy-five (75) sq. ft. in aggregate or 1 sq. ft. per one foot of lot frontage (whichever is less), no individual sign to exceed 32 sq. ft. in area or 15 in height, with the exception of temporary and no trespassing signs</p>	<p>Ten percent (10%) of any single building facade or sixty-four (64) sq. ft. per unit or lot in aggregate, whichever is less. Window wall signs shall not occupy more than 25% of any window.</p>	<p>Other on-premises non-residential use advertising signs for principal permitted, special and existing non-conforming uses subject to Maximum Sign Surface Area for all signs on the lot as set forth in the two columns to the left.</p> <p>Off-premises non-residential use directional signs subject to maximums provided on this Schedule for all permitted signs. Commercial directory signs as defined herein (see Definitions section).</p>

Town of Rochester Zoning Law § 140-21, Schedule of Sign Regulations

Prohibited Signs	Signs Allowed Without Permits	Signs Allowed with Permits from Enforcement Officer	Maximum Sign Surface Area Allowed for All Permitted Signs on a Lot Combined		Signs Permitted Upon Review by Planning Board
			Freestanding	Wall Signs	
<p>Animated, moving or flashing signs</p> <p>Projecting signs extending more than 15 inches from an exterior wall</p> <p>Roof signs extending above peak</p> <p>Signs on vehicles parked to create a permanent sign effect</p> <p>Signs on utility poles</p> <p>Signs resembling traffic signals or official traffic signs</p> <p>Signs that emit sound, odor or smoke</p> <p>Signs within the roadway of a public road</p> <p>Signs within 10 feet of power and telephone and television cable lines</p> <p>Signs of more than 15 feet in height (except as provided for non-residential use advertising signs in § 1308 of this Law)</p>	<p>Awning, canopy or marquee signs of 4 sq. ft. in aggregate per lot</p> <p>Bus shelter signs of 10 sq. ft. no more than two per shelter or lot</p> <p>Civic and religious signs of 4 sq. ft.</p> <p>Directional and instructional signs of 4 sq. ft. in aggregate per lot</p> <p>Non-commercial flags, emblems, insignia and temporary signs</p> <p>Governmental signs</p> <p>Holiday decorations</p> <p>Name and address plates and plaques of 2 sq. ft. each in area and 4 sq. ft. in aggregate per lot</p> <p>No trespassing, no dumping and similar signs of 2 sq. ft. in area</p> <p>Real estate, temporary construction and contractor signs of 16 sq. ft.</p> <p>Parking lot entrance/exit sign (1) of 4 sq. ft., no more than 5 feet high</p> <p>Parking lot directional signs of 8 sq. ft. (16 sq. ft. in aggregate), no more than 7 feet high</p> <p>Portable wheeled signs of 32 sq. ft.</p> <p>Sandwich board or A-frame sign (1) of 10 sq. ft. placed no more than 10 feet from principal building entrance</p> <p>Sports patron advertising signs of 32 sq. ft. in area</p> <p>Temporary signs of 32 sq. ft., more than 5 times or 45 days per calendar year aggregate</p> <p>Incidental signs of 4 sq. ft. each and 12 sq. ft. in aggregate per lot (up to 6 sq. ft. each and 16 sq. ft. in aggregate within RU Districts</p> <p>Warning of danger signs removed within 3 days of end of danger</p>	<p>Multi-family building signs of 4 sq. ft. each, no more than 1 per building.</p> <p>Residential development entrance ground signs (2 per road) of 24 sq. ft.</p> <p>Awning, canopy or marquee signs of 16 sq. ft. each provided no more than 50% of awning, canopy or marquee is used for signage</p> <p>One permanently mounted changeable letter or fuel price sign of 36 sq. ft.</p> <p>One freestanding sign of 32 sq. ft. for non-residential use identification purposes</p> <p>Wall signs subject to the Maximum Sign Surface Area limitations to the right for such signs</p>	<p>One-hundred (100) sq. ft. in aggregate or 1 sq. ft. per two-foot of lot frontage (whichever is less), no individual sign to exceed 32 sq. ft. in area or 15 in height, with the exception of temporary and no trespassing signs</p>	<p>Ten percent (10%) of any single building façade or sixty-four (64) sq. ft. per unit or lot in aggregate, whichever is less. Window wall signs shall not occupy more than 25% of any window.</p>	<p>Other on-premises non-residential use advertising signs for principal permitted, special and existing non-conforming uses subject to Maximum Sign Surface Area for all signs on the lot as set forth in the two columns to the left.</p> <p>Off-premises non-residential use directional signs subject to maximums provided on this Schedule for all permitted signs Commercial directory signs as defined herein (see Definitions section).</p>

All Other Districts
(AR-3, AB-3, B, I and NR)

§ 140-22 Storm Water Management.

Every application requiring Site Plan Review or subdivision approval shall, where applicable, comply with storm water management regulations of the New York State Department of Environmental Conservation (DEC). The following standards and procedures shall apply:

- A. The application shall include the following items, prepared to DEC requirements and Section 125-27 of the Town of Rochester Code:
 - (1) An Erosion and Sedimentation Control Plan (Basic SWPPP) illustrating those measures to be employed during construction and as may be necessary to prevent loss of soil from erosion and to prevent resulting property damage, siltation and contamination of water courses or impoundments.
 - (2) A Storm Water Pollution Prevention Plan (SWPPP) identifying those practices employed after construction and as may be necessary to prevent property damage by and pollution of associated water courses or impoundments. Where DEC approval of such items is required, Town of Rochester Planning Board approval shall be conditioned upon such approval. Where only a Notice of Intent (NOI) is required under such DEC regulations, the Town Planning Board may require review of such plans by the Town Engineer and modification as may be necessary based upon such review. A certified copy of a completed NOI, signed by the applicant and certified by the applicant's professional representative shall be supplied. A copy of the New York State DEC reply to the NOI shall also be supplied when issued. All applications requiring Site Plan Review and a Notice of Intent shall be reviewed for compliance with DEC stormwater technical standards. The Planning Board's conditions of approval may address local drainage and runoff issues and, where practical, it shall encourage use of stormwater infiltration practices that reduce stormwater runoff and increase groundwater recharge in new development and redevelopment. Such practices may include vegetated open channels (grassy swales) instead of paved drainage ditches, rain gardens on residential lots and use of permeable pavement and similar surfaces in parking.
- B. Applicants shall employ low-impact development techniques as provided for in the New York State Stormwater Management Design Manual. Infiltration practices shall be used whenever acceptable under DEC guidelines. Applicants shall provide deep test pits and percolation tests in support of this or demonstrate infiltration is not a viable practice for the site in question. Dry grass swales and other similar measures shall also be encouraged wherever practical.
- C. All storm water management improvements shall be properly maintained so as to continue to perform in their intended manner. A Stormwater Maintenance Agreement may be required. Sediment shall, at a minimum, be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%. The Town Code Enforcement Officer, upon observing such improvements are not being so maintained, may direct a property owner to undertake such maintenance. Failure to comply after a minimum of 30 days notice shall constitute a violation of this law.

Article 5
Supplementary Regulations Applicable to Particular Uses

§ 140-23 Recreational Vehicles, Campgrounds and RV Parks.

A. Annual permit.

- (1) No person, partnership, association, limited liability or other company or corporation, being the owner, user, operator or occupant of any land within the Town of Rochester, shall use or allow the use of such land for a campground or RV park or any other form of camping regulated herein unless a permit has been obtained as herein provided.
- (2) The Town Code Enforcement Officer of the Town of Rochester shall issue a permit after approval of the application by the Town Planning Board pursuant to Special Use procedures. Such application shall be also be subject to Site Plan Review. Said permit shall be effective from the date of issuance until surrendered by the licensee or revoked by the Code Enforcement Officer.
- (3) No permit shall be issued until the Code Enforcement Officer has received a written application from the applicant, the required fee as herein provided and approval of the application, plans and specifications by the Ulster County Department of Health.
- (4) All licenses issued hereunder shall be valid until March 31 of the following year. No later than January 1 of each year, applicants shall request or apply for renewal of such licenses. The Town Code Enforcement Officer shall inspect the premises to ensure continued compliance with this section. A finding of such compliance shall entitle the applicant to an automatic renewal subject only to such fees as may be required. However, the Town Planning Board shall, subject to a public hearing, approve, disapprove or approve with modifications any renewal that involves proposed changes in the facilities or major changes in the operations connected with the RV park or campground.
- (5) Any person holding a permit for a campground or RV park who desires to add additional lots or spaces to such park shall file an application for a supplemental permit. The application for such supplemental permit must be accompanied by 10 sets of plans and specifications and shall be filed and processed as provided herein for new campgrounds or parks.
- (6) Each application for a new or supplemental campground or RV park permit shall be in writing and signed by the applicant. The Code Enforcement Officer shall promptly transmit copies of the application and plans to the Town Planning Board, which shall review the application pursuant to the Special Use and Site Plan Review requirements herein. The Code Enforcement Officer, within 30 days of the filing of the Planning Board's action with respect to Special Use and Site Plan Review, shall issue the permit. Each permit application shall be accompanied by site plans and other data as shall be required herein for Special Use and Site Plan Review applications.
- (7) The applicant, for any new permit or transfer, shall pay the Town a fee as shall be established modified from time to time by resolution of the Town Board.

B. Design standards and general requirements.

- (1) A campground or RV park shall have a gross area of at least 15 contiguous acres of land in single ownership or under unified control.
- (2) RV park or campground lots shall meet the following standards with respect to lot area, lot width and density:

Campground/RV Park Standards		
Standard	Transient Campgrounds/RV Parks	Nontransient Campgrounds/RV Parks
Minimum Campground Lot Area	1,500 sq. feet	3,000 sq. feet
Minimum Campground Lot Width	30 feet	50 feet
Maximum Density*	8.0	8.0
* Number of campground lots per acre of land designated for campground use.		

- (3) Individual campground or RV park lots shall be separated from service building structures by a minimum distance of 50 feet. Also, notwithstanding other requirements, no recreational vehicle or tent platforms shall be located closer than 50 feet to the street right-of-way or any adjacent property line.
- (4) No less than one off-street parking space shall be provided on each lot, in addition to the site area provided on each lot for placement of the recreational vehicle or tent.
- (5) All campgrounds and RV park streets shall be cleared, graded and improved to a 12 feet width for one-way traffic and 20 feet width for two-way traffic. Such streets shall be improved to a year round passable condition and include periodic speed bumps on each major tangent section to reduce speed.
- (6) No individual on-site sewerage or water supply shall be permitted, and all community systems for the common use of campground occupants shall fully comply, as evidenced by approved plans, with standards imposed by the Ulster County Department of Health and the Town of Rochester.
- (7) A campground or RV park shall possess a minimum of 200 feet of frontage on a state, county or town highway.
- (8) A minimum of 20% of the gross site area of the campground or RV park shall be set aside and developed as common use areas for open and enclosed recreational facilities. No recreational vehicle site, required buffer strip, street right-of-way, cartway, storage area or utility site shall be counted as meeting this requirement.
- (11) Entrances and exits to campgrounds or RV parks shall be designed for safe and convenient movement of traffic into and out of the park and to minimize marginal friction with free movement of traffic on adjacent streets. All traffic into or out of the park shall be through such entrances and exits, which shall be limited to a maximum of two each except where safety demands and the Planning Board has approved the same. The Planning Board may also require emergency entrances and exits where access in the event of emergencies would be otherwise difficult. No

entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and the radii of curbs and pavements at intersections shall be such as to facilitate easy turning movement for vehicles with trailer attached. No intersection of an entrance and/or exit with a state, county or town highway shall be located where less than 500 feet of sight distance exists in either direction along the state, county or town highway, nor shall such intersection be located within one hundred (150) feet of any other intersection.

- (12) No parking, loading, or maneuvering incidental to parking or loading shall be permitted in connection with the use of any campground or RV park on any public street, sidewalk, required buffer, right-of-way or any public grounds, nor any private grounds not part of the campground or RV park unless the owner has given written permission for such use. Each campground or RV park operator shall provide off-street parking, loading and shall be responsible for violations of these requirements.
- (13) Campground or RV park lots shall be used only for camping purposes, except for a maximum of three lots used for staff or similar special circumstances. No improvement or living unit designed for permanent occupancy shall be erected or placed on any campground or RV park lot. All recreational vehicles in the development shall be maintained in a transportable condition at all times, except for temporary removal of a hitch, and meet all requirements that may be imposed by the State of New York. Any action toward removal of wheels or to attach the recreational vehicle to the ground for stabilization purposes is hereby prohibited. Moreover, no campground or RV park lot shall be occupied for more than 120 days in a transient campground or RV park or 270 days in a non-transient campground or RV Park. No campground or RV park lot, except as provided above, shall be the primary and principal residence of the occupant, each campground or RV park lot to be used and occupied (excepting for occasional guests) for camping and recreational purposes only by a single household.
- (14) The management of every campground or RV park shall be responsible for maintaining accurate records concerning the occupancy of all campground or RV park lots. The term "management" shall include associations of property owners when such are responsible for maintenance and operation of common facilities. Management shall keep a written record of all persons occupying facilities by date, which records shall be available for a period of at least one year from the date of occupancy and shall include:
 - (a) The name and mailing address of the occupant of each lot or site.
 - (b) The name and address of the owner of each recreational vehicle that is not occupied by such owner.
 - (c) The state in which each recreational vehicle is registered and the registration number of the same.
 - (d) The name and address of the owner of the motor vehicle that transported said recreational vehicle, the state in which said motor vehicle is registered and the registration number of the same.

The Town Code Enforcement Officer shall have access to, and the right to inspect, records for evidence of permanent residency or lack thereof. The Town Board and/or Code Enforcement Officer shall, in addition, have the authority, when any provision of this chapter is violated, to prohibit the occupancy of any and all campground or RV park lots in a recreational development until the owners and/or management provide evidence of compliance with these provisions.

- (15) No owner or occupant of any campground or RV park lot or within such campground or RV park lot shall permit or allow the dumping or placement of any sanitary or other waste anywhere upon any campground or RV park lot or elsewhere within the development, except in places designated therefor. No outside toilets shall be erected or maintained on any campground or RV park lot. Plumbing fixtures within any recreational vehicles placed upon lots in the campground or RV park shall be connected to the sewage disposal system for the development. Sanitary facilities, including toilets, urinals and showers, shall be provided in separate buildings located not less than 100 feet or more than 500 feet from each campground or RV park lot.
- (16) All property lines within the development shall be kept free and open; and no fences, except as may be required for screening or as may exist naturally, ledges or walls shall be permitted thereon. This shall not, however, preclude the erection of fences around the perimeter of the development.
- (17) No noxious or offensive activities or nuisances shall be permitted on any campground or RV park lot or anywhere within such developments. Such nuisances shall include, but not be limited to; (1) noise which exceeds the limitations set forth herein; (2) uncontrolled fires or repeated burning (except for camp fires) which results in soot, cinders, smoke, noxious fumes, gases or unusual odors emanating beyond the property line of the development; and (3) any other activity that would exceed the limitations of the Town of Rochester Code. Responsibility for meeting such requirements shall extend in all circumstances to individual occupants of campground or RV park lots as well as owners and operators.
- (18) No animals shall be kept or maintained on any campground or RV park lot, except the usual household pets (cats, dogs and the like). Pets shall be kept confined so as not to become a nuisance.
- (19) No person shall burn trash, garbage or other like refuse on any campground or RV park lot. All such refuse be placed and kept in airtight receptacles for the same, which shall be provided by the owners of the campground or RV park lots. No owner or occupant shall permit the accumulation of litter or refuse or junk vehicles on a campground or RV park lot.
- (20) Notwithstanding any provisions herein contained to the contrary, picnic tables, benches, storage sheds, fireboxes or fireplaces and similar items of personal property may be placed on a campground or RV park lot. All personal property on a campground or RV park lot shall be maintained in good condition so as not to become unsightly.
- (21) No recreation vehicle shall be parked on any street or roadway within the development.
- (22) Potable water drinking supplies shall be provided within three hundred (300) feet of each campground or RV park lot and be operational during any period of occupancy.

- (23) Every campsite shall be accessible by fire and emergency equipment and shall be maintained in such condition, free of obstacles to access.
- (24) If the use of all-terrain vehicles or other similar sports equipment (including dirt bikes) is permitted within the campground or RV park, such activity shall be strictly limited to designated internal roads or other controlled designated areas within the campground or RV park and further limited to such time periods as will conform with the noise requirements herein. Campground or RV park management as well as individual campground lot owners/users shall be responsible for enforcing these limitations and be subject to the penalties provided herein if they do not and a nuisance situation is created for adjoining landowners.
- (25) The operational standards contained in this section shall be incorporated in the management plan and restrictions for any transient campgrounds or RV parks, which restrictions and/or plan shall be approved by the Planning Board in its review of site development plans for the campground or RV park. A plan or set of restrictions that does not adequately provide for conformance with this section shall not be approved. The plan and/or restrictions shall also provide the Town with the option (but not the obligation) of being a part to their enforcement and include a right for the Town to periodically inspect the development for continued compliance with the plan and/or restrictions.

C. Revocation of permit.

- (1) If the Code Enforcement Officer finds that a campground or RV park for which a permit has been issued is not being maintained in a clean and sanitary condition or is not being operated in accordance with the provisions of this chapter, he may service personally or by certified mail upon the holder of the permit a written order which will require the hold of the permit to correct the conditions specified in such order within 10 days after the service of such order.
- (2) If the holder of such permit shall refuse or fail to correct the condition or conditions specified in such order, the Code Enforcement Officer shall revoke such permit and the holder of the permit shall thereupon immediately terminate the operation of such campground or RV park and held to be in violation of this law.
- (3) However, if the owner or operator of such recreational vehicle park shall thereafter correct such conditions and bring the recreational vehicle park into compliance with this chapter, such owner may then apply for issuance of a new permit for such park, and if the application is approved and permit is granted, the applicant shall pay to the town the fee required by this chapter without any credit for the fee paid for the permit which was revoked.

D. Penalties for offenses; additional remedies.

The Code Enforcement Officer may, in the case of violations of the foregoing provisions by any campground or RV park lot occupant, and in addition to other remedies available under this Zoning Law and, regardless whether or not such campground or RV park has a current permit, remove or cause to be removed all camping facilities and persons associated with such activity. This shall include tents, vehicles, recreational vehicles, personal equipment and other goods. Such person or persons shall also be guilty of a violation and be punished as provided herein. The Code Enforcement Officer shall provide any violator who

is not a repeat violator with a warning and order to immediately cease and desist in the violating activity and upon failure of the violator to do so shall institute the actions provided above. He may enter onto the grounds of any property for purposes of determining compliance.

E. Exceptions. None of the provisions of this chapter shall be applicable to the following:

- (1) The business of recreational vehicle sales.
- (2) The storage of a recreational vehicle not being used on premises occupied as the principal residence by the owner of such recreational vehicle; provided, however, that such unoccupied recreational vehicle shall not be parked or located between the street line and the front building line of such premises or be connected to utilities.
- (3) Camping by the owner or renter on his or her own vacant property for a maximum of 30 days in consecutive days.
- (4) Storage yards within any campground or RV park for vehicles and tents when not in use for camping. A campground or RV park may also include: a store for sales of camping supplies and other retail goods to campers; areas for musical and similar entertainment events that are also open to the general public, provided such uses are occasional in nature and clearly accessory to the campground or RV park as the principal use of the property; and permanent cabins for camping purposes provided such cabins are limited to a 500 square feet footprint size, are owned and managed by the resort owner and constitute no more than 20% of such camping accommodations as are offered at the facility.

§ 140-24 Manufactured Housing Parks.

A. Manufactured housing parks shall be permitted as Special Uses in the AR-3 and R-2 Districts.

B. Manufactured housing parks shall also meet the following criteria:

- (1) The parcel must have a minimum of 15 acres in total gross area.
- (2) The property must have a road frontage of a minimum of 200 feet.
- (3) The total density or maximum number of lots per park shall not exceed the permitted density for the zoning district.

C. License requirements.

Any person or legal entity, being the owner or occupant of any land within the Town, shall not use or allow the use of such land for a manufactured housing park, unless a license has been obtained as herein provided from the Code Enforcement Officer shall issue a permit therefore. This license shall be effective from the date of issuance to and including December 31 of that same year. The original license shall not be issued until the Town of Rochester has received:

- (1) A completed, written application from the applicant;

- (2) The required fee as established by the Town Board;
- (3) The listing of a local contact name and telephone number to act as an official representative of the park owner in the event of an emergency situation;
- (4) Documentation asserting compliance with the safety requirement of fire extinguishers, smoke detectors, and carbon monoxide detectors for each unit;
- (5) Approval of the application by the Ulster County Department of Health and any other required government agency permit or approval; and
- (6) A resolution from the Planning Board approving issuance of a Special Use permit for said manufactured home park.
- (7) A certificate of occupancy issued based upon a complete inspection of the premises by the Code Enforcement Officer indicating all Town of Rochester requirements have been met.

D. Application and renewal.

- (1) Initial application.
 - (a) The application for license or renewal thereof shall be filed with the Code Enforcement Officer and shall be accompanied by a fee in the amount as established by the Town Board. Said application shall include the name, address, and telephone number of the applicant, the nature and extent of his interest in the business for which a license is desired and whether said applicant is the owner of the property and such legal description of the premises upon which the manufactured housing park is or will be located as will readily identify and definitely locate the premises. If land ownership is vested in some person other than the applicant, a duly verified statement is required by that person stating the applicant is authorized to construct or maintain the park and to make said application.
 - (b) The application shall state the contact information for a local representative of the owner in the event of an emergency situation.
 - (c) The application shall state the total acreage of the site, the acreage designated as open space, the acreage designated as recreational or community area, the number of approved lots, and the number of actual units in the manufactured housing park.
 - (d) A copy of the regulations and rules for residents of the park as imposed by the park owner must accompany the application for a permit.
 - (e) If said application is for a new manufactured housing park or for the expansion of the same, an application for a Special Use permit must be made to the Planning Board in accordance with the procedures provided in this chapter for such permits.
- (2) License renewal.

- (a) An application for the renewal of any manufactured housing park license must be filed with the Code Enforcement Officer on or before October 1 of the year preceding the expiration of the permit.
 - (b) Upon a satisfactory inspection of the premises and the approval by the Code Enforcement Officer, a renewal license shall be issued to be effective upon the expiration of the previous license and to continue in force for a period of one year.
 - (c) At the time the license is applied for the applicant shall pay a fee in the amount established by the Town Board.
 - (d) Such renewal license shall not be transferable or assignable to any other individual, group, corporation or association.
 - (e) All required improvements and community utilities within a manufactured housing park shall be continuously maintained in a safe manner, and all required services shall be continuously provided in order to secure the annual permit. The Code Enforcement Officer, County Health Inspector, Fire Inspector, or any other government or safety inspector shall have full access to any public spaces located within the park boundaries at any time for inspection purposes.
- E. Application for preexisting manufactured housing parks. A manufactured housing park that is in existence or applied for prior to the effective date of this law may continue in existence, provided it complies completely to the standards and requirements of the Ulster County Department of Health and receives a satisfactory, written inspection report with no safety, health, or Town Code violations from the Code Enforcement Officer. However, any additions, extensions, or supplements to such preexisting park must be made pursuant to this chapter, and all regulations hereof apply thereto.
- F. Revocation of license.
- (1) If the Code Enforcement Officer finds and reports to the Town Board that a manufactured housing park for which a license has been issued is not being maintained in a clean and sanitary condition or is not being operated in accordance with this chapter, the Town Board shall, by resolution, authorize the personal service, upon the holder of the license, of a written order that shall require the holder of said license to correct the conditions specified in such order within 15 days after the service of such order.
 - (2) If the holder of such license shall refuse to correct the condition or conditions specified in such order within 15 days after the personal service of such order, the Town Board shall hold a hearing to determine whether the holder is in violation of the provisions of this chapter. The holder shall have the opportunity to be heard and defend its position at the hearing. If the Town Board determines the holder is in violation, it shall, by resolution, revoke such license and impose the levy of a daily fine (as set by Town Board schedule), and the holder of the same shall thereupon terminate the operation of such manufactured housing park. All the enforcement provisions of this chapter, shall apply in such case.

- (3) However, if the owner or operator of said manufactured housing park shall thereafter correct such conditions and bring the park into compliance with this chapter, said owner may then apply for the issuance of a new license for said park, and if the application is approved and a permit is granted, the applicant shall pay to the Town Clerk the required fee without any credit for the fee paid for the permit which was revoked.

G. Prescribed standards.

- (1) The manufactured housing park plan shall be drawn to scale on a survey map prepared by a civil engineer or land surveyor duly licensed by the State of New York and shall show the following:
 - (a) The name and address of the applicant (or the name and address of each partner if the applicant is a partnership; or the name and address of each officer and director if the applicant is an association or corporation).
 - (b) The location and description of the land that is proposed to be used as a camp or park.
 - (c) The existing zoning of the site.
 - (d) Physical features, including topographic contours at two-foot intervals, locations of watercourses, marshes and areas subject to flooding and location of wooded areas.
 - (e) Existing development, including a location map depicting all land within 200 feet of the proposed park; all structures on the land which abuts the proposed park; the location, names, and widths of all adjacent streets; and the location of all water lines and utilities within and adjacent to the proposed site.
 - (f) Proposed development including:
 - [1] The location and widths of all entrances, exits, streets, and walkways.
 - [2] The number, location, size, and arrangement of all proposed unit areas within the park.
 - [3] The method and plan for electric lighting.
 - [4] The location and plan for all proposed structures and improvements.
 - [5] The proposed grading.
 - [6] The proposed stormwater management system.
 - [7] The proposed utilities.
 - [8] Any public improvements proposed by the Town in or adjoining the proposed site.
 - [9] Any proposed zoning.

[10] A landscaping plan, as provided by § 140-15 and § 140-24.G(10) hereof, shall be submitted as part of the park plan.

[11] The proposed open space area and any improvements planned for such space.

[12] The proposed recreation areas, specific uses and plans for such areas, and all improvements pertaining to such areas.

[13] The required perimeter fifty-foot buffer zone and the proposed or existing landscaping plans for that zone.

[14] The location and improvements of all community-related infrastructural needs, such as mail collection areas, refuse collection areas, community parking areas, school bus shelters, and the like.

(2) Site requirements.

- (a) The site shall be well drained, and have such grades and soil types as to make it suitable for the purposes of residential living.
- (b) The site shall be preserved in its natural state insofar as possible, including the preservation of existing trees, soils, and vegetation.
- (c) A Storm Water Pollution Prevention Plan as required by § 140-22 hereof shall be required.
- (d) The site shall not be exposed to excessive or objectionable smoke, dust, noise, odors or other adverse influences.
- (e) No portion of the site shall be subject to sudden flooding or erosion, nor shall it be used for any purpose which would expose persons or property to hazards.
- (f) Each lot fronting on a named stream depicted on United States Geological Survey maps shall include a setback of 100 feet in depth from the high water mark of such stream. No principal structure shall be located within such setback. The Planning Board shall, however, be authorized to modify this requirement where necessary or to accommodate reasonable use of properties outside the floodplain, provided other mitigating measures such as deed covenants limiting clearing near the stream are employed to protect stream quality.

(3) Buffer zone.

- (a) A minimum of a 50 feet wide landscaped buffer zone shall be constructed and maintained around the perimeter of the manufactured housing park, provided that this requirement may be modified or waived where the area is already wooded or the park adjoins property that is otherwise naturally buffered.
- (b) The area encompassed by this buffer zone shall be landscaped as required by § 140-15 hereof.

- (c) The Planning Board may also require a fence or berm for an additional visual screen or noise buffer if deemed appropriate.
- (d) Where natural vegetation exists that meets or exceeds the above requirement within the 50 feet buffer zone, it may be utilized instead of the required plantings at the option of the Planning Board; however, this existing vegetation must be maintained and replaced if it fails to continue to meet the above requirements.
- (e) Such buffer zones shall not be required where they would interfere with the vision of motorists at intersections with public or private roadways.

(4) Open space and recreation areas.

- (a) An area of not less than 40% of the gross site area shall be maintained as open space. No part of such open space shall be included in any manufactured home site, roadway, wastewater treatment plant, or parking area within the park, nor shall any part of such open space be occupied by manufactured homes.
- (b) Recreation area. An area of not less than 25% of the required open space (or 10% of the total gross site area) shall be maintained as active recreational or community areas for the common, equal use of all residents of the park. Active recreational areas may include playgrounds, tennis courts, swimming pools, wading pools, saunas, exercise rooms, clubhouse facilities, specifically constructed outdoor sports fields, picnic areas, walking trails and other similar facilities intended for the exclusive use and participation of all residents within the proposed park. The applicant shall establish that the type and quality of the planned improvements for the active recreation space shall satisfy the needs of the residents of the park. Notwithstanding the above, if a contiguous public facility such as a public park, school playground, or the like already exists, this recreation area requirement may be waived in lieu of a payment, to be determined by the Town Board, to a Town recreation fund, but in no case shall less than 25% remain open space. Only the recreation area may be waived.
- (c) All open space and recreation areas shall be accessible to all home lots within the park.
- (d) The park owner is responsible for maintaining all recreation areas and open space areas.
- (e) The Planning Board shall require a bond and/or escrow account for the construction and maintenance of the community recreation areas in accordance with the guidelines set forth herein.
- (f) All common open space, recreational areas, and other common properties shall be preserved for their intended purpose as shown on the approved development plan and shall be established by metes and bounds on the final development plan.

(5) Individual manufactured housing park unit lots.

- (a) Each park site shall be marked into unit areas, and all lot dimensions and placement of lots shall be permanently recorded on the survey map.
 - (b) No manufactured housing lot shall be constructed on a plot which has a slope of 15% or greater, except by application by the applicant to the Zoning Board of Appeals for a variance.
 - (c) No manufactured housing park lot shall extend into a designated floodplain or wetland.
 - (d) Every home lot as described on the site plan shall be clearly defined by field survey and indicated on the ground with permanent and visible markers.
 - (e) Each designated manufactured home lot shall be not less than 12,000 square feet in area; have a minimum of 80 feet of frontage on an interior park roadway; be not closer than 60 feet to a public street or other property line; and otherwise comply with development standards applicable to conservation subdivisions (see Chapter 125 of the Town of Rochester Code). No manufactured home lot shall access a public roadway directly. All lots must front an interior park roadway.
 - (f) All manufactured homes shall be single-family residences.
 - (g) No additions may be made to a manufactured home to increase the livable floor space.
 - (h) Only one manufactured home shall be permitted to occupy each manufactured home lot.
- (6) Manufactured homes shall be located no less than: 50 feet from any adjacent structure in any direction; 75 feet from an adjacent property line; 75 feet from the right-of-way line of a public road; and 35 feet from the nearest edge of any interior roadway within the park. Each lot shall have a 35 foot rear yard. An accessory building of not more than 144 square feet may be added to the lot for storage. This building must be situated in the rear of the lot, not closer than 10 feet to the lot line.
- (7) All manufactured homes and lots within a manufactured home park shall comply with the requirements of Chapter 99, Manufactured Homes.
- (8) Street systems.
- (a) A manufactured home park shall access a public roadway at a minimum of two and a maximum of four points on a public highway. Such accesses shall be at least 125 feet apart and be at right (90 degree) angles to the public roadway.
 - (b) Street lighting shall be provided at manufactured home park entrances and exits. The lighting shall be sufficient for safety purposes but shall be made to have minimal intrusion on individual lots and neighboring properties.
 - (c) Such entrances and exits shall be designed and strategically located for safe and convenient movement into and out of the park and to minimize conflict with the free movement of traffic on a public highway or street. All entrances and exits shall be free of any material which would impede the visibility of the driver on a public highway or street, providing sight distances of no

- less than 250 feet in both directions. All entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with manufactured homes attached.
- (d) The Planning Board shall require a designated and marked walkway and may require improved sidewalks, at least four feet in width, to be provided on at least one side of each internal roadway that is used for ingress and egress to a public roadway to provide for the safe pedestrian access of residents and school children to the public road system.
 - (e) Each park shall have its streets provided with a smooth, hard surface which shall be durable and well drained under normal use and weather conditions to provide for convenient accessibility to all unit areas and other important facilities within the park. The street system shall be designed to permit the safe and convenient vehicular circulation within the park, shall be adapted to the topography, and shall have suitable alignment and gradient for traffic safety.
 - (f) All interior roadways shall meet Town subdivision requirements for minor streets as provided in Chapter 125, Subdivision of Land. The proposed interior roadways shall have appropriate safety signage and speed limit signage as deemed necessary by the Highway Superintendent. The Planning Board may require speed bumps or other safety devices if deemed appropriate.
 - (g) If dead-end streets are part of the plan, they shall meet cul-de-sac standards provided in Chapter 125 of the Town of Rochester Code.
 - (h) All streets shall be named and all intersections marked appropriately with monuments.
- (9) Utilities and service facilities.
- (a) Utilities and service facilities shall be provided in accordance with the regulations and requirements of the Ulster County Department of Health, the New York State (NYS) Department of Health, and the Sanitary Code of New York State and the New York State Department of Environmental Conservation.
 - (b) Each manufactured home and community facility that requires such shall have an attachment or water supply with a shutoff relief valve provided. The water source must be approved by the appropriate state, county, or Town agency or agencies and shall conform to all applicable rules, laws, ordinances, and regulations.
 - (c) Each manufactured home shall be served by a central sewer system or septic system approved by the Ulster County Department of Health or other such health agency as shall have jurisdiction. Connections to unoccupied lots shall be capped to prevent the emission of odors or the creation of a health hazard.
 - (d) The park owner shall provide for the sanitary disposal of all refuse and recycling generated in the park. The owner shall determine the means of the disposal system, which shall be kept in a sanitary condition at all times. Collection areas shall be required to be landscaped to screen their view from any neighboring street, park lot, or adjoining property.

- (e) Each manufactured home lot shall be provided with weatherproof electric service connections and outlets which are a type approved by the New York State Board of Fire Underwriters.
- (f) All community utilities shall be carried underground and shall be installed in accordance with all local, county, state, and federal regulations.
- (g) Each manufactured home site shall be provided with facilities for the aboveground safe storage of required fuels. All systems shall be installed and maintained in accordance with applicable codes and regulations governing such.
- (h) The park owner shall be responsible for the placement and maintenance of onsite mailboxes provided at a common location in the park as determined by the United States Postal Service. All mailboxes shall be easily accessible and be of a consistent style and color.

(10) Landscaping.

- (a) Areas of manufactured housing parks, not used for the placement of structures, walkways or roads or cleared for recreational facilities shall be landscaped pursuant to the requirements of § 140-15 hereof or shall remain wooded and/or otherwise unimproved to preserve the rural atmosphere and aesthetic characteristics of the Town of Rochester.
- (b) Landscaping shall be provided to the extent necessary for the purpose of screening nonresidential structures or uses within the park and to provide shade and suitable settings for the dwellings and other facilities within the park.
- (c) The park owner shall be required to maintain all landscaping in buffer zones, community areas, screening areas, and at entrances.
- (d) Maintenance of individual lot landscaping may lie with either the resident or the park owner, but the owner of the park may set minimum standards for proper maintenance of this landscaping.

(11) Park records.

- (a) The owner or operator of each manufactured housing park shall keep a written record of all persons occupying such park. This record shall include the name and mailing address of the occupant of each manufactured home and the name and address of the owner of each manufactured home that is not occupied by such owner.
- (b) The park owner shall be required to provide a copy of the New York State document "Mobile/Manufactured Home Park Tenants' Rights" as explained in § 233 of the New York State Real Property Law to each residence within the park.
- (c) The park owner shall be required to provide a written list of all park rules and regulations to each residence within the park.

(12) Parking.

- (a) A manufactured home lot shall have two adjacent off-street parking spaces.
- (b) No unregistered and/or unlicensed vehicles may be stored on a manufactured housing park lot.
- (c) No commercial vehicles, except pickup trucks, passenger vans, or other recognized personal-use vehicles registered commercially, shall be permitted to be parked on a manufactured housing park lot.
- (d) Visitor parking at the rate of one space per every four manufactured housing lots shall be allowed for. These shall be located as near the individual lots they service as is possible.
- (e) No on-street parking or parking in non-designated parking spaces shall be allowed.
- (f) A visually screened, fenced, secured, common area within the park shall be set aside and maintained for residents to park any recreational vehicles such as campers, boats, snowmobiles, ATV vehicles, and the like. An appropriate service fee may be charged for this service by the park owner.
- (g) Each off-street parking space and the parking areas shall conform to the residential parking standards of this chapter.

(13) Performance and maintenance bond.

- (a) The Planning Board shall require a cash bond or renewable, irrevocable letter of credit for the construction of roads, sewerage system, water system, or any other community needs deemed necessary. The amount of the bond shall be determined by the Planning Board after consultation with a Planner or Engineer for the Town.
- (b) The Planning Board shall require a cash bond or irrevocable, renewable letter of credit of the applicant to insure the continued maintenance of any community utility that would impose hardship on the residents if not maintained adequately and properly. The amount of the bond shall be determined by the Planning Board after consultation with a Planner or Engineer for the Town.

(14) Safety.

- (a) Each manufactured home shall be equipped with a minimum of one fire extinguisher of proper type in the kitchen as well as one smoke detector in each room used as either sleeping quarters or cooking area. Carbon monoxide detectors shall also be required. The park owner shall be responsible for the mandating of this provision and shall be required to verify the continued operational capacity of these safety items once per year and submit notarized documentation stating compliance for all park units with the annual license application.
- (b) There shall be a clear numbering system for all units within a manufactured housing park. The numbers shall be not less than four inches in height, Arabic writing, made of reflective material, and prominently displayed on the manufactured home where it is visible from the interior access roadways.

- (c) A copy of the layout map shall be filed with the applicable fire and rescue agencies.
- (d) An easily visible, posted layout map showing the location and numbering of each lot in the park shall be also required at each entrance to the park from the public roadway.
- (e) Water supplies to aid in fighting fire shall be adequate as determined by the Ulster County or local Fire Commissioners, whether the supply is derived from hydrants connected to an underground water supply system or a reservoir or other water supply system.
- (f) No flammable materials may be stored beneath any manufactured home.
- (g) The park owner shall be required to provide an adequate area for translucent, Plexiglas-type school bus shelter(s) at the entrance(s) to the park for the purpose of sheltering school children from inclement weather while waiting for school bus transportation. These shelter(s) must be large enough and a minimum number to meet the needs of the school-age population of the park.

(15) Park owner requirements.

- (a) The owner or operator of the park shall be required to maintain all landscaping, roadways, public facilities, common grounds, and community recreational equipment in a safe, clean, sanitary condition.
- (b) The park owner shall be responsible for the collection of waste material, snow plowing, road maintenance, maintaining lawns, trees, and shrubs, public utilities, and any other public services necessary to preserve a sanitary, safe, clean, and orderly community environment.
- (c) The Building Inspector, Code Enforcement Officer, County Health Inspector, Fire Inspector, or any other government or safety inspector shall have full access to any public spaces located within the park boundaries at any time for inspection purposes.

§ 140-25 Planned Unit Developments.

A. Purposes.

- (1) Planned unit developments may, with approval of the Town of Rochester Town Board, be permitted in designated zoning districts for the purposes, including but not limited to the following:
 - (a) Offering choices in types of housing, lot sizes and community facilities available to residents.
 - (b) Creating more usable open space and recreation areas and preserving natural areas.
 - (c) Conveniently locating businesses and services with respect to neighborhoods.
 - (d) Developing commerce, industry and tourism in planned units compatible with other uses.

- (e) Facilitating development that allows an orderly transition from rural to urban uses.
 - (f) Providing for the efficient use of land and the placement of utilities and streets in ways that lower development costs and impacts.
 - (g) Encouraging innovation not possible under strict application of subdivision and zoning regulations.
 - (h) Promoting the expansion of existing hamlets and development of new centers.
 - (i) Promoting traditional neighborhood and mixed-use development patterns.
- (2) Generally, planned unit developments are intended to provide landowners who wish to develop functionally integrated communities or complexes with the flexibility to do so, provided sufficient open space will be preserved and the development is designed with safeguards to protect the public health, safety and welfare.

B. Procedures.

- (1) The Town Board, shall be authorized, at its sole discretion, to designate a property for Planned Unit Development use following a public hearing and within 62 days of receiving a report from the Town of Rochester Planning Board recommending the same. This report shall be based upon review, by the Planning Board, of a Sketch Plan application. The Sketch Plan application shall be completed to such detail as provided in §140-46 and be processed accordingly.
- (2) The Town Board shall, in making its determination, assess whether the proposed Planned Unit Development would be consistent with; (1) the sound development, safety, health and welfare of the property on which it is proposed and the surrounding neighborhood, and (2) the purposes of this section. It shall also, where Planned Unit Development is proposed in AR-3, R-2 and R-5 Districts, give preference to applications for projects adjacent to B, H and R-1 Districts, where such development will serve to strengthen centers.
- (3) Any designation of a property for Planned Unit Development use by the Town Board shall be conditioned upon Planning Board approval of a detailed site plan complying with the requirements of §140-46. The Planning Board shall only be authorized to act upon such site plan following Town Board approval. Town Board designation of a property for Planned Unit Development use shall only serve to authorize a full application and shall not be construed as an approval to proceed with development or serve to vest any rights in such development with the applicant.
- (4) Town Board action shall be a necessary prerequisite of Planning Board approval but not sufficient in its own right to authorize any disturbance or use of land for purposes of Planned Unit Development. Such authority shall remain with the Planning Board, which shall act as Lead Agency for purposes of SEQRA compliance.

C. General requirements.

- (1) The following standards shall apply to all Planned Unit Developments:

Planned Unit Development Standards				
Category	PCD Planned Commercial Development	PID Planned Industrial Development	PRD Planned Residential Development	PXD Planned Resort Development
Zoning Districts	AB-3, H, AR-3, NR, R-5	AB-3, NR, R-5	AR-3, H, R-1, R-2, R-5	AR-3, R-5
Minimum Site Area	10 acres	20 acres (50 acres in R-5)	20 acres	100 acres
Maximum Residential Density	N/A	N/A	District density times 2	District density times 2, less 25 acre maximum resort footprint to which no density restrictions shall apply
Permitted Uses	All BD principal permitted uses, convenience stores and nurseries and greenhouses	All ID uses	Single-family dwellings (except manufactured homes), two-family dwellings, multi- family dwellings, amenities, convenience retail as accessory use (3,000 sq. ft. maximum)	Hotels, motels, resorts, ranches and other accommodations plus related accessory uses, including but not limited to on-site retail, dining and recreation uses plus amenities
Utilities	Community water and sewage facilities and underground electric	Community water and sewage facilities and underground electric	Community water and sewage facilities and underground electric	Community water and sewage facilities and underground electric
Minimum Open Space	10%	10%	40%	50%
Maximum Lot Coverage	30%	30% (20% in R-5)	20%	50% within resort footprint 20% outside resort footprint
Building Setback	75 feet - all lot lines	100 feet - all lot lines (200 feet in R-5)	100 feet - all lot lines	200 feet - all lot lines
Maximum Height	45 feet	45 feet	45 feet	60 feet or 4 stories (whichever is less)

- (2) With the exception of lot and yard requirements which may be modified by the Planning Board, Planned Unit Developments shall comply with all other provisions of this Law, including, but not limited to, the parking, landscaping and commercial and industrial performance standards of § 140-20. Interior signs directed only to on-site individuals shall, however, be exempt from sign standards.
- (3) The land proposed for a Planned Unit Development may be owned, leased or controlled either by an individual, business entity or by a group of individuals or business entities. Planned Unit Development applications shall be filed by the owner or jointly by all owners of the property included in the application. In the case of multiple ownership, the approved plan shall be binding on all owners.
- (4) A management plan and covenants and restrictions for the Planned Unit Development to ensure long-term maintenance of properties and improvements, address hours of operation and deal with other matters potentially having an impact on adjoining properties, shall be submitted for review and approval by the Town Board at the time the Planned Unit Development is proposed.
- (5) Contiguous parcels or areas of land within multiple zoning districts, including land outside zoning districts where Planned Unit Developments are not permitted, may be included if they do not constitute more than 10% of the project acreage. Density shall be based on the underlying density for the larger portion of the property.

§ 140-26 Multi-Family Residential Uses.

- A. Multi-family dwelling projects shall be allowed in the AR-3, AB-3, R-1, R-2, H, and B zoning districts. Such projects shall be considered major subdivisions and require both Special Use and subdivision approval, however the application fee for subdivision review shall be waived. This "major subdivision" classification shall apply to all subdivisions of property in connection with the development, regardless of whether or not the same are connected with building development, and the approvals required shall be requested and acted upon concurrently as one subdivision.
- B. Density Requirements.
 - (1) Multi-family dwelling density in the B, H, and R-1 zoning districts shall not exceed twice the number of dwelling units per acre permitted under the Schedule of District Regulations.
 - (2) Multi-family dwelling density in the AR-3, AB-3, and R-2 zoning districts shall not exceed the number of dwelling units per acre permitted under the Schedule of District Regulations.
- C. Application for preliminary approval of multi-family dwelling projects, accordingly, will be made to the Town in the manner provided under the Town Land Subdivision Law. The subdivider shall also submit all information required by such Regulations plus the following additional data;
 - (1) An application for approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the criteria set forth herein.

- (2) A proposed plot plan showing the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this Law. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and sizes of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in Town of Rochester. Setbacks from property lines, improvements and other buildings shall also be indicated.
 - (3) A schedule or plan and proposed agreement(s) either with the Town or a property owners' association for the purpose of dedicating, in perpetuity, the use and/or ownership of the recreation area and open space required by this Law to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed declaration of covenants and restrictions for filing in the County Clerk's office, but shall in any event, provide to the satisfaction of the Town that maintenance and use of the property, regardless of ownership, be restricted to either; (1) activities intended for the sole benefit of the occupants of the particular project proposed or, (2) permanent open space as hereinafter provided.
- D. The Planning Board shall act on the Preliminary Development Plan and Special Use application concurrently provided an Environmental Assessment is also conducted pursuant to the New York State Environmental Quality Review Act. No building permit shall be issued to the applicant, however, until all conditions attached to the approval of any preliminary Development Plan, shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to Preliminary approval. This requirement notwithstanding, the building permit application shall be made with the Preliminary Development Plan and shall, if granted, be valid for a period equal to that for Preliminary Development Plan approval. If the Preliminary Development Plan shall be rejected no building permit shall be granted.
 - E. The developer shall provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, recreational facilities and lighting. No Certificate of Occupancy (where the same is required) shall be issued until such time as; (1) Final Development Plan approval shall have been granted in accordance with the procedures and requirements of this Law and (2) buildings have been completed and inspected by the Town Building Inspector.
 - F. Complete final building plans shall also be submitted as part of the Final Development Plan Application.
 - G. No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this Law, unless and until Final Development Plan approval shall have been granted (unless the improvements shall have been guaranteed), and the Plan has been recorded in the Office of the Ulster County Clerk.
 - H. All areas of a multi-family development not conveyed to individual owners; and not occupied by buildings and required or proposed improvements shall remain as permanent open space or be dedicated to recreation area to be used for the benefit and enjoyment of the residents of the particular

units being proposed. No less than 50% of the tract shall be used for this purpose and fees in lieu of dedication may not be substituted for such space. Such open space shall be subject to the following regulations:

- (1) No less than 50% of the open space to be provided (25% of the total tract) shall be dedicated to recreational area for the benefit and enjoyment of the residents of the particular units proposed. Recreation areas (as distinct from other open space) shall be immediately adjacent (part of the same parcel and contiguous) to the proposed units and freely and safely accessible to all residents of the development. They shall not be used to fulfill open space requirements or provide recreational areas for residents of other units, excepting as provided for in subsection (2) below. They shall be usable for active recreational activities and shall not include wetlands, quarries, slopes over 15% in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas.
 - (2) Land designated as open space shall be permanently maintained as such and not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed excepting that a holding zone may be reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all Development Plans. Such lands shall not be included in calculating permitted density for the proposed development. These provisions, however shall not be construed as granting or reserving to the developer any rights or privileges to develop on the basis of a "pre-approved plan" if density or other zoning requirements shall have been modified to preclude such development.
 - (3) Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas may be owned, preserved and maintained by dedication to a property owners association which assumes full responsibility for maintenance of the open space and/or deed-restricted private ownership which shall prevent development of the open space, provide for its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/developer to retain ownership and use of a portion of the property (for hunting, fishing, etc.) provided the permanence of the open space is guaranteed.
 - (4) Whichever maintenance mechanism(s) is used, the developer shall provide, to the satisfaction of the Town Attorney and prior to the granting of any Final Development Plan approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.
 - (5) Developments of 50 units or more shall provide one-half acre of playground area per 50 units unless restricted to adult occupancy only plus such other recreation area as may be required by the Town Subdivision Law.
- I. All multi-family developments shall be served with community wastewater facilities and water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multi-family buildings and structures as a minimum.

- J. The following design criteria shall apply to multi-family developments:
- (1) Yard requirements for the district shall apply to the development as a whole and not individual units.
 - (2) Access roads through the development shall comply with minor street requirements as specified in this Law and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Parallel parking may be permitted.
 - (3) A multi-family development of 50 or more units shall be served by by a minimum of two accesses.
 - (4) Parking spaces of two per unit shall be provided plus, for every two units intended for rental or other transient occupancy, one additional space to accommodate parking needs during sales and other peak visitation periods.
 - (5) No structure shall be erected within a distance equal to its own height of any other structure.
 - (6) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.
 - (7) All multi-family projects shall comply with landscaping, parking, lighting, storm water and general design guidelines as set forth in this code.
- K. Maintenance of a multi-family project shall be vested in (1) an association or other legal entity organized prior to the offering of the first unit for occupancy, or (2) a manager, who may be the developer, or a person designated by the developer before the developer offers a unit for occupancy, or (3) the owners or occupants of units themselves if the total number of owners or occupants within the development is not more than five (5).
- L. The association or manager, as the case may be, shall be responsible for maintenance, repair and replacement of the common areas of the development including buildings and, if applicable, the furniture, fixtures and equipment within the units.
- M. The developer shall, in filing a Preliminary Development Plan, provide a narrative description of how responsibility for maintenance and care of the units and common areas will be assured and a pro forma operating budget for the maintenance organization including a breakdown of the common expense to be borne by the maintenance organization and a separation of long-term maintenance costs from on-going routine maintenance costs. There shall also be provided a narrative description of how the developer proposes to assure maintenance of the units and common facilities during any sales program. The Planning Board may require additional temporary facilities to accommodate service demands. Copies of all applicable instruments shall be provided, for purposes of determining that long-term arrangements for maintenance of common facilities have, in fact, been made by the developer.
- N. Any developer who proposes to construct multi-family dwellings and convey the common elements of said multi-family dwelling project, including recreation areas, to an association of purchasers of units

therein shall submit a maintenance bond or other performance guarantee acceptable to the Town Board and Town Attorney ensuring long-term maintenance and repair of said common elements.

- O. If the development shall be subject to the New York State statutes governing the sale of real property used for multi-family occupancy, the developer shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this subsection such certification shall suffice as to conformance with these requirements.

§ 140-27 Conversions of Residential or Non-Residential Structures.

Any conversion of a residential structure to a more intensive residential use or a non-residential use shall require a Special Use permit. Similarly, the conversion of any non-residential use to multi-family dwellings shall require a Special Use Permit. The following additional review criteria shall apply in both instances:

- A. There shall be adequate parking to accommodate the new use in combination with other activities on the property or in the vicinity.
- B. There shall be demonstrated sewage treatment and water supply capacity to serve any increased needs connected with the new use.
- C. The conversion shall not result in increased residential density exceeding that permitted within the district.
- D. Conversion of a residential structure to a non-residential use shall not be permitted where the new use is not otherwise allowed. Adaptations of any such structure should preserve its architectural integrity and residential character, except for minimal signage, required parking and other features mandated by the nature of the business.

§ 140-28 Sand, Gravel and Quarrying Operations (Extractive or Mining Uses).

- A. All excavation for the purposes of soil mining or mineral extraction, such as gravel pits, quarrying or any subsoil removal, shall be classified using the following criteria:
 - (1) Excavations subject to NYSDEC Mined Land Reclamation Law jurisdiction.
 - (2) Excavations exempt from NYSDEC Mined Land Reclamation Law jurisdiction.
- B. Excavations subject to NYSDEC Mined Land Reclamation Law (MLRL) permit shall be allowed only upon Site Plan Review approval in the NR Zoning District subject to § 140-20 of this chapter and the following provisions.
 - (1) Site Plan Review approval shall run coterminous with the NYSDEC permit. The suspension or revocation of any permit issued by the NYSDEC shall also suspend or revoke the Planning Board's Site Plan Review approval.

- (2) Renewals for NYSDEC permits shall not require a renewal of Site Plan Review approval by the Town Planning Board. However, changes of the use that are considered modifications of the NYSDEC permit shall require Site Plan Review. A public hearing shall be held.
- (3) The Planning Board may, in granting Site Plan Review approval, place conditions on its issuance, provided such conditions are limited to those specified in the New York State Mined Land Reclamation Law.
- (4) Upon Site Plan Review approval by the Planning Board, one copy of the approved excavation plan shall be returned to the applicant by said Board, and in the case of permits also approved by the NYSDEC, one copy shall also be sent to the appropriate NYSDEC regional office.
- (5) Upon receipt of notice to the Town from the NYSDEC of a completed application for a Mined Land Reclamation permit, such notice shall be referred to the Town Planning Board. The Planning Board shall conduct public hearing(s), either concurrent with or separate from its Site Plan Review approval proceedings, to make determinations and recommendations to the NYSDEC within 30 days of receipt of notice for incorporation in such mining permit with regard to:
 - (a) Appropriate setbacks from property boundaries and public thoroughfare rights-of-way;
 - (b) Fabricated or natural barriers designed to restrict access if needed, and, if affirmative the type, length, height and location thereof;
 - (c) Dust control;
 - (d) Hours of operation; and
 - (e) Whether mining is prohibited at the location.

C. Excavation exempt from NYSDEC Mined Land Reclamation Law permit requirements ~~and~~ shall also be permitted as accessory uses in all zoning districts (except R-1, R-2 and H Districts) subject to Site Plan Review. Notwithstanding this, property owners may utilize gravel, stone quarrying or subsoil excavation on their own property for fill or leveling or for other not-for-sale purposes without need of a permit or Site Plan Review. Mining related excavation subject to Site Plan Review under this subsection shall be permitted subject to periodic inspection by the Code Enforcement Officer (minimum of bi-annually) and the following provisions:

- (1) The volume of activity shall not exceed NYSDEC Mined Land Reclamation Law permit requirements and may be conditioned upon a specified volume of excavation annually.
- (2) All excavations hereunder shall require a 100 feet setback from property lines.
- (3) No commercial rock crushing or processes other than dry screening shall be permitted.
- (4) All site plans shall incorporate stormwater management planning and final reclamation, including seeding, consistent with NYS-DEC requirements.

- (5) The subject activity shall not create any conditions which are injurious or hazardous to the public. The Planning Board may also reasonably restrict the hours of operation to address noise and related issues and subject this to annual review.
- (6) The proposed activity shall be such that it will not be detrimental to the character of the surrounding neighborhood.

§ 140-29 Wireless Telecommunication Facilities.

A. Purpose and Intent. The Town of Rochester desires to balance the interests of residents, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town and is cognizant the concerns and desires of these interests sometimes vary. The Town recognizes wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, scenic ridgelines and viewsheds, and the character and environment of the Town and its inhabitants and neighborhoods. The Town also recognizes facilitating the development of wireless service technology can be an economic development asset to the Town, is a necessity for emergency management communications, and may provide significant benefit to its residents and businesses. The Town further recognizes wireless telecommunications is an industry which carries a high degree of Federal oversight and control and is considered a public utility in New York State. In seeking achievement of this balance the intent of this Local Law is to:

- (1) Ensure that the location, placement, construction, modification, and maintenance of wireless telecommunications facilities will pose the least possible adverse effect upon the Town and its inhabitants, minimize the negative impacts of wireless communications facilities on surrounding land uses, and protect the Town's health, safety, public welfare, scenic, historic, environmental, and natural or man-made resources.
- (2) Adequately serve the needs of the users of wireless telecommunications facilities by providing safe, adequate coverage for the Town of Rochester residents and businesses and accommodating the growing desire and demand for wireless telecommunications services.
- (3) Provide for a wide range of appropriate locations and options for wireless telecommunications providers and encourage and promote the location of new telecommunications facilities in areas which are not zoned primarily for residential use.
- (4) Minimize adverse aesthetic and visual impacts to protect the natural features and aesthetic character of the Town with special attention to the Shawangunk Ridge, Mohonk Preserve and Catskill Preserve.
- (5) Encourage creative approaches in location and types of wireless telecommunications facilities which will blend in with the surroundings of such facilities and promote, wherever possible, the reasonable sharing and/or collocation of wireless telecommunications facilities among service providers, and the locating of telecommunications facilities on existing structures.
- (6) Establish a fair and efficient process for the review of applications consistent with Federal, State and local regulations which assures an integrated, comprehensive review of the health, safety, welfare, and environmental impacts of such facilities.

B. Applicability. This Local Law shall apply to the development activities including installation, construction, and/or modification of all wireless telecommunications facilities including, but not limited to, existing towers; proposed towers (concealed and non-concealed), public or private, including temporary "Cell on Wheels" (C.O.W); collocation on existing towers, and attached wireless telecommunications facilities (concealed and non-concealed).

- (1) As of the effective date of this chapter, and except as otherwise expressly provided herein, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities without having first obtained a building permit from the Code Enforcement Officer and any and all other approvals as required herein or under other applicable law. No existing structure shall be modified to serve as a telecommunications structure unless in conformity with these regulations. A new wireless facility must, in addition to a building permit, obtain a special use permit from the Planning Board.
- (2) With this Local Law the Town of Rochester hereby institutes the following classification system for applications concerning wireless telecommunications facilities. Upon receipt of a zoning permit application the Code Enforcement Officer shall review the action proposed and classify the application in the following manner.
 - (a) **Type A** – The action is determined to be replacement of existing transmission equipment with equipment comparable in size and function. No other agency review shall be required.
 - (b) **Type B** – The action is determined to be replacement, alteration, or modification of existing transmission equipment or a telecommunications structure or the collocation of transmission equipment on an existing wireless telecommunications facility which constitutes an "eligible facilities request" action, as defined by the FCC¹. Such action shall require Site Plan application and review by the Planning Board. SEQRA review shall require Short Form EAF unless the Planning Board shall require Long Form EAF.
 - (c) **Type C** - The action is determined to be replacement, alteration, or modification of existing transmission equipment or a telecommunications structure or the collocation of transmission equipment on an existing wireless communications facility which exceeds the criteria of an "eligible facilities request" action, as defined by the FCC¹. Such action shall require Special Use Permit application and review by the Planning Board. SEQRA review shall require Long Form EAF.
 - (d) **Type D** – The action is determined to be construction of a new wireless telecommunications facility. Such action shall require Special Use Permit application and review by the Planning Board. SEQRA review shall require Long Form EAF.

¹ *In accordance with Section 6409 of the "Middle Class Tax Relief and Job Creation Act of 2012", the Planning Board may not deny ,and shall approve, any "eligible facilities request" for a modification of an existing wireless tower or base station that does not substantially change, as defined by the FCC, the physical dimensions of such tower or base station.*

- (3) All applications for wireless telecommunications facilities are subject to the standards in this subsection to the extent that they do not violate Federal or New York State limitations on local siting standards and are not otherwise inconsistent with Federal or State law and, upon notification of complete application, shall be acted upon within a reasonable period of time as required by applicable Federal regulations.
 - (4) The provisions of this subsection are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services.
 - (5) This subsection shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.
 - (6) The Town may not regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions.
 - (7) Any decision to deny a request to place, construct, or modify personal wireless service facilities shall be made in writing and supported by substantial evidence contained in a written record.
- C. Exclusions. The following wireless telecommunications facilities shall be exempt from the provisions of this chapter:
- (1) Any facilities operated by or on behalf of any unit of government for public or municipal purposes to provide communications for the sole purpose of public health and safety.
 - (2) Any facilities exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications.
 - (3) A temporary wireless telecommunications facility, upon the declaration of a state of emergency by federal, state, or local government; except that such facility must comply with all federal and state requirements. No communications facility shall be exempt from the provisions of this Section beyond the duration of the state of emergency.
 - (4) Any facilities expressly or implicitly exempt from the Town's zoning or permitting authority under law.
 - (5) Emergency repairs to existing wireless telecommunications facilities for restoration of service, which repairs shall be reported to the Code Enforcement Office no later than the end of the next business day.
- D. Definitions. The following definitions shall specifically apply to this section. Where a definition references a specific law, code, or statute; any amendments to that law or code shall apply. Where a definition references a Federal agency who has been empowered with the authority to interpret such definition; the most recent definition adopted by that agency shall apply.

Abandonment - Cessation of use of a wireless telecommunications facility for wireless telecommunications activity for at least the minimum period of time specified under this chapter.

Accessory Facility or Structure - An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities including but not limited to, utility or transmission equipment storage sheds or cabinets.

Alteration - Any construction or renovation to an existing wireless telecommunications facility other than a repair

Alternate Design Tower Structure - Artificial trees, clock towers, bell steeples, light poles, silos and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers (see also Stealth Facility).

ANSI - American National Standards Institute, a non-profit, privately funded membership organization that coordinates the development of voluntary national standards in the United States.

Antenna - A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, Personal Telecommunications Services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building, and permitting authority.

- 1) Directional antenna (also known as panel antenna) -Transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.
- 2) Omni-directional antenna (also known as whip antenna) - Transmits and receives radio frequency signals in a 360-degree radial pattern. For the purpose of this chapter, an omni-directional antenna is up to 15 feet in height and four inches in diameter.
- 3) Parabolic antenna (also known as a microwave antenna or microwave dish antenna) - A bowl-shaped device used to link communications sites together by wireless transmission of voice or data for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.
- 4) Repeater – A small receiver/relay transmitter and antenna of relatively low power output designed to extend Personal Wireless Services to areas which are not able to receive adequate coverage directly from a base or primary station.

Antenna Array - One or more antennas used to provide wireless service.

Appurtenance – Any object attached to the body of the tower or support structure that would protrude from the edge.

Attachments - Wire, fiber optic, telecommunications and/or coaxial cable, nodes, and other wireless communications equipment attached and maintained upon a structure.

Base Station - As defined by the FCC, a station at a specified site that enables wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. It includes a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station. It may encompass such equipment in any technological configuration, including distributed antenna systems and small cells.

Breakpoint Technology - The engineering design of a monopole tower wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent (5%) more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

Cell on Wheels (COW) - A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

Collocation or Co-location - As defined by the FCC, the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Commercial Impracticability or Commercially Impracticable - The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercially impracticable and shall not render an act or the terms of an agreement commercially impracticable.

Concealed - A tower, accessory structure, or equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site. There are two (2) types of concealed facilities:

- 1) **Antenna Attachments**, including painted antenna and feed lines to match the color of a building or structure, faux windows, dormers or other architectural features that blend with an existing or proposed building or structure and
- 2) **Freestanding**. Freestanding concealed towers usually have a secondary, obvious function, which may include church steeple, windmill, bell tower, clock tower, light stanchion, flagpole with or without a flag, or tree.

Coverage Area - A boundary defined by the lack of cellular service or specific cellular coverage emitted from an identified contained communications facility.

Distributed Antenna System (DAS) - A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Eligible Facilities Request - As defined by the FCC, any request for modification of a existing wireless tower or base station that involves collocation, removal or replacement of transmission equipment, provided the request does not "substantially change" the physical dimensions of the tower or base station.

Eligible Support Structure – As defined by the FCC, any structure that meets the definition of a wireless tower or base station.

Equipment Compound - The fenced-in area surrounding the ground-based wireless communications facility including the areas inside or under a tower's framework and accessory structures such as equipment necessary to operate the antenna on the structure that is above the base flood elevation including cabinets, shelters, pedestals, and other similar structures.

Equipment Cabinet - Any structure above the base flood elevation including cabinets, shelters, pedestals, and other similar structures and used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communications signals.

FAA - The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC – The Federal Communications Commission, or its duly designated and authorized successor agency.

Fall Zone - The adjacent area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Guyed Tower - A wireless communications support structure, which usually consists of metal crossed strips or bars, and is steadied by wire guys in a radial pattern around the tower.

Height - When referring to a tower or other structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna, lightning protection device or any other apparatus attached to the tower or other structure.

Lattice Tower - A wireless communications support structure, which consists of metal crossed strips or bars to support antennas and related equipment.

Micro Cell - A low power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

Minimum Signal Coverage - Specific signal strength established as a minimum capacity for cellular and PCS coverage.

Modification or Modify - The addition, alteration, removal or change of any of the physical or visually discernible components, colors, or other aspects of a wireless telecommunications facility; including but not limited to antennas, cabling; equipment shelters, landscaping, shrouding, fencing, utility feeds, vehicular access, or parking, specifically including new transmission equipment, removal of transmission equipment, replacement of transmission equipment, adding a new wireless carrier or service, changes of wireless carrier or service provider, and/or upgrade or replacement of the equipment for better or more modern equipment. A modification shall not include the replacement of any existing permitted components of a wireless facility, actions that do not change the physical or visually discernible appearance of the facility or

any part thereof as it was originally permitted, or wireless facilities classified as described in B(2)(a) of this code.

Monopole Tower - A freestanding tower that is composed of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of tower is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground.

NIER - Non-Ionizing Electromagnetic Radiation

Non-Concealed - A wireless communications facility that has not been treated, camouflaged, or disguised to blend with the setting and is readily identifiable.

OET Bulletin 65 – Document published by the Federal Communications Commission (FCC) Office of Engineering and Technology specifying radio frequency radiation levels and methods to determine compliance.

Personal Wireless Facilities - See definition for “Wireless Telecommunications Facilities”.

Personal Wireless Services (PWS) or Personal Telecommunications Service (PCS) - As defined by the Telecommunications Act of 1996, commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services. These services include but are not limited to cellular services, personal communications services (PCS), high speed internet services, specialized mobile radio services and paging services.

Radial Plots - Computer-generated estimates of the signal emanating from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide adequate coverage for the personal wireless telecommunications service facility proposed for that site.

Repairs - The restoration to good or sound condition of any part of an existing wireless telecommunications facility for the purpose of its maintenance.

Roof Mounted and/or Building Mounted - Antennas and/or equipment mounted above the roof ridge line of an existing structure (including rooftop appurtenances) or a building face.

Stealth Facility - A communications facility that is integrated or attached as part of a structure or is a freestanding monopole incorporating flush mounted antennas or a transparent shell design to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities.

Structure Mounted – Antennas mounted to, or as part of, a structure (e.g., a building, billboard, church steeple, freestanding sign, water tank, etc.).

Substantially Change the Physical Dimensions of a Tower or Base Station - The test criteria applied to a facility to determine if it may be classified as an “eligible facilities request” as defined in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas by the FCC. In order to be classified as such, the impact of such facility must be equal to or less than all of the following criteria.

- 1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- 2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- 4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

Telecommunications – As defined by the Telecommunications Act of 1996, the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunication Structure - A structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.

Transmission Equipment – As defined by the FCC, any equipment that facilitates transmission for wireless communications, including all the components of a base station, such as, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup power supply, but not including support structures.

Wireless Telecommunications Facility - A structure, facility, or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, Personal Telecommunications Services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Town's siting, building, and permitting authority. This includes without limit, towers of all types and kinds and structures that employ stealth technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structure that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related

facilities such as cabling, guy wires, and associated anchors, equipment shelters and other structures associated with the site.

Wireless Telecommunications Site - The boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

Wireless Tower – As defined by the FCC, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized license-exempt antennas and their associated facilities, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower. It includes structures that are constructed solely or primarily for any wireless communications service, such as, but not limited to, private, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul.

E. Permitted and Prohibited Locations. Wireless telecommunications facilities, upon determination of the classification of the action as described in §140-29(B) by the Code Enforcement Officer, shall be permitted and prohibited in the Town of Rochester in the following zoning districts.

- (1) Type A and Type B wireless telecommunications facilities shall be allowed under the Schedule of District Regulations in all zoning districts as a principal permitted use. Type B shall require Site Plan approval from the Planning Board
- (2) Type C wireless telecommunications facilities shall be allowed under the Schedule of District Regulations in all zoning districts upon receipt of a Special Use approval from the Planning Board.
- (3) Type D wireless telecommunications facilities shall be allowed under the Schedule of District Regulations in the AR-3, AB-3, R-5, I, NR, and B zoning districts upon receipt of a Special Use approval from the Planning Board. They shall be prohibited in the R-1, R-2, and H zoning districts, except if such existing parcel use is for public utility, municipal or emergency services use.
- (4) In all cases, Type D wireless communications facilities shall be prohibited in the FD (Floodplain Overlay) district even though the use may be allowed in the underlying zoning district.
- (5) There shall be no wireless telecommunications facilities constructed within a NYS or Federal delineated wetland or an area designated as a critical environmental area.
- (6) There shall be no wireless telecommunications facilities constructed so as to extend higher than the ridgeline of the Shawangunk Mountain ridgeline.
- (7) Exception under public utility regulations.
 - (a) Should the application propose new wireless telecommunications facilities to be located in a prohibited location or a zoning district where the use is not specifically allowed under the Schedule of District Regulations, such application may proceed and shall require approvals of both a Use Variance from the Zoning Board of Appeals and a Special Use Permit from the Planning Board. SEQRA application shall be Long Form EAF with both agencies identified as involved agencies. The Planning Board and Zoning Board of Appeals may, but shall not be required, to convene a joint public hearing for both agencies.

- (b) In seeking such Use Variance, the applicant, under New York State law as a public utility, shall show that there is a need for the proposed facility and that the proposal would benefit the needs of the public and shall submit proof no alternative site, either existing or proposed, is possible in a zoning district where the use is permitted. Commercial impracticability may not be considered in this review. Upon a determination feasible, alternate sites are possible, the Use Variance shall be denied on this basis. Upon a determination no alternate site is possible, the Zoning Board of Appeals shall grant such Use Variance and remit the application to the Planning Board to conduct a Special Use Permit review. Such review may occur either consecutively or concurrently, however no Special Use Permit approval shall be granted absent an approved Use Variance.
- (9) Non-conforming Use. All wireless telecommunications facilities lawfully existing on or before the effective date of this chapter and located in a prohibited location or zoning district effective with this chapter shall be made non-conforming with this or any subsequent amendment and may be continued in accordance with all provisions of Article 6 of §140 of the Town of Rochester zoning code. Such facilities shall be allowed to continue as they presently exist, provided however, that an existing wireless telecommunications facility must comply with this chapter in the event of any modification, repair, or maintenance.
- F. Application Review Timeframes. The Town recognizes the authority of Federal standards on these actions and establishes this process for determination of a complete application. Upon the determination of the application classification and the review required the Code Enforcement Officer shall remit such information to the applicant and Planning Board and/or Zoning Board of Appeals along with a signed copy of the zoning permit.
- (1) Should Planning Board and/or Zoning Board of Appeals review be determined not to be required the application shall be considered complete on the date the application material is posted as received by the Code Enforcement Officer unless the CEO notifies the applicant in writing (written responses may be made via electronic notification with hard copy to follow), within thirty (30) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete.
- (2) Should Planning Board and/or Zoning Board of Appeals review be determined to be required, the applicant shall be directed to file the appropriate application to the agency for review. In such case the application shall be considered complete on the date the application material is posted as received by that board and it shall be scheduled as an agenda item for the next regular meeting of the board unless the board notifies the applicant in writing (written responses may be made via electronic notification with hard copy to follow), within thirty (30) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Fulfillment of the complete application requirement shall not preclude the board from requesting additional information as it may deem necessary to complete review, however the board may not delay decision due to the request of additional information.
- (3) Upon determination of a complete application the Building Department, Planning Board, or Zoning Board of Appeals shall render a decision within ninety (90) days on an application determined to be an eligible facilities request and one-hundred-fifty (150) days to render a decision on all other

applications, as defined in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, except upon mutual written agreement between the applicant and board to extend such timeframe.

G. Wireless Facility Standards

- (1) Support Structure. In all cases, structures offering visually the least obtrusive silhouettes such as monopole and stealth facilities shall be required unless the applicant presents written proof of the technological impracticability of such.
- (2) Height.
 - (a) Ground-mounted wireless telecommunications towers shall not exceed the height of the nearest tree line plus 50 feet. No tower shall exceed 150 feet in height in any zoning district.
 - (b) Structure mounted wireless telecommunications facilities shall not increase the height of the original structure by more than 15 feet above the highest point of a flat or mansard roof or 15 feet above the height at the midpoint between the peak and the eave of other roof styles, unless the facility is completely camouflaged (for example, a facility within a flag pole, steeple or chimney) and in no event shall the height exceed 35 feet.
 - (c) The Planning Board may grant a waiver to the height requirements upon written request from the applicant and written justification for the need for such waiver request to achieve meeting mandated coverage requirements. Such waiver shall be adopted by majority resolution.
- (3) Setbacks. Any proposed tower and/or other proposed wireless telecommunications facility structure shall be located on a single parcel of land and shall be set back from abutting parcels and road and street lines by the minimum of a distance equal to one hundred and ten percent (110%) of the height of the proposed tower or wireless telecommunications facility structure, or the existing setback requirement for the applicable land use designation, whichever is greater. If the wireless facility is shown to employ breakpoint technology, the Planning Board may consider such technology in the determination of the height. Setback distances shall be calculated from the fenced perimeter of the equipment compound.
- (4) Color. Structure colors shall be a single color and shall be subject to approval of the Planning Board, except in such case as is determined by the Planning Board to aid in minimizing the visual effect. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- (5) Lighting. Structures shall not be artificially lighted except as may be required by the Federal Aviation Administration (FAA). Lighting of the equipment compound shall be full-cutoff fixtures located so as not to project light onto neighboring properties or roadways.
- (6) Security. All wireless telecommunications facilities and antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access. All antennas, towers, utilities, and other supporting structures, including guy wires, shall be completely fenced for security to a height of eight feet and gated in such a manner that they cannot be climbed or collided with and

transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them. Use of razor wire is not permitted.

- (7) Signage. A sign no greater than two square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signage shall be maintained in legible condition and contain accurate information. No signage of any kind shall be allowed to be attached to towers or antennas, except any required safety warnings. Signage may be allowed by the Planning Board, upon written petition of the applicant, in instances of stealth facilities where such additional signage would be in character with the alternate design tower structure.
- (8) Utilities. Necessary utilities to serve the site shall preferably be underground and in compliance with all local, State, and Federal laws, rules, and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. Overhead lines shall follow access roads and/or existing tree lines to minimize visual impact upon surrounding properties, critical viewsheds and/or historic properties.
- (9) Roadways. An access road from the public road, parking area, and fire access area surrounding the perimeter of the equipment compound area shall be provided to assure adequate emergency and service access and shall conform to the New York State Fire Code. Use of existing roads, public or private, shall be utilized to the maximum extent possible. Road construction shall be consistent with construction standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential but may exceed normal standards. Roadways shall be maintained in good and passable condition under all traffic and weather conditions and kept open so that firefighting equipment and other emergency vehicles may access any telecommunications facility structures. Equipment or vehicles may not be stored at the facility site, except during the construction phase.

H. Site Plan review requirements, criteria, and standards.

- (1) Applications for Site Plan shall contain the following information and certifications. All certified documents shall be signed by a New York State licensed professional engineer, architect, or surveyor and shall bear the seal of that professional.
 - (a) The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided. Proof shall be provided the applicant is authorized to do business in the State of New York.
 - (b) The postal address and tax map parcel number of the property. The land use designation in which the property is situated. The size of the property stated both in acreage or square feet and lot line dimensions.

- (c) Authorization from the owner of the property and/or facility indicating knowledge of the application shall be required.
- (d) Property deed and/or existing or proposed lease, right of way and/or easement agreements shall be provided. Financial terms may be redacted from any documents submitted.
- (e) Documentation ensuring the applicant has an agreement with a licensed wireless telecommunications carrier to locate on the telecommunications facility if the applicant is not the licensee.
- (f) FCC licensing documentation
- (g) Submission of proof of compliance with the National Environmental Policy Act (NEPA) and compliance with the National Historic Preservation Act (NHPA)
- (h) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts. The frequency, modulation, and class of service of radio or other transmitting equipment
- (i) Certification to the Town that the NIER levels at the proposed site are within the threshold levels adopted by the FCC and the provision of the calculations used to determine the cumulative NIER levels if the application involves collocation.
- (j) Certification to the Town that the proposed antenna(s) will not cause interference with other telecommunication devices.
- (k) Certification to the Town that the proposed facility is in compliance with Federal Aviation Administration regulations and stating if the FAA requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If the analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- (l) The number, type and model of the antenna(s) proposed with a copy of the specification sheet; the make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users.
- (m) Certification to the Town the site is adequate to assure the stability of the proposed wireless telecommunications facilities as designed and that a geotechnical subsurface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site has been conducted. If collocated on an existing tower, a copy of the installed foundation design shall be supplied.
- (n) A structural certification study conducted by a New York State licensed engineer indicating the structure or tower's compliance with current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" or

its successors. Calculations shall provide proof the telecommunication facility tower and foundation and attachments, rooftop support structure, or any other supporting structure as proposed to be utilized are designed and are constructed to meet all local, city, state and federal structural requirements for loads, including wind and ice loads. In the instance of collocation, such structural study shall reflect the current condition of the structure or tower.

- (o) A list of pending permits and/or copies of all permits issued from all other local, State, or Federal agencies with jurisdiction over said project, other than the Town Planning Board.
- (2) The applicant shall prepare and submit a Site Plan which shall comply with the regulations set forth in this chapter and the provisions of Article 7 of §140 of the Town of Rochester code and shall specifically illustrate
 - (a) Existing and proposed structures on the subject property, the location of all residential structures within five hundred feet of the wireless facility site, the type, locations and dimensions of all proposed and existing landscaping, and fencing on the subject property; the azimuth, size and center-line height location of all proposed and existing antennas on the supporting structure.
 - (b) All easements / rights of way required for access from a public way to the facility.
 - (c) Setback distances for the existing and proposed wireless telecommunications facility from property boundary lines, rights of way, wetlands and waterways, and public and private roadways.
 - (d) Radius shall be shown indicating the fall zone of the wireless structure.
 - (3) Location map using the most recent United States Geological Survey Quadrangle map showing the area within a three mile radius of the proposed facility site indicating facility location and property lines of the facility parcel.
 - (4) Elevation drawings showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities. The Planning Board may require visual renderings be submitted.
 - (5) A descriptive summary statement of the nature and objective(s) for the work proposed in the application, and the impact(s) of the work on the surrounding area. Applicant shall state that the work proposed in the application is legally permissible. There shall be provided a "Sequence and Schedule Report" for completion of each phase of the entire project.
- I. Special Use review requirements, criteria, and standards.
 - (1) Applications for Special Use shall meet the provisions of Article 7 of §140 of the Town of Rochester code and shall require a Site Plan submittal as detailed in §140-29(H).
 - (2) Applications for Special Use shall require the following additional documentation.

- (a) Written report demonstrating the need for such services which shall illustrate gaps in current services and show how the proposal will remedy these gaps. The report shall demonstrate with written documentation that it has analyzed the feasibility of the proposed telecommunications facilities in comparison to opportunities for collocation of existing facilities and/or the use of other pre-existing structures as an alternative to a new construction for providing adequate coverage and/or adequate capacity to the Town of Rochester. The report shall inventory and identify existing towers within reasonable distance of the proposal. Proof of attempts to negotiate with the owners of such alternatives shall be made.
- (b) A "Zone of Visibility Map" shall be provided in order to determine locations from which the tower or structure may be seen to provide proof the visual intrusion will be minimal. Pictorial representations of "before" and "after" views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to State highways and other major roads, State and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. The Planning Board shall determine the appropriate key sites.
- (c) An assessment of the visual impact of the tower or structure, the tower base, guy wires, and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening which shall include a demonstration that the facility will be sited so as to be the least visually intrusive and thereby have a minimal adverse visual effect on the environment and the nature and character of the community, existing vegetation, and on the residences in the area of the wireless telecommunications facility. The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.
- (d) Documentation shall be submitted justifying the total height of any requested tower, facility, and/or antenna and the basis thereof. Such documentation shall be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- (e) A land grading and vegetation clearing plan shall be prepared. Clear-cutting of all trees in a single contiguous area shall be limited to the area of the equipment compound plus the area of an emergency access roadway which shall encircle the entire perimeter of the equipment compound as determined by the Planning Board. Existing on-site vegetation designated to be utilized as screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality.
- (f) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New York State licensed professional engineer for the site and any road used to access the site. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.

(g) An economic analysis study of the property value impacts the construction and the operation of the telecommunications facility may have on all adjacent properties located within 500 feet of the parcel boundaries on which the facility is located.

(3) Balloon Test. Prior to any public hearing being held on a new wireless telecommunication facility application, a balloon test shall be conducted by the applicant that will include flying or otherwise raising brightly colored balloons that approximate in diameter the potential build-out of all antennas. The balloon test shall be at minimum four (4) hours in duration between the hours of 10:00 AM and 4:00 PM on two days from Friday through Monday, one day of which must be a Saturday or Sunday. The dates, times and location of this balloon test shall be advertised, by the applicant, ten days in advance of the test date in a newspaper with a general circulation in the Town of Rochester and proof of such advertisement provided to the Planning Board. Any and all expense for this test shall be borne by the applicant.

(4) Any application involving construction of a new tower, structure, or facility shall be required and submit written proof as to the offer of collocation opportunities for emergency service transmission equipment to local emergency service agencies at the time of construction.

J. Performance Security.

(1) Prior to issuance of Planning Board approval for any new or substantially modified wireless telecommunications facilities, the applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Town Board a bond, or other form of security acceptable to the Town Board as to type of security and the form and manner of execution, in an amount to be determined by the Town Board sufficient to cover the entire cost of removal of the wireless telecommunications tower and related facilities such as power lines, transformers, etc., and the reclamation of the affected landscape to substantially the same condition as prior to the facilities construction. Said financial surety, bond or similar undertaking shall be in an amount acceptable to the Town Board and substantiated by a qualified and independent engineering expert as designated by the Town Board. The full amount of the bond or security shall remain in full force and effect throughout the term of the approval and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original approval.

(2) Should there be any violation of this section, which remains uncorrected by the applicant and or owner, after proper notice in accordance with this chapter, the Town Board shall have the right to correct the violation, utilizing the security to pay for same. In the event that the security is insufficient to correct the violation, the Town shall chargeback any additional costs against the owner and/or applicant, and may file a municipal lien against the property to recover the costs and any attorney fees incurred by the town for the correction of the violation.

K. Registration of Wireless Communications Facilities.

(1) Purpose. The Town of Rochester desires to develop a registration system to ensure all wireless telecommunications facilities are properly maintained and to ensure all owners properly maintain and inspect their facilities.

- (2) All owners of wireless telecommunication facilities located in the Town of Rochester shall be required to register the facility upon granting of a Certificate of Occupancy. Facilities in existence as of the effective adoption date of this chapter shall have sixty (60) days from the filing of this chapter to register.
- (3) The local wireless telecommunications facility registration system shall be administered by the Code Enforcement Office. The Town Board shall establish the fees structure for the registration which may be amended by resolution from time to time.
- (4) Registration shall be effective for a three year period, with renewal required prior to expiration date. Recertification shall be required for year two and three as described in this chapter.
- (5) Registration Requirements. The owner shall provide and certify to the Town the following:
 - (a) The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the wireless facility.
 - (b) The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
 - (c) Copy of FCC license(s) allowing the antenna(s) or other broadcast device to be deployed:
 - (d) Written certification the wireless telecommunications facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations
 - (e) Written certification the tower or structure and all attachments are designated and constructed and continue to meet all local, State, and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a State of New York licensed professional engineer, the cost of which shall be borne by the applicant.
 - (f) Written certification the cumulative NIER levels at the facility are within the threshold levels adopted by the FCC. Such certification shall include a report of field testing of cumulative NIER levels conducted by a State of New York licensed professional engineer.
 - (g) Written certification onsite vegetation has been maintained to ensure the desired screening effect.
- (6) Inspection of Facilities. The owner and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construction of such facilities, including towers and antennas, shall agree in writing to allow the Code Enforcement Officer access to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including, but not limited to, towers or structures, antennas, and buildings or other structures constructed or located on the permitted site to verify accordance with any applicable technical, safety, fire, building, and zoning codes, laws, regulations, and other applicable requirements.

- (7) Notification of Termination of Use. The owner shall sign a letter of commitment, which shall commit the wireless telecommunications facility owner and its successors and assigns to notify the Building Inspector, in writing, within 30 days of the discontinuance of use of the facility. Failure to notify and thereafter remove the facility and all appurtenances shall be deemed a violation punishable under applicable provisions of the Town of Rochester Zoning Law. Notwithstanding this provision, the Building Inspector shall have the right to independently investigate any discontinuance of the facility and render a written determination setting forth the extent, duration and facts evidencing the violation and the discontinuance of the facility. Upon rendering said written determination, written notice of the determination shall be provided to the owner and the lessees of the facility and the owners of the real property upon which the facility is situate by certified mail, return receipt requested. Upon proven receipt of the notice of the determination by the facility owner, any lessee of the facility and the owners of the real property said facility is situate thereon, the Building Inspector and the Town of Rochester may commence legal proceedings to levy upon the financial surety, bond or similar undertaking and have the facility removed from the site in accordance with all applicable law.
- (8) Annual Certification. Recertification by the facility owner of the following information shall be required for year two and three of each registration period and be due on the anniversary date of registration.
- (a) The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the wireless facility.
 - (b) The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
 - (c) The wireless telecommunications facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations
- (9) Renewal of Registration. Registrations shall be required to be renewed beginning with a period of time ninety (90) days prior to expiration until the anniversary date of the registration.
- (a) Application for renewal of registration of permitted facilities shall include a report prepared by a State of New York licensed professional engineer detailing physical inspection(s) conducted within the prior six (6) months to insure structural integrity and to insure paint and other coating is not deteriorated and continues to be consistent with the immediate surroundings of the tower.
 - (b) The Town Board may review performance security deposits in conjunction with registration renewal to insure the amount of the bond is adequate and may increase the amount of the performance security, if necessary.
- (10) Changes in Registration Information. The owner shall provide notice to the Town of any changes in registration information within thirty (30) days of such change.

L. Abandonment and Removal of Wireless Communications Facilities

- (1) Any wireless telecommunications facility which ceases to operate shall be wholly removed from the site. "Ceases to operate" is defined as not performing all normal functions associated with operation of the wireless telecommunications facility and its equipment on a continuous basis for a period in excess of one year.
 - (2) In the event the wireless telecommunications facility is not so removed, the Town Board, upon notice from the Code Enforcement Officer shall give written notice to the owner of such facility (i) stating that the wireless facility is considered abandoned, and (ii) setting a time, date and place for a public hearing. Such public hearing shall be on not less than thirty days notice to such owner. Upon a finding that the wireless facility has been abandoned, the Town Board shall deliver written notice to the facility owner indicating the reasons for its finding, and directing that the wireless facility be removed within one hundred twenty days. In the event that the wireless facility is not so removed, the Town Board may commence an action in Supreme Court against the owner of such facility seeking an order requiring the removal.
 - (3) Upon recommendation of the Building Inspector, the Town Board may waive or defer the requirement that a wireless telecommunications facility be removed if it determines that retention of such facility is in the best interest of the Town.
 - (4) Should the town remove the tower, structure, or facility pursuant to this subsection, the Town shall utilize the security provided for in Section 140-29(J) to pay for same. In the event that the security is insufficient to correct the violation, the Town shall chargeback any additional costs against the owner and/or applicant, and may file a municipal lien against the property to recover the costs and any attorney fees incurred by the town for the correction of the violation.
- M. Penalties. § 268(1) of New York State Town Law is hereby superseded to allow the Town Board to set penalties higher than those specified in Town Law §268(1). A violation of this Section 140-29 Law is hereby declared to be an offense punishable by a fine not exceeding One Thousand dollars (\$1,000) for a conviction of a first offense; punishable by a fine of not less than One Thousand Dollars (\$1,000) and not more than One Thousand Five hundred (\$1,500.00) for conviction of a second offense; and no less than One Thousand Five Hundred Dollars (\$1,500) and no more than Two thousand Five Hundred Dollars (\$2,500.00) upon conviction for a third or subsequent offense. Each week's continued violation shall constitute a separate additional violation.

§ 140-30 Affordable Housing.

- A. This section is enacted pursuant to the authority of the Municipal Home Rule Law authorizing towns to adopt a local law which amends or supersedes any provision of the Town Law in relation to property, affairs or government of the Town. The Town Board of the Town of Rochester hereby enacts this section superseding § 261(b) of the Town Law so as to grant authority to the Town of Rochester Planning Board to waive certain and limited dimensional requirements of the Town of Rochester Zoning Law with respect to lots in residential subdivisions.
- B. The Town of Rochester Planning Board is hereby authorized to modify, when reasonable, the density, lot area, lot width and/or lot depth requirements provided in the Town of Rochester Zoning Law for the purposes of encouraging the provision of affordable housing. Such authority shall be limited to a maximum of 20% of the residential lots/units created and be further limited to those lots/units restricted

to development for affordable housing, which shall be of the same type and general quality as the remainder of the development. Modifications shall be limited to 25% of the applicable standard. Affordable housing shall consist of lots/units marketed at a "Net Affordable Purchase/Rental Price" (NAPP) per square foot of individual unit floor area, including all fees. Applicants must demonstrate, in writing, a basis for the NAPP based on affordability to Town of Rochester residents earning 80% of median family income in the case of owner units and 60% of median family income in the case of rental units. Such NAPP shall also be approved by the Planning Board and be the basis of any modifications granted. A developer taking advantage of this provision shall provide evidence of compliance with this standard throughout the sales period subject to a program approved by the Town of Rochester Planning Board at the time of Preliminary Plan approval.

- C. Any modification granted by the Planning Board may be subject to such conditions as the Planning Board may determine reasonably necessary to promote public health, safety and general welfare. Such waiver shall also be limited to the minimum necessary to achieve the purpose of creating affordable housing supplies within the Town. The Town of Rochester Planning Board shall be under no obligation to approve any modification that, in its judgment, based on evidence presented by the subdivider, does not establish need.

§ 140-31 Conservation Subdivisions.

Conservation subdivisions shall be permitted in all zoning districts. Such subdivisions shall be subject to the provisions of Chapter 125 of the Town of Rochester Code. The Town of Rochester Planning Board shall be authorized to modify minimum lot area, yard and other development standards of this Chapter 140 so as to accommodate such projects, including the granting of additional density for purposes of additional open space preservation or the creation of affordable housing as provided herein and in Chapter 125.

§ 140-32 Adult Uses.

- A. Findings. Based upon recent studies evaluating the nature and extent of adverse secondary effects caused by adult uses in residential and commercial areas, including a 1996 study by the City of Newburgh, a 1994 study by the City of New York, and a 1980 study by the City of Islip, the Town Board hereby finds that adult uses have negative secondary impacts such as a deterioration of community character and quality of life, depreciation of property values, increase in crime rates, and the blighting or downgrading of surrounding neighborhoods and commercial uses.
- B. Purpose. In the development and execution of this Section, it is recognized that there are some adult uses which, because of their very nature, are recognized as having serious objectionable characteristics. The objectionable characteristics of these uses are further heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of surrounding neighborhoods or land uses, increase crime or police calls, contribute to the spread of prostitution and AIDS, increase the quantity of transients in residential and commercial areas, cause a deterioration in the quality of life in residential neighborhoods, increase the accessibility of adult oriented material and entertainment to minors, and encourage residents and businesses to locate elsewhere.
- C. Definitions. As used in this Law, the following terms shall have the meanings indicated:

Adult Use — A use of a building or property for a business has adult materials as a significant portion of its stock-in-trade or involves the sale, lease, trade, gift or display of drug paraphernalia. Adult materials include any literature, book, magazine, pamphlet, newspaper, paper, comic book, drawing, computer or other image, motion picture, sound recording, article, instrument, display or any other written or recorded material which depicts or describes: a) any nudity; or b) the specific sexual activities listed herein. The Town shall also rely upon the general meaning given to these two terms by the State of New York and in the various decisions of the U.S. Supreme Court referenced herein, should further clarification be required. For purposes of this law, adult oriented businesses shall also mean any nightclub, bar, tavern, restaurant, eating and drinking establishment, arcade, theater, motel, hotel, or any other establishment that regularly features, for economic gain or other consideration, entertainment in any form which is characterized by nudity or the depiction or display of specified sexual activities. This shall not exempt such a business from any requirements of this law or limitations on public displays of personal nudity. Nothing in this definition shall be construed to incorporate breast-feeding, single-sex rest rooms and showers or items and displays of recognized artistic merit as previously interpreted by the U.S. Supreme Court or activities in a private residence by the occupants thereof.

Nudity — The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

Specified Sexual Activities — Includes the following:

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

Specified Anatomical Areas — Includes the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately about the top of the areola; or
- (2) Human male genitals in a discernible turgid state even if completely and opaquely covered.

- D. Separation requirements applicable to adult uses. Adult uses shall be limited to I Industrial districts. They shall be considered Special Uses subject to Site Plan Review. Because adult uses can lend themselves to ancillary unlawful and unhealthy activities, they shall also be separated from other uses that could be severely impacted by their presence or that, in combination with the adult uses, accentuate the negative impacts on the area. These distances shall be measured in a straight line, without regard to intervening obstacles, from the nearest portion of the structure incorporating any aspect of the adult use to the nearest property line of the of the premises incorporating any of the above listed uses.

- (1) No adult use shall be located within a two hundred (200) foot radius of any other residential or commercial zoning district or another adult use.
 - (2) No adult use shall be located within a five-hundred (500) foot radius of the property of any residence, residential facility, institution, health facility, child care center, church, synagogue, other place of religious worship, school, public or semi-public use, public park or recreation facility, youth oriented center, playground or playing field, cemetery or any establishment that sells alcoholic beverages.
- E. Exterior display prohibited. No adult use shall be conducted in any manner that allows the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way. This provision shall apply to any display, decoration, sign, show window or other opening.
- F. Signage. Adult use signage shall be limited to one approved ground sign not to exceed a surface area of thirty-six (36) square feet for both sides combined.
- G. Non-conforming buildings. No non-conforming building or lot shall be used for an adult use.
- H. Activities. Because they are known to encourage prostitution, increase sexual assaults and attract criminal activity, the following activities shall not be permitted in any adult oriented or other business or any other public place within the Town of Rochester:
- (1) Public appearance by a person knowingly or intentionally engaged in specified sexual activities.
 - (2) The knowing and intentional public appearance of a person in a state of nudity.
 - (3) Touching of patrons or the performance by any entertainer in an adult use facility within six feet of the nearest patron.
 - (4) Sale of alcoholic beverages in adult use facilities as defined herein.
- I. Loudspeakers. No loudspeaker or similar audio equipment used to describe or discuss specified anatomical areas or specified sexual activities shall be audible beyond the exterior of the structure in which it is located.

§ 140-33 Resource Recovery, Vehicle Junkyard and Wrecking Facilities.

- A. Purposes. These regulations are enacted for the purpose of establishing minimum health and safety standards for junkyards in the Town of Rochester as well as controlling their location. They are enacted pursuant to the authority granted towns by § 136 of the General Municipal Law and § 136.1 of the Town Law.
- B. Scope. These regulations shall apply to all junkyards now existing or hereafter proposed in the Town of Rochester. No junkyard shall be created except in conformance with the standards herein, and all junkyards shall be required to conform to said standards or be removed at the owner's expense.

C. Exemptions. The following land uses shall be exempt from these requirements provided they are not maintained in the manner of a junkyard and do not include a junkyard operation:

- (1) Storage areas for officially recognized and operable antique or classic automobiles or other operable special purpose vehicles.
- (2) Agricultural equipment which is utilized as part of an active farming operation or contractors' construction equipment which is part of an active contracting business.
- (3) Automobile repair businesses or automobile, vehicle and equipment sales operations managed by State licensed dealers.

No right to establish or continue a junkyard operation shall be conveyed by the existence of a New York State license or the presence of any of the above activities on a site.

D. Definition. The term "junkyard" shall mean:

- (1) An area of land, with or without buildings, used for the storage of metal, glass, building materials, machines, wire, pipe, appliances, equipment, automotive, recreational or other vehicles or parts thereof, with or without the dismantling, processing, salvage, sale or other disposition of the same.
- (2) Any place where three or more old, secondhand, abandoned, partially disassembled, dilapidated or unlicensed vehicles or parts of vehicles, no longer in condition for legal operation on the public highways, are stored outside for any purpose for a period of one year or more. The Town of Rochester Building Inspector(s) shall determine when a vehicle or part thereof shall meet these conditions and it shall be the burden of the landowner in such instance to demonstrate conclusively, within a period of seven (7) days after notice, that a vehicle is legally operable at the present time if he or she shall disagree with the Building Inspector's determination.
- (3) Ancillary businesses located on a junkyard lot or lots that are part of the same site and site plan if one is a matter of record; including but not limited to vehicle and equipment sales, rental operations, repair operations, other sales activities, services and processing operations; whether or not directly related to the primary junkyard function.

E. License required. No person, partnership, association or corporation, being the owner or occupant of any land within the Town of Rochester, shall use or allow the use of such land for a junkyard unless a license has been obtained and maintained as herein provided, which license shall be applied for concurrently with application for Site Plan Review and Special Use approval hereunder. The Building Inspector shall issue a license within 10 days after approval of the application by the Town Planning Board pursuant to these criteria. Said license shall be effective from the date of issuance until surrendered by the licensee or revoked by the Building Inspector and shall be renewed annually based on inspection by the Building Inspector and approval by the Town Board as to continued compliance with these standards . No license shall be issued until the Building Inspector has received:

- (1) A written application from the applicant on the form provided by the Town Building Inspector.
- (2) The required fee as herein provided. Such fees shall be set by resolution of the Town Board.

- F. Transfers of license. The license may be transferred to a new owner of a junkyard provided all of the requirements of this Law pertaining to new junkyards are met and a new application is submitted.
- G. Disapprovals. Any disapprovals shall be in writing and include the reasons therefore. The Building Inspector shall not issue a license in any instance where the Planning Board has not approved the site plan and given Special Use approval.
- H. Right to enter and inspect. The Building Inspector shall enforce all of the provisions of this Law and shall have the right, at all reasonable times, to enter and inspect any junkyard. The Town Board shall specify the frequency of such inspections, but no less than four times per year, and set fees by resolution to cover costs involved.
- I. Orders to correct. If the Building Inspector finds that a junkyard for which a license has been issued, is not being operated in accordance with the provisions of this Law, he may serve, personally or by certified mail to the holder of the license, a written order which will require the holder of the license to correct the conditions specified in such order within 10 days after the service of such order.
- J. Suspension of license. If the holder of such license shall refuse or fail to correct the condition or conditions specified in such order within 10 days after the service of such order, the Building Inspector may suspend such license and the holder of the license shall thereupon terminate the operation of such junkyard.
- K. Expiration of license. Any license which is not used for the purpose intended within 12 months of the date of issuance shall automatically expire and the junkyard shall be removed in its entirety.
- L. Standards applicable to new junkyards. All new junkyards shall conform to the following standards:
 - (1) No part of any junkyard shall be located closer than five-hundred (500) feet to an existing public right-of-way or adjoining property line, or one-thousand (1,000) feet to a church, school, health care facility, public building or place of public assembly.
 - (2) New junkyards shall, moreover, be permitted only in the NR Natural Resource and I Industrial Districts.
 - (3) All new junkyards must erect and maintain a eight (8) foot fence or dense natural screening along the boundaries of the property adequate to discourage the entrance of children or others into the area and to contain, within such fence, all materials in which the owner or operator deals. Such fence or screening shall also substantially screen the junkyard from public view at all times of the year and otherwise comply with the requirements of § 136 of the General Municipal Law. The fencing or screening shall, in the case of properties that are upslope or downslope from the grade level of the adjoining highway, be adjusted in height and density so as to accomplish the purpose of screening the the junkyard from view. Any material within the junkyard shall be screened from view from adjoining highway(s) and properties.
 - (4) No junkyard shall be used as a dumping area for refuse or as a place for the burning or disposal of trash.

- (5) All dismantling operations shall take place inside an enclosed structure and any parts of vehicles or equipment shall similarly be stored inside an enclosed structure. All vehicles awaiting dismantling or retained for sale or use intact shall be stored in paved surface parking areas specifically designated for this purpose, which areas shall be buffered as required in this section for the junkyard as a whole.
 - (6) The Planning Board, in acting upon the Special Use application for any new junkyard, shall consider aesthetics and the impact on surrounding property consistent with the demands of § 136-7 and 8 of the General Municipal Law.
 - (7) All waste oils and similar waste products shall be stored and/or disposed of consistent with local and State requirements and best industry practices.
- M. Standards applicable to existing junkyards. All existing junkyards shall conform to the following standards to be administered by the Town Building Department based on the inspection and report as to compliance with the standards of this Law:
- (1) Existing nonconforming junkyards shall, within a period of one year following the effective date of this Law, be removed unless a license shall have been obtained for continued operation and the facility has been made to conform to the regulations provided below.
 - (2) Applications for licenses to continue operating existing non-conforming junkyards shall, unless the owners thereof have indicated in writing their intention to discontinue operations as provided above, be made within one year following the effective date of this Law. All licenses shall, thereafter, be renewed by April 1 of each calendar year.
 - (3) Applications for licenses to continue operation of existing non-conforming junkyards shall include a site plan depicting the existing operation and any planned improvements as may be required by this Law.
 - (4) Yard requirements applicable to new junkyards shall not be further violated. All existing junkyards proposing to expand shall include an eight (8) foot high fence or screen along the side and rear boundaries of the property adequate to discourage the entrance of children or others into the area and to contain, within such fence, all materials in which the owner or operator deals.
 - (5) All fencing or screening must be approved by the Town Building Department and produce a screen through which one generally cannot see. Various materials, including evergreen screening or existing forest cover, may be used. The Town Building Department may also take measures, such as securing injunctive relief, to ensure maintenance of such fencing or screening.
- N. Existing junkyards shall not be expanded except in conformance with the regulations contained herein for new junkyards, and in no case will any change in an existing junkyard that would lessen its conformity with these regulations be permitted. Any person or persons proposing to establish or expand a junkyard in the Town of Rochester shall prepare site plans of the same to be submitted to the Planning Board under Special Use/Site Plan Review procedures.

§ 140-34 Transfers of Density Rights (TDR).

A. Purposes. This section is intended to:

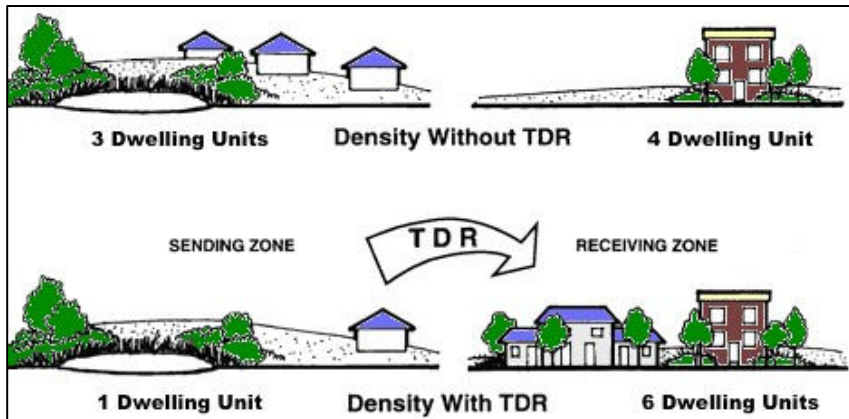
- (1) encourage the permanent preservation of important farmland and environmentally sensitive areas;
- (2) direct growth to locations where central sewage disposal services are available; and
- (3) provide a voluntary method for landowners to be compensated by the free market to preserve their land.

B. Special definitions.

- (1) **SENDING PROPERTY** -- A lot(s) or portion of a lot that is restricted by a conservation easement or farmland preservation easement as a condition of approval of a higher density on the "Receiving Property" than would otherwise be permitted.
- (2) **RECEIVING PROPERTY** -- A lot(s) that is approved to permit a higher density than would otherwise be permitted as a condition of the restriction of development on the Sending Property through a Conservation Easement.

C. Applicability.

- (1) Owners of Sending and Receiving Properties may voluntarily commit to transfer residential density rights under this Zoning Law. Although the transfer of density rights shall only officially occur at the time of final approval of a subdivision or site plan, the process shall be initiated during the preliminary



planning process. The approval of a preliminary plan shall then be conditioned upon compliance with this Section. As part of a preliminary and final plan application, the applicant shall present a draft Conservation Easement on the "Sending Property" and a written, signed and notarized agreement by the owner of the "Sending Property" acknowledging and agreeing to the application.

- (2) The Conservation Easement shall be drafted so that it is binding if the "Receiving Property" is granted Final Plan approval. The Conservation Easement shall be recorded in the County Clerk's office at the same time as, or prior to, the Final Plan for the Receiving Property. If a Final Plan is recorded in phases, then the Conservation Easement may be recorded in corresponding phases.

- (3) The form of the Conservation Easement shall be acceptable to the Town Board based upon review by the Town Attorney and Planning Board and/or New York State DEC if applicable. The term "Conservation Easement" shall include, but not be limited to, an Agricultural Conservation Easement. In the case of agricultural land, the standard language for an Agricultural Conservation Easement used by the Ulster County Agricultural and farmland Protection Board may be utilized. The easement shall limit the development of the Sending Property to agricultural and open space uses and associated accessory activities and any residual residential density not transferred to the Receiving Property.
- (4) A Sending Property shall be within the AB-3, AR-3, NR or R-5 District. A Sending Property shall have a minimum lot area of 10 acres.
- (5) A Receiving Property shall be within the AB-3, AR-3, B, H, R-1, R-2 or R-5 Districts. Preference shall, in the case of AR-3 and R-5 Districts, be given to applications for projects adjacent to B, H and R-1 Districts, where such development will serve to strengthen centers.
- (6) Once a Conservation Easement is established it shall be binding upon all current and future owners of the Sending Property. The applicant for the Receiving Property is responsible to negotiate with, and pay compensation to, the owner of the Sending Property for the Conservation Easement. Such transaction shall occur privately, and the value shall be determined by the private market. The Town shall be under no obligation to pay the owner of the Sending Property.
- (7) The right to develop a Sending Property may also be purchased by or donated to an established incorporated nonprofit conservancy organization whose mission includes preservation of agricultural land or natural features. A permanent Conservation Easement shall, in such case, be established on the Sending Property at the time of such purchase or donation. The right to develop such dwelling units may be held for a maximum of five years, before being used on a Receiving Property(ies).

D. Determination of density.

- (1) Yield Plans shall be presented by the applicant. One Yield Plan shall be presented for the Receiving Property and one for the Sending Property. Such Yield Plans shall be a level of detail typically found in a sketch plan, including potential lots and roads, steep slopes, 100 year floodplains and suspected wetlands. Such Yield Plans shall estimate the number of new dwelling units that could be lawfully constructed on each property under Town regulations without any transfer of development rights. Detailed percolation tests are not required on all potential lots but deep pit soil testing may be required in areas of suspected marginal soil types for subsurface sewage disposal.
- (2) Such Yield Plans shall be reviewed by the Town Planning Board, with advice by the Town Engineer, to determine whether each represents a reasonably accurate estimate of the number of dwelling units possible on each site, both physically and legally. If such estimates are determined to not be accurate, the applicant shall be required by the Planning Board to revise such Yield Plan.
- (3) Based upon the Yield Plans, permission to develop a number of dwelling units may be transferred from the Sending Property to the Receiving Property. The potential to develop some or all of the

dwelling units may be transferred from the Sending Property, depending upon the amount of land affected by the permanent Conservation Easement.

- (4) If, for example, the Yield Plan determines that 10 new dwelling units would be allowed under current zoning on the Sending Property, and the Sending Property will be preserved by a Conservation Easement, then the right to develop 10 additional dwelling units shall be transferred to the Receiving Property. The development of the Receiving Property shall still comply with all other requirements of this Zoning Law, except for the maximum density, which shall be regulated by this Section.
 - (5) The Receiving Property shall be permitted to include the increased total number of dwelling units above the number that would otherwise be permitted, as approved by the Town Planning Board based upon the Yield Plan, provided that density shall not be increased by more than 50% under any circumstance (including any other incentives). Yard requirements may also be reduced, but in no instance to less than 20 feet for the front yard and 10 feet for the side and rear yards, except in instances where zero-lot line development is proposed with compensating yards on the opposite side. Also, no more than 35% of any acre outside a R-1 District shall be covered with impervious surface in the form of access drives, parking areas or structures.
 - (6) Utilities. To receive a transfer of density rights, all lots of less than one acre on the Receiving Property shall be served by a central or communal sewage system.
 - (7) The transfer of density rights shall not be combined with incentives concerning Conservation Subdivision development, nor shall any transfer increase the density of a manufactured home park.
- E. Once a conservation easement is established under a transfer of density rights, it shall be permanent, regardless of whether the Receiving Property is developed. The approval to develop the Receiving Property in a higher density shall be treated in the same manner as any other Final Subdivision or site plan approval. The Planning Board may extend time limits to complete the development of the Receiving Property in response to a written request.
- F. As part of a transfer of density rights, the development of the Receiving Property shall comply with all Town of Rochester zoning requirements, except for provisions specifically modified by this section.

§ 140-35 Commercial Events Facilities

- A. Findings. The Town of Rochester, in an effort to encourage economic development and tourism activities, recognizes that permitted business uses such as inns, bed and breakfasts, spas, and similar enterprises may desire to derive income from the occasional use of their facilities for events.
- B. Purpose. This section of law is to ensure facilities which may not have been designed to service such special events meet the standards of health, safety, and welfare while allowing for such use upon satisfaction of specific standards
- C. Scope. Where such facilities are permitted either by right or permit, commercial on-site events such as conferences, banquets, festivals, weddings and other celebratory or educational activities shall be permitted as a Special Use subject to the standards of § 140-16 and below: The use shall be a

separate use considered a multiple use, as defined herein, and shall be required to meet the sum of all development standards for the zoning district.

- D. Exemptions. Upon review of a zoning permit application by the Code Enforcement Officer where commercial event use is determined to be “regularly occurring and usually associated with such use”, approved uses such as agricultural tourism enterprises, hotels/motels, non-profit clubs, places of worship, public buildings and parks, resorts, restaurants, taverns, or other such use shall be exempt from the requirement of a Special Use Permit and these standards but, in all cases, shall be required to meet the additional parking and health and safety requirements. In such cases, the Code Enforcement Officer is empowered by the Town Board to determine if the requirements have been satisfied and may determine Site Plan review and approval by the Planning Board to be required. A nonconforming use shall not be eligible for exemption and shall require a Special Use Permit in all cases.
- E. The facility shall submit a plan subject to Site Plan Review standards for the conduct of such events.
- F. The number of events shall be limited to a maximum of 12 events per calendar year, each day of activities open to persons other than lodging guests counting as a separate event. The facility operator shall be required to notify the Code Enforcement Office of any event scheduled a minimum of 3 business days prior to the event by either e-mail or written letter.
- G. Event hours shall be limited to between 9:00 am and 11:00 pm. Setup and dismantling hours shall be limited to between 8:00 am and 12:00 midnight.
- H. The designated portions of the property to be used for such events, including but not limited to temporary parking areas, temporary structures and sanitation facilities, shall be clearly identified on the site plan and meet applicable yard requirements.
- I. All parking for events shall be off-street and may consist of temporary parking within required yards or, by agreement, on other properties.
- J. All temporary structures and equipment must be removed within four days after each event and shall remain in place a maximum of seven days altogether, except by Code Enforcement Officer approval when the next event is scheduled within seven days of the preceding event.
- K. Applicants shall document compliance with Ulster County Board of Health and other applicable health and safety regulations.

§ 140-36 Vehicle and Equipment Sales, Service, and Repair

- A. Whenever a vehicle and equipment sales, mechanical and body repair use is proposed as a Special Use, or as an expansion of an existing non-conforming use, the following additional performance standards shall apply:
 - (1) All automobile or vehicle parts, new or used, shall be stored within buildings or screened.
 - (2) Vehicles that are temporarily on the property awaiting repair, shall be stored in an area which meets the minimum yard requirements applicable for the district and the use.

- (3) Vehicle and equipment sales shall be limited to those districts specified on the Schedule of District Regulations and be subject to the following additional regulations:
- (a) A site plan designated and improved parking space meeting the standards contained herein shall be provided for each vehicle or piece of equipment displayed.
 - (b) Display areas for vehicles and pieces of equipment shall comply with front and side yard setbacks applicable to principal structures. (c) Signs connected with vehicle and equipment displays shall be limited to permanent or temporary signs otherwise permitted hereunder.
 - (d) Additional off-street parking areas shall be provided for the use of customers at the rate of one space for each 10 vehicles or pieces of equipment displayed outdoors. No on-street parking shall be permitted.
 - (e) Lighting of outdoor vehicle and equipment sales areas shall be limited to pole or wall lighting meeting the standards contained herein for commercial lighting.
 - (f) The Planning Board may require landscaping of vehicle and equipment sales operations, as provided herein, to separate and buffer them from the public right-of-way and adjoining properties.
 - (g) All vehicle and equipment sales operations shall provide a permanent (suitable for year-round use), heated sales office of no less than 150 square feet in size and rest room facilities.

§ 140-37 Mulch or Compost Processing Facilities

- A. Whenever a mulch or compost processing facility use is proposed as a Special Use, or as an expansion of an existing non-conforming use, the following additional performance standards shall apply:
- (1) Such facilities shall be permitted to locate within the AR-3, AB-3, R-5, NR, I, and B zoning districts subject to Special Use Permit.
 - (2) No part of the facility shall be located within 300 feet of the lot line.
 - (3) No storage pile or windrows shall exceed 15 feet in height or 30 feet in width. The length of windrows shall not be restricted so long as emergency fire equipment can adequately navigate the site.
 - (4) No storage pile or windrows shall be located within 75 feet of any watercourse and a minimum 50-foot vegetated area shall be provided adjacent to any watercourse to prevent unfiltered runoff of organics into the watercourse.

§ 140-38 [RESERVED]

Article 6
Nonconforming Uses and Structures

§ 140-39 Rights to Continue Nonconforming Uses.

- A. A use, building or structure lawfully in existence as of the effective date this law and non-conforming with it or any subsequent amendment may be continued, except as otherwise provided herein with respect to specific uses. Upon request, the Building Inspector may issue Certificates of Nonconformance to owners or operators of bona fide non-conforming uses, buildings or structures who desire confirmation of their rights hereunder.
- B. It is the purpose of this Article to limit the injurious impact of non-conforming uses, buildings, lots and structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of non-conforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this Zoning Law, when failure to allow such alteration, continuation or extension would itself lead to neighborhood or district deterioration.
- C. It is further the purpose of this Article to set forth those standards which are to be applied by the Town in determining the reasonableness of proposals to alter, continue or extend a non-conforming use and to establish when Town review and approval shall be required for such actions.
- D. The protections extended by this Article to existing non-conforming uses, buildings, lots or structures, commonly known as "grandfathering", shall not extend to any non-conforming activity occurring subsequent to the effective date of this law, as amended.

§ 140-40 Normal Maintenance and Repairs.

- A. Normal maintenance and repair activities, such as painting, replacing a roof or fixing gutters, shall be permitted. Also permitted are alterations, such as adding or removing windows, and interior renovations that do not structurally alter buildings, add living areas or result in extended or increased non-conforming use of a building, lot or structure.
- B. Increases in outside storage or display of retail or wholesale inventory, which in the ordinary course of business would be sold within one year, shall be permitted, provided they do not eliminate parking spaces, unoccupied open spaces or accesses required by this law. Notwithstanding this provision, however, the Planning Board, in reviewing any Special Use application for expansion or upon determining, with respect to any present use, that a condition exists which requires remedies, may establish limits on such storage or display or require removal of inventory (altogether or to another location on the site) to preserve adequate sight distances and residential buffers or otherwise protect public health, safety and welfare.

§ 140-41 Restoration, Reconstruction or Re-establishment.

- A. If any non-conforming use, building or structure is damaged, it may be restored or reconstructed by building permit issued within five years of the date of the damage.

- B. A non-conforming use, building or structure may be re-established within a period of five years after it has been discontinued or vacated.
- C. A non-conforming use, building or structure may be considered abandoned under any one of the following circumstances:
 - (1) The intent of the owner to discontinue the use is made obvious by the posting of signs, boarding up of windows, failure to pay taxes or assessments or other measures that demonstrate the enterprise is going out of business or the use is otherwise ending; or
 - (2) The building has not been occupied for five years or more and/or the use has not been exercised; or
 - (3) The non-conforming use has been replaced by a conforming use or changed to another use under permit from the Town; or

The Town Planning Board may, subject to Site Plan Review, permit the re-establishment of an abandoned use where the structure is particularly suited to such use and difficult to adapt to other conforming uses, provided the use has not been abandoned for more than five years. The Town Board may extend this period for good cause but not more than an additional five years by other than a zoning amendment.

- D. The Building Inspector, on determining these circumstances exist, shall, by certified mail, so notify the property owner of record, informing the owner the use is considered abandoned and may not be re-established once a period of 12 additional months has expired. If an owner cannot be reached through the mail, the Building Inspector shall publish the notice once in a newspaper of general circulation in the Town and/or post the property and the owner shall be presumed to have been notified.

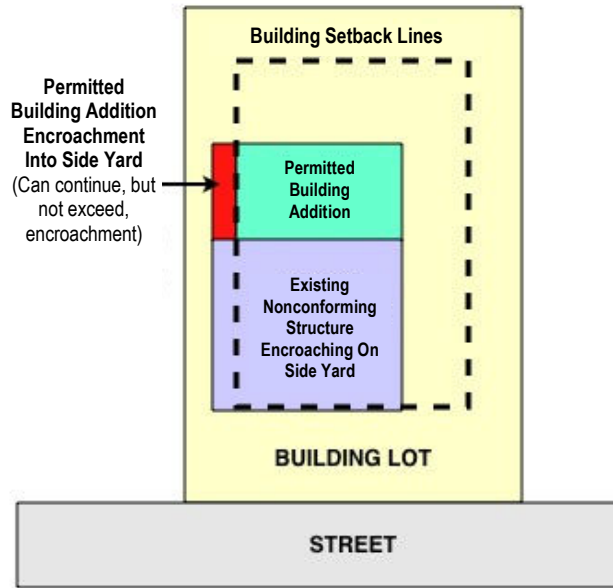
§ 140-42 Changes, Additions, and Expansions.

Excepting for activities provided for above and accessory uses, all changes, additions, and expansions to nonconforming uses shall be considered Special Uses. No change, addition, or expansion shall result in a more intensive category of use. A non-conforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use. Permits for changes, additions, or expansions shall be granted only after a determination by the Planning Board that the following conditions have been, or will be, satisfied.

- A. There shall be no expansion in the amount of land area outside a non-conforming facility (outdoor area) used for storage of materials, supplies and/or products, except as provided herein.
- B. Where the non-conforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.

C. No addition, change or expansion of a nonconforming use shall further violate setback and/or height regulations of the district in which it is located.

D. There shall be no increase in the amount of storm water runoff for the site over what was existing as of the date of the enactment of this law. A Professional Engineer or other appropriate professional may be relied upon to recommend appropriate measures to control storm water runoff. Such measures shall be attached as conditions of approval by the Planning Board.



E. In no case will a change, addition or extension of a non-conforming use be allowed that would result in a traffic increase that would decrease the Level of Service for the highway, the diversion of traffic closer to a nearby residence or a reduction of any of the parking and unloading requirements of this law where additional parking or loading would otherwise be required due to the change, addition or expansion. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this law, the Planning Board may require vegetative screening of the parking area from nearby residential areas.

F. The use may only be expanded or extended onto another property of record if; that property is immediately adjacent to the lot on which the original structure or use was located as of the effective date of this law or amendments hereto and the use is not one which has been altogether prohibited as a new use under this law.

G. Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is determined by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this law, the requested expansion or extension shall be denied.

§ 140-43 Use of Existing Non-conforming Lots of Record.

A structure may be erected on any lot of record, existing at the time this Law is enacted; provided no front yard is reduced in size and no side yard is reduced to less than 50% of the requirement for the district in which it is located or 20 feet, whichever is greater; and a sewage disposal system meeting New York State standards, including well and septic isolation distances, can be placed on the lot should public facilities be unavailable.

§ 140-44 [RESERVED]

Article 7
Special Use and Site Plan Review Procedures

The Town of Rochester Planning Board is authorized, in accordance with Sections 274-a and 274-b of the New York State Town Law, to review and approve, approve with modifications or disapprove Special Uses and site plans connected therewith. Site Plan Review shall be required for all Special Use permits and such other uses as the Town Board may from time to time designate by local law. The Planning Board shall review all applications for Special Use and Site Plan with regard to the standards and regulations of this code and any applicable local, county, state, or federal standards or regulations. The following procedures shall apply:

§ 140-45 Sketch Plan.

An applicant for a Special Use permit or Site Plan Review may submit a sketch plan for review and advice by the Planning Board. The Planning Board may also require the submission of such a sketch plan or alternate sketch plans depicting different development concepts for a property. Such a sketch plan should provide locations and dimensions of the proposed use in relation to the property boundaries and adjacent uses. It should also indicate all accesses and improvements both existing and proposed and any site features or known environmental constraints that could have a bearing on the project including the general topography and existing ground cover. Aerial photography may also be required. Should such sketch plan involve one-time additions of less than 10% and 200 square feet in floor area or accessory uses or structures, the Building Department may review and approve the site plan on its own during the building permit process. If these thresholds are exceeded, however, the sketch plan shall be referred to the Planning Board. If referred to the Planning Board, this sketch plan shall be used by the Board as a basis for advising the applicant regarding information it shall require on the site plan before it conducts a public hearing or takes any action with respect to the plan. The Planning Board shall give no approval or disapproval regarding any sketch plan but may use it to schedule a public hearing if sufficient data is available, determine if any provisions of this article should be waived or begin its review of the application under the New York State Environmental Quality Review Act ("SEQRA").

§ 140-46 Application and Site Plan Required.

The Planning Board shall be under no obligation to schedule a public hearing or take any action with respect to a Special Use or Site Plan Review permit application until formal application has been made on forms provided by the Board and a detailed site plan providing the following information has been submitted:

- A. The location of all existing watercourses, wooded areas, rights-of-way, roads, structures or any other significant man-made or natural feature, if such feature has an effect upon the use of said property, including, where practical, significant features within 200 feet of the property.
- B. The site plan shall include all known natural resource restrictions, flood plains, wetlands, ecologically sensitive areas, etc. extending beyond the project boundaries a distance of 200 feet. Air photos showing existing conditions shall be provided (may be obtained free of charge online from several sources).

- C. The location, use and floor or ground area of each proposed building, structure or any other land use, including stormwater management, sewage disposal and water supply systems.
- D. The location of all significant landscaping and ground cover features, both existing and proposed, including detailed planting plans and a visual depiction or rendering of the final appearance of the property after all landscaping and other physical improvements are completed.
- E. The location, dimensions and capacity of any proposed roads, off-street parking areas or loading berths, including typical cross-sections for all paving or regrading involved.
- F. The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelizations, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.
- G. The location and identification of proposed open spaces, parks or other recreation areas.
- H. The location and design of buffer areas and screening devices to be maintained.
- I. The location of trails, walkways and all other areas proposed to be devoted to pedestrian use.
- J. The location of public and private utilities, including maintenance facilities.
- K. The specific locations of all signs existing and proposed, including a visual depiction of the latter.
- L. Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, height and general design or architectural styling. Lighting plans and details shall also be required.
- M. A completed SEQRA Environmental Assessment Form.
- N. Topography of the site using two feet contour intervals unless otherwise specified by the Planning Board, along with detailed grading plans, and stormwater pollution prevention plans as required herein, where significant land disturbance is proposed. A survey map and/or grading plan may be required to accurately depict property lines, easements and grade changes where determined necessary by the Planning Board.
- O. A map and report detailing the proposed conveyance, storage, distribution, generation, use, treatment or disposal of any storm water and sewage including an estimate of the total daily flows. An application for any proposed use with projected on-site sewage disposal flows averaging 2,000 gallons or more per day during any single 30-day period shall include a hydrogeological report prepared by a qualified hydrogeologist or engineer.
- P. A written description of the project including all of the activities proposed on the site, number of employees if relevant, how the project meets the zoning requirements, particularly design guidelines, landscaping requirements and storage of hazardous materials.

- Q. The Storm Water Pollution Prevention Plan (SWPPP) if required. GPS (Global Positioning System) reference data for stormwater outfalls and permanent structures built in accordance with New York State Stormwater Management Design Manual shall be required on all site plans.
- R. An Agricultural Data Statement, if applicable.
- S. The location of historic properties or districts within 500 feet of the site.
- T. Wetlands as mapped by the New York State Department of Environmental Conservation and the Army Corps of Engineers, including any soils identified as hydric.
- U. Site Plans shall be overlaid on an aerial photo base map.
- V. The Site Plan shall contain blank approval blocks for the Town Planning Board stamp and signatures on every sheet of the set of plans.
- W. Any other information required by the Planning Board that is clearly necessary to ascertain compliance with the provisions of this law (e.g., Site Plan Review or Special Use checklists) and limited to such information.

§ 140-47 Waivers.

The Town of Rochester Planning Board shall, pursuant to Section 274-a(5) of the Town Law, have the right to waive, when reasonable, upon written request of the applicant, any of the procedural or submittal requirements of this article for the approval, approval with modifications or disapproval of Special Use permits and site plans submitted for approval. Such waiver and the reasons therefor shall be recorded in the minutes of the Planning Board. This waiver authority may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare or are not applicable to a particular site plan. Any such waiver shall be subject to the following conditions:

- A. No waiver shall result in allowing a use not permitted within the applicable Zoning District.
- B. No waiver shall be given with respect to standards outside the scope of this article which would otherwise require a variance from the Zoning Board of Appeals, except in the case of the adaptive re-use of a building or structure.
- C. Waivers shall be limited to those situations where the full application of the requirements contained herein would generate unnecessary data with regard to deciding the matter at hand, due to the scope or nature of the project involved. The proposed enclosure of a deck or a simple change of use with no significant structural modifications in the case of a commercial property, for example, might not require typical cross-sections for proposed regrading or water supply data.
- D. An applicant for site plan approval who desires to seek a waiver of certain of the above-referenced requirements pertaining to such applications shall submit a preliminary site plan as provided above. The Planning Board shall review the preliminary site plan, advise the applicant as to potential problems and concerns and determine if any additional site plan information is required. The Planning Board shall consider such site plan as adequate when, in its judgment, the information submitted is sufficient

to make a determination of compliance with the development standards contained herein and the intent of Site Plan Review criteria found below.

- E. The Town of Rochester Planning Board, following a public hearing in conjunction with other matters before the Board, shall be permitted to modify the standards of this law to the extent of 10% of the stated criteria where the circumstances otherwise meet the tests for an area variance as set forth herein. Such modifications shall also be permitted for the purposes of increasing the efficiency with which buildings and their sites use and harvest energy, water, and materials; and reducing building impacts on human health and the environment, through better siting, design, construction, operation, maintenance and removal during the complete building life cycle; otherwise known as energy efficient building.
- F. Nothing herein shall authorize the Planning Board to waive State Environmental Quality Review requirements.

§ 140-48 Hearing and Decision.

The Planning Board shall fix a time, within 62 days from the day the Board deems complete an application for a Special Use permit or site plan approval is made, for the hearing of any matter referred to under this section. For the purposes of this code an application shall be deemed complete either upon specific resolution and majority affirmative vote or upon the scheduling of a public hearing. The deeming of an application as complete shall not preclude the Planning Board from requiring additional studies or information. It shall give public notice of such hearing at least five (5) days prior to it in a newspaper of general circulation in the Town and decide upon the application within 62 days after the close of such hearing. Notices of major hearings shall be provided using the same notice used in the public advertisement, to all property owners within 500 feet of the parcel boundary as identified in the latest tax assessment records of the Town of Rochester, including those for properties on the opposite side of any public or private road. Such notice shall be given by the Town at the expense of the applicant by regular mail postmarked at least seven calendar days in advance of such hearing. Such notice shall explain the approval requested and the rights of all landowners to both subdivide land and offer public input on applications. The Planning Board shall be authorized to waive this requirement where it is determined by the Board that adjoining owners have otherwise been afforded reasonable notice of such hearing as evidenced by their appearance at or knowledge of such hearing. No hearing shall be delayed where the Board determines the Town has made reasonable attempts to notify all interested parties as provided herein. It shall not, however, grant approval before a decision has been made with respect to environmental impacts pursuant to SEQRA. The decision of the Planning Board shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant within five (5) business days after such decision is rendered.

§ 140-49 Modifications and Conditions.

The Planning Board shall be authorized, in conjunction with any Site Plan Review, to require the modification of said site plan to protect the health, safety and welfare of the public and secure harmonious development that protects the character of the neighborhood. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related and incidental to the proposed Special Use permit or site plan. Upon approval of said permit and/or plan, any such conditions shall be met prior to the actual issuance of permits by the Town. These conditions may include requirements of the

applicant to provide parkland or to provide fees in lieu thereof pursuant to Section 274-a(6) of the New York State Town Law for new lots and residential units of any kind.

§ 140-50 Referrals.

The Planning Board is authorized to refer Special Use permit applications and site plans to other agencies, groups or professionals employed or used by the Town for review and comment and to charge the applicant reimbursement fees for any reasonable expenses connected therewith. The Board shall, in particular, ensure that the requirements of Section 239-m of the General Municipal Law regarding review by the Ulster County Planning Department are met. It shall also comply with all requirements of the New York State Environmental Quality Review Act.

§ 140-51 Appeals.

Any person aggrieved by any decision of the Planning Board or any officer, department, board or bureau of the town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules.

§ 140-52 Effect of Site Plan and Special Use Approval.

- A. The site plan and/or Special Use permit as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan, except as provided herein, shall require resubmission and reapproval by the Planning Board.
- B. The site plan shall remain effective, as an authorization to establish the use, for a maximum of one year from the date of approval unless the Planning Board shall have granted an extension in writing and provided the applicant has diligently pursued the implementation of the plans. Absent such an extension the Special Use shall be deemed to have expired.
- C. A Special Use which has been discontinued for a period of two or more years shall also be deemed to have lapsed without hearing or notice.

§ 140-53 Renewal of Permits.

The Planning Board may require, at the time it is initially granted, that any Special Use approval be renewed periodically. Such renewal shall be granted upon written application by the holder of the permit and following public notice and hearing. Such renewal may only be withheld upon a determination that the conditions attached to any previous approval have not been met. A period of 62 days shall be granted the applicant in such cases to make remedies and bring the use into full compliance with the terms of the Special Use approval. Should the applicant fail to make such remedies, the Special Use approval shall be revoked by the Planning Board and the use immediately discontinued.

§ 140-54 Conformity with Other Plans, Laws and Ordinances.

The Planning Board, in reviewing the site plan, shall consider its conformity to the Town of Rochester Comprehensive Plan and the various other plans, laws and ordinances of the Town, Ulster County, and New York State. Conservation features, aesthetics, landscaping and impact on surrounding development

as well as on the entire town shall be part of the Planning Board review. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets.

§ 140-55 Special Use Review Criteria.

The Planning Board, in acting upon the Special Use, shall also be approving, approving with modifications or disapproving the site plan application connected therewith taking into consideration not only the criteria contained above but also the following Special Use criteria:

- A. Whether the proposed use will have a detrimental or positive impact on adjacent properties or the health, safety and welfare of the residents of the Town of Rochester.
- B. If the proposed use is one judged to present detrimental impacts, whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
- C. Whether the use will have a positive or negative effect on the environment, job creation, the economy, housing availability or open space preservation.
- D. Whether the granting of an approval will cause an economic burden on community facilities or services, including but not limited to highways, sewage treatment facilities, water supplies and firefighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Town shall be authorized to demand fees in support of such services where they cannot be directly provided by the applicant. This shall specifically apply, but not be limited to, additional fees to support fire-district expenses.
- E. Whether the site plan indicates the property will be developed and improved in a way which is consistent with that character which this law and the Town's Comprehensive Plan are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.

§ 140-56 Bonding of Site Improvements

- A. Supersession of statutory provisions. This section shall, pursuant to the supersession authority granted by the Municipal Home Rule Law, supersede, in its application to the Town of Rochester, the provisions of §§ 274-a, 276 and 277 of the Town Law of the State of New York relating to the limitation upon the authority of a town to require the posting of a performance bond or other form of security in connection with the approval of a land subdivision plat, to extend such authority to Planning Board approvals of commercial and residential site plans in accordance with the provisions of § 274-a of the Town Law.
- B. Legislative intent. In order to ensure that once a project has been started it shall not be abandoned, partially completed or left in a state which will cause erosion of the soil, improper drainage or any other condition which will result in the deterioration or devaluation of the surrounding land or neighborhood, and in order to ensure that while under construction, the workmanship and materials used shall promote the long life of the project and the health, safety and welfare of the future users of the subject premises and surrounding areas, the Town Board of the Town of Rochester has determined it to be a proper exercise of authority conferred upon it by the laws of the State of New York to require the

posting of adequate security for the performance of necessary site improvements contemplated in connection with a residential or commercial site development.

C. Procedure.

- (1) Prior to or contemporaneously with the grant of final site plan approval for a particular project, the Planning Board, in considering the recommendation of the engineering authorities available to it, shall establish the amount of performance security to cover the full cost of the required site improvements as shown on such final site plan as enumerated in Subsection D hereof. The Planning Board shall make a referral of the matter regarding the establishment of the amount of performance security of a particular project to the Town Board, which referral shall include its recommendation as to the amount of such performance security. The performance security shall become effective only if and when the Town Board shall have approved it as to form, sufficiency of surety and manner of execution.
- (2) The performance security shall be in the amount approved by the Town Board in the form of a performance bond issued by a surety company licensed in the State of New York; a letter of credit issued by a federally or state-chartered financial institution; or a savings passbook, money market account or certificate of deposit naming the Town of Rochester as joint tenant.
- (3) Such performance security, if in the form of a performance bond or letter of credit, shall run for a term to be fixed by the Planning Board, but in no event for a term longer than three years; provided, however, that the term of such security may be extended by the Planning Board with the consent of the parties thereto. In the event such security is in the form of a letter of credit, such a letter of credit shall contain a provision requiring automatic renewal thereof unless, not less than 30 days prior to its expiration, the Town of Rochester is given written notice of the issuing institution's intention not to renew such letter of credit.
- (4) The performance security in the full amount established by the Town Board shall be posted with the Town Clerk upon grant of final site plan approval. No building permits shall be issued for and no site preparation work shall be commenced on the subject premises unless and until the necessary performance security has been posted.
- (5) A duly designated official of the Town shall inspect the improvements during construction to assure their satisfactory completion. An inspection fee of 5% of the performance bond amount shall be posted by the applicant, to cover the cost of required inspections.
- (6) During the course of construction, the performance security may be reduced, in the sole discretion of the Town Board upon the recommendation of the Planning Board, to an amount certified by the Town Engineer or the town's consulting engineer to be the probable cost of completion of the remainder of the required site improvements, but in no event shall such amount be reduced to less than 50% of the original amount of the performance security.
- (7) The performance security shall be released or reduced only by the Town Board and only upon recommendation of the Planning Board after certification by the Town Engineer or the town's consulting engineer that all or part of the required site improvements have been completed in conformance with the approved final site plan and all applicable regulation.

- D. Site improvements subject to bonding. The following items are considered essential to the principles stated above and shall be included in the amount of the performance security to be set:
- (1) Site grading, including replacement of topsoil and seeding, and including necessary structural features such as retaining walls and ground cover.
 - (2) Drainage, including waterways, conduits and all necessary appurtenances and structures.
 - (3) Water and sewer systems, including all wells, conduits, structures and appurtenances as may be required by those government agencies having final jurisdiction for approval of those system.
 - (4) Foundation course, pavement, curbs and sidewalks for all roads, drives, parking areas and walkways.
 - (5) Lighting, including all necessary wiring, structures and appurtenances.
 - (6) Landscaping, including all shrubs, trees and screening as may be required to ensure that the final site condition meets with the planning and zoning concepts expressed in the Comprehensive Plan of the Town of Rochester and this chapter, as well as all drainage and soil erosion measures required to protect the site.
 - (7) The Planning Board shall have the discretion to require only a restoration bond be posted, should it be deemed sufficient to protect the Town's interests. In the event a restoration bond is posted, the inspection fee to be deposited by the applicant shall be 5% of the full performance bond amount otherwise required by this section.
- E. Phased projects. In the event that a particular site plan is to be constructed in sections or phases, the Planning Board, in its sole discretion, taking into consideration the importance of the entirety of the site improvements on the section or phase to be constructed, may recommend to the Town Board that the performance security be posted for only so much of the project as is going to be constructed in a particular phase or section; provided, however, that no building permits shall be issued for and site work shall be conducted on any future phase or section unless and until the required performance security is established for such future phase or section and properly posted in accordance with the provisions of this section.
- F. Default. In the event any required site improvements have not been installed as provided in this section within the term of the performance security, the Town Board shall thereupon declare said performance security to be in default and collect the sum remaining payable thereunder, and, upon receipt of the proceeds thereof, the town shall install such improvements as are covered by such security and are commensurate with the extent of building development that has taken place on the site. In the event no building has taken place but site preparation has taken place, the proceeds of the security shall be used, to the extent practicable, to restore the site to its original state and avoid erosion and adverse drainage conditions.

§ 140-58 [RESERVED]

Article 8
Administration and Enforcement

§ 140-59 Building Inspector.

The Town Board shall provide for the services of a Code Enforcement Officer and/or Building Inspector to simultaneously enforce the provisions of this Law and other applicable Town of Rochester codes and the Uniform Fire Prevention and Building Code Enforcement Law. Such Building Inspector shall examine all applications for permits, issue permits and/or certificates of occupancy for construction and uses which are in accordance with the requirements of this law, record and file all applications for permits with accompanying plans and documents and make such reports as may be required including, at a minimum, a written monthly activity report to the Town Board. Permits requiring Site Plan Review and Special Use approval, however, shall only be issued with approval of the Town of Rochester Planning Board. Likewise, permits requiring variances of this law shall only be issued with approval of the Town of Rochester Zoning Board of Appeals.

§ 140-60 Permit Requirements.

- A. Any action for which the Code Enforcement Officer has permitting authority, and any action which requires subdivision approval, a special use permit and/or site plan approval or variance shall require a zoning permit.
- B. No person shall construct, erect, alter, convert or use any building or structure, or part thereof, nor change the use of any land, subsequent to the adoption of this law, until a building permit and/or Certificate of Occupancy has been issued by the Building Inspector. This shall specifically include, but not be limited to enlargements, structural alterations, building demolitions and removals, conversions, plumbing installations, pools, regulated sheds, fences, roofing and signs. Applications for such permits shall be made to the Building Inspector prior to any construction activity and/or change in the use of land. The Officer shall review such applications and act upon them according to the requirements of this law, taking no action, however, until the Planning Board and/or Zoning Board of Appeals has first taken action, should the approval of either Board be required. A building permit shall authorize the applicant to proceed with construction proposed.
- C. Prior to use of the structure or the change in use of the land, a Certificate of Occupancy shall be required and shall be issued by the Officer, provided all construction has been in accord with the building permit granted and/or the proposed use is in compliance with this law. The Building Inspector shall be authorized to make such inspections as he deems necessary to ensure that construction does, in fact, comply with this law.
- D. The Building Inspector, with approval of the Town Board, may issue a temporary permit for an otherwise nonconforming structure or use which will promote public health, safety or welfare, provided such permit shall be of limited duration and the use or structure shall be completely removed within 90

days of expiration of the activity for which it was granted. A temporary permit shall not be valid beyond this period or three years from the date of issuance, whichever is shorter.

- E. The Building Inspector shall ensure that all water supply and sewage disposal facilities proposed in connection with any building permit or Certificate of Occupancy application shall conform with Ulster County Department of Health guidelines. The Building Inspector shall ensure that all lot access proposed in connection with any building permit or Certificate of Occupancy application shall conform to the standards of the New York State Uniform Fire Prevention and Building Code and Town of Rochester road standards and shall have an access permit approved by the agency having roadway jurisdiction.
- F. It shall be the duty of the Building Inspector to issue a building permit, provided that he is satisfied that the structure, building, sign and the proposed use conform with all requirements of this law, and that all other reviews and actions, if any, called for in this law have been complied with and all necessary approvals secured therefore.
- G. When the Building Inspector is not satisfied that the applicant's proposed development will meet the requirements of this law, he shall refuse to issue a building permit or Certificate of Occupancy, as the case may be, and the applicant may appeal to the Zoning Board of Appeals.
- H. A building permit or Certificate of Occupancy may be revoked by the Building Inspector upon a finding that information provided in the application was inaccurate or invalid or that the construction or use has proceeded in a manner not consistent with the permit(s) granted.
- I. No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this law. Any person desiring to change the use of his premises shall apply to the Building Inspector for a Certificate of Occupancy. No owner, tenant or other person shall use or occupy any building or structure or premises thereafter erected or altered, the use of which shall be changed after the passage of this law, without first procuring a Certificate of Occupancy; provided, however, that an Certificate of Occupancy, once granted, shall continue in effect so long as there is no change of use, regardless of change in tenants or occupants.
- J. Though compliance with the development and use standards of this Law will still be required, the following activities shall not demand permits, except as may be required by the New York State Uniform Fire Prevention and Building Code:
 - (1) Aboveground swimming pools and hot tubs or spas of two feet or less in depth.
 - (2) Portable structures of 144 square feet or less in size which are unoccupied and intended for storage.
 - (3) Patios, farm livestock fences and landscape improvements.
 - (4) All nonstructural accessory uses of a residential or temporary nature (30 days or less).
 - (5) All nonstructural alterations and repairs.

- K. All applications shall be made on forms as shall be developed and periodically updated by the Building Inspector. Applications shall include plot plans and such other information as is required to determine compliance with the requirements of this law.
- L. A building/zoning permit shall expire after 24 months if the applicant fails to complete the improvements as approved. An extension may be approved by the Building Inspector for good cause (such as seasonal weather conditions) provided that any extension of more than 12 months or subsequent extension of any length shall require approval of the Town Board.
- M. The Building Inspector shall issue a Certificate of Occupancy and/or Compliance to any legally existing use, provided the owner thereof so certifies and the Officer's investigations do not indicate otherwise.
- N. No permits shall be issued for any new uses where there are unremedied existing violations.
- O. Open development as described in § 280-a.4 of the New York State Town Law, shall be subject to procedures and standards as shall be determined by the Town of Rochester Town Board under New York State Town Law.

§ 140-61 State Environmental Quality Review Act Compliance.

All actions taken with respect to this law shall comply with the New York State Environmental Quality Review Act ("SEQRA"). Applicants shall provide such data as may be required to determine the significance of any environmental impacts from such actions. A project sponsor shall not commence any physical alteration related to a covered action until the provisions of SEQRA have been met.

§ 140-62 Violations and Penalties.

- A. Whenever a violation of this law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. Nothing herein shall, however, restrict the right of the Building Inspector to act on a violation absent a complaint. Whenever the Building Inspector observes a violation, he or she may issue a notice of violation.
- B. Should any building or structure be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land be used in violation of this law, the Town Board or the Building Inspector, in addition to other remedies, may institute an appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- C. Whenever a violation of this Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. The Town Board shall be responsible for directing further enforcement.

D. A violation of this Law is hereby declared to be an offense punishable by a fine not exceeding three hundred fifty dollars (\$350); for conviction of a second offense, punishable by a fine of not less than three hundred fifty dollars (\$350) nor more than seven hundred dollars (\$700); and, upon conviction for a third or subsequent offense, punishable by a fine not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000). Each week's continued violation shall constitute a separate additional violation.

§ 140-63 Fees.

A. All application fees for special permits, variances, site plans, subdivisions and other matters of land use, planning and development which are brought before any agent or agency of the Town of Rochester shall be in accordance with a table of fees for licenses and permits, which table shall be created by resolution of the Town Board with assistance of the Planning Board and shall be maintained on a current basis and from time to time modified or updated upon recommendation of the Planning Board or upon initiation by the Town Board.

B. Professional fees, expenses and escrow requirements.

(1) The Town Board, the Planning Board, the Zoning Board of Appeals and the Building Department are empowered to charge an applicant the reasonable and necessary expenses incurred for public hearing notices and for professional fees incurred by any of those Boards or the Building Department as a result of professional work required to be performed on behalf of any of said Boards or the Building Department as a result of the filing of an application seeking approval by that Board or the Building Department. For the purpose of this § 140-63, professionals shall include, but not be limited to, engineers, attorneys (limited to application-related research), planning consultants, architects, traffic consultants and noise consultants.

(2) Creation of an escrow account may be required simultaneously with the filing of an application for approval of a development and prior to the commencement of the review of the application. The applicant or developer, as the case may be, shall deposit with the Town Supervisor a sum of money, as determined in Subsection of this § 140-63, which sum shall be used to pay the costs incurred by the Town for consulting, engineering and legal services as described in this section.

(3) Upon receipt of such sums, the Town Supervisor or his or her designee shall cause such monies to be placed in a separate non-interest bearing account in the name of the Town and shall keep a separate record of all such monies so deposited and the name of the applicant or developer and project for which such sums were deposited.

(4) Upon receipt and approval by the Town Board of itemized vouchers from a professional for services rendered on behalf of the Town pertaining to the application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town.

(5) The Town Board shall review and audit all such vouchers and shall approve payment of only such professional fees as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of the application. For purpose of the foregoing, a fee or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge

by professionals to the Town for services performed in connection with the approval or construction of a similar application, and in this regard the Town Board may take into consideration the magnitude of the application and any special conditions or considerations as the Town Board may deem relevant.

- (6) If at any time during or after the processing of such application or in the construction, inspection or acceptance of the proposed project there shall be insufficient monies on hand to the credit of such applicant or developer to pay the approved vouchers in full, or if it shall reasonably appear to the Town Supervisor, or his or her designee, that such monies will be insufficient to meet vouchers yet to be submitted, the Town Supervisor, or his or her designee, shall cause the applicant or developer to deposit additional sums as the Supervisor, or his or her designee, deems necessary or advisable in order to meet such expenses or anticipated expenses.
- (7) In the event that the applicant or developer fails to deposit such funds or such additional funds, the Town Supervisor, or his or her designee, shall notify, as applicable, the Chairman of the Planning Board or Zoning Board of Appeals, Town Board and/or Town's Code Enforcement Officer of such failure, and any review, approval, building permit or certificates of occupancy may be withheld by the appropriate Board, officer or employee of the Town until such monies are deposited.
- (8) After final approval, acceptance and/or the issuance of a certificate of occupancy relating to any specific application, and after payment of all approved vouchers submitted regarding such development, any sums remaining on account to the credit of such applicant or developer shall be returned to such applicant or developer, along with a statement of the vouchers so paid.
- (9) The amount of the initial deposit for the various developments covered by this section shall be as set forth in a schedule of deposits established from time to time, by resolution of the Town Board. Said schedule shall remain in effect and shall apply to all applicants and developers until amended or revised by subsequent resolution.
- (10) The deposits required by this section shall be in addition to any application fees as may be required by other laws, rules, regulations or ordinances of the Town, and shall not be used to offset the Town's general expenses for professional services for the several Boards of the Town, nor its general administration expenses.

§ 140-64 [RESERVED]

Article 9
Zoning Board of Appeals

§ 140-65 Establishment and Membership.

There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law, as provided under Chapter 38 of the Town of Rochester Code. Said Board shall consist of five (5) members of staggered 5-year terms, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.

§ 140-66 Powers and Duties.

- A. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official(s) charged with the enforcement of this law and to that end shall have all powers of the administrative official(s) from whose order, requirement, decision, interpretation or determination the appeal is taken.
- B. Use variances.
- (1) The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.
 - (2) No such use variance shall be granted by a Zoning Board of Appeals without a showing by the applicant that applicable regulations and restrictions of this law have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that;
 - (a) he or she cannot realize a reasonable return, provided lack of return is substantial as demonstrated by competent financial evidence;
 - (b) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - (c) the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (d) the alleged hardship has not been self-created.

- (3) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Area variances.

- (1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officials charged with the enforcement of this law, to grant area variances as defined herein.
- (2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board of Appeals shall also consider:
 - (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (c) whether the requested area variance is substantial;
 - (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - (f) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

- D. The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§ 140-67 Procedures.

- A. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson, or in his or her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses.

- B. Meeting of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- C. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record. Every decision of the Zoning Board of Appeals shall be made by resolution and include findings establishing the basis of the decision.
- D. The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. It shall also have authority to refer matters to the Town Planning Board for review and recommendation prior to making a decision.
- E. Except as otherwise provided herein, the jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative officials charged with the enforcement of this law. The concurring vote of three members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- F. Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officials charged with the enforcement of this law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all papers constituting the record for the action appealed.
- G. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed with the administrative office, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- H. The Zoning Board of Appeals shall fix a reasonable time, no more than 62 days following application, for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. Notice shall be provided, using the same notice used in the public advertisement, to all property owners within 500 feet of the parcel boundary as identified in the latest tax assessment records of the Town of Rochester, including those for properties on the opposite side of any public or private road. Such notice shall be given by the Town at the expense of the applicant by regular mail postmarked at least seven calendar days in advance of such hearing. The cost of sending or publishing any notices relating to

such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The hearing shall be conducted in accordance with rules of the Zoning Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures and allow for rehearings on the unanimous vote of the members present.

- I. The Zoning Board of Appeals shall decide upon the appeal within 62 days after the close of said hearing. The time within which the Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Board.
- J. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- K. At least five (5) days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal; and to the Ulster County Planning Department, as required by Section 239-m of the General Municipal Law. No Zoning Board of Appeals decision shall be made except in conformance with such 239-m procedures including requirements for an affirmative vote of no less than four (4) members of the Board if it shall determine to approve an application which the County has recommended it disapprove or modify.

§ 140-68 [RESERVED]

Article 10 Planning Board

§ 140-69 Planning Board

The Town of Rochester has established a Planning Board pursuant to New York State Town law. The jurisdiction of such Board shall be addressed in Chapter 37 the Town of Rochester Code.

APPENDICES

- A. Schedule of District Regulations
- B. Town of Rochester Zoning Map

Section 2. This law is enacted pursuant to the authority of Section 265 of the New York State Town Law and Section 10 of the New York State Municipal Home Rule Law. The Town of Rochester hereby exercises its authority under the Municipal Home Rule Law to specifically supersede the following provisions of New York State Town Law:

- (1) Section 265 of the New York State Town Law is superseded to permit voiding of a zoning change to a planned unit development district, as provided under §140-25, above, without resorting to further zoning procedures.
- (2) Section 265 of the New York State Town Law is further superseded to permit the Town Board to classify unlisted uses, as provided under §140-8, above, without resorting to zoning amendment.
- (3) Section 268 of the New York State Law is superseded by 140-29, above to allow for higher fines than those set forth in Section 268 of the Town Law for violations of the Section 140-29, above, relating to wireless telecommunications facilities.
- (4) Section 278.3(b) of the New York State Town Law is superseded to permit the Planning Board to approve a cluster development or conservation subdivision to result in a permitted number of building lots or dwelling units that exceeds the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of Chapter 140, above, applicable to the district or districts in which such land is situated to encourage the provision of additional open space and affordable housing.
- (5) Section 271 of the New York State Town Law is superseded by §140-47.E above, to permit the Town Planning Board, following a public hearing in conjunction with other matters before the Planning Board, to modify the standards of Chapter 140 of the Code, to the extent of 10% of the stated criteria where the circumstances otherwise meet the tests for an area variance as set forth in §140-66, above, or to accommodate the practice of energy efficient building as described in §14047.E, above.
- (6) Sections 274-a and 274-b of the New York State Town Law are superseded by §140-45, above, to permit the Town Planning Board to review preliminary site plans and, if a preliminary site plan demonstrates the proposed activity involves one-time additions of less than 10% and 200 square feet in floor area or consists solely of

accessory uses or structures, the Building Department may review and approve the site plan on its own.

- (7) Section _____ of is superseded by 140-29, above to allow for higher penalties than those set forth in Section _____ for violations of the Section 140-29 relating to wireless telecommunications facilities. _____

Section 3. Severability

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

Section 4. Effective Date

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to section 27 of the municipal home rule law.