

*Adopted November 14, 2024*

**Local Law 6 of 2024**

**A Local Law amending Chapter 140, Zoning  
of the Code of the Town of Rochester**

**Section 1. Chapter 140, Zoning Amendment**

Chapter 140, Zoning, of the Code of the Town of Rochester shall be deleted in entirety and replaced as follows.

# Town of Rochester Zoning Code

## CHAPTER 140, ZONING

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## CHAPTER 140, ZONING

### Article I General Provisions

#### **§ 140-1. Authority, interpretation, conflict, and separability.**

- A. Title. This chapter shall be known as the "Town of Rochester Zoning Law."
- B. This law is enacted pursuant to and in accordance with the provisions of New York State Municipal Home Rule Law
- C. Interpretation. The provisions of this chapter, in their interpretation and application, shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.
- D. Conflict. This chapter 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 chapter, however, shall repeal and replace in its entirety the existing Town of Rochester Zoning Law.
- E. 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 either 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 and when 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 chapter 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 wildlife habitats, and encouraging the provision of sewage collection, maintenance, and treatment within the 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 floodplain development.
- J. Providing for continued commercial and industrial growth.
- K. Allowing for home-based occupations.
- L. Preserve 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 to maintain existing character and native species habitats.
- 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 to ensure privacy and safety for residents and their freedom from nuisances.
- R. Ensuring signage in Town is both attractive and functional.
- S. Reducing traffic congestion and improving 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, and encouraging commercial uses to be located in particular zones designated for such uses
- Y. Providing public access to trails and other recreational resources.

## **Article II 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 chapter; the word "requirements" means the minimum requirements necessary for the purposes set forth in Article I; and the words "this chapter" shall mean this chapter 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 chapter. 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.

#### **ACCESS STRIP**

A narrow strip of land providing access from a public or private road to an interior lot to which the right of use by adjoining property owners, may be conveyed or dedicated by an easement or right-of-way.

#### **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 DWELLING UNIT**

see **DWELLING UNIT, ACCESSORY** and §140-13.1.

**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.

**ADAPTIVE REUSE**

Adapting an existing building or structure for a new purpose or use.

**ADULT USE**

See Chapter 140-32(C)

**AFFORDABLE HOUSING**

Housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for gross housing costs, including utilities.

**AGRICULTURAL ACCESS ROAD**

An agricultural road or farm track solely serving agricultural or forestry purposes and having only local travel related to agricultural or forestry activities.

**AGRICULTURAL BUILDING**

As defined by the New York State Uniform Fire Prevention and Building Code, currently, and as same may be hereafter amended, “A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other agricultural products. Such structure shall not include habitable or occupiable spaces, spaces in which agricultural products are processed, treated, or packaged; nor shall an agricultural building be a place of occupancy by the general public”.

**AGRICULTURAL DATA STATEMENT**

A state-required form identifying farm operations within a certified agricultural district located within 500 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 takes place.

**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, brewing and other distilling, and fruit storage.

## **AGRICULTURAL RETAIL SALES**

A commercial agricultural sales operation conducted in the manner of:

- A. A permanent structure greater than 200 square feet, 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
- B. 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 listed in the Schedule of District Uses [see Appendix C] 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, fish, trees, food of all kinds, vegetables, nurseries, aquaculture, and lands devoted to soil conservation or forestry management programs. See also "FARM OPERATION."

## **AGRICULTURAL USE, ANIMAL**

The keeping of animals in a Farm Operation, as defined herein, in a New York State certified Ulster County Agricultural District. It includes day-to-day care, selective breeding and the raising of domesticated farm animals and livestock.

## **AGRICULTURAL USE, NON-ANIMAL**

Agriculture concerned with maintaining and cultivating the soil, and growing crops for food, raw materials propagation, and medicinal uses. It includes the preparation of plant products for people to use and their distribution to markets.

## **ALTERATION, BUILDING OR STRUCTURE**

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.

## **ALTERATION OF USE**

Any change of use or expansion of use on a parcel of land to an approved or non-conforming use.

## **ANIMAL**

Any warm or cold-blooded vertebrate.

### **A. ANIMAL, CUSTOMARY HOUSEHOLD PET**

Any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. This term excludes exotic animals and wild animals.

### **B. ANIMAL, EXOTIC**

Any animal not identified in the definition of “farm or native wild animal.” This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.

### **C. ANIMAL, FARM**

Any domestic species of poultry, cattle, sheep, swine, goats, alpacas, llamas, or horses, which are normally and have historically, been kept and raised on farms in the United States and used or intended for use as food or fiber, or for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

### **D. ANIMAL, NATIVE WILD**

Any undomesticated animal that lives or has historically lived wild in the area without having been introduced by man.

## **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 HUSBANDRY**

An accessory use involving the keeping, grazing, feeding, and care of animals on a parcel of land not located in the New York State certified Ulster County Agricultural District, excepting CUSTOMARY HOUSEHOLD PETS, or animals kept in conjunction with a KENNEL or VETERINARY OFFICE. [See section 14.1 of this code for further regulations]

**ANIMAL SANCTUARY**

A 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, but may allow or facilitate the adoption of farm or domesticated animals; 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 chapter.

**AQUIFER**

A geologic formation or deposit composed of bedrock or unconsolidated sediments that is capable of yielding significant amounts of groundwater.

**ATTORNEY FOR THE TOWN**

The professional(s) retained by the Town of Rochester to provide legal services to the respective Board, department., or agency.

**AUCTION HOUSE OR 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 Uniform Fire Prevention and Building Code; also including youth hostels.

**BEDROOM**

The definition shall be the same as it appears in the Property Maintenance Code of New York State. "Any room or space used or intended to be used for sleeping purposes in either a dwelling or sleeping unit."

**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.

**BUFFER ZONE, STREAM**

See also **RIPARIAN BUFFER** and **SECONDARY SETBACK BUFFER**.

An area surrounding a wetland/watercourse that shall be left undisturbed and vegetated to provide riparian corridor functions. It is intended to provide protection of the wetland/watercourse from human activity and other encroachment associated with development.

**BUILDABLE (BUILDING) AREA**

The portion of the established development parcel which can be devoted to buildings and structures after required setbacks and other zoning limitations have been accounted for.

**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 deckline of mansard roofs; and to the mean height between eaves and ridge for gable, hip, and gambrel roofs.

**BUILDING INSPECTOR**

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

**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.

**CAMP**

The development or use of a lot, tract or parcel of land operated commercially or as a not-for profit, held in single unified ownership for the provision of Indoor or outdoor recreational or educational activities. Any or all of the following features may be included: buildings or structures that are designed for seasonal use or year-round use (depending on the type of camp), including but not limited to: cafeteria, gymnasiums, community centers, administration buildings, sanitary facilities, and similar buildings for use by camp attendees and designed in accordance with all applicable uniform building codes as they apply to their Intended use, e.g., seasonal or year-round. In addition, ball playing fields, basketball courts, tennis courts, running tracks, swimming pools, horseback riding facilities, hiking and riding trails, and other similar recreational facilities are permissible. The occupants of a camp shall be limited to the owner, staff (including volunteers), all individuals registered for the camp session, and family members when permitted.

Camps are further categorized as follows:

**A. CAMP, DAY**

A parcel of land (or adjoining parcels of land) used for recreational, educational or business-related use and that does not include any overnight accommodations. A camp established and maintained for temporary, summer seasonal occupancy during the period or part of the period from June 1 to September 15 In any year for the daytime supervision of children under 16 years of age, under general supervision, for the purpose of Indoor or outdoor organized group activities, as regulated In Part 7 of Title 10 (Health) of the New York Codes Rules and Regulations, for a period of less than 24 hours on any day the property is so occupied and/or which no provisions are made for overnight occupancy, is deemed a day camp

**B. CAMP, OVERNIGHT**

A camp used seasonally by families and households that Include overnight accommodations and that operate any time during the period or part of the period from June 1 to September 15 in any year.

**C. CAMP, SEASONAL**

A camp used seasonally to provide for the supervision of children between the ages of 5 and 18, along with overnight accommodations within bunk houses, cabins or similar building during the summer period or part of the period from June 1 to September 15 in any year. A seasonal camp shall not include temporary or permanent shelters, buildings or structures designed for use or occupancy by family members of the attendees of the camp or its staff or employees, except in accordance with the seasonal camp requirements set forth in this Zoning Chapter.

**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 of whether or not done for pecuniary gain.

**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 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 of 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 of lack thereof.

**A. TRANSIENT CAMPGROUND or RECREATIONAL VEHICLE (RV) PARKS**

Publicly operated facilities or businesses offering three 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. NONTRANSIENT 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.

**CAMPING, PERSONAL**

The non-commercial use of a property as a site by the owner for sleeping outside; or the parking of travel trailers or similar equipment, the erection of tents or other shelters.

**CARGO STORAGE CONTAINER**

Any portable, reusable metal vessel originally, specifically, or formerly designed for or used in the packing, shipping, movement, or transporting of freight by commercial trucks, trains, and/or ships. When used for any purpose other than transporting freight a cargo container shall be considered a structure.

**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 Uses [see Appendix C] to another (e.g., from an office to a restaurant).

**CHARGING**

When an electric vehicle is connected to electric vehicle supply equipment (or standard outlet) for the purpose of recharging batteries on board the electric vehicle.

**CHARGING LEVEL**

The standardized indicators of electrical force, or voltage, at which an electric vehicle's battery is recharged.

- A. Level 1 is considered "slow" charging level, typically requiring an amp breaker of 15 to 20 amps on an AC circuit of 120 volts and standard outlet.
- B. Level 2 is considered "medium" charging level, typically requiring an amp breaker of 40 to 100 amps on an AC circuit of 240 volts.
- C. DC Fast Charge is considered "rapid" charging level, typically requiring a dedicated breaker of 60 amps or higher on a three-phase circuit of 480 volts or higher with special grounding equipment. DC Fast Charging uses an off-board charger to provide the AC to DC conversion, delivering AC directly to the car battery.

### **CODE ENFORCEMENT OFFICER**

The person charged by the Town Board with responsibility for administration and enforcement of this chapter. 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, pursuant to former § 140-35. This use is only allowed if approved by the planning board prior to the adoption of this zoning code.

### **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 this chapter.

### **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 nonresidential use on the Schedule of District Uses [see Appendix C].

### **COMMERCIAL VEHICLE**

Any motor vehicle that requires a commercial driver's license (CDL) to operate.

### **COMMON IMPROVEMENTS**

Roads, recreational amenities or other facilities and utilities provided for the benefit of multiple lots, not including shared driveways.

### **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.

### **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.

**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.

**CONTRACTOR STORAGE YARD**

A parcel or a portion of a parcel used for the storage of tools, equipment, materials, vehicles, containerized debris, and other raw materials ancillary to work being performed off-site, for someone other than the contractor, by a contractor engaged in such work. This definition excludes private landowners and their personal equipment for noncommercial use on private property; and entities solely engaged in agricultural activities.

**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 or the sale of gasoline.

**COUNTY**

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

**DAY-CARE CENTER**

Any NYS Office of Children and Family Services or Department of Health licensed 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.

**A. HOME BASED**

The supervised day-use program or facility is located and operated within a residence (dwelling unit) in which care is provided on a regular basis.

**B. CENTER BASED**

The supervised day-use child or adult care program or facility is located and operated in a non-residential building in which care is provided on a regular basis.

**DEC**

The New York State Department of Environmental Conservation.

**DENSITY**

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

**DENSITY, MAXIMUM**

The greatest number of dwelling units or uses, or the equivalent in the case of nonresidential uses, legally permitted on an adjusted tract area 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.

**DISTRIBUTION FACILITY**

A warehouse or other specialized building, often with refrigeration or air conditioning, which is stocked with products (goods) to be redistributed to retailers, wholesalers or directly to consumers.

**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.

**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. This definition shall not include or apply to seasonal single-family dwellings described in Section 140-23.1(C)(2).

### **B. DWELLING, TWO-FAMILY**

A building arranged, designed, and intended for and occupied by two families living independently.

### **C. DWELLING, MULTIFAMILY**

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.

### **D. DWELLING, ACCESSORY UNIT**

A subordinate dwelling unit located either within a principal residential dwelling, (inclusive of garage if attached thereto), or within an approved detached accessory structure, having its own ingress and egress and providing independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation. All ADUs shall meet the requirements of habitable space as defined by the New York State Uniform Fire Prevention and Building Code.

## **DWELLING UNIT**

The definition shall be the same as it appears in the Property Maintenance Code of New York State, as amended: "A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation".

## **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.

## **EATING AND DRINKING ESTABLISHMENT**

See "RESTAURANT"

## **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 campgrounds, as defined herein.

## **ELECTRIC VEHICLE**

Any motor vehicle that is registered with the New York State Department of Motor Vehicles and authorized to operate on public and private highways, roads, and streets, and uses electrical energy stored on board for motive purpose. "Electric vehicle" includes battery electric vehicles and plug-in hybrid electric vehicles.

## **ELECTRIC VEHICLE CHARGING STATION**

A public or private parking space that is served by electric vehicle supply equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery in an electric vehicle.

## **ELECTRIC VEHICLE CHARGING STATION - PUBLIC USE**

An electric vehicle charging station that is publicly owned and publicly available (e.g., parking spaces on a public street or municipal parking lot) or privately owned and publicly available (e.g., shopping center parking, non-reserved parking in multifamily parking lots).

## **ELECTRIC VEHICLE CHARGING STATION - RESTRICTED USE**

An electric vehicle charging station that is privately owned and restricted access (e.g., single-family home, designated employee parking) or publicly owned and restricted (e.g., fleet parking with no access to the general public).

## **ELECTRIC VEHICLE INFRASTRUCTURE**

The structures, machinery, and equipment necessary and integral to support an electric vehicle, including the electrical conduit and premises wiring requirements for the installation of electric vehicle supply equipment, as well as battery exchange stations.

## **ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE)**

The conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle conductors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for purposes of delivering energy from the premises wiring to the electric vehicle, complying and conforming with National Electric Code Article 625 and Society of Automotive Engineers J1772 Standard.

## **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 CONSERVATION DEVELOPMENT/GREEN ENERGY DEVELOPMENT**

Energy efficient building and site design such as but not limited to the definition by the Department of Energy’s Zero Energy Ready Home certification (fully thermally broken walls; R-5 and R-7 windows; heat/enthalpy recovery whole-house ventilation; HVAC with fault detection and diagnostics; SMART Home and grid integration technology; whole-house water use efficiency; disaster resistant/resilient construction) or surpassing the most recent international Energy Conservation Codes or LEED certification of Silver or greater.

**ENERGY EFFICIENT BUILDING AND/OR SITE DESIGN**

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. Energy Star, IECC, ZERH and PHIUS+ “Passive House” are examples of energy efficient construction and design certification programs.

**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, broadband, water and sewage collection systems along with normal accessory activities.

**EXISTING BUILDING OR STRUCTURE**

A structure predating the adoption of zoning codes by the Town of Rochester, a structure legally erected prior to the adoption of this code, or one for which a previous building permit has been issued.

**EXISTING USE**

A land use already legally established at the time of this chapter's enactment.

**EXPANSION OF USE**

An addition to an existing land development use, including but not limited to, the enlargement of a structure or structures, construction of a new structure, increasing the infrastructure or tangible personal property for the use, or any combination thereof.

**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 on within a New York State Certified Ulster County Agricultural Districts 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 permanent structure less than 200 square feet, a temporary structure, or a tent 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. See also **AGRICULTURAL RETAIL SALES**.

**FAST FOOD RESTAURANT**

An establishment whose principal business is the sale of preprepared 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.

**FLOOD HAZARD BOUNDARY MAP**

Any map defining a FEMA flood zone (floodplain). Geographic areas that the FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map. Each zone reflects the severity or type of flooding in the area.

**FLOODPLAIN**

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

**FLOODWAY**

The channel of a waterbody and such portions of the 1% annual chance floodplain [aka 100-year floodplain] as are required to carry and discharge the floodwater or flood flow as so classified by the Federal Emergency Management Agency.

**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 centerline of party walls separating two buildings, excluding cellar and basement areas used only for storage or for the operation and maintenance of the building.

**FLOOR AREA, LIVABLE**

In accordance with the New York State Uniform Fire Prevention and Building Code.

**FOOTCANDLE**

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.

**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**

A building or part thereof which is used for the sheltering of private motor vehicles and storage of household equipment incidental to the residential occupancy and in which there are no facilities for repairing or servicing of such vehicles for remuneration or commercial use.

**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.

**GREEN ENERGY**

See **ENERGY CONSERVATION DEVELOPMENT**

**GREENHOUSE, PERMANENT**

A commercial 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.

**GREENHOUSE, TEMPORARY**

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.

**GROUND WATER**

Water in the subsurface zone beneath the water table in which all pore spaces are completely saturated.

**GROUP HOUSING**

A residential dwelling intended for occupation by residents participating in a particular social program living as a family, as defined herein.

**HABITABLE FLOOR AREA/HABITABLE SPACE**

See FLOOR AREA, LIVABLE

**HAZARDOUS SUBSTANCE (WASTE)**

1. Any substance listed as a hazardous substance in 6 NYCRR Part 597, Hazardous Substance List, or a mixture thereof. In general, a hazardous substance means any substance which: (1) because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed; (2) poses a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; (3) because of its toxicity or concentration within biological chains, presents a demonstrated threat to biological life cycles when released into the environment

OR

2. A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes.

**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."

**HEALTH CLUB**

See SPA or HEALTH CLUB

**HELICOPTER PAD**

A landing area for helicopters.

**HISTORIC BUILDING**

Any building or structure that is one or more of the following: (1) listed or certified as eligible for listing, by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places; (2) in the National Register of Historic Places. Designated as historic under an applicable state or local law; (3) Certified as a contributing resource within a National Register or state or locally designated historic district.

**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 multifamily dwellings.

**HUD**

United States Department of Housing and Urban Development

**HUNTING AND FISHING CLUB**

Meeting and noncommercial overnight lodging facilities associated with hunting and fishing recreational activities.

**HYDROGEOLOGICAL STUDY**

A study or investigation of the subsurface hydrologic and geologic conditions in an area or location. Data are collected about the type and thickness of geologic materials, the occurrence of groundwater, how it flows in pore spaces and/or fractures, the quality of the groundwater, and what can be expected at wells. The purpose of hydrogeological studies is to (1) assess the available groundwater to support the proposed development and (2) evaluate the potential impacts for adverse impacts on nearby groundwater uses and surface waters.

**ICC**

The International Code Council

**INDUSTRIAL USE**

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

**INFLAMMABLE(S)**

Substances capable of being easily ignited and of burning quickly which require additional measures in the prevention, control, and mitigation safeguards to reduce the hazards associated with the storage, handling, and use of flammable and combustible substances.

**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 nonnative 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 nonprofit establishment in which dogs or similar domesticated animals are housed on a temporary or permanent basis.

**LAND DISTURBANCE**

Land preparation, such as, but not limited to, tree removal, clearing, grading, and filling, or the building of structures, including driveways.

**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 legally established 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, legal parcel of real property, or any similar term.

**A. CONFORMING**

A legally established tract or parcel of land having not less than minimum area and dimensions required by this chapter 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. CORNER LOT**

A legally established tract or parcel of land located at the intersection of and abutting on two or more streets. One frontage on a corner lot may be designated as a side yard and one frontage as a front yard. Frontage shall be designated by the Code Enforcement Officer.

**C. IMPROVED LOT**

A legally established tract or parcel of land that has a substantially completed building or structure on it, and an associated substantially completed potable water supply and wastewater system that may or not be located on the lot.

**D. NONCONFORMING**

A legally established tract or parcel of land established prior to the adoption of L.L. No. 4-2009, 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 chapter for a lot in the district in which such land is situated.

**E. UNIMPROVED LOT**

A legally established tract or parcel of land on which no development (other than improvements that are not material and are temporary in nature) has occurred and as of any date of determination.

**F. VACANT LOT**

A legally established tract or parcel of land that is unoccupied and not being used. Usually but not exclusively parcels with no structures or improvements.

**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**

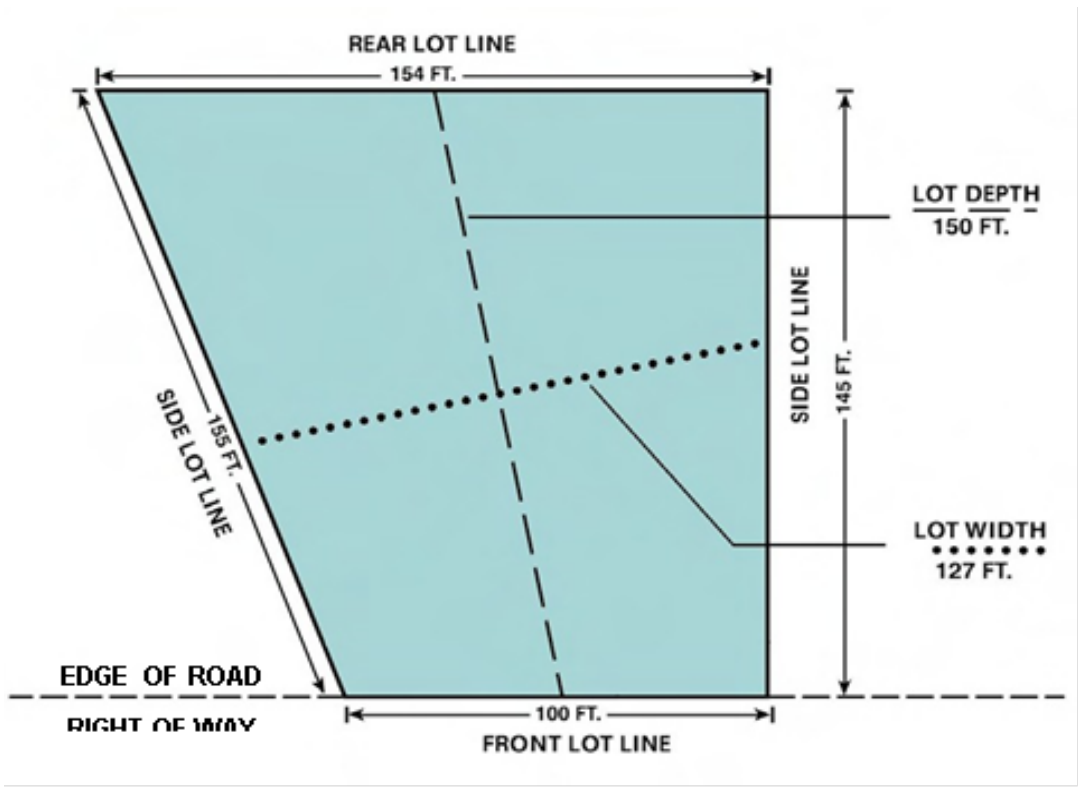
The width of a lot at the edge of the street right-of-way.

**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.



## **LOT DEVELOPMENT**

The physical extension and/or construction of land uses. Development activities include subdivision of land; construction or alteration of structures, roads, utilities, and other facilities; installation of septic systems; grading; deposit of refuse, debris, or fill materials; and clearing of natural vegetative cover (except for agricultural activities). Routine repair and maintenance activities are exempted.

## **LOW-IMPACT HEALTH CARE PRACTICE**

An establishment of less than 2,500 square feet floor area and containing four 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 footcandle of lighting power placed in a sphere emits 12.57 lumens.

## **MANUFACTURED (MOBILE) HOME**

A factory-manufactured structure, built to the federal Manufactured Home Construction and Safety Standards (HUD Code), and 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.

## **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.

**MANUFACTURING, LIGHT**

An industrial use where all processing, fabricating, assembly, or disassembly of items takes places 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.

**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.

**MOBILE HOME**

Factory-built homes produced prior to June 15, 1976, when the federal Manufactured Home Construction and Safety Standards (HUD Code) went into effect.

**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 any type of motorized vehicles or motorcycles are conducted, except for one-day tractor and truck pulls.

**MULTIPLE PERMITTED USES**

Two or more permitted land uses located on a parcel or parcels, exclusive of accessory uses, legally allowed within a given zoning district under this chapter, including principal permitted uses and special uses.

**MUSEUM, GALLERY, 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 noncombustible, 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, semisolid, liquid, semiliquid, 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, cutting, 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 BUILDING OR STRUCTURE**

A building that was constructed prior to the adoption of the zoning law or zoning amendment that is not in accordance with the dimensional provisions, such as building height or setback requirements, of that law or amendment.

**NONCONFORMING USE**

A use that was legal at the time it was created, but which has since become impermissible because of a subsequent modification or adoption of a zoning law. This is sometimes referred to as a "grandfathered" use, meaning that it was a use which was allowed before the law changed to prohibit it.

**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, COMMERCIAL**

Land and/or structures dedicated to the use for a minimum of six months or more to propagate annual and perennial plants (trees, shrubs, vines, medicinal, ornamental, aromatic, flower, and vegetable plants, etc.), provide initial nourishment; grow young seedlings; and offered for sale and transplanting for commercial agriculture, horticulture, or hobby gardening.

**OCCUPANCY**

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

**OFFICE**

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) 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 containing land exclusive of required front and side yard areas that is not covered by structures, parking areas, streets or other nonrecreational improvements (except as may be permitted by this chapter).

**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.

**PARK MODEL RECREATIONAL VEHICLE (PMRV)**

As defined by the Recreational Vehicle Industry Association, a trailer-type recreational vehicle that is designed to provide temporary accommodation for recreation, camping, or seasonal use. PMRVs are built on a single chassis, mounted on wheels, and have a gross trailer area not exceeding 400 square feet in the set-up mode. Such vehicles are certified by their manufacturers as complying with the ANSI A119.5 standard for recreational park trailers.

**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.

**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.

**PERFORMANCE OR COMPLETION GUARANTEE (a/k/a PERFORMANCE OR MAINTENANCE BOND)**

A surety bond, certified check, or other security meeting the requirements of § 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 chapter, 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.

**PLACE 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. 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 subdivision, to be used as a basis for conceptual consideration by for site review and determining allowable density and to evaluate feasibility and design characteristics at an early stage in the planning process.

**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, in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, and such other information as required by this chapter at suitable scale and in such detail as local regulation may require.

**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.

**PLANNING BOARD**

The Town of Rochester Planning Board.

**PLUG-IN HYBRID ELECTRIC VEHICLE (PHEV)**

An electric vehicle that contains an internal combustion engine and also allows power to be delivered to drive wheels by an electric motor; charges its battery primarily by connecting to the grid or other off-board electrical source; may additionally be able to sustain battery charge using an on-board internal-combustion-driven generator; and has the ability to travel powered by electricity.

**PORTABLE STORAGE CONTAINER**

A portable, weather-resistant receptacle without wheels designed specifically and used for the storage or shipment of household goods, wares, building materials or merchandise.

**PORTABLE OR MOBILE TOILET**

Any type of toilet that can be moved around, by a person, or mechanical equipment. Most do not require any pre-existing services, such as sewage disposal, but are completely self-contained.

**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.

**PRIME FARMLAND SOILS**

As mapped and defined by the United States Department of Agriculture.

**PRINCIPAL STRUCTURE**

The building where the primary activities associated with the approved major land use on a parcel is intended to 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, noncommercial 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 ongoing 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 or public education.

**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:

- A. Collection, treatment, storage, and distribution facilities under control of the supplier of water of such system and used with such system; and
- B. Collection or pretreatment storage facilities not under such control which are used with such system.

**RAILROAD BOX CAR**

A railroad car that is enclosed and generally used to carry freight. Boxcars have side doors of varying size and operation, and some include end doors and adjustable bulkheads to load very large items.

**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 nonregistered 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 § 140-33D.

## **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. Also known as an EATING AND DRINKING ESTABLISHMENT.

## **RETAIL AND SERVICE ESTABLISHMENT**

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 chapter.

## **RETAIL ESTABLISHMENT (VEHICLE AND EQUIPMENT)**

The use of any building, land area or other premises 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 but may not include gasoline sales.

## **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**

The entire right-of-way of a vehicular traveled way plus its necessary appurtenances, including bridge structures, drainage systems, retaining walls, traffic control devices, sidewalks, pedestrian facilities, and the airspace above them.

## **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.

## **ROADWAY**

See ROAD.

## **ROADWAY, SCENIC AND HISTORIC**

A roadway of locally or regionally outstanding scenic, natural, recreational, cultural,

historic, or archeological significance designated by State or local law.

**ROUTINE MAINTENANCE AND REPAIR**

Maintenance and repairs on structures that are necessary to ensure structural soundness and sanitary conditions so as not to pose a threat to the public health, safety, or welfare.

**SAWMILL, COMMERCIAL**

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.

**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 Building Department, Code Enforcement Officer, Planning Board or Zoning Board of Appeals.

**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.

**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.

**SEQRA**

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

**SERVICE ESTABLISHMENT (VEHICLE AND EQUIPMENT)**

The use of any building, land area or other premises 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."

**SHORT-TERM TRANSIENT RENTAL**

See §140-26.1(F).

**SIGN**

Any device, facade, fixture, material, placard, or structure that uses any color, form,

graphic, picture, illumination, symbol or writing to advertise, announce, declare, represent, 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. [See Section 140-21 for further definitions]

**SITE PLAN**

A detailed plan that depicts the location of improvements on a parcel of land and contains all the information required by this chapter (see § 140-46 ~~140-45~~ hereof).

**SITE PLAN REVIEW**

The process, established by § 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.

**SOLAR ENERGY**

See Chapter 140-37

**SOLID WASTE LANDFILL, PROCESSING, OR STORAGE FACILITY**

As administered under 6 CRR-NY Part 360 by the NYS Department of Environmental Conservation, facilities used in the manner of collection and storage of discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, municipal, commercial, institutional, mining, or agricultural operations or from residential activities including materials that are recycled or that may have value.

**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 §§ 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, PRIVATE**

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

**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 to 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 as 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.

## **STRUCTURE, CERTIFIED HISTORIC**

Properties as defined and included in the five general categories of the National Register of Historic Places (NRHP): building, district, object, site, and structure and generally but not necessarily: (a) Individually listed in the National Register; or (b) Located in a registered historic district and certified by the Secretary as being of historic significance to the district.

## **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 this chapter.

### **A. MINOR SUBDIVISION**

A subdivision creating four (4) new lots or less that does not involve common improvements such as roads, recreational amenities or other common facilities and utilities.

**B. MAJOR SUBDIVISION**

1. A subdivision creating five (5) new lots or greater.

**OR**

2. A subdivision of any number of new lots where such common improvements such as roads, recreational amenities or other common facilities and utilities are to be provided, not including shared driveways.

**SWPPP**

A stormwater 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.

**TDR**

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

**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.

**THROUGH LOT**

A lot extending from one street to another.

**TIMBER HARVESTING, PERSONAL USE**

Noncommercial felling of timber which does not exceed 1 acre for individual use.

**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, and all appendices adopted as a part of the Comprehensive Plan.

**TOWN ENGINEER, CONSULTANT(S), 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.

**TRUCK TRAILER**

A portable receptacle supported at the rear by its own axles and wheels, and at the front by fifth wheel from a tractor or dolly.

**TRUCKING SERVICE**

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.

**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.

**WILDLIFE REHABILITATOR**

An individual licensed by the NYS Department of Environmental Conservation to possess wildlife to provide care for (including their capture, housing, feeding, and emergency treatment) injured or debilitated wildlife for release back to the wild. Pursuant to Environmental Conservation Law, section 11-0515.

**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 § 140-29 for definitions.

**WORKSHOP**

A small commercial establishment where manufacturing or handicrafts are done inclusive of the structure(s) which provides both the area and tools (or machinery) that may be required for the manufacture or repair of goods.

**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.



**YARD, WATERFRONT**

A yard extending the full width of the lot, the depth of which is the horizontal distance between the water line and the nearest building line (waterfront setback), as defined herein.

**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 ~~district~~ that have specific land-use restrictions and controls regulating the existing and future development and uses 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 III Basic District Regulation

### § 140-5. Enumeration of districts

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

A-3	Local Agricultural District
AB-3	Agricultural Business District
R-1	Neighborhood Residential District
R-2	Low Density Residential District
R-5	Rural Conservation District
PL-10	Preserved Land District
H	Hamlet District
B	Business District
I	Industrial District
NR	Natural Resource District
CS	Community Services
FD	Floodplain Overlay District (see supplementary regulations)
AP	Aquifer Protection Overlay District (see supplementary regulations)
EEO	Economic Enterprise Overlay District (see supplementary regulations)
HP	Historic Preservation Overlay District (see supplementary regulations)

### B. Description of Zoning Districts

#### Agricultural

##### **A-3 Local Agricultural District**

This district is intended to recognize and preserve the high-valued agricultural lands of the Town, while allowing for low density residential development of a compatible nature. The district is further intended to complement the New York State Ag District program and maintain full rights-to-farm within these areas.

##### **AB-3 Agricultural Business District**

This district is intended to recognize and preserve the high-valued agricultural lands of the Town, while allowing for low density residential development of a compatible nature. The district is further intended to complement the adjacent Business District and New York State Ag District program and maintain full rights-to-farm within these areas.

## **Residential**

### **R-1 Neighborhood Residential District**

This district is intended to recognize and preserve the integrity of predominately moderate-density residential areas of the Town, together with personal and residential services, and to protect them from intrusions of incompatible uses.

### **R-2 Low Density Residential District**

This district is intended to recognize and preserve the integrity of predominately low-density rural residential areas of the Town and to protect them from intrusions of incompatible uses.

### **R-5 Rural Conservation District**

This district is intended to conserve large open areas of the Town that are difficult to develop while allowing for both very low-density residential development and those compatible uses that, while they may require large acreages, also typically also involve large open spaces.

### **PL-10 Preserved Land District**

This district is intended to protect the Town's critical high value natural resources, watershed and large open areas of the Town as specified in the Comprehensive Plan, while allowing for both very low-density residential and accessory uses.

## **Business/Residential**

### **H Hamlet District**

This district is intended to create designated neighborhood shopping areas ~~centers~~ complemented by higher density residential development that can access those shopping areas as pedestrians or with very short drives.

### **B Business District**

This district is intended to provide areas for highway-related commercial uses requiring large land areas and high visibility.

## **Specific Use Districts**

### **I Industrial District**

This district is intended to recognize existing areas of industrial activity, allow for expansion of these uses and to protect these uses from intrusions of incompatible uses.

### **NR Natural Resources District**

This district is intended to recognize existing areas of mining activity, allow for expansion of such uses and to protect these uses from intrusions of incompatible uses.

**CS                    Community Services District**

This district is intended to recognize existing areas of community services, including water, garbage collection, wastewater management, security, fire protection, public recreation, street lighting, library services, ambulance services, and similar agencies which exist for the overall benefit of the community at large.

**Overlay Districts [See 140-5.1 for specific description]**

**FD                    Floodplain Development Overlay District**

**AP                    Aquifer Protection Overlay District**

**EEO                  Economic Enterprise Overlay District**

**HP                    Historic Preservation Overlay District**

**§ 140-5.1.    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, and I Industrial shall not exceed 15% of lot area.
- 2) The following uses and activities shall be prohibited uses partially or wholly 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.
  - e. Vehicle and electronic disassembly facilities
  - f. Asphalt, concrete, or coal tar plants.
  - g. Chemical and biological testing or research laboratories.

- h. Junkyards, salvage yards or impoundment yards.
  - i. Chemical or petroleum product manufacturing and bulk sales (e.g., gasoline filling station).
  - j. Wood preserving or treating facilities.
  - k. Tanneries
  - l. Clearing cutting of wooded areas greater than one acre
- 3) The following uses and activities, when proposed partially or wholly within the Aquifer Protection Overlay District, shall be designated as Type I actions under SEQRA. A hydrogeological study shall be required and mitigation including reduction in intensity or denial of use as necessary shall be made to protect the water supply.
- a. any residential uses, including subdivisions with projected on-site groundwater withdrawals and/or on-site sewage disposal flows using over 2,000 gallons per day or more during any single thirty-day period.
  - b. any commercial, mixed use, or industrial use or activity with projected on-site groundwater withdrawals and/or on-site sewage disposal flows over 1,000 gallons per day or more during any single thirty-day period.
- 4) Any use, activity, or proposed development project (regardless of its classification on the Schedule of District Uses) within the AP Overlay district and subject to site plan review by the Town of Rochester Planning Board may be required to conduct a hydrogeological study upon Planning Board review.
- 5) Filling, excavating and earthmoving activities shall be minimized to the extent practicable.
- 6) The following additional information shall be provided for a proposed nonresidential 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 1% annual chance of flooding [aka 100-year floodplain] Flood Hazard Boundary Maps for the Town of Rochester, as issued by the Federal Insurance Administration (FEMA) or its successor (FEMA designated 1% annual chance of flooding map) . 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 Code [Chapter 81, Town of Rochester code] as amended. No principal structures, multifamily dwellings, two family dwellings, or single-family dwellings at a density of more than one dwelling unit per three ~~two~~ acres shall be permitted within the FD District. No planned unit developments shall be permitted within the FD District, and no density bonuses or incentives of any kind shall apply in this overlay district. For parcels partially within the FD District, the development standards and regulations of the FD District shall apply to the portion of the lands within the FD District. Any building permits issued for the FD Overlay District shall be subject to FEMA Flood Building Codes.

- 1) The following uses are prohibited in all zoning districts within the FD 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.
  - e. Vehicle and electronic disassembly facilities
  - f. Asphalt, concrete, or coal tar plants.
  - g. Chemical and biological testing or research laboratories.
  - h. Junkyards, salvage yards or impoundment yards.
  - i. Chemical or petroleum product manufacturing and bulk sales (e.g., gasoline station).
  - j. Wood preserving or treating facilities.

k. Tanneries

l. Clearing cutting of wooded areas greater than one acre.

- 2) These 1% annual chance floodplain [aka 100-year floodplain] areas shall be preserved from any and all destruction or damage resulting from clearing, grading, or dumping of earth, waste material or stumps, except with site plan review and approval by Planning Board.

**C. (EEO) Economic Enterprise Overlay District.** The purpose of the Economic Enterprise Overlay (EEO) zone is to foster economic development, diversification of land uses and employment generation through the reuse and/or redevelopment of underutilized properties. Development is encouraged to follow a mixed use, compact pattern that is sensitive to the environmental characteristics of the land and adheres to the goals and objectives contained in the Town's Comprehensive Plan and follows § 140-20, General commercial and industrial standards. It is the intent of the EEO to promote flexibility in the development process while integrating a diversity of land uses within close proximity to each other. The specific qualifications and requirements to attain EEO designation are detailed in § 140-18.1 of this code.

- 1) The EEO permits a broad range of uses that work in harmony to accomplish the following objectives:
- a. Active utilization and reinvestment in underutilized properties, including adaptive reuse.
  - b. Adaptively reuse structures and associated lands to protect against abandonment and general vacancy of structures.
  - c. Enhance the variety and availability of employment, service, retail, residential and civic facilities.
  - d. Develop well-configured public spaces that are woven into the pattern of the development and dedicated to the social interaction, recreation, and visual enjoyment of residents.
  - e. Design civic buildings, open spaces, and other visual features to act as landmarks, symbols, and focal points for community identity.
  - f. Ensure development operates in harmony within the surrounding neighborhood and/or hamlet.
  - g. Ensure valued natural features and undisturbed areas are protected and incorporated into the open space of the development.
  - h. Foster the compatibility of buildings and other improvements through their arrangement, bulk, form, character, and landscaping.

- i. Design the public and private realms using architecture, landscaping and other elements that respond to the unique character of the region.
- j. Promote projects and development that meet objectives of the Comprehensive Plan.

**D. (HD) Historic Preservation Overlay District .** The Town of Rochester determines that the historical, archeological, architectural, and cultural heritage of the Town is among the most important assets of the Town and that it should be preserved. Historic preservation offers residents of the Town a sense of orientation and civic identity, is fundamental to localized concern for the quality of life and produces numerous economic benefits to the Town. The existence of irreplaceable buildings of historical, archeological, architectural, and cultural significance is threatened by the forces of change. The specific qualifications and requirements are detailed in § 140-18.2 of this code.

- 1) It is hereby declared to be the public policy and in the public interest of this Town to engage in a program of historic building preservation to accomplish the following purposes:
  - a. To promote the use, reuse, and conservation of such buildings for the education, inspiration, welfare, recreation, prosperity, and enrichment of the public
  - b. To promote and encourage the protection, enhancement and perpetuation of such buildings which have or represent distinctive elements of the Town's historical, archeological, architectural, or cultural significance.
  - c. To encourage and assist residents and local organizations of the Town to undertake preservation programs and activities.
  - d. To foster civic pride in the beauty and accomplishments of the past through cooperation with residents and local organizations
  - e. To protect and enhance the Town's attractiveness to visitors and support and stimulate the Town's economy.
  - f. To ensure the harmonious, orderly, and efficient growth and development of the Town
  - g. To ensure a linkage between past and future generations
  - h. To encourage the repair, maintenance, and preservation of historic structures.
  - i. Promote projects and development that meet objectives of the Comprehensive Plan.

**§ 140 - 5.2 Economic Enterprise Overlay District.**

A. Application and approval procedure.

- 1) The application for and approval of an EEO shall be treated as a legislative act and an amendment to the Town of Rochester Code Chapter 140, Zoning.
- 2) The application for and approval of an EEO shall follow the procedures for zoning amendment outlined in Town Law, as well as the procedures required under the New York State Environmental Quality Review Act (SEQRA).
- 3) A complete application pursuant to this article shall be submitted prior to consideration by the Town Board.
- 4) The Town Board reserves the right to consider or not consider any petition submitted under this article.
- 5) The adaptive reuse of structures and associated lands containing said structures shall be permitted under this article.
- 6) Upon approval on an EEO by the Town Board, the applicant shall be required to apply to the Town of Rochester Planning Board for site plan approval. This submission shall include all documents, plans and items required under conformance with Article VII of this chapter. The Planning Board shall review said application pursuant to this chapter and by New York State Town Law § 274-A.

B. Information to be provided.

- 1) Applications for the establishment of an Economic Enterprise Overlay Zone by amendment to the Zoning Map shall be made in writing to the Town Board, by the owner(s) of the land proposed to be included in such district or by a person who possesses a written contract or option rights to purchase such lands. In the event that the application is made by a person holding a contract or option rights to purchase the lands, the application shall be accompanied by a statement signed by the owner(s) granting authority on the part of the applicant to make the application.
  - a) A description of the existing economic and land use opportunities for the property as currently zoned and/or developed.
  - b) An explanation of why and/or how currently permitted uses and/or regulations restrict the highest and best use of the property.
  - c) A description of how the proposed project and land uses are in conformance with the Town of Rochester Comprehensive Plan.
  - d) A description of how the proposed project and land uses are compatible with adjacent existing land uses and those reasonably anticipated in the future.

- e) A full environmental assessment form.
- f) A conceptual development plan of sufficient detail as shall be determined by the Town Board. The conceptual development plan shall consist, at a minimum, of the following:
  - 1. A mete and bounds description of the proposed district.
  - 2. A survey of the land prepared and certified to the Town of Rochester by a licensed land surveyor.
  - 3. A map drawn to scale showing existing conditions of the parcel, including:
    - a. The name and address of the owner of record and, the name and address of the applicant, if not the owner of record.
    - b. The name of the person or firm preparing the plan.
    - c. The date, North arrow, and scale of the plan.
    - d. The acreage of the parcel and the tax map number(s) of the parcel.
    - e. The location and width of existing and proposed state, county or Town highways or streets and rights-of-way abutting the parcel.
    - f. The approximate location and outline of existing structures both on the parcel and within 100 feet of the property line and other setback requirements.
    - g. The location of any existing storm or sanitary sewers, culverts, water lines, hydrants, catch basins, manholes and other visible infrastructure as well as other utilities within or adjacent to the parcel.
    - h. The existing zoning of the parcel.
    - i. The approximate location and outline of existing water bodies, streams, marshes or wetland areas and their respective classification as determined by the appropriate governmental regulatory body.
    - j. The approximate boundaries of any areas subject to flooding or stormwater overflows.
    - k. The location and outline of existing vegetation clusters (for a distance of 50 feet onto adjoining property).

1. The identification of any other significant features.
4. The conceptual development plan, drawn approximately to scale, shall clearly show the following:
  - a. The approximate location and dimensions of proposed principal and accessory buildings on the site and their relationship to one another, and to other structures in the vicinity.
  - b. The approximate location and dimensions of vehicular traffic circulation features of the site, including proposed roadways, internal driveways, parking and loading areas and proposed access to the site.
  - c. The proposed source of water supply and method of delivery to the site.
  - d. A general plan for the collection and disposal of sanitary waste from the site.
  - e. A general plan of proposed stormwater management facilities.
  - f. Preliminary identification of areas which will be disturbed and areas which will remain undisturbed by project implementation.

C. Town Board review.

- 1) In its review of the application, the Town Board may suggest such changes in the conceptual plan as are found necessary or desirable by the Town Board in order to meet the requirements of this section. The Town Board may notify the applicant of such changes and may discuss such changes with the applicant. The suggestion of changes by the Town Board shall not constitute a waiver of its legislative discretion to reject or deny the rezoning application.
- 2) The Town Board shall have the discretion to reject the application outright or to hold a public hearing with regard to the rezoning application.
- 3) If the Town Board decides to hold of a public hearing to consider the rezoning of a property, the application shall be referred to the Town of Rochester Building Inspector who shall make a recommendation to the Town Board within 30 days of receipt of the application, and to the Town of Rochester Planning Board and the Ulster County Planning Board for recommendations as provided in this chapter and General Municipal Law.
- 4) The Town Board may refer the application to any local, state, or federal agency having jurisdiction over or expertise in the subject matter seeking comment.

- 5) The Town Board may engage the services of an engineering consultant to review such aspects of the project which may be beyond the scope of expertise of local Town employees or volunteer boards and commissions, such as stormwater plans, traffic plans, or other similar specific reports. The fee for such review shall be the responsibility of the applicant and an escrow account shall be established prior to commencement of any review.
- 6) If the Town Board elects to hold a public hearing, the Town Clerk shall provide notice of said hearing to the owners of all parcels located within 500 feet of the subject property and shall publish proper legal notice of the time and place of the public hearing.
- 7) Following the public hearing the Town Board may, in its sole legislative discretion, act to approve, approve with modification or conditions, or disapprove the rezoning application. Approval shall result in amendment to the Zoning Map.
- 8) In determining whether to approve the application for an EEO District, the Town Board shall consider the public health and welfare of the surrounding area, together with following criteria, and the intent and objectives of this section:
  - a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the creation of a district on the property.
  - b) Whether the site is located in an area suitable for the proposed elimination of nonconformity or readaptation of buildings and site development so as to be reasonably free of objectionable conditions such as odors, noise, dust, air and light pollution, traffic volumes beyond the capacity of the existing road systems or proposed road improvements, and other environmental constraints.
  - c) Whether the site will have adequate water and sewer facilities.
  - d) The recommendations of the Town Building Inspector or any Town contracted consultants.
  - e) Recommendations of the Town of Rochester Planning Board and the Ulster County Planning Board.
  - f) Whether the site is located in a manner that allows access to the site from a public street with adequate site distances and that meets current engineering standards of the Town.
  - g) Whether the readaptation or modification of the site shall produce undue adverse effects on the surrounding neighborhood.

D. Planning Board review.

- 1) Following a zoning amendment to create an EEO District, site plan review and approval by the Planning Board shall be required prior to the issuance of a building permit for any readaptation or modification of development of the property.
- 2) The Planning Board shall not approve any site plan application within an EEO District unless such Board finds that the plan is in substantial conformance with the conceptual development plan that was submitted to the Town Board and that served as the basis for the zone change to the EEO District.

E. Regulations.

- 1) To be eligible to apply for EEO zoning consideration, all properties shall adaptively reuse structures and associated lands to protect against abandonment and general vacancy of structures or allow for the reuse and/or redevelopment of underutilized properties.
- 2) All other Overlay District regulations shall remain in place.
- 3) All parcels located in the A-3, AB-3, H, I, NR, and B Zoning Districts shall be eligible, except as listed below.
  - a. Parcels located in a designated county agricultural district with existing structures utilized in a farm operation, as defined in this Code, shall not be eligible.
  - b. Parcels consisting entirely of vacant land which are located in a designated county agricultural district with soil areas of prime farmland or farmland of statewide importance, as designated by the United States Department of Agriculture, shall not be eligible.
- 4) District size limitations.
  - a. An EEO shall include parcels in their entirety and the perimeter of EEO districts shall be coterminous with the platted property lines of those parcels included in said district. In the event that an applicant wishes to use multiple parcels in its application, said parcels must be combined prior to the Zoning Map being amended.
  - b. No land shall be designated for an EEO if, in the opinion of the Town Board, it is too small, too narrow in width, too irregular in shape; contains natural resources otherwise too valuable or is with topography too excessive to be planned and developed in a manner consistent with the purpose and objectives of the EEO.

- c. The Town Board may set lot size requirements to assure that the proposed development is in accord with the Town's Comprehensive Plan and consistent with the character of the neighborhood.

F. Modifications.

- 1) Any further proposed change in the use of a property that does not comply with the underlying zoning for the property shall be required to go back before the Town Board for review pursuant to the provisions of this section.
- 2) Any further proposed subdivision of a property shall require amendment to the EEO by the Town Board and subdivision approval of the Planning Board.
- 3) Following initial construction and occupancy, any changes other than use changes shall be considered as a request for a site plan amendment and be referred to the Planning Board for amended site plan review.
- 4) Modifications to the zoning of properties within an approved EEO Overlay District require application and approval by the Town.

G. Districts, land use allocation and permitted uses.

- 1) Overlay district requirements.
  - a. The EEO District shall permit Economic Development and Community Development Overlays to provide enhanced flexibility while permitting the mixing of compatible uses within the community.
  - b. Each lot within an EEO shall be allocated to a specific district and land use category at the time of application.
  - c. Adaptive reuse of existing structures and associated lands shall be permitted subject to the review criteria set forth within these EEO regulations.
  - d. The following uses are prohibited in EEO districts:
    1. Agricultural processing facilities.
    2. Bulk fuel storage.
    3. Fast food restaurant.
    4. Gasoline filling stations & Convenience Stores.
    5. Mining (under DEC jurisdiction).
    6. Resource recovery, vehicle junkyard, and wrecking.

7. Retail establishments (vehicle and equipment).
8. Retail Establishments (national or regional chain concepts with a square foot footprint over 4,000 square feet)
9. Trucking services.
10. Transfer station
11. Storage units/self-storage facilities

#### H. Design requirements.

##### 1) Regulations.

- a. Development may take place on the existing development footprint regardless of such footprint's location. Expansion of development beyond the existing development footprint, or relocation of a development footprint, of any qualifying property shall be allowed if such expansion or relocation is approved by the Town Board based on the layout and limitations of the site, and additionally, any such expansion must be approved by the Planning Board in the site plan review process. The Planning Board shall not be obligated to grant such expansion if it determines that the proposed expansion is inappropriate for the site.
- b. The Town Board and the Planning Board may grant waivers of development standards for the property, if deemed appropriate for the redevelopment of the property.
- c. Density of existing structures may be maximized in accordance with existing New York State Building Codes.

##### 2) Design standards.

- a. All standards of Chapter 140 of the Code of the Town of Rochester.
- b. Notwithstanding the above, the guidelines and chapter sections may be waived where deemed appropriate by the Town Board in review of the projects for redevelopment of preexisting structures for adaptive reuse.
- c. Required off-street parking spaces shall be determined by the Town Board with consideration of recommendations made by the Planning Board and in general conformance with § 140-17

#### I. Fees.

- 1) An application shall be accompanied by an application fee as prescribed from time to time by resolution of the Town Board.

- 2) If professional review of the application is required by a designated private planning, engineering, legal or other consultants or, if other extraordinary expense to review documents or conduct special studies in connection with the proposed application is incurred, reasonable fees shall be paid for by the applicant, in accordance with § 140-63B.
- 3) Applicants will be responsible for payment of all fees associated with the application, including, but not limited to, mailing, duplication of documents and materials, and public hearing fees.

### **§ 140-5.3 Historic Preservation Overlay District.**

#### **A. Jurisdiction.**

In accordance with § 96-a of the General Municipal Law of the State of New York, entitled "Protection of Historical Places, Buildings and Works of Art," and Article 5-K of the General Municipal Law of the State of New York, entitled "Historic Preservation," the Town Board of the Town of Rochester has authority to provide, by local law, certain regulations, special conditions and restrictions for the protection, enhancement; perpetuation and the use of buildings having special character or special historical or other aesthetic interest or value. Pursuant to such authority, the Town Board has adopted this article setting forth standards to be followed when a zoning permit is issued affecting a historic structure as defined by this code.

#### **B. Findings.**

The Town of Rochester was formally established in 1703 by a Patent from Queen Anne of England and grew out of the original Dutch settlement community of Wildwyck on the Hudson. In its early days, the extended colony had a strong agrarian character, with the initial habitation stretching along the fertile alluvial basin of the Rondout Creek. The earliest form of stone dwelling is the one-room single story house. Stone construction continued strongly into the early nineteenth century in Rochester. Fifty-three stone houses survive to date. The arrival of the Canal in the Rondout Valley coincided with the introduction of the Greek revival style of architecture and a proliferation of frame homes. The barn was the principal farm structure. Two basic types were constructed: the Dutch variety and the English.

In 1828 the Delaware and Hudson (D & H) Canal began service through the Hudson River. As the industrial base of the township grew, this pattern continued with mill sites and small shops being located in the surrounding hills close to the streams that powered them and to the natural resources that they used. In fact, the small hamlet of Alligerville was something of a boomtown that grew around the activity of the Canal. The D&H canal ran north following the Rondout Creek, and later connected with the Hudson River running south. This permitted a wider distribution of goods and was a vital asset for early business development in the Town of Rochester.

The tourism that grew in the early twentieth century generated the Craftsman and Bungalow Styles. In reference to the aforementioned, a number of residential, commercial, and accessory buildings are of great historical significance to the Town by reason of: Historic events which have taken place within, on or near them; or the fact

that they are illustrative of events in periods of history of the Town and surrounding areas.

It is further found that a number of residential, commercial, and accessory buildings are of historical significance to the Town for their architectural and aesthetic value due to their representation of a style or period of architectural design of buildings which is significant to the Town's identity, and which forms an integral part of the Town's environment and in consideration of the Town's history and character. In the interests of preservation of these areas within the Town which are of historical, archeological, architectural, or cultural importance, the Town of Rochester enacts the Historic District Overlay.

Local design guidelines are not intended to prevent property owners from making changes to their properties, they are meant to ensure that changes enhance the historic qualities that are enjoyed by all members of the community.

**C. Establishment of District.**

There is hereby created a special zoning district identified as the Historic Preservation Overlay District. The Historic District Overlay shall include but not be limited to the Alligerville and Accord Historic Districts. 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:

**D. Design Standards**

- 1) Special attention shall be paid to protecting the distinctive character, landscape, and historical structures within the Town of Rochester Historic Preservation Overlay District.
- 2) Town of Rochester design approvals shall comply with the following,
  - a) The removal or disruption of historic traditional or significant structures or architectural elements shall be avoided or minimized.
  - b) The conversion, conservation and preservation of existing buildings and sites in a manner that maintains the historic or distinctive character of the Town of Rochester Historic Preservation Overlay District is encouraged.
  - c) Any changes modification or alterations to the exterior of the structures shall be consistent with:
    1. The New York State Office of Parks, Recreation, and Historic Preservation review standards, and guided by the Secretary of the Interior's Standards for the Treatment of Historic Properties
    2. The distinctive characteristics of the district as identified in the Town of Rochester Historic Resources Survey

3. Technical Guidelines for the preservation of historic houses and other buildings as detailed by either the National Register of Historic Places or the New York Landmarks Preservation Commission shall be followed to the greatest extent possible.
  - d) Proposed structures or modifications to existing structures shall be harmoniously related to their surroundings, the terrain in the district, and to the use, scale, and architecture of existing structures in the district that have a functional or visual relationship to a proposed structure or modification. This may include but not be limited to the proportion of the property's front façade, proportion and arrangement of windows and other openings within the façade, roof shape, and the rhythm of spacing of properties on streets, including setback, and the importance of historic physical and visual features to the significance of the property.
  - e) All spaces, structures, and related site improvements visible from public roadways shall be designed to be compatible with the elements of the area of the Town of Rochester Historic Preservation Overlay Districts in and around the proposed building or modification.
  - f) The color, size, height, location, proportion or openings, roof treatments, building materials, and landscaping of commercial or residential property and all proposed signs and lighting shall be evaluated for compatibility within the Accord and Alligerville National Register Districts architectural motif.
  - g) Maintenance of scenic beauty, historic structures, monuments, and landscaping shall be a priority.
  - h) Changes to the structure's character, defining features, and all additions shall be compatible with or complementary to the historic property.
  - i) Repairs and restorations should retain original distinguishing characteristics, materials and finishes or, replace in-kind to the greatest extent possible. If features are missing, historic documentation should be used to guide replacement. Treatments that could damage historic materials should not be used unless necessary for structural integrity of the structure.
  - j) New construction should not destroy historic features, elements, materials or alter the historic character of structures.
- 3) The HPC shall be authorized to send annual notification to the owner operators of structures within a Historic Preservation Overlay District of the regulations of 140-18 (D) (HD) Historic Preservation Overlay District.

E. Application and Review Procedure

- 1) All construction or modifications requiring any Building Department Permit within a Town of Rochester Historical Preservation Overlay District shall be reviewed by the Town of Rochester Historic Preservation Commission (HPC), which shall

review an application and reporter commendations to the Code Enforcement Office within 62 days.

- 2) For site plan and special use permits applications, the Planning Board shall refer the application to the HPC for review and recommendations within 62 days.
  - 3) The Historic Preservation Commission or Planning Board may seek the recommendations of any Town or regional agency or outside specialist including, but not limited to, the National Register of Historic Places, Ulster County Regional Planning Board, the Ulster County Historical Society, and the New York State Historic Preservation Office (NYS OPRHP).
- F. The HPC may offer guidelines to the Code Enforcement Officer, Planning Board, or to any property owner for the preservation, reconstruction, and renovation of the reviewed application and may issue a “certificate of appropriateness” for structures that meet all historic design guidelines. Hard copy and web-based design guidelines, templates, and resources are available to applicants through the Town Historic Preservation Commission, the National Register of Historic Places, the Ulster County Historical Society, the Preservation League of New York State ([www.preservenys.org](http://www.preservenys.org)) and the New York State Historic Preservation Office, among other resources.

#### **§ 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 [Appendix A] and made a part of this chapter.

#### **§ 140-7 Interpretation of district boundaries.**

- A. Zoning district boundary lines are intended generally to follow, parallel or connect the centerlines 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

standards.

**§ 140-8 Schedule of District Uses. [see Appendix C]**

The restrictions and controls intended to regulate development in each district are set forth in the Schedule of District Uses [see Appendix C] which is then supplemented by other sections of this chapter and other laws of the Town of Rochester. In the case of any inconsistencies found to exist between the Schedule of District Uses [see Appendix C] 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 Uses [see Appendix C] [see Appendix C]. 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.

- A. If a proposed use is not specifically listed in any category of uses or within any zoning district on the Schedule of District Uses [see Appendix C], 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.

**§ 140-8.1. 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, including, but not limited to surveying and electromagnetic detection to estimate reserves and / or resources.
- E. Prohibition against solid waste landfills, processing or storage facilities, household hazardous waste collection and storage facilities and industrial waste collection and storage facilities. No parcels in the Town shall be used for solid waste landfills, processing or storage facilities or household/industrial waste collection and storage facilities.
- F. Prohibition against radioactive materials treatment, handling, storage, or disposal facilities. No land in the Town shall be used for the treatment, handling, storage, or disposal of radioactive materials.
- G. Bulk fuel storage. No provision of this chapter shall be deemed to regulate the use known as "Bulk Fuel Storage" as defined in Chapter 140, Zoning.

**§ 140-9. Applicability of regulations.**

- A. Whenever any owner or occupant of property in the Town of Rochester shall, for any purpose or in any manner; establish a new use, change an existing use, make permanent structural improvements to a property, erect a new building, or move, add to, or enlarge any existing land use or building; such owner or occupant shall first comply with the requirements of this chapter. A zoning permit shall be required whenever a change in land use occurs, regardless of whether any new construction is involved or not, excepting that agricultural uses, personal-use timber harvesting, and tilling may be exempt from all permit requirements.
- B. 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. [see Appendix B]**

- A. All structures, inclusive of residential use dwellings--unless specifically deemed exempt by this code--whether intended for primary or accessory use shall meet New York State Uniform Fire and Prevention, Building Code, and ICC requirements prior to occupancy.
- B. Minimum development standards. The development standards contained in the Schedule of Lot Development Standards are minimums and shall apply to each use unless

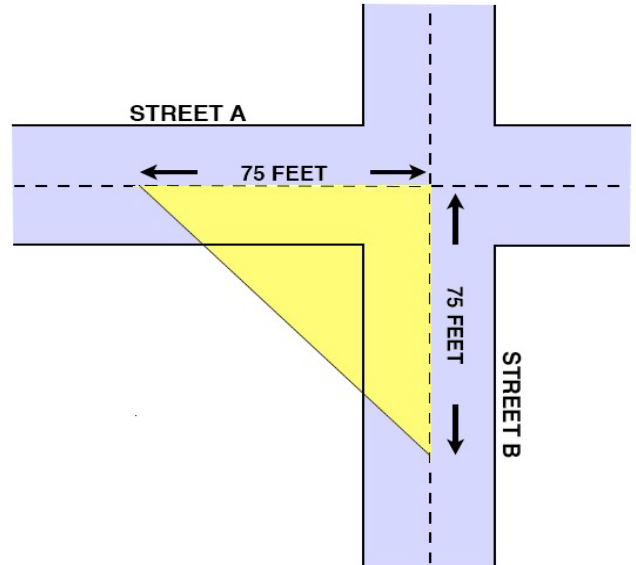
otherwise specifically provided. [See Appendix B for details]. For all lot development, the referred municipal agencies shall use the guidelines set forth in the Ulster County Community Design Manual, and its revisions as adopted in 2018 by Ulster County Planning Board in their review.

1. Multiple permitted 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 setback requirements shall apply to the lot perimeter in such cases, provided building separations meet New York State Uniform Fire Prevention and Building Code requirements. Some exceptions may apply as stated in §140-10 (B)(2)]
2. Lot area exceptions. (See also Article V of this chapter, 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 multiple permitted uses which include a residential use as defined herein are 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 Lot Development Standards [see Appendix B]. Where multiple permitted uses which include a residential use are 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 Lot Development Standards [see Appendix B].
3. Density Bonus  
Lots in the R-1, H, B and AB-3 zoning districts shall be eligible for a density bonus of 1.5X the standard lot density, subject to Planning Board review as detailed in this code. for
  - a) Green energy/energy conservation/passive house development. Lots shall be subject to all zoning district setback standards. The Planning Board shall certify the development incorporates sufficient energy conservation measures such as, but not limited to: LEED net zero construction, geothermal (ground source heat pump) or passive solar heating, and natural habitat preservation.
  - b) Affordable housing development where a minimum of 1 dwelling unit or no less than 25% of dwelling units on such lots are developed for affordable housing in perpetuity by deed restrictions. Lots shall be subject to all zoning district setback standards. The Planning Board shall certify the development incorporates sufficient affordable housing measures.
4. Lot development shall provide driveway access to buildings on such lots from an approved street in accordance with Section §140 - 17 Parking, loading access and traffic standards and Town of Rochester, NYS DPW or NYS DOT Road Specifications.

5. Lot development of parcels with total land disturbance of 1 acre or greater (inclusive of all structures, access driveway(s), septic, and all other land clearing) shall require site plan approval. All agricultural lot development shall be exempt.
6. Lot development of parcels containing steep slopes. Site Plan review shall be required when developing, regrading, or stripping land slopes equal or greater than 15%. On slopes between 15% and 25%, no more than 15% of the slope area may be disturbed. No site disturbance shall be allowed on slopes exceeding 25% grade, except grading for a portion of a driveway accessing a single-family dwelling when it can be demonstrated that no other routing that avoids slopes exceeding 25% is feasible.
7. A hydrogeological study shall be required for any proposed development project with onsite groundwater withdrawals and/or on-site sewage disposal flows potentially equal to or exceeding an average of two thousand (2,000) gallons per day (gpd) during any single thirty (30)-day period for sites identified and included in the in AP Overlay District.
8. Guidelines
  - The following guidelines shall be considered by the Planning Board in review of the siting of structures in lot development.
  - a. Wherever feasible, retain and reuse existing old farm roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls.)
  - b. Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.
  - c. Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields.
  - d. Use existing vegetation and topography to buffer and screen new buildings, if possible, unless they are designed and located close to the road in the manner historically found in the Town. Group buildings in clusters or tuck them behind tree lines or knolls rather than spreading them out across the landscape.
  - e. Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance and emergency access as per NYS Fire Code. Use curves in the driveway to increase the screening of buildings.

- f. Site buildings so that they do not protrude above treetops and crestlines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.
  - g. Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multilevel structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat.
  - h. Minimize land disturbance generally. Whenever development is undertaken, removal of vegetation, grading, and operation and storage of heavy equipment should only occur where necessary for the proposed development. Special attention should be given to preserving the root systems of existing trees by avoiding soil compaction within their drip lines.
9. Protected resource areas on parcels should be linked. Waterbodies, freshwater wetlands, and streams should be adequately buffered. [See Yards, waterfront yards of this code for further regulations].
10. Adaptive reuse. Any applicant who proposes a project which involves the adaptive reuse of an existing building or structure shall be permitted to request a waiver from the Planning Board from any yard (setback) area, lot width, lot depth, height or lot coverage area development standards of a particular zoning district provided all the following requirements are met. In such case, an area variance shall not be required.
- (a) The use proposed is one which is allowed in that zoning district.
  - (b) Any new construction will not further violate any area development standard requirements.
  - (c) Board of Health requirements for water and sewer can be attained.

C. 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. The Planning Board may impose higher standards where necessary to deal with grade limitations that would otherwise limit the beneficial impact of these measures.



D. Through lot requirements. A through lot shall be considered as having two street frontages that do not intersect, both of which shall be subject to the front yard requirements. Other yards shall be considered side yards.

E. Minimum lot frontage.

1. All lots in the H zoning districts shall have a front lot line with a minimum length of 35 feet on a public or private road either existing or proposed.
2. All lots in the R-1, R-2, R-5, AB-3, B, and A-3 zoning districts shall have a front lot line with a minimum length of 50 feet on a public or private road either existing or proposed.
3. All lots in the PL-10, I, and NR zoning districts shall have a front lot line with a minimum length of 75 feet on a public or private road either existing or proposed.
4. Insufficient frontage with access via shared driveway. The Planning Board may grant a waiver from required lot frontage and other street requirements of this chapter 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. No shared driveways shall be permitted originating from a private road cul-de-sac. 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 § 140-10E(5), and no approval shall be granted unless a release has been given to the Town and approved by the Town Board making clear that the Town is exempted from all responsibility for the maintenance of the same. The lots in question shall not be capable of being subdivided further or are 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 § 125-29R.

5. Private road frontage. The Planning Board, in the review of a 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 Superintendent 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. Private road standards in this chapter shall be the same as those set forth in Town of Rochester Code § 125-29S.
  6. Where any portion of access and/or infrastructure for a parcel to be developed is to be located in an adjoining municipality, final approval shall not be granted until such access and/or infrastructure is complete and approved by the adjoining municipality.
- F. Flag lots. The development of interior lots with limited lot frontage consisting of only an access strip shall be permitted provided:
1. That the controlled use of a flag lot permits reasonable use of a parcel to be subdivided without adverse environmental impact or in contravention of the public health, safety, and welfare of the community.
  2. That for reasons of topography, landform, remoteness of location, and existing lot pattern of unusual size or shape of a parcel, there is no reasonable or practical alternative to creating a flag lot.
  3. That the creation of a flag lot will result in the preservation of natural scenic resources and the protection of open space, valuable soils, biodiversity resources, surface water resources, and view sheds.
  4. That the basis for the formation of a flag lot must not be to circumvent the need for the construction of a road.
  5. The minimum flag lot road frontage for a zoning district shall be as specified in section§ 140-10E (1), (2) and (3).
  6. The access strip utilized for flag lot access shall be a maximum of 500 feet in length and shall maintain the minimum lot frontage (road frontage) width for a zoning district for the entirety of the access strip length.
  7. Flag lots shall not be permitted in the PL-10 zoning district.

8. At all times a clear right-of-way of at least 20 feet in width for the access driveway shall be maintained within the access strip to permit vehicular travel from the public road to the principal structure, and the minimum driving surface shall be 16 feet in width and shall be sufficient to provide suitable access, ingress, and egress for emergency vehicles. The Planning Board may vary, modify, or waive the width of the access driveway upon written request by the applicant where specific unique conditions, in the opinion of the Planning Board, merit such consideration.
9. Minimum lot area. The minimum area of a flag lot shall be the lot size required for the applicable zoning district. The buildable portion of a flag lot is the rear portion of the lot and shall be considered the "flag," which does not include the portion of the lot that is the access strip or "flagpole" of the flag lot. The area of the flagpole shall not be included in the calculation of the required minimum lot area for the flag lot.
10. No access strip 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.
11. All flag lot access strips shall be titled in fee-simple ownership to the flag lot 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.
12. Such flag lot owner shall bear responsibility for maintenance of the improvements. A road maintenance agreement (RMA) approved by the Town Board shall be required and included on the plat. The maintenance agreement shall be filed with the Ulster County Clerk by the applicant immediately upon final approval of the subdivision.
13. No more than one flag ~~such~~ lot shall be created from an existing parcel.
14. No more than two lots shall be accessed from the access strip driveway, including the lot fronting on the right-of-way street, if it is accessed from the same driveway as the rear lot. A cumulative total of three lots including the original lot shall be permitted when a subdivision of an existing parcel uses and creates a flag lot on an existing parcel. This restriction shall be incorporated in deed covenants and placed on the recorded plat map at the time any flag lot is created.

15. All front, side, and rear yard (setback) regulations shall be maintained in the primary building area and the access strip "flag" portion of the flag lot in conformance with 140-12 and the Schedule of Lot Development Standards [see Appendix B].



- G. Conversions of seasonal residential communities. Existing seasonal residential communities may be converted to permanent single-family, two-family, or multifamily 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. Conversion of seasonal residential communities to multifamily structures shall fully meet all the standards of §140-26 Multifamily Residential Uses.
  3. 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 multifamily 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.
  4. New dwellings and other improvements shall not further violate any lot development standards of the zoning district in question along a given property line.
  5. All sewage and water supply systems for any such conversion shall meet current standards. Existing systems intended for reuse 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 Lot Development Standards [see Appendix B] 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 be subject to all specific regulations that may apply to such uses.

**§ 140-12. Yard (Setback) Regulations**

A. The starting point of the front yard setback shall be measured starting at the near edge of the road right-of-way which shall be established, depending on road jurisdiction, as follows in all cases:

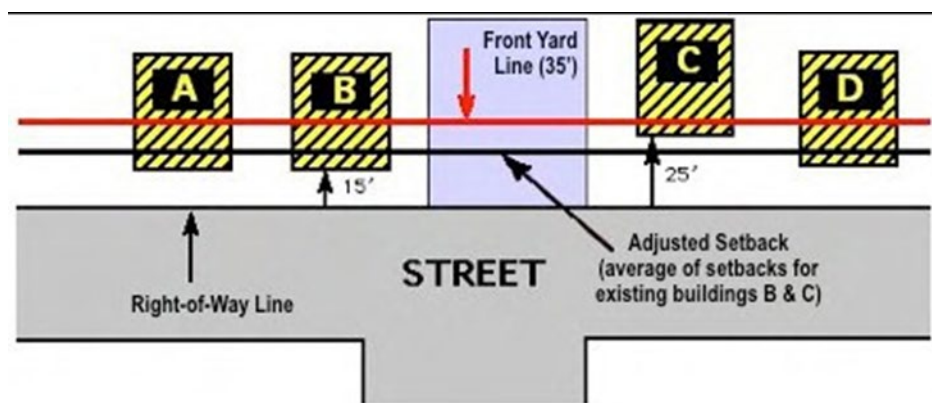
1. Parcels which have road frontage on a public NYS Dept. of Transportation or Ulster County Dept. of Public Works controlled roadway: The front yard setback shall be measured beginning from the lot line nearest the road as documented by the recorded survey, plat, deed, or official highway map to the satisfaction of the Code Enforcement Officer.
2. Parcels which have road frontage on a public Town of Rochester controlled roadway: The front yard setback shall be measured from a point established at 25 feet from the centerline of such paved roadway unless otherwise documented by the recorded survey, plat, deed, or official highway map to the satisfaction of the Code Enforcement Officer.
3. Parcels which have road frontage on a private controlled roadway: The front yard setback shall be measured beginning from the edge of the established or traveled private road right-of-way unless otherwise documented by the recorded survey, plat, deed, or official highway map to the satisfaction of the Code Enforcement Officer.
4. Parcels which have no road frontage and are accessed via a shared driveway or right-of-way: The front yard setback shall be measured from the edge of the lot line as documented by the recorded survey, plat, or deed to the satisfaction of the Code Enforcement Officer.
5. Parcels where the front yard setback starting point cannot be ascertained shall be determined by the Code Enforcement Officer.

B. Overlay District Yard Setbacks

For parcels with road frontage within an Overlay District, the yard setback requirements of an Overlay District shall supersede the yard setbacks regulations outlined herein.

C. Yard Setback Exceptions.

1. Side yard setback exception. Where the side wall of a building is not parallel with the side lot line or is irregular, the side yard setback may be varied. In such case, the average width of the side yard setback shall not be less than the otherwise required minimum width; provided, however, that such yard setback 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.
2. In the case of a nonresidential use in the B or AB-3 District, a front yard setback 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.
3. In the case of a nonresidential use in the Industrial (I) Zoning District, front, side, and rear yard setbacks may be reduced to 20 feet where the given parcel side is facing or contiguous to another Industrial (I) zoned parcel.
4. When an unimproved lot is situated adjacent to or between improved lots already having a nonconforming principal building within the required front yard setback, the front yard setback 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 setback 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 setback or open space for any other building, and no yard setback or other open space on another lot shall be considered as providing a yard setback or open space for a building on any other lot.

E. Waterfront yards.

1. For the purposes of this section, wetlands are defined by both local, state, and federal governing regulations. Stream and Wetland Buffer areas apply to all identified wetlands greater than 0.1 acre. Protected streams are depicted on United States Geological Survey maps, NYS DEC Environmental Resource Mapper or are defined as streams and small water bodies that are located in the course of a stream with a NYSDEC classification of AA, A, or B, or C with or without a standard of (T) or (TS). Unnamed streams are streams that do not appear on official USGS maps.
2. Each lot fronting on a named and/or protected stream or identified wetland depicted on United States Geological Survey maps shall include a stream buffer setback of 100 linear feet from the high-water mark of the named stream or identified wetland; and 50 linear feet from the high-water mark of any intermittent stream, as defined in §140-16D of this code.
3. The Planning Board, in the course of any review shall be authorized to modify this requirement where necessary or to accommodate reasonable use of properties outside the 1% annual chance floodplain [aka 100-year floodplain] , provided other mitigating measures such as deed covenants limiting clearing near the stream are employed to protect stream quality.
4. Unless superseded by state or federal regulations, these buffer areas may be increased or decreased by up to 50% at the discretion of the Planning Board provided that the water quality from the impacts of erosion and sedimentation will not be compromised.
5. No buildings, paved areas, storage of machinery, waste storage or disposal (including but not limited to disposal and dumping of snow and ice; recyclable materials; barnyards, silos, and animal pens; hazardous or noxious chemicals; automobiles or appliances; and other abandoned materials); or disturbance of more than 25% of the vegetation and trees shall be allowed within the stream buffer setback. Fences, decks, and structures as defined in 140-16 J (2) are allowed within the stream buffer setback provided that they do not store non-permitted waste.
6. If a lot is in the Flood District (FD) Overlay the stream buffer setback, shall be to the 1% annual chance floodplain [aka 100-year floodplain] verified high water mark for all waterbodies and wetlands.

7. All sewage systems, both drain fields and raised systems, must adhere to a 100- foot stream buffer setback in compliance with the New York State Codes, Rules, and Regulations.
8. All manure piles shall be located 100 feet from the stream buffer setback. All chemical storage not within a containment structure (for example, salt or salt/sand storage) shall be located 200 feet from the stream buffer setback and the containment structure shall not be used to store any hazardous materials in violation of any federal, state, or local requirements.
9. Mining or removal of soil, sand, and gravel, and quarrying of raw materials in a stream buffer setback shall be prohibited.
10. No widening, straightening or any such alteration of the beds and banks of streams except where the New York State Department of Environmental Conservation has issued a permit expressly allowing such activities on the parcel shall be permitted.
11. Tree cutting within 25 feet of the top of any stream bank shall be prohibited. Any clearing activity within a stream buffer setback must retain at a minimum 25% of the preexisting tree canopy at all times. Removal of trees in any location shall be permitted provided the tree or trees pose an immediate threat to property or public safety.
12. Delineation of any applicable stream & wetland buffer setbacks shall be recorded on all subdivision plats, site plans and special use permits.
13. The Planning Board in site plan review shall have the ability to request ecological landscaping to protect and/restore stream beds.
14. Any deviation from these stream buffer setback requirements shall require an area variance.

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.

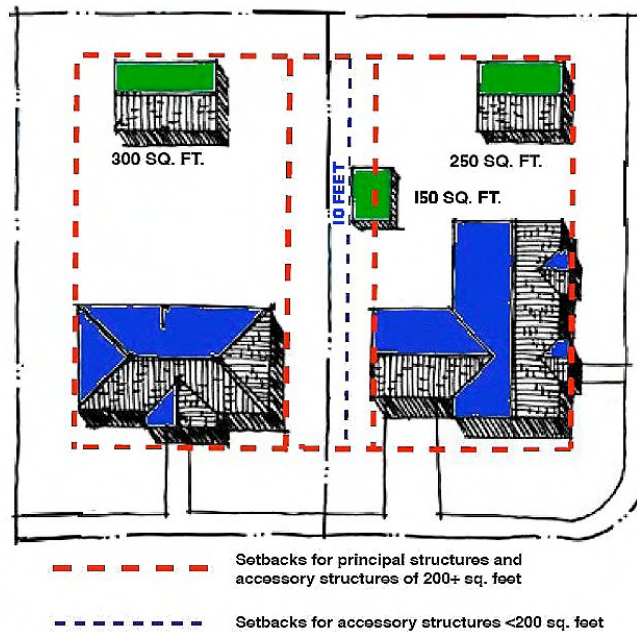
**§ 140-13. Accessory Structures**

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

- A. No accessory structures permitted by this chapter shall be placed in any required side or front yard setbacks except as provided in Subsection C below.
- B. The aggregate ground area covered by any accessory structures in any rear yard setback shall not exceed 25% of the rear yard setback area.

- C. Accessory structures located in a side or rear yard (setback) and not attached to a principal structure shall be located not less than 10 feet from any side or rear lot line or in such a fashion as to not 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.
- D. Accessory structures not attached to a principal structure located closer to the street and in front of any principal structure on the lot shall have a footprint area no greater than the principal structure area, except in the case of agricultural buildings or accessory structures located more than 100 feet from the front lot line. No accessory structure may be in the required front yard setback areas, except as may be permitted elsewhere in §140.

See Illustration for examples of these principles.



- E. 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.
- F. The use of cargo or portable storage trailers or bulk/shipping containers as an Accessory use in connection with agricultural, industrial, commercial, residential, or institutional use shall be permitted with a permit from the Code Enforcement Officer. Railroad boxcars, truck trailers, manufactures home units, and recreational vehicles shall not be used for the purposes of accessory or principal structures in connection with any use,
- G. Cargo or portable storage containers:
  - 1. Shall meet the setback requirements of the underlying zone.

2. Shall be in an approved designated area and on the same property as the principal use and be included in the calculation of overall lot coverage.
3. Shall be limited to 2 per parcel, unless used exclusively for agricultural use.
4. As a condition of placement, may be required by the Code Enforcement Officer or Planning Board to be fenced or screened from abutting properties and/or rights-of-way pursuant to the provisions of the underlying zoning regulations.
5. Shall not be stacked above the height of a single container device, except in an I zoning district with Site Plan approval by the Planning Board.
6. Shall not be used for any advertising purpose and shall be kept clean of all alpha-numeric signage and writing. Cargo or portable storage containers shall be painted a non-reflective earth-tone color and be maintained in a condition free from rust, peeling paint, and other forms of deterioration. Exception shall be made for a portable storage container which shall be a rented unit for temporary use in preparation for shipment of contents. In such case the owning company logo may be visible.
7. Shall not occupy required access, off-street parking, loading or landscaping areas.
8. Shall be used for storage only and shall not be used for human habitation and/or commercial business purposes involving occupancy.
9. Shall not be used to store any hazardous materials in violation of any federal, state, or local requirements.
10. No permanent mechanical or plumbing shall be made to the storage unit.
11. Any containers placed within the FEMA designated 1% annual chance of flooding [aka 100-year floodplain] (FD Overlay District) shall adhere to the Code of the Town of Rochester Chapter 81, Flood Damage Prevention, or its successors.

H. 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 chapter not in conflict herewith, except that 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 set back from any property line by a distance no less than 1.5 times 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 155 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.
  7. Tower footprint supports or foundation shall not be located in wetlands, soft, or highly erodible soils and must have secure footings. Exceptions for foundations may be appropriately modified by the Planning Board to meet safety requirements.
- I. Swimming Pools. Swimming pools shall require a building permit and shall comply with the applicable sections of the New York State Uniform Fire Prevention and Building Code, as amended.
- J. Solar energy structures. See § 140-37, Solar energy.
- K. 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 maximum height of six feet when located in any front yard setback or a maximum height of eight feet when located in any side or rear yard setback in any zoning district.
  3. No fence may exceed a height of eight feet at any place on any parcel in any case in any zoning district. Fence height shall be measured from the natural contours of the ground to the top of the fence. The addition of berms or raising of the ground to lessen fence height shall not be permitted.

4. All retaining walls and combinations thereof over 8 feet high shall require site plan review by the Planning Board (limited to the proposed improvement only) and a building permit from the Code Enforcement Officer, except as otherwise approved by the Planning Board as part of a site plan.
5. The Planning Board may modify 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 exceptions will create beneficial screening and not impact neighboring properties.
6. 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.

**§140-13.1 Accessory Dwelling Units**

**A. Purpose and intent.**

It is the specific purpose of this law to aid the general welfare of the Town by providing a variety of housing opportunities; particularly:

- a. for our aging population to "age in place."
- b. to create housing expansion for our local workforce.
- c. to provide options for young and older families.
- d. to allow the more efficient use of the town's existing stock of dwellings and accessory structures.
- e. to provide economic support for resident families of limited income; and
- f. to protect and preserve property values while preserving the rural character of the town.

**B. Definitions.**

As specifically apply to this subsection

**ACCESSORY DWELLING UNIT (ADU)**—An existing or proposed subordinate dwelling unit located either within a principal residential dwelling, (inclusive of garage if attached thereto), or within an approved detached accessory structure, having its own ingress and egress and providing independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation. All ADUs shall meet the requirements of habitable space as defined by the New York State Uniform Fire Prevention and Building Code.

**FLOOR AREA, GROSS** - 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 centerline of party walls separating two buildings, excluding cellar and basement areas used only for storage or for the operation and maintenance of the building.

**PRIMARY DOMICILE** - A resident's true, principal, and permanent home and a legal construct used to determine where a resident votes, files lawsuits, pays taxes, claims benefits, and obliges governmental authority.

PRINCIPAL DWELLING - The primary residential building of a parcel 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.

HABITABLE SPACE - Space occupied within a dwelling unit for the purposes of living as defined by requirements of the NYS Building Code.

C. Authorization.

1. The Town Board authorizes the Code Enforcement Officer to issue a zoning determination to property owners per the provisions of this local law.
2. All accessory dwelling units are subject to requirements for Residential Building Permits.
3. Prior to issuance of a Certificate of Occupancy for an Accessory Dwelling Unit a deed restriction shall be filed with the Ulster County Clerk stating the Accessory dwelling Unit shall be restricted as an ADU in perpetuity. A copy shall be filed with the Town.

D. Zoning Districts.

Accessory Dwelling Units as defined herein shall be permitted in the A-3, AB-3, R-1, R-2, R-5, H, and B zoning districts as a permitted accessory use to a principal permitted single- or two-family dwelling. To apply for a permit, the accessory dwelling unit shall be located on the same parcel as the principal residential dwelling. In the determination of permitting, the construction or conversion intended to create an accessory dwelling unit shall demonstrate that is clearly incidental and secondary to the primary residential dwelling. The accessory dwelling unit shall always be considered an accessory use and subordinate to the principal dwelling.

E. Lot requirements.

1. The following lot requirements shall apply:
  - a. ADUs shall not be subject to any additional density requirements. A detached structure or expansion of the footprint of the principal dwelling where an accessory dwelling unit is proposed shall conform with the setback, lot coverage, and height requirements of the zoning district in which it is located.
  - b. Accessory dwelling units proposed where the principal dwelling is located on a lot non-conforming with regards to lot size may be permitted, subject to Site Plan Review.
  - c. All other standards of the Schedule of District Uses [see Appendix C] shall apply.
2. Provisions for parcels large enough to accommodate multiple Principal Uses
  - a. When constructing a new dwelling unit on lot that contains an existing dwelling unit, and where sufficient acreage exists to support multiple principal uses, the owner can specify whether the new unit is to be constructed under the provisions governing ADU's, or as an additional Principal Dwelling.

Principal dwellings are subject to the bulk density requirements of the underlying zoning district where they are located.

3. Provisions for vacant lots

- a. When constructing on a vacant lot, an applicant may propose construction of both a principal dwelling(s) and an Accessory Dwelling Unit simultaneously, subject to the conditions of this section, §140-13.1 Accessory Dwelling Units

F. Prohibitions.

Accessory dwelling units shall be prohibited:

1. As accessory uses to multifamily dwellings.
2. As accessory uses to commercial or industrial uses.
3. From receiving a permit for Short-Term Transient Rental Use, under the provisions of §140-26A.

G. Owner Occupancy.

The owner of the parcel on which an Accessory Dwelling Unit is located shall maintain their primary domicile in either the principal dwelling or the accessory dwelling unit.

H. Certificate of Occupancy.

1. An accessory dwelling unit may not be located on a parcel where a current building violation exists unless the legalization or creation of the Accessory Dwelling Unit will cure the violation.
2. All Accessory Dwelling Units shall be on a permanent foundation.

I. Maximum Habitable Space.

An Accessory Dwelling Unit shall contain a minimum of 350 sq. ft and shall not exceed the gross floor area of the principal dwelling unit or 750 sq ft, whichever is less.

J. Number of Accessory Apartments.

A maximum of one accessory dwelling unit shall be permitted on each qualifying parcel. Additional dwelling(s) on a lot which meets area/bulk requirements shall be considered a principal dwelling unit and subject to the lot development standards for the zoning district in which it is located.

K. Construction.

Both the accessory dwelling unit and the principal dwelling shall meet the requirements of New York State Uniform Fire Prevention and Building Code and New York Department of Health Code. For the purposes of this code, accessory dwelling units shall have a maximum number of 2 bedrooms.

L. Water and Septic.

1. Ulster County Department of Health approval of the adequacy of septic must be obtained prior to the issuance of a Building Permit.

2. The water system shall connect to the system of the principal dwelling unless a letter is presented, signed, and sealed by a licensed engineer certifying that such connection is not feasible. A new, adequate water source must be established prior to the issuance of a building permit.

M. Parking.

Off-street parking as required by Chapter §140-17 shall be provided, with a minimum of one space for the ADU and such parking shall not be located in the front yard setback. Additional driveways are discouraged where it is possible to use a single driveway. Any driveway that provides access to a single Dwelling Unit and a single associated ADU shall not be considered a shared driveway.

N. Cap of Accessory Dwelling Unit Permits

The Town Board shall have the ability to institute a cap on the number of permits issued on ADUs annually through resolution.

**§ 140-14 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 Chapter 75, Farming, of the Town Code. It is the policy of the Town to encourage agricultural use and farm operations, particularly in New York State Certified Ulster County Agricultural Districts and in the A-3, and AB-3 zoning 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.

- 1) 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 Uses [see Appendix C] and this chapter.
- 2) Farm operations located within New York State Certified Ulster County Agricultural Districts.
  - a. All agricultural uses operated as a farm operation, as defined in §140-4 of this code and located on parcels within New York State Certified Ulster County Agricultural Districts are a permitted use in any zoning district by right.

- b. The construction of on-farm buildings and structures to be used in conjunction with a farm operation, as defined in §140-4 of this code and located on parcels within New York State Certified Ulster County Agricultural Districts are a permitted use in any zoning district by right. All agricultural use permanent structures shall require a zoning permit and shall comply with NYS Uniform Fire Protection and Building Codes and shall comply with the minimum setbacks of the district in which they are located. Accessory structures shall comply with § 140-13.
- C. Non-Animal Agricultural uses are permitted uses by right in all zoning districts.
- D. Animal Agricultural uses located in New York State Certified Ulster County Agricultural Districts are permitted uses by right.
- E. Animal Agricultural uses not located in a New York State Certified Ulster County Agricultural District in the A-3, AB-3, and R-5 zoning districts are permitted uses by right.
- F. Animal Agricultural uses not located in a New York State Certified Ulster County Agricultural District in the B, PL-10, NR, H, R1, and R2 zoning districts are subject to section § 140-14.1 Animal Husbandry of this code.
- F. Animal Agricultural uses not located in a New York State Certified Ulster County Agricultural Districts are prohibited in the I zoning district.
- G. Agricultural Use Structures. All agricultural use structures may require a zoning and/or building permit as determined by the Code Enforcement Officer and shall comply with NYS Uniform Fire Protection and Building Codes and shall comply with the minimum setbacks of the district in which they are located. Accessory structures shall comply with § 140-13. Agricultural buildings shall be exempt from height restriction standards as detailed in §140-11.
- H. 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 full- time employees.

**§ 140-14.1 Animal Husbandry.**

- A. This article regulates all animal husbandry not located on property assessed as agricultural use or any property in an Ulster County New York State certified Ulster County Agricultural District that is actively employed in agriculture. Animal husbandry shall conform to the following standards.
- B. The keeping, grazing, feeding, and care of animals shall be permitted as an accessory use on improved lots pursuant to the Schedule of District Uses [see Appendix C].
- C. 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 on a parcel located in a New York State certified Ulster County Agricultural District.
  3. The keeping of animals in conjunction with a kennel or a 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, in force previous to the application, is submitted to the satisfaction of the Code Enforcement Officer. The Code Enforcement Officer may disallow or restrict the number of animals based on the acreage, topography and/or proximity to neighboring residences of the parcel.
- D. The keeping of exotic and native wild animals is not permitted in any zoning district., with the exception of Wildlife Rehabilitators as defined and licensed by the NYS Department of Environmental Conservation (6 CRR-NY 184.2 of Codes, Rules, and Regulations of the State of New York).
- E. Animal husbandry shall conform to the following standards:
1. Animals shall in all instances be adequately sheltered so as to maintain the health and welfare of the animals.
  2. Animals shall in all instances be adequately fenced or contained and otherwise maintained so as not to create a nuisance to surrounding properties.
  3. Existing conditions shall be suitable for the grazing and or feeding of the proposed animal(s) species.
  4. Animals shall be maintained in a sanitary manner and shall be provided a constant availability of clean water and adequate forage/food.
  5. Handling, storage, disposal, or removal of all animal waste shall be done in a timely manner 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 buffers and must be screened from view from public roadways or neighboring residential properties.
  6. Minimum Lot Size
    - a. The minimum lot size for keeping large hooved animals (such as horses, mules, llamas, cows, sheep, goats, hogs, or other similar four-legged domestic-type farm animals) shall be a minimum three (3) acres excluding all structures, except animal housing structures.
    - b. The minimum lot size for keeping large birds (such as waterfowl, turkeys, and peafowl) or small poultry (such as chickens) shall be one (1) acre.

- c. In the case of keeping multiple animal types, the greater minimum lot size shall apply.
  7. 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.
  8. Minimum Setbacks
    - a. All animal enclosures (stable buildings, feeding areas, and manure storage areas, except for grazing paddocks), shall be located no less than 50 feet from any adjoining property line and any public or private roads.
    - b. All animal enclosures (stable buildings, feeding areas, and manure storage areas, except for grazing paddocks), shall be located no less than 150 feet for large hoofed animals and 75 feet for poultry, from any adjoining property residential structure.
    - c. Manure storage areas shall be a minimum of 200 feet from a watercourse or wetland as per §140 – 12(E), Waterfront Yards, 150 feet from a residential structure, and 50 feet from any adjoining property line.
    - d. Changes to the required setbacks may be determined by the Code Enforcement Officer on finding that the potential effects of the animal agricultural use could be minimized or enhanced due to topography, natural vegetation, and/or separation by other physical features or adjacency with other agricultural uses.
  9. Animal husbandry shall not be permitted on multifamily dwelling parcels.
  10. Animal husbandry in manufactured housing parks shall be permitted only upon site plan approval by the Planning Board.
  11. Further County or state regulations may apply, and the most restrictive regulations shall take precedence.
- F. 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, animal water sources, screening, and manure piles in addition to all other natural features, (such as but not limited to

waterbodies, wetlands, and wooded areas), 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 site plan approval.
3. In all zoning districts where a parcel has less than one acre, no large hooved animals shall be permitted, with the exceptions of 140-14.1 (C) (1-4) remaining in force.

G. Animal husbandry in practice before the adoption of this chapter shall be deemed a nonconforming use with respect to these minimum lot size requirements.

#### **§ 140-14.2, Kennels**

A. Kennels, including animal day-care centers where the animals are boarded for any length of time, shall, where permitted, be subject to special use and site plan review and the following standards.

1. A minimum parcel of three acres shall be required.
2. No structure used for the keeping of animals shall be located no closer than 100 feet to any property line or 100 feet to any public or private road.
3. Parking shall be provided in accord with the requirements of chapter §140-17 Parking, loading, access and traffic standards
4. A noise barrier consisting of a solid fence not less than six feet in height or a dense vegetative planting of not less than six feet in height shall be provided at a distance not to exceed 15 feet and fully encircling all kennel areas not enclosed in a building.
5. All animals shall be restricted from using kennel areas not fully enclosed in a building from 8:00 p.m. to 8:00 a.m.
6. Kennels shall be supervised by an on-site contact person during business operating hours.

#### **§ 140-15. Landscaping Standards**

A. The Planning Board shall, to assure an acceptable buffer between adjacent residential and nonresidential uses and to 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 nonresidential use is proposed in any district so as to buffer parking areas and buildings from the highway, each other and from other uses. The landscape plan shall preserve existing features which would add value to residential development or to the

Town as a whole, such as trees, wetlands, watercourses and falls, historic structures, scenic views, and similar irreplaceable assets. These features shall be preserved through harmonious design of a site plan or subdivision. 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 the number, locations, sizes, and species of all existing and proposed mature shade trees or other species of six-inch caliper or greater and indicate existing vegetation to be removed or preserved. No tree of 12 inches or more diameter at 4 feet from the ground shall be removed, nor any change of grade of the land affected until approval of the final plat has been granted. Removal of invasive species, as defined by the NYS DEC, shall be always permitted during the application process upon approval by the Planning Board. All trees on the plat required to be retained shall be preserved, and all trees, where required, shall be welled, and protected against any change of grade. and the plat shall further indicate all trees marked for retention and the location of all proposed shade trees.
- C. The landscape plan ~~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.
- D. 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 site plan or special use:
  - 1. The plan should promote attractive development, preserve existing trees, vegetation, and unique site features, (such as stone walls and rock formations or historical features), 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. A list of reference invasive species is found at the NY State DEC list of prohibited and regulated invasive species and the Cornell Cooperative Extension of Ulster County Invasive Plants.  
[https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/isprohibitedplants2.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/isprohibitedplants2.pdf)  
[http://ulster.cce.cornell.edu/environment/invasive-plants.](http://ulster.cce.cornell.edu/environment/invasive-plants)

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.
  6. Consideration and determination of the adequacy of the above plan requirements are at the Planning Board's discretion.
- E. Landscaping guidelines. The following minimum specifications shall be applied by the Planning Board when new landscaping is required:
1. The minimum branching height for all shade trees shall be six feet.
  2. Shade trees shall have a minimum caliper of six inches (measured four feet above grade) and be at least 12 feet in height when planted.
  3. Evergreen trees shall be a minimum of six feet in height when planted.
  4. Shrubs shall be a minimum of 36 inches in height when planted. Hedges shall form a continuous visual screen within two years after planting.
  5. A buffer screen (vegetative, fencing or a combination of both) at least 20 feet in width along any residential lot line shall be provided. It may include an opaque wooden stockade fence up to eight feet in height and on average 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 evergreens or an alternative suitably buffering landscaping arrangement, shall be permitted as a substitute for the stockade fence upon Planning Board approval.
  6. A landscape strip at least 20 feet in width that includes at least one deciduous tree for every 25 linear feet of perimeter lot line shall be required for any nonresidential use. Such deciduous trees shall 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) shall be landscaped with grass, ground cover, shrubs, or other perennials/appropriate plant material with a preference for native and pollinator supporting species.
  8. The preservation of mature shade trees shall be required unless there is no alternative but to remove them. Any shade tree identified intended to be saved

shall be properly fenced to protect the root zone from the impact of vehicle traffic, construction, and other activities. Existing shade trees that may be preserved may be used to meet requirements of this section provided the Building Inspector or Planning Board determines the purpose of this section is achieved.

9. Landscaping, trees, and plants shall be planted and maintained in a healthy, growing condition according to accepted horticultural practices. Any landscaping, trees, and vegetation which are in a condition that does not fulfill the intent of these guidelines shall be replaced by the property owner during the next planting season for the specific plant material.
  10. Any screening fence, wall, or curbing required by landscaping standards shall be maintained by the property owner in good condition throughout the period of the use of the parcel.
  11. The Planning Board may allow these standards to be reduced with a waiver request in special circumstances where other adequate landscape treatment is provided.
- F. 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 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. Further maintenance guarantees may be required to ensure replacement of damaged or dead landscape materials, upon decision by the Planning Board.
- G. 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 for Future Use**

**Article IV**  
**General Supplementary Regulations**

**§ 140-17. Parking, loading, access, and traffic standards.**

- A. Off-street parking and 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. Multifamily 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. The Planning Board shall apply the following standards to determine parking needs in cases of uncategorized uses.
- B. For such uses where the standards may only be partially or not directly applicable, parking requirements shall be the same as for the most similar use listed as determined by the Planning Board at the time of special permit and/or site plan review and may be reduced or increased by the Planning Board based upon the following criteria.
- C. An applicant may similarly request, in writing, a modification of parking standards, and the Planning Board shall decide 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.
  - (1) 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.
  - (2) The characteristics and use patterns 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.
  - (3) 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.
  - (4) 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.
  - (5) 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.

- (6) 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.
  - (7) The use of pervious surfacing to reduce stormwater impacts.
- D. 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 the Planning Board may make adjustments 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.

<b>Basic Parking Requirements</b>	
<b>Land Use</b>	<b>Parking Requirement</b>
Home occupations	1 space per 250 square feet of floor area devoted to use
Hotels/motels	1 space per rental room plus 1 space for each 4 employees
Industrial uses	1 space per 500 square feet floor area plus 1 space per employee
Commercial uses	1 space per 250 square feet floor area
Places of public assembly	1 space per 4 seats
Offices	Open to the public: 1 space per 250 square feet of gross floor area. Not open to the public: 1 space per employee or owner plus necessary spaces for visitors
Vehicle service establishments	4 spaces plus 1 space per employee
Eating and Drinking Establishments	1 space per 3 seats inclusive of outdoor seating, or 50 square feet of floor area available to patrons, whichever is greater, whether such seats or floor area is situated within an enclosed building or outdoor service are

E. Electric Vehicle Charging

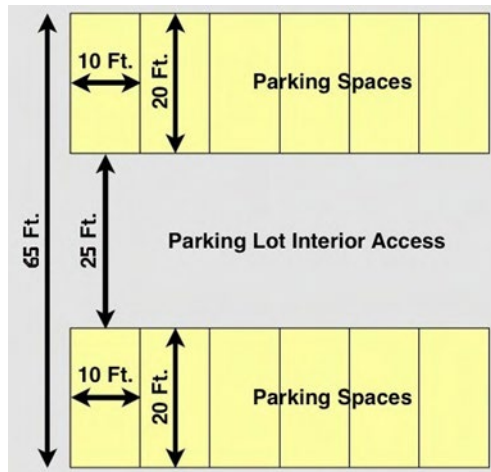
1. Any site plan for a residential use that proposes more than five dwelling units or a nonresidential use that proposes more than 20 parking spaces shall make provision for the installation and use of one or more electric vehicle charging stations (EVCS) in accordance with the following:
  - a. Residential structures shall include at least one internal or external parking space with a Type I or Type 2 EVCS per 5 dwelling units.
  - b. Office, business, commercial, recreational, and other nonresidential uses, including civic, cultural, and not-for-profit uses (for instance, libraries, day-care centers, schools, churches, etc.) shall provide at least one parking space with convenient and suitable access to an EVCS for every 20 automobile parking spaces.
  - c. Parking spaces for nonresidential uses shall be designed and arranged so that electric vehicle parking spaces are generally available for the parking of an electric vehicle. Parking spaces designated on an approved site plan for a public EVCS shall be used exclusively for the parking of a vehicle that is connected to the EVCS for charging and shall include signage indicating such.
  - d. All installed EVSC parking facilities shall be maintained in good operating order at all times during the duration of the proposed use.
  - e. In the event that the Planning Board determines that the applicant has demonstrated good cause to waive the installation of EVCS facilities otherwise required by this section, it shall require that a sufficient number of spaces be provided with conduit and such other equipment as may be necessary to enable EVSE to be installed in the future with minimal inconvenience or disturbance of parking areas.
  - f. A parking space available for use by an electric vehicle shall continue to be deemed a parking space for purposes for calculating the number of parking spaces required

F. ADA Standards

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% of the total
101 to 150	5	1,001 and over	20 plus 1 for each 100 over 1,000
151 to 200	6		

G. Garages, carports, and driveways not in the public right-of-way may be considered parking spaces. Parking spaces shall be a minimum of 9 feet wide and 18 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 sixty-degree angle parking, 15 feet for forty-five-degree angle parking and 13 feet for thirty-degree angle parking. The Planning Board may modify these standards in conjunction with site plan review to fit the needs of particular enterprises.



H. 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 rights-of-way and shall avoid light spillage onto adjacent properties.

I. Parking Standards

- 1) Parking landscaping plans shall be designed to accommodate storage areas for piling snow.
- 2) ~~No~~ Parking areas shall not ~~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, shall 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 Lot Development Standards [see Appendix B]. 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.



- (4) Parking shall be placed between the principal building and a public street, if necessary due to specific site conditions and/or functional requirements, if the parking is screened by topography or a year-round vegetative buffer of sufficient density to substantially limit the view of the parking lot.

J. Parking Landscape Guidelines

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 means of stormwater control. The following are guidelines the Planning Board encourages use of and may require:

- 1) No more than 12 parking spaces should be allowed in a continuous row uninterrupted by landscaping or other natural features. Maintenance guarantees may be required to ensure replacement of damaged or dead landscape materials. Each landscaped area should be planted with native ground cover, grass, or shrubs, in addition to any shade tree requirements.
- 2) For parking spaces facing one another a landscaped island of at least four (4) feet in width and extending the full length of the 12 parking spaces of one hundred (120) feet should be established. The landscaped island should include deciduous shade trees 4 inches in caliber at 4 feet from the ground, at planting, with a minimum of one every 12 feet between the parking rows. Trees species should be chosen for their proven hardiness in a parking setting.
- 3) For 12 linear parking spaces each division should be landscaped. Landscaped divisions shall have a minimum dimension of at least four (4) feet in width and eighteen (18) feet in length and include one (1) deciduous shade trees 4 inches in caliber at 4 feet from the ground, at planting.
- 4) A landscaped area should also be provided at the ends of parking rows, where feasible, to separate parking spaces from the circulation aisles. Spaces which cannot be used for parking, such as perimeter corners between parking stalls, shall be incorporated into the landscaped area rather than being paved.



Courtesy of Neup Neup Associates

- 5) Parking Lot bioswales/bioretenion and rain gardens may be required where feasible

on Planning Board Review.

- K. A single access to adjoining parking lots or an interconnection between adjoining parking lots is encouraged and may be required where necessary to provide safe traffic management. Parking should be organized into smaller interconnected lots behind retail and mixed-use buildings.



**L30 Parking lot placement Preferred**

The parking lot is in the middle of the block so that the impact on the street wall and sidewalk experience is minimized. The storefront is on the sidewalk.

- L. 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 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.
- M. Access to and from all nonresidential 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 to prevent access to the area from other than the defined entrance and exits.

- 3) All access drives shall obtain a driveway permit from either 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 that are 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 centerline 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) Intersections should be designed to slow traffic and be made pedestrian friendly where possible.

10) The Planning Board shall have authority to require additional traffic safety improvements in conjunction with site plan review for any project.

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

- 1) No tract shall be provided direct access to Route 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 Route 44/55 or 209, provided that existing residential lots shall not be subject to this Subsection. 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 landowners submitting a subdivision or site plan for property on Routes 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 business 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) Curb line 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 to 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 or sharing of parking area is not feasible. Such analyses may be provided for as a condition of approval at the expense of the applicant.
- O. Separation from road. All nonresidential 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.
- P. 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 determined likely to generate an increase of 25% or greater trip ends per day or likely to 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.

- Q. 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.
- R. Residential access. At the discretion of the Town Superintendent of Highways, any residential use parcel which has frontage on two or more Town roads may be required to access the public road via the lesser-traveled roadway; similarly, any residential use parcel which has frontage on a private road and a Town road may be required to access the private road.

**§ 140-18. Reserved for Future Use**

**§ 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:

<b>Home Occupation Classifications</b>		
<b>Class</b>	<b>Description</b>	<b>Requirements</b>
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, more than those normally associated with residential use	<ul style="list-style-type: none"> <li>• No on-site employees other than family members residing in the dwelling.</li> <li>• No display or sale of retail goods</li> <li>• No stockpiling of inventory of a substantial nature</li> <li>• No outside appearance of business (e.g., parking, signs, or lights)</li> <li>• 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.</li> <li>• No generation of any solid waste or sewage discharge, in volume or type, not normally associated with residential use in the neighborhood.</li> <li>• Business activity conducted only within the dwelling.</li> <li>• Shall not occupy more than 25% of the habitable floor area or 250 square feet of floor area, whichever is less.</li> </ul>

Class II	<p>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.</p>	<ul style="list-style-type: none"> <li>• No more than one on-site employee other than family members residing in the dwelling.</li> <li>• No display or sale of retail goods</li> <li>• No stockpiling of inventory of a substantial nature</li> <li>• 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.</li> <li>• No generation of any solid waste or sewage discharge, in volume or type, not normally associated with residential use in the neighborhood.</li> <li>• 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 of whether located in the dwelling or in an accessory structure.</li> <li>• No display or parking of equipment or products, storage of goods, materials, or signs visible from outside the building, except for a name or accessory use sign</li> <li>• No external evidence of the home occupation or alterations inconsistent with the residential use or appearance of the buildings</li> </ul>
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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"> <li>• No more than two on-site employees other than family members residing in the dwelling.</li> <li>• No more than 150 square feet of floor area used for display or sale of retail goods.</li> <li>• No stockpiling of inventory of a substantial nature</li> <li>• 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.</li> <li>• No generation of any solid waste or sewage discharge, in volume or type, not normally associated with residential use in the neighborhood.</li> <li>• 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 of whether located in the dwelling or in an accessory structure.</li> <li>• No display or parking of equipment or products, storage of goods, materials, or signs visible from outside the building, except for a name or accessory use sign</li> <li>• No external evidence of the home occupation or alterations inconsistent with the residential use or appearance of the buildings</li> </ul>
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- B. A Class II or III Home Occupation 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 chapter 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 off site, 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.**

- A. Wherever a building permit, site plan review, or special use permit is required, with the exception of agricultural activities and home occupations, the following performance standards shall apply. The Code Enforcement Officer or 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.
- B. Green energy/energy conservation development shall be encouraged to incorporate sufficient energy conservation measures such as, but not limited to: LEED Zero Energy Certification, geothermal (ground source heat pump) or passive solar heating, and natural habitat preservation.
- C. Building design and location.
  - 1) Building design and location should be suitable for the use intended and compatible with natural and manufactured surroundings. Examples of preferred commercial and industrial building designs are detailed in the TOR Historic Resources Report & Reconnaissance Survey, TOR Comprehensive Plan and the Ulster County Community Design Manual.
  - 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. The Planning Board may request alternatives to building color, materials, and design including changes which may be contrary to a national franchise aesthetic. If existing surrounding buildings are disused, poorly maintained, or abandoned building design shall reflect the design standards as detailed herewith or within the Comprehensive Plan and not reflect the surrounding structures.
  - 3) Exterior materials of new construction shall be compatible with those traditionally used in the region and may include wood (clapboard, board and batten or shingles), natural stone or red common brick.
  - 4) Man-made or processed masonry materials (such as cultured stone, or cement board) designed to simulate wood, brick or stone may be used when the texture, color, ecological impact, method of construction and architectural features (gables, lintels, sills, etc.) of the material is sufficiently similar to that of the natural material to be compatible.
  - 5) Building placement and site development layout should also incorporate the

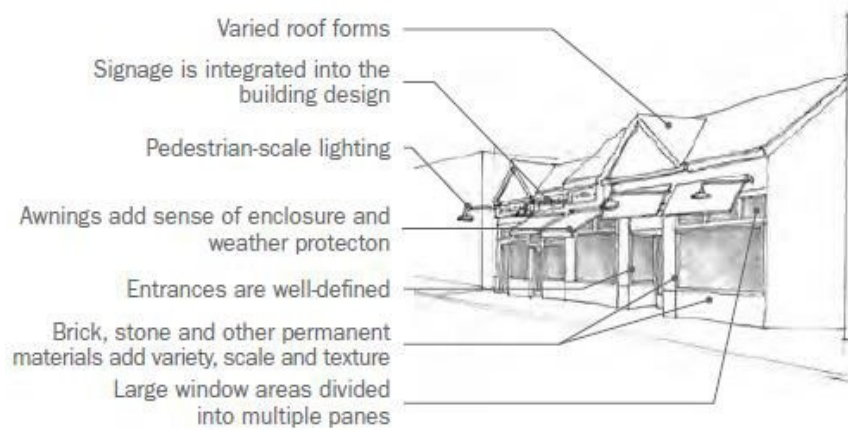
- site's topography, existing vegetation, and other unique features. On a lot with multiple buildings, those located on the interior of the site shall front towards and relate to one another, both functionally and visually, and may be organized around features such as courtyards, greens, or quadrangles. Smaller, individualized groupings of buildings are encouraged. Buildings shall be sited to provide safe fire and emergency access. Accessory buildings shall, wherever possible, be located in the rear.
- (7) Buildings should relate in scale and design features to the surrounding buildings, showing respect for existing and neighborhood architecture. Buildings shall avoid long, uninterrupted walls or roof planes. Building wall offsets, including projections, recesses, and changes in floor level or other comparable design features shall 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. For example, a main pitched roof could be combined with secondary roof types. Large roof expanses could incorporate dormers, cupolas, and other features to help reduce the scale of pitched roofs. Commercial facades of more than 100 feet in length shall incorporate design features of this nature.
- (8) Building entries should be emphasized through canopies, awnings, and other architectural elements. The use of covered arcades, Porte cochere, and canopies are encouraged as an architectural feature in façade design and to provide weather protection.
- (9) All building facades 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, landscaped vegetative buffers shall be provided.
- (10) 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. Permeable paving or stabilized gravel/grass or other ecologically conscious materials and techniques shall be utilized as practicable over asphalt paving. Loading docks and accessory facilities should be incorporated into the building design and screened with materials comparable in quality to the principal structure. (See chapter 140-17 Parking, Loading and Traffic).
- (11) Dumpsters, outside storage (non-display) and drop-off boxes shall be limited to rear yards or screened side yards.
- (12) All mechanical equipment, such as heating and air conditioning units, exhaust fans, satellite dishes, etc., shall be confined within the principal structure or visually screened by natural topography or a wall, fence, berm or landscaping of sufficient height and density to screen the equipment year-round from view

from adjacent streets, properties, and parking lots. Such equipment should preferably not be located on the building roof.

- (13) Developers are encouraged to preserve tree borders. Existing trees over twelve inch diameter at 4 feet height shall be incorporated in the site design to the maximum extent practical, as shall be determined by the Planning Board, and no trees shall be removed prior to site plan review and approval, unless for safety reasons as approved by the Code Enforcement Officer.
- (14) 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.
- (15) New construction within 500 feet of a National or State Register Historic District, Site or Structure is encouraged to reference the historical designs detailed in the Town of Rochester Historic Resources Report and shall be referred to the TOR Historic Preservation Committee for review and commentary . See Examples on the next page.



The use of building facade colors compatible with a historic color palette shall be encouraged.



**D. Building Size**

Where allowed in a zoning district, except the Industrial (I) zoning district, any individual freestanding commercial building, or any group of attached commercial buildings total footprint shall not exceed an area of 10,000 square feet of retail space.

**E. Route 209 commercial design standards.**

Any site plan review or special use application for a new commercial or industrial use fronting on or within 600 feet of Route 209 shall 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.

**F. 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 yard setbacks 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 twenty-foot-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 setback is already wooded.

**G. Inflammables.**

All activities involving the manufacturing, production, storage, transfer, or disposal of inflammable and explosive materials shall be provided with NYS Uniform Fire Protection and Building Code compliant 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 and refuse 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 yard setbacks and/or fencing.

**H. 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.

**I. Noise.**

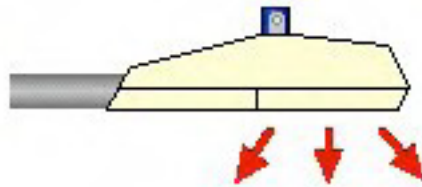
- (1) All proposed new land uses shall not generate cumulative sound levels (SPL), at or beyond any lot line, which exceeds the ambient noise level by 10 or more decibels (dBA). Any sound of five (5) to ten (10) decibels above the ambient noise level shall be attenuated or mitigated to the maximum degree 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. If additional setbacks, buffers, or other noise mitigating measures are required by the Planning Board, annual certification of their maintenance in operative form shall be provided to the Code Enforcement Officer.
- (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. Noise measurements shall be performed by a certified third-party sound consultant at the expense of the applicant. The increase in ambient noise level shall be determined for all lot lines at the site where the project is to take place, during the proposed hours of operation of the project and at any other locations as shall be specified by the Planning Board considering existing noise sources.
- (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 a.m. and 7:00 p.m.; 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.

**J. Vibration.**

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

## K. Lighting.

- 1) Lighting for all commercial, multifamily residential, institutional, and industrial uses shall be shielded and focused downward to prevent glare and spillover of light onto adjoining properties. LED and other high-efficiency lighting shall be used. Climate Smart Communities defines "high efficiency" as any lighting fixture that exceeds ASHRAE 90.1 by at least 3%.



- 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 shall not exceed 10 footcandles at any point on the site plan Average footcandles at the property line shall be less than 1.0 footcandles, 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 exterior and sign lighting, with exception of safety related building mounted lighting, shall be turned off outside of hours of operation. Safety related building mounted lighting shall preferably be motion sensitive lighting.
- 8) All lighting over 2,000 lumens in strength shall meet the full cut-off standard of the illuminating Engineering Society of North America (IESNA).

9) All site activity areas, including parking lots and walkways, shall meet minimum IESNA standards and exceed those standards by no more than 25%.

10) All gasoline canopy lighting shall be fully recessed and the average light level under the vehicular canopy shall not exceed 20 horizontal maintained footcandles.

**L. 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. Any open burning of waste or refuse shall be prohibited.

**M. 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 regulate and control the location, size, type, and design of existing and proposed signs, help residents and visitors find what they need without difficulty; improve the appearance of the Town; and promote public safety in order to.

1. Eliminate and prevent the erection of signs that cause distractions or obstructions that create hazards to traffic safety.
2. Prevent dangers to public safety from unsafe, improperly constructed or located signs.
3. Enhance and protect the Town's physical appearance and property values.
4. Encourage the most effective and functional use of signs as directional, informational, and advertising devices.
5. Preserve the historic and architectural heritage of the Town.
6. Enhance the Town's ability to attract sources of economic development and growth.

B. Authority and Permit.

- (1) This subchapter regulates signs, as defined in this subchapter, that are placed on private property or on property owned by public agencies other than the Town and over which the Town has zoning authority.
- (2) Signs which require a permit, as detailed by this Section, shall not be installed, built, located, or displayed unless a permit is obtained. Signs which are exempt may be installed, built, located, or displayed without a permit.

C. Permit Application Process

- (1) Application for permits, where needed, shall be made to the Code Enforcement Officer or Building Inspector in writing on official forms together with any fees required. A sketch or depiction of the sign, showing placement and dimensions shall be included. Written consent of property owners shall also be provided, if made by other than the property owner.
- (2) All signs, including exempt signs, which are proposed as a part of a Site Plan or Special Use Permit review shall be reviewed and approved by the Planning Board prior to installation.
- (3) Applications determined to not require Planning Board review shall be acted upon within 30 days of receipt by the Code Enforcement Officer or Building Inspector .
- (4) Applications submitted to the Planning Board shall be acted upon within 45 days of receipt unless proposed as a part of a Site Plan or Special Use review.
- (5) Signs within the Historic Preservation Overlay District requiring permit shall be reviewed by the Town of Rochester Historic Preservation Committee for comment to the approving authority.

D. General regulations. The following regulations shall apply to all signs, whether requiring a permit or exempt from regulation:

- (1) Signs shall not be displayed without the consent of the legal owner of the property, or the designated agent, on which the sign is mounted or displayed. For purposes of this regulation, "owner" means the holder of the legal title to the property and all parties and persons holding a present right to possession, control, or use of the property.
- (2) No sign shall be located in such a manner as to obstruct free and clear vision for drivers; interfere with, mislead or confuse traffic; or be located where, by reason of its position, shape or color such sign may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device by making use of the words "STOP," "LOOK," "DANGER" or any other word, phrase, symbol or character or red, green or amber illumination or reflection..

- (3) Except for official traffic signs and signs in H Districts, those signs that exceed 24 square feet in surface area shall be set back at least five feet from the front and side lot lines.
  - (4) No sign shall exceed a height equal to one-half its distance from a road right-of-way, regardless of other height limitations.
  - (5) Signs may be double faced and the reverse side of any sign may be used without counting toward the total sign area.
  - (6) 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 roofline of the building to which they are attached. Portable signs, except as provided herein, shall be subject to all freestanding sign regulations.
  - (7) 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.
  - (8) Internally illuminated signs shall be required to be turned off at minimum one half hour before and after operating business hours in all zoning districts. This applies to all signs in the Town of Rochester. Externally illuminated signs may remain lit.
  - (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. Billboards. Billboards shall be permitted in existing billboard locations provided that they consist of signs of an area not more than 325 square feet, excluding supports, which shall be at least six feet from all property boundaries of the property on which they are erected. No new billboard locations shall be permitted.
- F. Nonconforming signs. Existing nonconforming signs may be repaired or reconstructed on the same site but shall not be relocated or increased in size except as provided herein. A nonconforming sign shall be considered a nonconforming structure.
- G. 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.

## H. General Definitions

[Photos used in this section are for illustrative purposes only]

### **SIGN**

Any device, facade, fixture, material, placard, or structure that uses any color, form, graphic, picture, illumination, symbol or writing to advertise, announce, declare, represent, 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.

### **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 STRUCTURE**

The sign and the supports, uprights, braces, and framework of the sign.

### **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.

## I. Sign Types and Definitions

### **ADDRESS SIGN**

The numeric reference of a structure or use to a street included as part of a sign.





### **ANIMATED, MOVING, or FLASHING SIGN**

A sign that uses movement, lighting, or special materials to depict action or create a special effect or scene. This classification includes wind-actuated and other elements (e.g., balloons, bunting, pennants, streamers, whirligigs) or other similar devices.

### **AWNING SIGN**

A sign painted on, printed on, or attached to the surface of a roof-like structure usually covered in fabric (e.g., canvas) that projects from the wall of a structure for the purpose of shielding a doorway or window from the elements.



### **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.

### **CANOPY SIGN**

A permanent roof-like structure of rigid or fabric materials extending from the main entrance of a structure and typically supported by posts at the corners furthest from where the canopy attaches to the structure.

### **CHANGEABLE LETTER SIGN**

A sign where the supporting frame or structure is permanent and only the letters, displays or illustrations are changeable or temporary.

## **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.



## **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.

## **DIGITAL OR ELECTRONIC MESSAGE SIGN**

Any sign with changing text or graphics generated by electronic components advertising a product, service, or activity, public service message, time, and/or temperature.

## **FREESTANDING SIGN**

A pole sign or ground sign (see below)

## **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.

## **HANGING SIGN**

A sign typically attached to the underside of a soffit or awning, or projects outward, typically at a ninety-degree angle, and hangs from a bracket or support that is located over or near a building entrance.

## **ICONIC SIGN**

A sign having significant historical character and that has acted as a landmark in the Town.  
OR

A three-dimensional sign containing a symbol or logo characteristic of the goods and services or the business to which it is affixed. An example of an iconic sign would be a barber pole affixed to a barber shop.

### **IDENTIFICATION SIGN**

A sign that is limited to the name, address and number of a building, institution, or person and to the activity carried on in the building or institution, or the type of occupancy of the person.

### **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.

### **INFLATED DISPLAY SIGN**

A three-dimensional object filled or activated by moving or non-moving air or other gas that is located, attached, or tethered to the ground, site, merchandise, structure, or roof and used as a sign or to attract attention. This definition does not include inflated gymnasium-type jumping or sliding devices used temporarily for a non-advertising activity (e.g., children's parties, etc.), or holiday decorations.

### **MARQUEE SIGN**

A permanent roofed structure attached to and supported by the building and projecting from the building face and generally used to post or otherwise display copy associated with the on-site business.

### **MEMORIAL PLAQUE**

A sign built in order to remind people of a famous person, event, or district.

### **NAMEPLATE**

A sign indicating the name and/or occupation of a person legally occupying the premises or indicating a legal home occupation thereon





### **OFF-SITE SIGN**

A sign located on a parcel of land which directs the public to a business or public attraction/location that is located on another parcel of land for the purpose of safety, location, and convenience. Such a sign shall require a Planning Board permit.

### **POLE SIGN**

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

### **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.

### **PROJECTING SIGN**

A type of building sign that projects outward from the façade, typically at a ninety-degree angle

### **REAL ESTATE SIGN**

A sign which advertises the availability of land, buildings, or spaces within buildings as being for sale or rent.

### **SANDWICH BOARD or A-FRAME SIGN**

A Freestanding tent sign typically placed on the sidewalk or in the front landscape area.

### **STATIC ALPHA NUMERIC DISPLAY SIGN**

A digital sign which singular function is only capable of displaying numbers and letters in static mode only. Any digital sign which retains the same stationary message for a period of 12 hours or more shall be considered a static alpha-numeric display sign. These signs are restricted in operation, limited only to displaying gas/fuel prices at auto services stations, hotel room rates, time/temperature, or other fixed message use and can only operate for that specified purpose.

### **STREAMERS or PENNANTS (COMMERCIAL)**

Decorations made from paper, cloth, canvas, light fabric, plastic, or other light materials used for decoration on a property or building in a commercial advertising manner.

### **TEMPORARY SIGN**

A nondurable sign no greater than 32 square feet intended to remain in place not more than 60 days, including advertising pennants. Signs located on wheels shall not be considered temporary signs.

### **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.

### **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.

### **WINDOW SIGN (INTERIOR)**

A sign, affixed to the interior of a window, for the purpose of advertising goods or services sold or provided from the premises.

## **J. Signs Exempt from Permit Requirements**

1. Memorial plaques, cornerstones, historical tablets and the like.
2. Signs not visible from outside the lot upon which they are situated.
3. Nameplates which do not in total exceed three square feet on one property.
4. Identification signs posted in conjunction with doorbells or mailboxes, not exceeding a total of 30 square inches in surface area.



5. Not more than one address sign, with a surface area of two square feet or less, per street frontage, which indicates the numerical address (in numbers or script) of the premises on which it is situated and the name of the occupant.
6. Cautionary, directional, regulatory, warning, or informational signs of a noncommercial nature, which are in the public interest, such as, but not limited to, “danger,” “no trespassing,” “exit,” “entrance,” “parking,” “one way,” “no entrance,” etc. Such signs shall not exceed 4 square feet and be no more than five feet in height if pole mounted.
7. Warning or Danger signs removed less than 3 days of end of danger.
8. Signs associated with agri-business on property classified with an agricultural exemption.
9. Awning, canopy, or marquee signs no greater than 4 square feet.
10. Bus shelter signs no more than 10 square feet, no more than 2 per shelter.
11. Permanent Civic and religious signs no more than 4 square feet.
12. Directional and Instructional signs no more than 4 square feet.
13. Incidental signs no more than 4 square feet.
14. Non-commercial flags, emblems, or insignia.
15. Governmental signs
16. Holiday decorations
17. Real Estate.
  - a. Only one sign advertising properties for sale or lease shall be allowed per property per street frontage. Signs shall be limited to a total height of six feet, with a maximum face area size of six square feet in residential zones and 24 square feet in non-residential zones. For new commercial and industrial developments, the maximum face area is 32 square feet.
  - b. Primary sign may have one secondary attached sign not to exceed one square foot, and one brochure box.
  - c. The sign may be placed in a yard, in a window, or on a wall.
  - d. All signs shall be removed within 14 days after the sale, lease, or rental has been completed. For those properties that continuously advertise properties for lease, such as a commercial center or an office building, such signs shall not be required to be removed but shall be integrated into the overall



site and building design.

- e. Signs shall only be posted on the subject property for sale, lease, or rent.
- 18. Signs less than 32 square feet placed on a residential property which are not commercial in nature, provide same meet the criteria of this code.
- 19. Sandwich board or A-frame sign of no greater than 10 square feet.
- 20. Temporary signs

- a. Signs advertising an event for a school, civic, religious, fraternal, political, or similar community-based group.
- b. One sign advertising the temporary construction or contractor doing work on a parcel which shall not exceed eight square feet and, if freestanding, shall not be located nearer than 5 feet to a street or property line.



21. Window Sign (Interior)

#### K. Prohibited Signs

- (1) Animated, Moving, or Flashing signs
- (2) Digital or Electronic Message signs
- (3) Inflated Display signs
- (4) Roof signs extending above the peak of the roof.
- (5) Signs on vehicles parked to create a permanent sign effect.
- (6) Signs mounted on or attached to utility poles.
- (7) Signs resembling traffic signals or official traffic signs.
- (8) Signs which emit sound, odor, or smoke
- (9) Signs more than 15 feet in height
- (10) Signs extending beyond the edge of a sidewalk or within the path of any roadway.
- (11) Signs within 10 feet of any utility, power, or cable wire or line
- (12) Streamers or Pennants (Commercial Use)

L. Total Aggregate of Sign Surface Area for Permit Signs per Parcel

<b>Allowable Districts</b>	<b>Freestanding Signs</b>	<b>Wall Signs</b>
<b>R-1, R-2, PL-10</b>	<b>50 square feet in aggregate OR 1 square feet per foot of lot coverage Whichever is LESS</b>	<b>5 % of building façade NO GREATER THAN 32 square feet in aggregate</b>
<b>A-3, AB-3, H, R-5</b>	<b>75 square feet in aggregate OR 1 square feet per foot of lot coverage Whichever is LESS</b>	<b>10 % of building façade NO GREATER THAN 64 square feet in aggregate</b>
<b>B, I, NR</b>	<b>100 square feet in aggregate OR 1 square feet per foot of lot coverage Whichever is LESS</b>	<b>10 % of building façade NO GREATER THAN 64 square feet in aggregate</b>

M. Signs Permitted with Code Enforcement Officer or Building Inspector Issued Permit

1. All signs must comply with 140-21(D)

**AWNING SIGN**



**Description:**

A sign painted on, printed on, or attached to the surface of a roof-like structure usually covered in fabric (e.g., canvas) that projects from the wall of a structure for the purpose of shielding a doorway or window from the elements.

<b>Allowable Districts</b>	<b>Size and Limitation</b>	<b>Quantity</b>
A-3, AB-3, R-5, PL-10, H, B, I, NR	Not to exceed 16 square feet or 50% of awning surface	One sign Commercial Use

## CANOPY SIGN



### Description:

A permanent roof-like structure of rigid or fabric materials extending from the main entrance of a structure and typically supported by posts at the corners furthest from where the canopy attaches to the structure.

Allowable Districts	Size and Limitation	Quantity
A-3, AB-3, R-5, PL-10, H, B, I, NR	Not to exceed 16 square feet or 50% of canopy surface	One sign Commercial Use

**MARQUEE SIGN**



**Description:**

A permanent roofed structure attached to and supported by the building and projecting from the building face and generally used to post or otherwise display copy associated with the on-site business.

<b>Allowable Districts</b>	<b>Size and Limitation</b>	<b>Quantity</b>
AB-3, R-5, PL-10, H, B	1. Not to exceed 100% of the building entrance, plus 5 ft on either side 2. Minimum clearance of 12 feet from the ground	One sign Commercial Use

## HANGING SIGN



### Description:

A sign typically attached to the underside of a soffit or awning, or projects outward, typically at a ninety-degree angle, and hangs from a bracket or support that is located over or near a building entrance.

Allowable Districts	Size and Limitation	Quantity
A-3, AB-3, R-1, R-5, PL-10, H, B, I	1. Not to exceed 10 square feet 2. Not to exceed 4 feet in width 3. Minimum clearance of 8 feet from ground 4. Permanently mounted 5. Must be stabilized so does not swing	One sign Commercial Use

## PROJECTING SIGN



### Description:

A type of building sign that projects outward from the façade, typically at a ninety-degree angle

Allowable Districts	Size and Limitation	Quantity
A-3, AB-3, R-1, R-5, PL-10, H, B, I, NR	<ol style="list-style-type: none"><li>1. Not to exceed 12 square feet</li><li>2. Not to exceed 5 feet from building</li><li>3. Minimum clearance of 8 feet from ground</li><li>4. Permanently mounted</li><li>5. Must be stabilized so does not swing</li></ol>	One sign Commercial Use

## CHANGEABLE LETTER SIGN



### Description:

A sign where the supporting frame or structure is permanent and only the letters, displays or illustrations are changeable or temporary.

Allowable Districts	Size and Limitation	Quantity
A-3, AB-3, R-5, PL-10, H, B, I, NR	1. Not to exceed 36 square feet 2. Permanently mounted	One sign Commercial Use

## GROUND SIGN



### Description:

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.

Allowable Districts	Size and Limitation	Quantity
A-3, AB-3, R-5, PL-10, H, B, I, NR	1. Not to exceed 32 square feet 2. Not to exceed 8 feet in height	One sign Commercial Use
A-3, AB-3, R-1, R-2, R-5, PL-10, H, B, I, NR	Not to exceed 24 square feet	Two signs Residential Development

## POLE SIGN



### Description:

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

Allowable Districts	Size and Limitation	Quantity
A-3, AB-3, H, B, I, NR	1. Not to exceed 32 square feet 2. Not to exceed 15 feet in height	One sign Commercial Use

**STATIC ALPHA NUMERIC DISPLAY SIGN**



**Description:**

A digital sign which singular function is only capable of displaying numbers and letters in static mode only. Any digital sign which retains the same stationary message for a period of 12 hours or more shall be considered a static alpha-numeric display sign. These signs are restricted in operation, limited only to displaying gas/fuel prices at auto services stations, hotel room rates, time/temperature, or other fixed message use and can only operate for that specified purpose.

Allowable Districts	Size and Limitation	Quantity
AB-3, H, B, I	1. Not to exceed 36 square feet 2. Permanently mounted	One sign Commercial Use

**WALL SIGN**



**Description:**

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.

<b>Allowable Districts</b>	<b>Size and Limitation</b>	<b>Quantity</b>
A-3, AB-3, R-1, R-2, R-5, H, B	Not to exceed 16 square feet	One sign per Multifamily Building
A-3, AB-3, R-1, R-2, R-5, H, B, I, NR	Not to exceed 16 square feet	Subject to Aggregate Commercial Use

**ICONIC SIGN (less than 8 square feet)**



**Description:**

1. A sign having significant historical character and that has acted as a landmark in the Town.
2. A three-dimensional sign containing a symbol or logo characteristic of the goods and services or the business to which it is affixed. An example of an iconic sign would be a barber pole affixed to a barber shop.

<b>Allowable Districts</b>	<b>Size and Limitation</b>	<b>Quantity</b>
A-3, AB-3, H, B, I	Not to exceed 8 square feet	One sign per parcel

N. Signs Permitted with Planning Board Issued Permit

**COMMERCIAL DIRECTORY**



**Description:**

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 32 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.

Allowable Districts	Size and Limitation	Quantity
AB-3, H, B, I	1. Not to exceed 32 square feet 2. Not to exceed 8 feet in height	One sign Commercial Use

**ICONIC SIGN (greater than 8 square feet)**



**Description:**

1. A sign having significant historical character and that has acted as a landmark in the Town  
OR
2. A three-dimensional sign containing a symbol or logo characteristic of the goods and services or the business to which it is affixed. An example of an iconic sign would be a barber pole affixed to a barber shop.

Allowable Districts	Size and Limitation	Quantity
AB-3, H, B, I	1. Not to exceed 32 square feet 2. Not to exceed 8 feet in height	One sign Commercial Use

## O. Planning Board Review Design Guidelines

Discretionary signs subject to Planning Board review shall be approved, approved with modifications, or disapproved based on the following design criteria in those cases where their review and approval of proposed signs is required. Application of the guidelines shall consider the specific sign location and the character of the area in which it is proposed.

1. Signs should not interfere with the views of other enterprises, residences, or signs.
2. Signs should be located so as to not interfere with clear views required for public safety.
3. Sign should not present an overhead danger or obstacle to persons below.
4. Sign sizes should achieve ready visibility without becoming an unnecessary distraction.
5. Large freestanding signs should be landscaped around the sign base.
6. Signs mounted on buildings should not cover openings or architectural details and should be located within areas designed to house signs if such exist.
7. Signs should be located no higher above the ground than is necessary for viewing from adjacent streets. When freestanding signage is being considered, monument style signage should be encouraged over pole style, if plausible.
8. Signs should be of regular shape and should be designed with respect to the shape and proportion of the space within which they will be located and the façade to which they will be applied.
9. The size of signs should relate to the vantage point of the intended observer and the length of time available for viewing; signs intended for pedestrians on the sidewalk need not be as large as those to be seen from passing cars.
10. Signs should include the minimum information necessary to convey the intended message so as to avoid clutter and confusion.
11. Multiple signs should be avoided where practical.
12. A sign should not obstruct or impair the visual effectiveness of neighboring signs.
13. Colors and materials which are discordant with the general character of the adjacent area should be avoided.
14. Generally, signs on the same building should be placed within the same horizontal band and be of similar height.
15. Wherever possible, signs should be integrated with fences, walls, or buildings rather than freestanding.
16. Sign material should be durable and require little maintenance.

17. Signs should be subordinate to the streetscape.
18. Signs in a particular area should create a unifying element and exhibit visual continuity.
19. Where establishments share a parcel or zoning lot, a master sign plan should be prepared which addresses visual unity, shape, color, materials, type of lettering and signage.

#### **§ 140-22 Stormwater management.**

Every application requiring site plan review or subdivision approval shall, where applicable, comply with stormwater 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 § 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 watercourses or impoundments.
  - (2) A stormwater pollution prevention plan (SWPPP) identifying those practices employed after construction and as may be necessary to prevent property damage by and pollution of associated watercourses 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 stormwater 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 chapter.

ARTICLE V  
**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 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 and 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:

<b>Campground/RV Park Standards</b>		
<b>Standard</b>	<b>Transient Campgrounds/RV Parks</b>	<b>Nontransient Campgrounds/RV Parks</b>
Minimum campground lot area	1,500 square feet	3,000 square 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 twelve-foot width for one-way traffic and twenty-foot 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~~ 40% 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.

- (9) 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 150 feet of any other intersection.
- (10) 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 and loading and shall be responsible for violations of these requirements.
- (11) 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.
- (12) Recordkeeping.
- (a) 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:
- [1] The name and mailing address of the occupant of each lot or site.

- [2] The name and address of the owner of each recreational vehicle that is not occupied by such owner.
  - [3] The state in which each recreational vehicle is registered and the registration number of the same.
  - [4] 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.
  - (b) 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.
- (13) 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.
- (14) 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.
- (15) 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 campfires) 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.
- (16) 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.

- (17) No person shall burn trash, garbage or other like refuse on any campground or RV park lot. All such refuse shall 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.
- (18) 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.
- (19) No recreation vehicle shall be parked on any street or roadway within the development.
- (20) Potable water drinking supplies shall be provided within 300 feet of each campground or RV park lot and be operational during any period of occupancy.
- (21) Every campsite shall be accessible by fire and emergency equipment and shall be maintained in such condition, free of obstacles to access.
- (22) 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.
- (23) 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 holder 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 chapter.

- (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 chapter and, regardless of 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 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 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.

## **§ 140-23.1 Camps**

### **A. Camps, Day**

#### **1. Site Capacity**

The minimum lot area shall be twenty-five (25) acres. The Planning Board may place limits on the overall number of cabins, dwellings, or campers in order to accommodate the use and avoid adverse impacts to the environment, the zoning district, or the Town's residential uses and neighborhoods. In doing so, the Planning Board shall consider the adequacy of potable water, wastewater disposal facilities, traffic circulation, emergency access, NYS Uniform Fire Prevention and Building Code

compliance, and other criteria that address public health, safety, and welfare of residents and camp attendees. The Code Enforcement Officer, as part of any Special Use permit, may conduct inspections when the camp is in operation periodically with prior notice of at least 24 hours, except in cases of emergency to determine compliance with capacity requirement.

2. Location

The camp shall have a minimum frontage of two hundred (200) feet on a County or State maintained highway. The Planning Board, in its discretion, may allow a camp to be situated on a Town maintained highway where it determines, in consultation with the Highway Superintendent, that such highway and intersections have adequate capacity to handle traffic from the camp and will not cause any adverse access, noise, or other impacts to adjoining residential uses.

3. Layout

Camp facilities shall be designed so as to be consistent with the character of the surrounding neighboring residences. Buildings and structures shall not exceed two and one-half (2.5) stories and thirty-five (35) feet in building height except for cafeteria gymnasiums, community centers, religious buildings, administration buildings, and similar non-residential types of buildings and structures which shall not exceed forty-five (45) feet in building height.

4. No recreational vehicle or tent campsites, or any other transient or overnight camping accommodations, shall be offered to noncampers, and no camping trailer or recreational vehicle of any size is allowed in a camp, except as approved by the Planning Board on a temporary basis, considering compatibility with the health, safety, and welfare of campers and neighboring residents.

5. No building, cabin, tent, or active recreation facilities/structures shall be located closer than fifty feet (50) feet from any lot line, except said setback shall be a minimum of one hundred (100) feet from any lot line or portion thereof that adjoins a residential use. Notwithstanding the foregoing, a camp in existence prior to the effective date of this Zoning Chapter with a setback of less than 100 feet from an adjoining residential use may be expanded with new buildings, cabins, tents, or active recreation facilities/structures that maintain the current setback provided it is a minimum of fifty (50) feet from adjoining residential uses. The uses and structures within the camp shall be effectively buffered and screened as required in Section (6) below to minimize noise and visual impact to adjoining residential properties.

6. A landscape buffer no less than fifty (50) feet inward from the camp property lines shall be provided and maintained within the required setbacks which shall provide adequate screening to provide visual separation from adjoining properties during all times of the year through preservation of existing vegetation and/or installation of a mix of deciduous and coniferous trees, shrubs, and other vegetation that achieves the screening objective. Said buffer may be encroached upon only by a driveway that provides direct access to an adjoining road. The Planning Board may waive or reduce this landscape buffer requirement where it finds that adequate screening is provided by reason of

topography, existing forested landscape, and/or where no activities or structures will be visible from adjacent properties. Where the buffer is provided by preservation of existing vegetation, notes shall be provided on a site plan that restricts clearing within the buffer area. Passive recreation uses such as walking, hiking, wildlife observing, non-motorized biking and similar activities that do not disturb the landscape buffer and that do not generate significant noise as determined by the Planning Board are allowed within the buffer, and minimal cutting or trimming of vegetation to allow such passive recreation issues within the buffer shall be permitted.

7. Adequate evidence shall be furnished by the applicant demonstrating that noise levels will not disturb nearby residential properties. Such evidence must consider the nature of the activity, the frequency of the activity and the time and day of the proposed activity. Public address systems are prohibited except as allowed below.
8. Sanitary and wastewater disposal systems shall be approved by the New York State Department of Health. Enclosed flush toilets shall be required.
9. Centralized solid waste receptacles shall be required with mandatory fencing and screening of at least 6 feet in height. Waste in these receptacles shall be collected regularly to avoid odor, health hazards and litter. At the discretion of the Planning Board and based on the size and operation of the camp, the Planning Board may require a trash compactor. On-site storage of refuse longer than seven days, and the burial of any refuse or debris is prohibited.
10. Adequate emergency access shall be required throughout the campsite. The Planning Board shall ensure that suitable surfaces are provided for Internal driveways to ensure emergency equipment can access all occupied areas of the site. The camp shall be designed with two separate points of Ingress and egress, unless the Planning Board grants a waiver from this requirement for good cause shown by the Applicant such as where two separate points are not feasible and adequate procedures and safeguards can be put in place to allow adequate access to the site. All internal drives shall consist of a dustless stabilized surface, and the Planning Board may require that they be paved to accommodate emergency vehicles based on the recommendations of the fire district or other emergency services providers, or the Town's engineering consultant. Drop-off and pickup areas for buses and vehicles shall be located no less than one hundred (100) feet from the lot line along the street providing access to the site, or some lesser distance if the Planning Board determines there is sufficient space to queue buses and other vehicles on the site without creating any queuing on the street(s) that provide access to the site during ordinary operations. There shall be safe and adequate management of vehicular and pedestrian traffic entering and exiting the site, as well as within the site, including particular safeguards covering episodic periods of drop-off and pick-up of children and/ or visitors. Buses shall be boarded and offboarded within the site and adequate space shall be provided.
11. No parking, loading or maneuvering Incidental to parking shall be permitted in connection with the use of any camp on any public street, sidewalk, required buffer, right-of-way, or any public grounds not part of the camp.

12. Accessory structures Including, but not limited to, laundry rooms, recreation rooms, cafeteria, accessory religious space for worship that are ancillary to the operation of the campground are permitted.
13. Fireplaces and campfires.  
All fires in any camp shall be in a designated approved location with at least a stone or other fireproof enclosure demarcating the usable area from which all vegetative growth or other flammable material which might contribute to the accidental spread of the fire shall be removed. A camp shall adhere to all outdoor burn bans Issued by any local, county, or state agency.
14. Resident Manager  
One dwelling for a resident manager may be occupied year-round and shall be permitted accessory to a day camp.
15. NYS Uniform Fire Prevention and Building Code  
The camp shall comply with the requirements of the NYS Uniform Fire Prevention and Building Code, as may be amended from time to time. The Code Enforcement Officer may conduct Inspections annually, or at other times for cause or in response to a complaint, to ensure such requirements and any Planning Board approvals are met.
16. Management  
Every camp shall maintain with the Town the contact information for the person Jn charge of the camp, including a phone number(s) for contact in the event of an emergency, or otherwise, available 24 hours per day.
17. Lighting shall be dark sky compliant and comply with Section 140-20 of this code.
18. Public Address System  
A public address system may be allowed by the Planning Board where it finds the system will be operated in a manner that complies with Section 140-20 of this code. The Planning Board shall approve the location of the public address system at the time of site plan approval to ensure it meets this requirement. If at any time the system Is not in compliance with the Section 140-20 of this code, the Code Enforcement Officer shall require It be relocated or removed. The public address system may only be operated from dawn to dusk, but nothing herein shall limit its use in an emergency.
19. Signage  
Signage hall be permitted in accordance with the sign regulations of this Chapter. For safety purposes, an identification sign shall be provided along the public road to which the camp fronts.
20. Visitation/Events  
The camp may exceed the overall camp capacity as set forth in Subsection 1 above on visitation and event days. The Planning Board may review and set limits on the number of events and timeframes for the events/visitation days, which shall take into

consideration the need for parking, demand for potable water and wastewater generation, and similar factors.

21. Architectural Review

The color, design, and materials of all buildings shall be subject to review and approval by the Planning Board. The Planning Board may require sample materials, elevations, and renderings to be submitted. A camp shall be designed using earthtone colors to fit into the landscape, except where there is a showing of need for different colors for religious or safety requirements.

22. Landscaping

The Planning Board shall require a landscaping plan, as per Section 140-15 of this code.

23. Amendments to Existing Day Camps

The alteration or expansion of any day camp operating with a special use permit shall require review and approval of an amended special use permit and site plan under this code and Article VII of this Chapter and shall be subject to the special use permit standards and requirements of this Section.

**B. Camps, Overnight**

1. An overnight camp shall adhere to all requirements for day camps.
2. Cabins or other sleeping quarters shall be constructed in compliance with all applicable New York State and Ulster County requirements, rules, and regulations.
3. Cabins or sleeping quarters that are part of an overnight camp shall only be used as part of the overnight camp use and no building shall exceed 4,000 square feet in gross floor area except where the Planning Board permits larger buildings based on a determination that the layout and locations of such larger dwelling units will ensure compatibility with the health, safety, and welfare of campers and neighboring residents. There shall be no permanent family occupancy in the overnight camp, except for resident manager quarters as set forth herein. All cabins and sleeping quarters shall otherwise be constructed in accordance with NYS Uniform Fire Prevention and Building Code and Sanitary Code requirements, as may be amended from time to time.
4. Resident manager quarters.  
Living quarters for any resident manager(s) and/or property owner(s) and their family household who live separately from campers or counselors sleeping in dormitories, cabins, bunkhouses, or other such group quarters without cooking facilities shall be provided within a permanent dwelling structure, meeting the requirements of the New York State Uniform Fire Prevention and Building Code. Such dwelling apart from camper and counselor staff beds in group quarters shall contain its own cooking facilities and shall be treated as a dwelling unit. The density for a dwelling unit shall be the minimum lot area required for a dwelling unit in the zoning district in which the camp is located. The required minimum lot area(s) for the living quarter unit(s) for resident manager(s) or property owner(s) shall be subtracted from the lot area before

calculating the maximum number of camper or staff beds in group quarters permitted at the overnight camp. The dwelling unit for a resident manager or property owner may be located within the overall property and need not be situated on an individual lot. The resident manager shall be on the premises on a regular basis or shall provide regular inspections to guard against vandalism during the off-season.

5. Operation plan.

Upon request of the Building Department, the applicant for an overnight camp shall submit a copy of a camp safety plan as required by Title 10, Subpart 7-2, Children's Camps, of the New York State Public Health Law.

**C. Camps, Seasonal**

1. A seasonal camp shall adhere to all requirements for day camps.
2. Sleeping quarters for families and households shall be considered seasonal single-family dwelling units, whether attached or detached. Seasonal single-family dwelling units shall only be occupied during the camp season and must be occupied by at least one staff member. The Planning Board may place limits on the overall number of seasonal dwelling units in order to accommodate the use and avoid adverse impacts to the environment, the zoning district, or the Town's residential uses and neighborhoods. In doing so, the Planning Board shall consider the adequacy of potable water, wastewater disposal facilities, traffic circulation and emergency access, Uniform Fire Prevention and Building Code compliance, and other criteria that address public health, safety, and welfare of residents and campers. The dwelling units shall be laid out so as to have a rural naturalistic appearance and shall not be laid out in a grid. Detached dwelling units and/or buildings containing attached dwelling units shall be separated no less than forty (40) feet from one another, and the Planning Board shall approve the layout and locations of dwelling units to ensure compatibility with the health, safety, and welfare of campers and neighboring residents.
3. Nothing herein shall permit individual ownership of the dwelling units, e.g., condominium association.
4. The Planning Board shall require a landscaping plan for that area designed with sleeping quarters for families and households.

**§ 140-24. Manufactured housing parks.**

- A. Manufactured housing parks shall be permitted as special uses in the A-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 who shall issue a permit therefor. 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.
  - (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 regulation 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.

- (f) 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.
- (g) 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.
- (h) At the time the license is applied for, the applicant shall pay a fee in the amount established by the Town Board.
- (i) Such renewal license shall not be transferable or assignable to any other individual, group, corporation, or association.
- (j) 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 chapter may continue in existence, provided it complies completely with 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 of 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 waterlines 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 § 140-24G(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 stormwater 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 fifty-foot-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 fifty-foot 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 no 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 35 feet of 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°) 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, all 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) These 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. Reserved for future use.**

**§ 140-26. Multifamily residential uses.**

- A. Multifamily dwelling 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. Multifamily dwelling projects, although a residential use, shall be reviewed under the standards and review practices of commercial use.
- B. Multifamily dwelling projects shall be allowed in the A-3, AB-3, R-1, R-2, R-5, H, and B Zoning Districts with Special Use Permit approval.
- C. Affordable Housing
  - 1) Multifamily dwelling units shall comply with the requirements of §140-30, Affordable Housing of this code.
  - 2) Affordable units should be built simultaneously with market-rate units and built throughout the complex rather than clustered in a single spot within the multifamily development.
- D. The following design criteria shall apply to multifamily developments:
  - (1) All multifamily projects shall comply with building design, landscaping, parking, lighting, stormwater, and general design guidelines, particularly the requirements of § 140-15, Landscaping Standards, § 140-17. Parking, loading, access, and traffic standards, § 140-20. General commercial and industrial standards, and § 140-22. Stormwater Management as set forth in this Code.
  - (2) In no case shall an individual structure contain more than eight attached dwelling units.

- (3) Yard setback requirements for the district shall apply to the development as a whole and not individual units.
- (4) Access roads through the development shall comply with minor street requirements as specified in this chapter 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.
- (5) A multifamily development of 50 or more units shall be served by a minimum of two accesses.
- (6) 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. Provisions shall be made for bicycle storage and electric vehicle charging stations and the infrastructure to develop and expand these facilities should be required given the growing trends and goals of NYS and the County to reduce automotive emissions.
- (7) No structure shall be erected within a distance equal to its own height of any other structure.
- (8) Structures shall comply with the NYS Energy Code.
- (9) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.

E. Design Guidelines

- (1) Consideration for building length, articulation of buildings (limiting straight lines), rooflines, window treatments, etc. should be included.
- (2) Multifamily dwelling units should be designed to create a sense of community.
- (3) Greenspace, rather than parking, should be incorporated into the surroundings immediately adjacent to dwelling units.

F. Density requirements.

- (1) Multifamily dwelling density in the B, H, R-2, and R-1 Zoning Districts shall not exceed twice the number of dwelling units per acre permitted under the Schedule of Lot Development Standards [see Appendix B].
- (2) Multifamily density in the A-3 and AB-3 Zoning Districts shall be reviewed under Chapter 125, Article V, Conservation Subdivision standards.

G. Application for preliminary approval of multifamily 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 chapter. 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 chapter 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.

- H. 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.
- I. 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 chapter and (2) buildings have been completed and inspected by the Town Building Inspector.
- J. Complete final building plans shall also be submitted as part of the final development plan application.
- K. 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 chapter, 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.

- L. All areas of a multifamily development not conveyed to individual owners, and not occupied by building 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 H(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 preapproved 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 25 units or more shall provide 1/2 acre of playground area per 25 units unless restricted to adult occupancy only, plus such other recreation area as may be required by the Town Subdivision Law. Playground area acreage shall be included in recreational acreage calculation.

- M. All multifamily 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 multifamily buildings and structures as a minimum.
- N. Maintenance of a multifamily 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.
- O. 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.
- P. 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 ongoing 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.
- Q. Any developer who proposes to construct multifamily dwellings and convey the common elements of said multifamily 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.
- R. If the development shall be subject to the New York State statutes governing the sale of real property used for multifamily 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.

#### §140-26.1 Short-Term Transient Rentals (STR)

- A. Purpose. With the increase in tourism over the past several years in the Town of Rochester and adjacent areas, there has been an increase in the number of property owners renting to tourists on a short-term transient basis. Many residents list their properties as short-term transient rentals on web-based booking sites such as Airbnb and VRBO. Short-term transient rentals offer many benefits to property owners and residents in our town such as increased income, however, they also create potential health, safety, and quality of life detriments to the community. In recognition of the widespread popularity of short-term transient rentals, and in recognition that many short-term transient rentals are already operating in the town, the purpose of this local law is to regulate the safety and use of short-term transient rentals as home businesses in line with the goals of the Town Comprehensive Plan.

The following local law imposes mandatory regulations and requirements on all Town of Rochester property owners that desire to rent on a short-term transient basis their property. The purpose of such regulations and requirements are to assure that the properties being rented meet certain minimum safety and regulatory requirements which are proportional to those imposed on similar uses such as beds and breakfasts, inns, motels, and hotels thereby protecting the property owners, occupants of such housing and the residents of the Town of Rochester.

- B. Authorization. This Local Law is adopted in accordance with Article 16 of the Town Law of the State of New York which grants the Town of Rochester the authority to enact local laws for the purpose of promoting the health, safety, and welfare of the Town, and in accordance with Municipal Home Rule Law, Article 2, Section 10, that gives the Town of Rochester the power to protect and enhance its physical environment. The Town Board authorizes the Code Enforcement Officer to issue permits to property owners to use their properties as a short-term transient rental per the provisions of this local law. Applications for a permit to operate a short-term transient rental shall be processed under the procedures set forth in this local law.
- C. Zoning. The use of a property for Short Term Transient Rental shall be strictly considered **an accessory use to residential use single family and two-family dwelling units** and allowable only upon receipt of a short-term transient rental permit in the A-3, AB-3, R-1, R-2, R-5, H, and B zoning districts. To apply for a permit, a parcel must contain a residential dwelling unit.
- D. Density. Existing short-term transient rental units shall meet all density and setback requirements for the zoning district unless they are pre-existing nonconforming structures. New construction dwelling units shall meet density and setback requirements for the zoning district.
- E. Prohibitions. The following parcels shall be prohibited from being issued permits to operate short-term transient rentals.

- (1) Parcels utilized for multifamily dwelling units.
- (2) Parcels utilized for commercial or industrial purposes.
- (3) Vacant property which does not contain a residential dwelling unit. Applicants who wish to utilize vacant parcels for the purpose of short-term transient rental use shall apply for a campground use, as defined in §140-2 of this code.

F. Definitions. As specifically apply to this subsection

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.

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.

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

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.

Existing Short-Term Transient Rental – A short-term transient rental, as defined herein, which is in operation as of December 31, 2021, and meets all criteria of §140-26 (K) of this code.

House Rules - A set of rules that apply to renters of short-term transient rentals while occupying the unit.

Local Manager - The person specifically named on the application and permit that is responsible for the day-to-day operation of the short-term transient rental, and who may be contacted, day or night, if there is a problem at the short-term transient rental. The local manager may be either the owner or an agent of the owner. The local manager must reside within thirty (30) miles of the Town of Rochester Town Hall.

NEW Operating Short-Term Transient Rental – A Short-Term Transient Rental not in operation prior to December 31, 2021

Non-Owner Occupied – A STR unit that does not qualify as owner-occupied.

Owner Occupied –A STR unit that is the primary residence of the owner for at least 180 days in the calendar year, or the owner is present in the dwelling or is present on the same parcel while the residence is being used as a short-term rental.

Primary Residence – A person’s domicile where they usually live in the Town of Rochester, whether on a full-time or part-time basis for at least 180 days in the calendar year, typically a house including any habitable accessory structures on the same property. This includes secondary dwelling units located on the same parcel.

Rental - An agreement granting use or possession of a residence, in whole or in part, to a person or group in exchange for consideration valued in money, goods, labor, credits, or other valuable consideration.

Rented in Part – An STR in a Primary Residence, as defined above, that is being occupied in part by the owner and in part by STR guest(s), simultaneously.

Rented in Whole – An STR in a dwelling unit that is being occupied entirely by STR guests for the rental duration.

Secondary Dwelling Unit (ADU) – An attached or detached secondary residential dwelling unit that shares the building lot of a larger, primary home, including having separate cooking and sanitary facilities.

Short-Term Transient Rental (STR) - The use of a parcel for the rental or lease of any or part of any residential use single family and two-family dwelling unit , for a period of less than thirty (30) days , to one entity Motels, hotels, resorts, inns, and bed & breakfasts, as defined in this chapter are excluded from this definition.

Short-Term Transient Rental Unit – A dwelling unit utilized for the purposes of short-term transient rentals.

Sleeping Room - An interior room other than a bedroom, as defined under the NYS Uniform Fire Prevention and Building Code, that may serve to afford sleep to a person, however, sleep shall not be the primary function of the room. Examples include, but are not limited to, a living room, family room, den or great room which may be furnished with a futon, convertible couch, or other sleeping surface. All sleeping rooms shall meet NYS Uniform Fire Prevention and Building Code mandates for bedrooms. (i.e., size, ceiling height, access, egress, lighting and ventilation, electrical outlets, heat, and smoke and carbon monoxide alarms).

Vacant Property – A parcel which does not contain a residential dwelling unit.

G. Applicable Law.

- (1) All property owners desiring to rent on a short-term transient basis must comply with the regulations of this local law. However, nothing in this local law shall alter, affect, or supersede any regulations or requirements of the Town of Rochester

Zoning Code, any regulations or requirements imposed by the County of Ulster, or any State or Federal regulations or requirements, and all property owners must continue to comply with such regulations or requirements.

- (2) All short-term transient rental property owners shall obtain a valid permit from the Code Enforcement Officer before operation. Such permits shall be applicable for a two-year period, subject to annual fire and safety inspection.

H. Ownership of Properties

- (1) Properties must be owned by an individual, individuals, sole proprietorship, general partnership, limited liability partnership, or a limited liability company. No property owned by a corporation or other business entity shall qualify for a permit.
- (2) A general partnership, limited liability partnership or a limited liability company must disclose names of all partners and/or members when applying. Any changes in partners and/or members shall be provided to the code enforcement department within thirty (30) days of change. For a **non-grandfathered permit** (see §(K) of this code) general partnership, limited liability partnership or limited liability company to qualify as an owner of a property a resident of the property must have at least 51% ownership in the general partnership, limited liability partnership or limited liability company.
- (3) No owner entity composed of similar individuals may hold permits for greater than two properties at any given time, one owner-occupied and one non-owner-occupied STR. Multiple permits on the same property shall count as one for the purposes of this section of the code.

I. Designation of STR Properties. All short-term transient rentals shall be designated as Owner Occupied, or Non-Owner Occupied, as defined herein.

J. Ulster County Hotel and Motel Occupancy Tax. All short-term transient rentals shall comply with the Ulster County Hotel and Motel Room Occupancy Tax (Local Law Number 5 of 1991). An operator of a hotel or motel may be responsible for the collection of tax on occupancy of Hotel/Motel room rentals. Included in the definition of Hotel/Motel rooms are short term and/or vacation rentals and properties typically listed on sites like Airbnb, Home Away, and VRBO.

K. Application of Law to Existing Short Term Rentals

- (1) Property owners who operate an existing short-term transient rental shall have 90 days from the effective date of this law to apply for a valid permit.
- (2) They shall be allowed to continue operation until such time as a permit is issued or denied by the Code Enforcement Officer.
- (3) Grandfathering  
The Town of Rochester will offer a one-time grandfathering opportunity recognizing

existing STR units operating prior to December 31, 2021. This is for BOTH owner-occupied and non-owner occupied STR units.

To qualify for “grandfathering” of existing use, a property owner shall meet the standards and produce documentation of compliance of (a), (b), and (c) below. Any property owners who fail to produce such documentation shall be required to file and be considered a NEW operating short-term transient rental.

- a) Provide an Ulster County Department of Finance Certificate of Authority dated prior to December 31, 2021.

AND

- b) Provide proof of operation as an STR between December 31, 2016, and December 31, 2021.

AND

- c) Have submitted a complete application and be subject to Section (T), General Permit Regulations and an annual fire and safety inspection.

- (1) Grandfathered STR Units shall be allowed to operate, subject to biennial application renewal and annual fire and safety inspection, until such use ceases to exist or the property changes ownership.
- (2) Grandfathered units which exceed §H(3) of this code shall be considered non-conforming and be allowed to continue.

L. Cap of Number of New, Non-Grandfathered, Non-Owner Occupied STR Permits

- (1) The Town of Rochester Town Board has determined a cap shall be established on the number of NEW short-term transient rental non-owner-occupied permits. There will be no cap on owner occupied units. This is to maintain the permanent housing stock availability for all income levels of residents.
- (2) The initial cap shall be established for the year 2022 at the Town Board 2022 Organizational Meeting after the initial grandfathering period of registration.
- (3) Henceforth, the cap number of available permits (not including those that have been grandfathered) shall be established for the following year by the Town Board annually on or before November 1 of each calendar year, utilizing a percentage of the number of housing units on the Town of Rochester Assessor Final Tax Roll for that year and the number of grandfathered permits for that same year.
- (4) Grandfathered STR units and owner-occupied units shall not be cap restricted.

M. Fee. A nonrefundable permit application fee and inspection fee shall be established by resolution of the Town Board for each dwelling unit that functions as or contains a short-term transient rental unit. Such permit fee shall be submitted with each new

application and each biennial renewal application.

- N. Application Forms. Application forms for a permit to operate a short-term transient rental shall be developed by the Code Enforcement Office.
  - O. Applicants must file a separate application and tender a separate application fee and obtain a separate permit and inspection for each dwelling unit which contains or functions as a short-term transient rental.
  - P. Application Process.
    - a. Applications to operate a new STR shall be available as of January 10, 2022.
    - b. The initial permit application to operate a short-term transient rental shall be submitted to the Code Enforcement Officer along with the applicable application fee, prior to operation.
    - c. Property owners shall register with the County's Commissioner of Finance and receive a Certificate of Authority empowering such operator to collect the tax from the occupant pursuant to Section 312-8 of the Code of Ulster County and provide documentation relating thereto to the Municipality to be eligible for any such permit.
- (1) The initial permit application shall include the following:
- a) Contact information. The names, addresses, email address(es) and day/night telephone numbers of the property owners and local managers shall be included in the application.
  - b) Designation of the STR as Owner Occupied or Non-Owner Occupied, as defined herein.
  - c) Designation of the STR as Rented in Part and/or Rented in Whole, as defined herein.
  - d) Hosting Platform information. The applicant shall provide the names and URLs for all hosting platforms or other advertising platforms, such as but not limited to Airbnb, VRBO or other hosting websites; and Facebook, Instagram, or other social media postings used by the applicant for advertisement of the short-term transient rental unit. Any changes or additions to the listed hosting/advertising platform shall be reported on the applicant's renewal permit.
  - e) Parking. The number of off-street parking spaces to be provided shall be stated on the application. Off street parking shall be provided to accommodate the occupancy of the short-term transient rental unit, one parking space for each sleeping room in the dwelling plus other parking as required by §140-17. Vehicles shall not be parked on front lawns. There shall

be no on-street parking allowed. No parking shall be allowed outside of the parking spots designated and detailed on the permit.

- f) **Maximum Occupancy.** The maximum desired occupancy by the operator shall be stated on the application. The Code Enforcement Officer shall establish the maximum occupancy. The Code Enforcement Officer shall limit the number of occupants based on the number, size, configuration, and furnishings of the bedrooms and/or sleeping rooms, and per the provisions of NYS Uniform Fire Prevention and Building Code.
- g) **Water and septic.** The source of the water supply shall be stated on the application and the permit. The septic system shall be functioning, and the type, size, and location of the septic system shall also be stated on the application. New permit applications shall require documentation as determined acceptable to the Code Enforcement Officer, indicating that the septic system is found to be currently working properly and is adequate for the Short-Term Transient Rental maximum occupancy.
- h) **Fire Safety.** Documentation of location and existence of fire extinguishers in compliance with NYS Uniform Fire Prevention and Building Code
- i) **Description.** State the occupancy of each bedroom and sleeping room and the methods of ingress and egress (examples: doors and windows) shall be included with the application. No kitchen shall be occupied for sleeping purposes.
- j) **Plat.** The applicant shall submit an aerial plat of the property showing approximate property boundaries and existing features, including buildings, structures, well, septic system, parking spaces, firepits/outdoor fireplaces, driveways, streets, streams and other water bodies, and neighboring buildings within one hundred (100) feet of the short-term transient rental unit. This does not need to be a survey. This is easily obtained free of charge from many online sources.
- k) **Garbage Removal.** The applicant shall state how garbage is to be removed from the property. The applicant is responsible for all refuse and garbage removal. The applicant shall be responsible for either (a) contracting with a refuse company or (b) the owner or property manager shall remove garbage on a weekly basis. If there is a dumpster located on the property, the location of the dumpster shall be depicted on the plat submitted with the application.
- l) **House Rules.** The applicant shall submit a copy of the house rules (see below Section T for required House Rules.
- m) **Jurisdiction.** If a property owner does not reside within thirty (30) miles of the Town of Rochester Town Hall, then they must designate the Local

Manager, as an agent.

- n) A copy of the Ulster County Commissioner of Finance Certificate of Authority

Q. Inspections.

- (1) Each short-term transient rental unit shall be inspected by the Code Enforcement Officer or Fire Inspector to determine compliance with the New York State Uniform Fire Prevention and Building Code. Inspections shall be done for the initial permitting and annually, thereafter.
- (2) All STR units must comply with NYS Building Code requirements and shall have no open violations. No initial or renewal permit shall be issued without compliance with the elements of the submitted application.

R. Application Review. Upon receipt of the application and fee, the Code Enforcement Officer shall determine if the applicant has complied with all the requirements of this local law as well as any federal, state, county, or local laws. If the applicant has fully complied, then the Code Enforcement Officer shall issue the property owner a short-term transient rental permit so long as Code Enforcement Officer inspections have been completed and approved. No permit shall be issued until inspection is completed and the short-term transient rental unit is approved by the Code Enforcement Officer. Notification of the initial permit shall be sent to neighbors within 500 ft of the property by the Code Enforcement Office upon permit approval.

S. Renewal permits. The applicant will provide the Town of Rochester with any changes to the original underlying application for a Short-Term Transient Rental Permit, together with such additional documentation as determined by the Code Enforcement Officer, all of which will be on forms prescribed by the Code Enforcement Office, along with the current application fee. Renewal applications shall never be subject to any cap, provided the property remains under the same ownership. Any applicant who applies for a short-term transient rental permit and did not hold a permit for the immediate prior year, shall be considered a new applicant and not a renewal applicant. Permit holders shall be able to apply for Renewal Permits beginning October 1st through December 1st.

T. General Permit Regulations.

- (1) The permit to operate a short-term transient rental in any given year will expire on December 31, except an initial permit approved after September 1st of a calendar year shall be allowed to run through December 31st of the subsequent year. All renewal permits shall run from January 1st to December 31st of a calendar year.
- (2) Copies of the permit must be displayed in the dwelling unit in a place where it is easily visible to the occupants.

- (3) Permits for operation of a short-term transient rental may not be assigned, pledged, sold, or otherwise transferred to any other persons, businesses, entities, or properties.
- (4) All short-term rental properties shall have posted on or about the inside of the front or main door of each dwelling unit a card listing emergency contact information. Such information shall include, but not be limited to the name, address, email, and phone numbers of the building owner, if local, or of a local manager and instructions on dialing 911 for emergency/fire/ambulance assistance. A local manager shall be able to respond in person within one hour.
- (5) Exterior advertising signs are prohibited except an STR may have one nonilluminated accessory use freestanding or wall sign not to exceed 12 square feet in area to identify the STR.
- (6) No person or persons shall be housed separately and/or apart from the approved dwelling unit in any temporary structure, tent, trailer, camper, lean-to, recreation vehicle, 'tiny house', boat, or non- dwelling unit.

#### U. House Rules

- (1) All short-term rental properties shall post for renters of each dwelling unit a listing of House Rules. House Rules shall incorporate, but not be limited to, the following:
  - a) An emergency exit ingress and egress plan
  - b) The location of fire extinguishers
  - c) Identify the property lines and a statement emphasizing that unit occupants may be liable for illegal trespassing.
  - d) Identify the procedures for disposal of refuse/garbage.
  - e) If allowed by the property owner, specify outdoor fires shall be made solely within a fireplace or fire pit in accordance with all New York State burning regulations.
  - f) If allowed by the property owner, instructions for fires in fireplaces or wood stoves. If not allowed by the property owner, a statement stating as such
  - g) Short Term Transient Rentals shall not be permitted to be used for any commercial use or commercial event space.
  - h) No outdoor camping shall be allowed.
  - i) Parking shall be allowed solely in the designated parking spaces.

#### V. Complaints

- (1) Complaints regarding the operation of a short-term transient rental shall be in writing to the Code Enforcement Officer.
- (2) Upon receipt of a complaint of violation, the Code Enforcement Officer shall investigate to determine the presence of a violation, and upon finding to his/her satisfaction that a violation was or is currently occurring, he/she shall issue to the

property owner and the local manager a notice detailing the alleged violation(s) as determined by the Code Enforcement Officer. Such notice shall also specify what corrective action is required of the property owner, and the date by which action shall be taken.

- (3) Notices required by this section shall be issued by the Code Enforcement Officer either by personal service to the property owner and/or the local manager, if applicable, or by certified mail to the address of the property owner and/or local manager as shown on the permit application.
- (4) If the landowner does not comply with corrective action by the date given by the Code Enforcement Officer, the Town of Rochester may initiate procedures to revoke the permit, or the Town of Rochester may begin a criminal action against the property owner or pursue any other relief permitted by law.
- (5) The Code Enforcement Officer shall refer to the Town Board any property owners whom they believe to be in violation of this Local Law. The Town Board shall determine whether the permit in question shall be revoked. A revocation of a permit requires a public hearing by the Town Board. The referral to the Town Board may be done in addition to any other penalties permitted by law.
- (6) Complaints can further lead to a denial of a renewal permit until the violation is resolved.

§ 140-27. Conversions of residential or nonresidential structures.

- A. Any conversion of a residential structure to a more intensive residential use or a nonresidential use shall require a special use permit.
- B. Any conversion of a nonresidential use to multifamily dwellings shall require a special use permit and shall be regulated by the standards of §140-26.
- C. The following additional review criteria shall apply in both instances:
  1. There shall be adequate parking to accommodate the new use in combination with other activities on the property or in the vicinity.
  2. There shall be demonstrated sewage treatment and water supply capacity to serve any increased needs connected with the new use.
  3. The conversion shall not result in increased residential density exceeding that permitted within the district.
  4. Conversion of a residential structure to a nonresidential 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 shall also be permitted as accessory uses in all zoning districts (except PL-10, 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 filling 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 biannually) 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 150 feet of 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, and habitat restoration or habitat improvement consistent with NYSDEC 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 and truck traffic routes 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 section 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,

- 2) 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 fabricated resources.
- 3) 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.
- 4) 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.
- 5) Minimize adverse aesthetic and visual impacts to protect the natural features and aesthetic character of the Town with special attention to the Historic Preservation Overlay District, Shawangunk Ridge, Mohonk Preserve and Catskill Preserve.
- 6) 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 co- location of wireless telecommunications facilities among service providers, and the locating of telecommunications facilities on existing structures.
- 7) 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 section 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 distributed antenna systems (DAS), temporary "cell on wheels" (COW); co-location 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 section, 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 as verified by submitted and reviewed updated technological new equipment parameters. 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 co-location of transmission equipment on an existing wireless telecommunications facility which constitutes an "eligible facilities request" action, as defined by the FCC. [Note: 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.] Such action shall require submission of updated equipment technological parameters and 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 co-location of transmission equipment on an existing wireless communications facility which exceeds the criteria of an "eligible facilities request" action, as defined by the FCC. [Note: 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.] Such action shall require submission of updated equipment technological parameters and 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 submission of updated technological parameters and shall require special use permit application and review by the Planning Board. SEQRA review shall require long form EAF.
- 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 TOR Comprehensive Plan objectives. 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 based on 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 provided updated technological equipment parameters are submitted:
- 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 nonprofit, 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, or computing services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building, and permitting authority.

- a. **DIRECTIONAL ANTENNA** (also known as **PANEL ANTENNA**) — Transmits and receives radio frequency signals in a specific directional pattern of less than 360°.
- b. **OMNI-DIRECTIONAL ANTENNA** (also known as **WHIP ANTENNA**) — Transmits and receives radio frequency signals in a 360° radial pattern. For the purpose of this chapter, an omni-directional antenna is up to 15 feet in height and four inches in diameter.
- c. **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.

d. 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 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.

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

commercially impracticable and shall not render an act or the terms of an agreement commercially impracticable.

**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 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.
- (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 an existing wireless tower or base station that involves co-location, 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 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.

**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.

**FAA** — The Federal Aviation Administration, 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 professional engineering standards.

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

**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 preexisting 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 Subsection B(2)(a) of this section.

**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.

**NER** — Non-ionizing electromagnetic radiation.

**NONCONCEALED** — 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, as amended and its successors.

**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 ranges and output strengths, type of antenna, antenna gain, topography of the site and its surroundings are all considered 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, provided all FCC guidelines are satisfied.

**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 on any building elevation. ~~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 areas 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 Co-location of Wireless Antennas by the FCC. To be classified as such, the impact of such facility must be equal to or less than all 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 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this subsection 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 20 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 subsection 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.

**TELECOMMUNICATION STRUCTURE** — A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

**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.

**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 multistory 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 onsite 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 and base stations.

- E. Permitted and prohibited locations. Wireless telecommunications facilities, upon determination of the classification of the action as described in § 140-29B by the Code Enforcement Officer, shall be permitted and prohibited in the Town of Rochester in the following zoning districts.
- a. Type A and Type B wireless telecommunications facilities shall be allowed under the Schedule of District Uses [see Appendix C] in all zoning districts as a principal permitted use. Type B shall require site plan approval from the Planning Board.
  - b. Type C wireless telecommunications facilities shall be allowed under the Schedule of District Uses [see Appendix C] in all zoning districts, except PL-10 upon receipt of a special use approval from the Planning Board.
  - c. Type D wireless telecommunications facilities shall be allowed under the Schedule of District Uses [see Appendix C] in the A-3, AB-3, R-5, I, NR, CS, and B Zoning Districts upon receipt of a special use approval from the Planning Board. They shall be prohibited in the PL-10, R-1, R-2, and H Zoning Districts, except if such existing parcel use is for public utility, municipal or emergency services use.
  - d. In all cases, Type D wireless communications facilities shall be prohibited in the FD (Floodplain Overlay) District even though ~~through~~ the use may be allowed in the underlying zoning district.
  - e. There shall be no wireless telecommunications facilities constructed within a New York State or federal delineated wetland or an area designated as a critical environmental area.
  - f. There shall be no wireless telecommunications facilities constructed which extend higher than the ridgeline of the Shawangunk Mountain ridgeline.
  - g. Exception under public utility regulations.
    - i. 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 Uses [see Appendix C], 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.

- ii. 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 site 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.

h. Nonconforming 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 nonconforming with this or any subsequent amendment and may be continued in accordance with all provisions of Article VI of Chapter 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 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 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 90 days on an application determined to be eligible facilities request and 150 days to render a decision on all other applications, as defined in the Nationwide Programmatic Agreement for the co-location of Wireless Antennas, except upon mutual written agreement between the applicant and board to extend such timeframe.

G. Wireless facility standards.

- a. 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.
- b. Height.
  - i. 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.
  - ii. 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.
- c. 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 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.

- d. 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.
- e. 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.
- f. 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.
- g. Signage. A sign no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-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.
- h. 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.
- i. 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 10 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.

a. 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.

i. 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 that the applicant has valid authorization to do business in the State of New York.

ii. 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.

iii. Authorization from the owner of the property and/or facility indicating knowledge of the application shall be required.

iv. 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.

v. 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.

vi. FCC licensing documentation.

vii. Submission of proof of compliance with the National Environmental Policy Act (NEPA) and compliance with the National Historic Preservation Act

(NHPA).

- viii. 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.
- ix. 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 co-location.
- x. Certification to the Town that the proposed antenna(s) will not cause interference with other telecommunication devices.
- xi. 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.
- xii. 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.
- xiii. Certification to the Town that 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 by a licensed engineer. If co-located on an existing tower, a copy of the installed foundation design shall be supplied.
- xiv. 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 co-location, such structural study shall reflect the current condition of the structure or tower.

- xv. 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.
  
- b. 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 VII of Chapter 140 of the Town of Rochester Code and shall specifically illustrate:
  - i. Existing and proposed structures on the subject property, the location of all residential structures within 500 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 centerline height location of all proposed and existing antennas on the supporting structure.
  - ii. All easements/rights-of-way required for access from a public way to the facility.
  - iii. 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.
  - iv. Radius shall be shown indicating the fall zone of the wireless structure.
  
- c. 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 and showing the location of nearest wireless structures outside of the three-mile radius. .
  
- d. 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.
  
- e. 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.
  - a. Applications for special use shall meet the provisions of Article VII of Chapter 140 of the Town of Rochester Code and shall require a site plan submittal as detailed in § 140-29H.
  - b. Applications for special use shall require the following additional documentation.
    - i. 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 co-location of existing facilities and/or the use of other preexisting 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 all existing towers within reasonable distance of the proposal, in all directions. Proof of attempts to negotiate with the owners of such alternatives shall be made.
    - ii. A zone of visibility map shall be provided 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.
    - iii. 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 station, tower base, and all related facilities and structures of the proposed wireless telecommunications facilities.
    - iv. Documentation shall be submitted justifying the total height of any requested tower, facility, and/or antenna and the basis for the special use ~~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.

- v. 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.
  - vi. 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.
  - vii. An economic analysis study of the property value impacts the construction, and the operation of the telecommunications facility may have on all contiguous and adjacent properties located within 500 feet of the parcel boundaries on which the facility is located.
- c. 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 to be installed. The balloon test shall be at minimum four hours in duration between the hours of 10:00 a.m. and 4:00 p.m. 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, 10 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.
- d. Any application involving construction of a new tower, structure, or facility shall be required to submit written proof as to the offer of co-location opportunities for emergency service transmission equipment to local emergency service agencies prior to and at the time of construction.
- J. Performance security.

- a. 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 of 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.
- b. 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. If 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.

- a. 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. All owners of wireless telecommunication facilities located in the Town of Rochester shall be required to register the facility prior to ~~upon~~ granting of a certificate of occupancy. Facilities in existence as of the effective adoption date of this chapter shall have 60 days from the filing of this chapter to register.
- b. The Code Enforcement Office shall administer the local wireless telecommunications facility registration system. The Town Board shall establish the fees structure for the registration which may be amended by resolution from time to time.
- c. 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.

- d. Registration requirements. The owner shall provide and certify to the Town the following:
  - i. emergency contact name for the corporation or owner of the wireless facility.
  - ii. The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
  - iii. Copy of FCC license(s) allowing the antenna(s) or other broadcast device to be deployed.
  - iv. Written certification that the wireless telecommunications facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations.
  - v. Written certification that the tower or structure and all attachments are designated, 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.
  - vi. Written certification that 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.
  - vii. Written certification that onsite vegetation has been maintained to ensure the desired screening effect.
- e. 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 the conditions of approval of the Planning Board and to be in accordance with any applicable technical, safety, fire, building, and zoning codes, laws, regulations, and other applicable requirements.
- f. 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 this chapter. 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.

- g. 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.
  - i. The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the wireless facility.
  - ii. The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
  - iii. The wireless telecommunications facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations.
- h. Renewal of registration. Registrations shall be required to be renewed beginning with a period of 90 days prior to expiration until the anniversary date of the registration.
  - i. 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 months to ensure structural integrity and to ensure paint and other coating is not deteriorated and continues to be consistent with the immediate surroundings of the tower.
  - ii. The Town Board may review performance security deposits in conjunction with

registration renewal to ensure the amount of the bond is adequate and may increase the amount of the performance security, if necessary.

- i. Changes in registration information. The owner shall provide notice to the Town of any changes in registration information within 30 days of such change.
- L. Abandonment and removal of wireless communications facilities.
- a. 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 more than one year.
  - b. 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 30 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 120 days. If 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.
  - c. 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.
  - d. Should the Town remove the tower, structure, or facility pursuant to this subsection, the Town shall utilize the security provided for in § 140-29J to pay for same. If 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. Section 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 § 140-29 is hereby declared to be an offense punishable by a fine not exceeding \$1,000 for a conviction of a first offense; punishable by a fine of not less than \$1,000 and not more than \$1,500 for conviction of a second offense; and no less than \$1,500 and no more than \$2,500 upon conviction for a third or subsequent offense. Each week's continued violation shall constitute a separate additional violation.

**§ 140-30. Affordable housing.**

- A. In accordance with the Town of Rochester Comprehensive Plan, the Town of Rochester desires to adopt and implement policies to promote housing that is affordable to those making less than the median household income in Rochester through incentive and inclusionary zoning.
- B. Affordable housing shall be permitted use throughout the Town in all zoning districts. A minimum set aside of 10% for all developments, 10 units or more, shall be required.
- C. 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 this chapter with respect to lots in residential subdivisions.
- D. 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 this chapter for the purposes of encouraging the provision of affordable housing. Such authority shall apply to all zoning districts, 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.
- E. 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 chapter, the following terms shall have the meanings indicated:  

ADULT USE — A use of a building or property for a business which has adult material 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 chapter, 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 chapter or limitations on public displays of personal nudity. Nothing in this definition shall be construed to incorporate breastfeeding, 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 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.

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.

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 premises incorporating any of the above listed uses.

- (1) No adult use shall be located within a two-hundred-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-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 semipublic use, public park or recreation facility, youth-oriented center, playground or playing field, cemetery or any establishment that sells alcoholic beverages.
- (3) 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.

E. Signage. Adult use signage shall be limited to one approved ground sign not to exceed a surface area of 36 square feet for both sides combined.

F. Nonconforming buildings. No nonconforming building or lot shall be used for an adult use.

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.
- G. 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.

#### **§140-32.1**

##### **Adult Use Cannabis Related Businesses**

- A. Authorization.  
This local law is authorized under New York State Cannabis Law Article VI section 131 and 10 NYCRR 119.
- B. Findings.  
The Town of Rochester finds that the orderly development of commercial business is essential to maintaining and protecting the health, safety, and welfare of the residents of the Town. Businesses which cater to adults should be located and regulated in order to minimize the impact to residents and youth.
- C. Purpose:
1. To provide for the placement of adult use cannabis retail dispensaries, adult use on-site cannabis consumption facilities, microbusinesses, and Registered Organization with Dispensing (ROD). Facilities.in appropriate places.
  2. To minimize the adverse impacts of adult use cannabis retail dispensaries, adult use on-site cannabis consumption facilities, microbusinesses, and Registered Organization with Dispensing (ROD). Facilities. on residential neighborhoods, schools, and other places where children commonly congregate.
  3. To regulate the siting, design, placement, security, safety, hours of operation, monitoring, and modification of adult use cannabis retail dispensaries, adult use on-site cannabis consumption facilities, microbusinesses, and Registered Organization with Dispensing (ROD). Facilities.

D. State Approval.  
Any adult use cannabis retail dispensaries, adult use on-site cannabis consumption facilities, microbusinesses, and Registered Organization with Dispensing (ROD). Facilities approved pursuant to this local law must be licensed in accordance with New York State Cannabis Law Article IV, Adult-Use Cannabis.

E. Definitions

**ADULT-USE CANNABIS RETAIL DISPENSARY**

An entity or individual licensed to purchase and deliver cannabis and cannabis products from cannabis establishments and to deliver, sell or otherwise transfer cannabis and cannabis products to cannabis establishments and to consumers.

**ADULT-USE ON-SITE CANNABIS CONSUMPTION FACILITY:**

An entity or individual licensed for the sale and on-site consumption of cannabis products.

**CANNABIS, MICROBUSINESS:**

A business licensed by New York State engaged in the cultivation, processing, distribution, retail sale and delivery of the licensee’s own cannabis products. An adult-use microbusiness must engage in cannabis cultivation and at least one additional licensed activity including processing, distribution, or retail sale.

**CANNABIS, REGISTERED ORGANIZATION WITH DISPENSING (ROD)**

A registered organization adult-use cultivator processing distributor retail dispensary licensed pursuant to section 68-a of the New York State Cannabis Law.

F. Applicability.

These regulations shall apply to all structures and uses of retail sales and/or consumption lounges where cannabis can be purchased or consumed.

1. No adult use cannabis retail dispensary or on-site cannabis consumption facility shall be established except in compliance with the provisions of this chapter.
2. When an adult use cannabis retail dispensary or on-site cannabis consumption facility is proposed in an existing building, regardless of prior site plan (including approval for retail sales on the property), that applicant shall require Special Use Permit and Site Plan approval for that use.
3. An adult use cannabis retail dispensary or on-site cannabis consumption facility may be located in the B, AB-3, or I zoning districts, except when located on a parcel as identified in section F(4) of this local law.

4. An adult use cannabis retail dispensary or on-site cannabis consumption facility shall not be located within a 500-foot radius from the property boundary of any parcel which has the following use:
  - a. Any private or public-school pre-k through 12.
  - b. Any daycare center, or any facility where children commonly congregate. A facility is not, however, limited to a building. A "facility where children commonly congregate" includes but is not limited to facilities in which children gather for particular purposes in a structured and scheduled manner, or which are dedicated to the use by children, such as playgrounds, youth service programs, day care centers, youth sports facilities, dance schools, and gymnastic schools.

Exception: The O&W Rail Trail is not included in the restrictions noted above.
  - c. Any other cannabis establishment, as may be applicable under this code.
  - d. Any drug or alcohol rehabilitation facility.
  - e. Any building containing a place of worship.
5. An adult use cannabis retail dispensary or on-site cannabis consumption facility shall not be located inside a building containing residential units, including transient housing such as motels and dormitories.

G. Special permit approval criteria.

1. An adult use cannabis retail dispensary or on-site cannabis consumption facility shall be contained entirely within a principal building or structure.
2. An adult use cannabis retail dispensary or on-site cannabis consumption facility shall be located within a permanent building and may not be located in a trailer, cargo container, motor vehicle or other similar nonpermanent enclosure.
3. No outside storage of cannabis, related supplies or promotional materials is permitted.
4. No smoking or consumption of any product containing cannabis or cannabis-related products shall be permitted on the premises of a cannabis retailer. No burning of any product containing cannabis or cannabis-related products shall be permitted on the premises of a cannabis retailer.

H. Allowable hours of operation

1. An adult-use on-site cannabis consumption facility may operate for the transaction of business from 9:00 am through 12:00 midnight.
2. An adult-use cannabis retail dispensary may operate for the transaction of business from 9:00 am through 9:00 pm

I. Signs

Size of sign shall be dictated relative to the zone where the adult use cannabis retail dispensary or on-site cannabis consumption facility is located per §140-21 of this Town of Rochester Code.

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

- (2) 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 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 Code Enforcement Officer 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 Code Enforcement Officer and shall be renewed annually based on inspection by the Code Enforcement Officer and approval by the Town Board as to continued compliance with these standards. No license shall be issued until the Code Enforcement Officer has received:
- (1) A written application from the applicant on the form provided by the Town Code Enforcement Officer.
  - (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 the requirements of this chapter 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 Code Enforcement Officer 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 Code Enforcement Officer shall enforce all the provisions of this chapter 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 Code Enforcement Officer finds that a junkyard for which a

license has been issued is not being operated in accordance with the provisions of this chapter, 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 Code Enforcement Officer 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 500 feet to an existing public right-of-way or adjoining property line, or 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 Resources and I Industrial Districts, subject to Special Use Permit. New Junkyards are not permitted in the AP, FD, and HD Overlay Districts.
  - (3) All new junkyards must erect and maintain an eight-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 to accomplish the purpose of screening 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, Subsections 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 chapter:
- (1) Existing nonconforming junkyards shall, within a period of one year following the effective date of this chapter, 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 nonconforming 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 chapter. All licenses shall, thereafter, be renewed by April 1 of each calendar year.
  - (3) Applications for licenses to continue operation of existing nonconforming junkyards shall include a site plan depicting the existing operation and any planned improvements as may be required by this chapter.
  - (4) Yard requirements applicable to new junkyards shall not be further violated. All existing junkyards proposing to expand shall include an eight-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. The Transfer of Development Rights (TDR) is based on the concept that ownership of land gives the owner a “bundle of rights,” each of which may be separated from the rest. For example, one of the “bundle of rights” is the right to develop land. With a TDR system, landowners are able to retain their land, but sell the development rights for use on other properties. TDR has been most often applied for preservation of farmland in New York. Under common TDR systems, a farmer is able to keep the land in agriculture by selling the property’s development rights, which are then used on non-agricultural land.

B. 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.

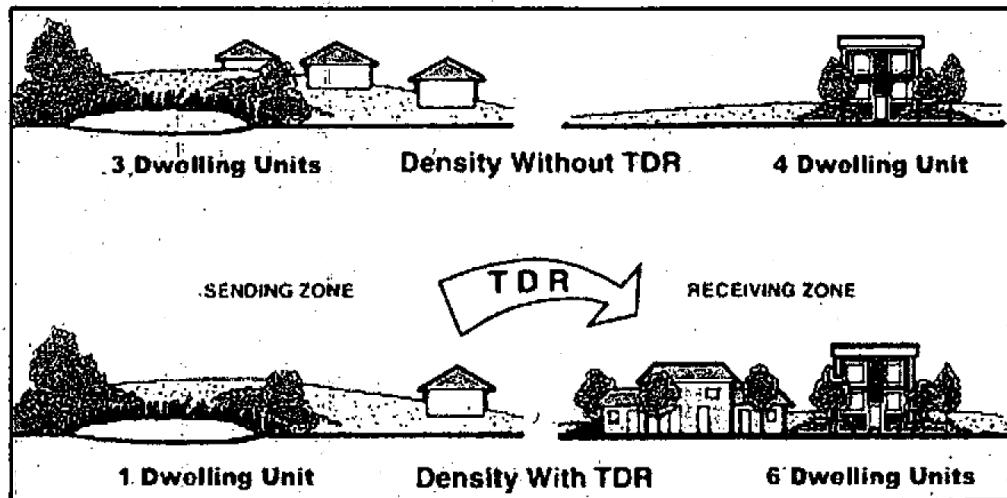
C. Special definitions. As used in this section, the following terms shall have the meanings indicated:

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.

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.

D. Applicability.

1. Owners of sending and receiving properties may voluntarily commit to transfer residential density rights under this chapter. 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, A-3, PL-10, 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, B, H, R-1, or R-2 Districts. Preference shall be given to applications for projects adjacent to or within the 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).

E. 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 chapter, 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 an 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.
- F. 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.

G. 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. Reserved for future use.**

**§ 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 nonconforming 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 setback requirements applicable for the district and the use. Vehicle storage shall preferably be in the rear or interior of the repair structure.
  - (3) Vehicle and equipment sales shall be limited to those districts specified on the Schedule of District Uses [see Appendix C] 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. Off street parking shall be in the rear or side of the established use.
    - (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 restroom facilities.

**§ 140-37. Solar energy.**

- A. Purpose. The Town of Rochester recognizes that solar energy is a clean, readily available, and renewable energy source. Development of solar energy systems for residential, agricultural, and nonresidential parcels use of solar energy provides an excellent opportunity for the reuse of land throughout the Town and offers an energy resource that can act to attract and promote green business development. The Town of Rochester has determined that comprehensive regulations regarding the development of solar energy systems is necessary to protect the interests of the Town, its residents, and its businesses. This section is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the aesthetic qualities and character of the Town. To the extent practicable, and in accordance with Town of Rochester law, the accommodation of solar energy systems and equipment and the protection of access to sunlight for such equipment shall be encouraged in the application of the various review and approval provisions of the Town of Rochester Code. It is therefore the intent of this section to provide adequate safeguards for the location, siting, and operation of solar energy facilities.
- B. Definitions. The following definitions shall apply specifically to this subsection. Any words defined in § 140-3 of this Code shall retain such definition. Usage of these words in other sections of this Code shall utilize such definition as well.

ALTERNATIVE ENERGY SYSTEMS — Structures, equipment, devices, or construction techniques used to produce heat, light, cooling, electricity, or other forms of energy on site and may be attached to or separate from the principal structure.

AREA OF USE — The area within the parcel measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create solar energy, exclusive of fencing and access roadways.

BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEMS — A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

COLLECTIVE SOLAR — Solar installations owned collectively through subdivision homeowner associations, college student groups, "adopt-a-solar-panel" programs, or other similar arrangements.

COMMUNITY NET METERING — As provided for by the New York State Public Service Commission.

FLUSH-MOUNTED SOLAR PANEL — Photovoltaic panels and tiles or other solar collectors that are installed flush to the surface of a building roof and which cannot be angled or raised.

GROUND-MOUNTED, FREESTANDING, OR POLE-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground and attached to a frame, pole, or other mounting system, detached from any other structure for the purpose of producing electricity for onsite or offsite consumption.

KILOWATT (kW) — Equal to 1,000 watts; a measure of the use of electrical power.

MEGAWATT (MW) — Equal to 1,000 kilowatts; a measure of the use of electrical power.

NET-METERING — A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

OFFSITE USE — A solar energy system designed to be used primarily for export of solar energy to be used primarily by parcels other than the parcel it is located on.

ONSITE USE — A solar energy system designed to be used primarily by the building and/or parcel on which it is located.

PHOTOVOLTAIC (PV) SYSTEMS — A solar energy system that produces electricity using semiconductor devices, called photovoltaic cells, which generate electricity whenever light strikes them.

QUALIFIED SOLAR INSTALLER — A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal

protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

REMOTE NET METERING — As provided for by the New York State Public Service Commission.

ROOFTOP OR BUILDING-MOUNTED SOLAR SYSTEM — A solar panel system located on the roof of any legally permitted and/or constructed building or structure for the purpose of producing electricity for onsite or offsite use.

SOLAR ACCESS — Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun to permit the use of active and/or passive solar energy systems on individual properties.

SOLAR COLLECTOR — A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR EASEMENT — An easement recorded pursuant to New York Real Property Law § 335-b.

SOLAR ELECTRIC GENERATING EQUIPMENT — Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY FACILITY/SYSTEM — An electrical generating system composed of a combination of both solar panels and solar energy equipment.

SOLAR ENERGY SYSTEM, LARGE SCALE — A solar energy system that is ground-mounted and produces energy primarily for the purpose of offsite use, sale, or consumption.

SOLAR ENERGY SYSTEM, SMALL SCALE — Solar photovoltaic systems which generate power exclusively for onsite use and consumption by the owners, lessees, tenants, residents, or other occupants of the premises of the building or lot to which they are attached and do not provide energy for any other lots, except as may be allowable under New York State or federal regulation.

SOLAR ENERGY SYSTEM, SUBDIVISION USE — A collective solar energy system occupying less than or equal to two acres area of use consisting of ground-mounted solar arrays or roof panels, and associated control or conversion electronics and that will be used to produce utility power to provide energy only for the onsite use and consumption of the specific lots associated with a particular major or minor subdivision.

SOLAR GARDEN — Groupings of solar photovoltaic solar panels connected to an electric circuit served by an electric utility company. Multiple users may

subscribe to receive the output from one or more panels, receive the benefits of PV technology and the efficiencies associated with a larger-scale project without having to own, host or maintain the equipment on their own property.

**SOLAR INVERTER** — Converts the variable direct current (DC) output of a photovoltaic (PV) solar panel into a utility frequency alternating current (AC) that can be fed into a commercial electrical grid or used by a local, off-grid electrical network.

**SOLAR PANEL** — A photovoltaic device capable of collecting and converting solar energy into electrical energy.

**SOLAR STORAGE BATTERY** — A device that stores energy from the sun and makes it available in an electrical form.

**SOLAR-THERMAL SYSTEMS** — Solar-thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

**TILT** — The angle of the solar panels and/or solar collector relative to their latitude. The optimal tilt to maximize solar production is perpendicular, or 90°, to the sun's rays at true solar noon.

**TRUE SOLAR NOON** — When the sun is at its highest during its daily east-west path across the sky.

C. Applicability. The requirements of this section shall apply to all solar energy systems installed or modified after its effective date, excluding general maintenance and repair. Solar-thermal systems and building-integrated photovoltaic (BIPV) systems are permitted outright in all zoning districts, subject to building permits if determined required.

D. Permit requirements.

- (1) All solar energy system installations shall be performed by a qualified solar installer.
- (2) A solar energy system connected to the utility grid shall provide written proof from the local utility company acknowledging the solar energy facility will be interconnected to the utility grid. Any connection to the public utility grid must be inspected by the appropriate public utility.
- (3) Solar energy systems shall meet New York's Uniform Fire Prevention and Building Code and National Electrical Code standards.
- (4) A plan showing location of major components of solar system and other equipment on the roof or legal accessory structure. This plan

should represent relative location of components at site, including, but not limited to, location of array, existing electrical service location, utility meter, inverter location, system orientation and tilt angle shall be provided. This plan shall show access and pathways that are compliant with New York State Fire Code, if applicable.

- (5) Specification sheets for all manufactured components.
- (6) All diagrams and plans must include the following:
  - (a) Project address, section, block, and lot number of the property.
  - (b) Owner's name, address, and phone number.
  - (c) Name, address, and phone number of the person preparing the plans; and
  - (d) System capacity in kW-DC.
- (7) Prior to operation proof of electrical connections being inspected and approved by an appropriate electrical inspection person or agency, as determined by the Town of Rochester, must be provided.

E. Safety.

- (1) Solar energy systems shall be maintained in good working order.
- (2) All solar energy systems shall be designed and located to prevent reflective glare from impacting roadways and contiguous properties to the maximum extent practicable.
- (3) Large scale solar energy systems shall not be permitted to install Battery Energy Storage Systems BESS/solar batteries unless the installation meets NY State Fire Code 1206.4 and all other applicable Solar Battery codes. If a (BESS) or solar storage batteries are included as part of the solar collector system, the operator shall provide:
  - (a) The location shall be shown on the site plan.
  - (b) Detailed information regarding the BESS to be installed including but not limited to fire resistance rating, quantities and types of BESS, manufacturer specifications, associated equipment installations,
  - (c) Description of smoke, fire, exhaust, and deflagration systems to be installed.
  - (d) Description of the energy storage management system
  - (e) Signage and fencing plan

(f) Operations and maintenance manual prior to commencement of operations

- (4) Information required in Subsection D(4) and (6) must be provided to the fire department that is obligated to respond to a call from that location. Owners and/or operators of large-scale solar energy systems shall provide for biannual training, to Town of Rochester fire and EMS and shall provide all NYSERDA recommended fire protection supplies necessary for fire and EMS response.

F. Exceptions.

- (1) The Planning Board, in conjunction with the review of a specific subdivision, site plan, or special use application, may also appropriately modify other development standards, including but not limited to building height, to accommodate solar and other energy efficient systems.
- (2) 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.

G. Small-scale solar energy system as an accessory use or structure.

(1) Applicability.

- (a) For purposes of this section, the term "small-scale solar" refers to solar photovoltaic systems which generate power exclusively for onsite use by the building or lot to which they are attached, and do not provide energy for any other lots. The use and/or structure shall be accessory to the main use and/or structure and shall be incidental, related, appropriate, and clearly subordinate.
- (b) Solar energy collectors shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the lot on which they are erected, but nothing contained in this provision shall be construed to prohibit collective solar installations or the sale of excess power through a net billing or net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.
- (c) No small-scale solar energy system or device shall be installed or operated in the Town of Rochester except

in compliance with this section.

- (2) Roof-mounted solar energy systems.
  - (a) Roof-mounted solar energy systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted and constructed building or structure, subject to building permits.
  - (b) Height. Solar energy systems shall not exceed maximum height restrictions within the zoning district it is located in, as illustrated in the Schedule of Lot Development Standards [see Appendix B] and are provided the same height exemptions granted to building-mounted mechanical devices or equipment. See also § 140-11, Height restrictions.
  - (c) Aesthetics. Roof-mounted solar energy system installations shall incorporate, when feasible, the following design requirements: Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
  - (d) Roof-mounted solar energy systems that use the energy onsite or offsite shall be exempt from site plan review under the local zoning code or other land use regulations.
- (3) Ground-mounted solar energy systems.
  - (a) Ground-mounted solar energy systems that use the electricity primarily onsite are permitted as accessory structures in all zoning districts, subject to building permits.
  - (b) Height and setback. The height of the solar energy system shall not exceed 15 feet when oriented at maximum tilt. Setback requirements shall be as stated for accessory uses for the underlying zoning district. Refer to §140-13 Accessory Uses for regulations.
  - (c) System capacity. Ground-mounted solar energy systems designed for onsite use shall not be sized greater than the energy usage necessary to serve the parcel. Documentation of energy use or energy use expansion necessity may be required.
  - (d) Lot coverage. Ground-mounted solar energy systems

shall be granted an additional 10% bonus lot coverage of the lot on which it is to be installed for a specific zoning district as listed from the Schedule of Lot Development Standards ~~District Regulations~~ [see Appendix B]. The surface area covered by solar panels shall be included in total lot coverage.

- (e) Small-scale ground-mounted solar energy systems in the R-1, R- 2, or H Zoning Districts shall be installed in the side or rear yards or be located greater than 100 feet from the front lot line.
- (f) Ground-mounted solar energy systems that use the electricity primarily onsite shall be exempt from site plan review under the local zoning code or other land use regulations.

H. Standards for solar energy system, subdivision use.

- (1) When an application for subdivision is presented to the Planning Board, which plans include incorporation of a solar energy system as a community energy source, the following criteria for the review and use shall be considered.
  - (a) Solar energy systems shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the subdivision on which they are erected, but nothing contained in this provision shall be construed to prohibit collective solar installations or the sale of excess power through a net billing or net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.
  - (b) Solar energy systems shall be permitted under the Schedule of District Uses [see Appendix C] when authorized by site plan approval from the Planning Board in conjunction with minor or major subdivision review subject to the following terms and conditions in the A-3, R-1, R-2, R-5, and H Zoning Districts so long as the solar energy system meets the criteria set forth in this subsection and Chapter 140, subject to obtaining all other necessary approvals.
  - (c) The solar energy system shall be located on one or more lots of the subdivision.
  - (d) All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes,

regulations, and standards.

- (e) A homeowners' association shall be established for the operation and maintenance of the solar energy system.

- (2) Site plan requirements. A solar energy system designed for use in conjunction with a specific subdivision use shall comply with all the site plan requirements of Chapter 140 in addition to the subdivision requirements of Chapter 125. Additional requirements for the use shall include but not be limited to the following:

- (a) Maximum area. The maximum area of use for a solar energy system designed for a specific subdivision use shall occupy less than or equal to two acres of land area of use.
- (b) Height and setback. The height of the solar energy system shall not exceed 15 feet when oriented at maximum tilt. Setback requirements shall be as stated for the underlying zoning district.
- (c) Lot coverage. A subdivision solar energy system shall be granted an additional 10% bonus lot coverage of the lot on which it is to be installed for a specific zoning district as listed from the Schedule of Lot Development Standards [see Appendix B]. The surface area covered by solar panels shall be included in total lot coverage.
- (d) The solar energy system shall be preferably located on an interior lot of the subdivision and placed away from contiguous residential use. Where a solar energy system designed for a specific subdivision use will abut other residential uses outside the boundaries of the subdivision, there shall be increased consideration for mitigating visual impact to the residential use. For example, increased setbacks, visual screening that does not impair solar access, or sound buffering may be required by the Planning Board.
- (e) All solar energy production facilities shall be designed and located in order to prevent reflective glare onto roadways or adjacent structures.
- (f) A minimum twenty-five-foot perimeter buffer, except for the area of roadway access, which may be partially or

totally within the subdivision perimeter lot line setback, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town of Rochester Zoning Code standards, as may be required by the Planning Board, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads. Landscape screening shall be provided in accordance with the landscaping provisions of this chapter. 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.

- (g) Site plans shall be developed that provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to be established when adjacent parcels are developed.
- (h) 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 and the area required for solar access.
- (i) Debris, materials and/or mulch generated by site clearing or construction shall not be stockpiled onsite.
- (j) Non-invasive ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, and non-fertilizer-dependent.
- (k) All local stormwater regulations shall be complied with. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. If determined to be required, a SWPPP (stormwater pollution prevention plan) shall be prepared and 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.
- (l) Conveyance of energy to subdivision lots. The site plan shall show the pathways of utility service lines which will be put into place to convey energy to each lot of the subdivision. 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.

- (m) The applicant shall provide the means of restricting access by the public to the solar collector and indicate such on the site plan.
  - (n) Signs. A sign no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number shall be posted. In addition, "No Trespassing" or other warning signs may be posted. All signage shall be maintained in legible condition and contain accurate information. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations. No signage of any kind shall be allowed to be attached to solar panels or support structures, except any required safety warnings.
  - (o) Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
  - (p) Proposed covenants and restrictions and a management plan for the proposed homeowners' association (HOA).
  - (q) A decommissioning plan, as detailed in § 140-37K, shall be prepared. Compliance with this plan shall be made a condition of the issuance of site plan approval under this section.
- I. Standards for large-scale solar energy systems as a special use.
- (1) Large-scale solar energy systems are permitted through the issuance of a special use permit within A-3 (solely dual-purpose use continuing agricultural use), R-5, NR, I, CS, and H Zoning Districts, subject to the requirements set forth in this section, including site plan approval. Large-scale solar energy systems shall not be permitted to be constructed on areas of prime farmland as designated by the United States Department of Agriculture.
  - (2) Large-scale solar energy systems shall not be permitted to be constructed on areas of prime farmland as designated by the United States Department of Agriculture or in Ulster County Habitat Cores as defined in the Town of Rochester Natural

Heritage Plan and Open Space Inventory.

- (3) Large Scale Solar Energy Systems shall not be permitted on lands with slopes greater than 15% or where there shall be significant impacts on hydrological, ecological or view shed assets. The Planning Board shall be authorized to retain outside consultants to do hydrological, ecological and/or visual impact studies.
- (4) “Dual Purpose” Agricultural Use + Large-Scale Solar Energy Systems shall be permitted in A-3 zoning district. For the use, the parcel shall remain in active agricultural production, at all times. ‘Dual Purpose’ Solar shall:
  - (a) Be under 2 MW and shall be less than 10 acres. Subdivision of parcels cannot be used to circumvent the restrictions.
  - (b) Dual purpose agriculture and solar shall be regulated by Ag and Markets for the agricultural portion and regulated by Town of Rochester Solar Law for the solar portion.
  - (c) Land under the panels shall be used contemporaneously and continuously as crop or pasture for the life of the Dual Purpose Agricultural Solar Energy System.
  - (d) The agricultural use of the operation shall be maintained for the life of the solar system use. If the agricultural use is discontinued the solar use shall also be terminated contemporaneously. If the solar use is terminated the solar installation must be decommissioned (See 140-37 (K)) and the land(s) shall return to agricultural use.
- (5) Special use permit application requirements. For a special permit application, the site plan application is to be used as supplemented by the following provisions. Compliance with these requirements and standards shall be made as a condition of the issuance of a special use permit under this Section.
  - (a) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
  - (b) Blueprints showing the layout of the solar energy system signed by a professional engineer or registered architect shall be required.
  - (c) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and

inverters that are to be installed.

- (6) Special use permit standards.
- (a) Height and setback. The height of the large-scale energy systems shall not exceed 15 feet when oriented at maximum tilt. Setback requirements shall be a minimum of 250 feet from the property line(s) or 2x the standard setback in a zoning district, whichever is greater. Setbacks shall be inclusive of screening and shall be measured to the edge of the solar panel(s). All inverters shall be set back a minimum of 150 feet from the property line(s) or until electromagnetic field (EMF) meets background level, as determined by the World Health Organization (WHO), whichever is greater, and shall preferably be located in the interior of the Solar System. ~~the lesser of 100 feet or until electromagnetic field (EMF) meets background level, as determined by the World Health Organization (WHO).~~
  - (b) Area of use. The area of use for a large-scale solar energy system shall be a maximum of 20 acres.
  - (c) Lot coverage. A large-scale solar energy system located in the A-3, ~~AB-3~~, NR, I, CS, or H Zoning District shall be granted an additional 10% bonus lot coverage of the lot on which it is to be installed as listed for nonresidential use from the Schedule of Lot Development Standards ~~District Regulations~~ [see Appendix B]. A large-scale solar energy system located in the R-5 Zoning District shall be granted an additional 20% ~~25%~~ bonus lot coverage of the lot on which it is to be installed as listed for nonresidential use from the Schedule of Lot Development Standards ~~District Regulations~~ [see Appendix B]. The surface area covered by solar panels, inverters and accessory structures shall be included in total lot coverage.
  - (d) All solar energy production facilities shall be designed and located to prevent reflective glare onto roadways or adjacent structures.
  - (e) A minimum twenty-five-foot perimeter buffer, except for the area of roadway access which may be partially or totally within the perimeter lot line setback, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance

with Town of Rochester zoning code standards, as may be required by the Planning Board, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent properties and Town, county and state roads. Landscape screening shall be provided in accordance with the landscaping provisions of this chapter and 140 -15 Landscaping.

- (f) A land grading and vegetation clearing plan shall be prepared. No Large- Scale Solar Energy Systems shall be permitted on lands with a slope greater than 15%. 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 and the area required for solar access.
- (g) Noninvasive ground cover under and between the rows of solar panels shall be low- maintenance, drought-resistant, and non- fertilizer- dependent. Pollinator attracting species (varietals such as clover or Geranium maculatum are examples) shall be encouraged for ground cover.
- (h) Debris, materials and/or mulch generated by site clearing or construction shall not be stockpiled onsite. The Planning Board shall have the authority to require bonding for the site maintenance during construction.
- (i) All local stormwater regulations shall be complied with. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. If determined to be required, a SWPPP (stormwater pollution prevention plan) shall be prepared and 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.
- (j) A stormwater maintenance plan for the full life of the solar arrays shall be prepared and shall be reviewed by the TOR Planning Board.
- (k) All large-scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. Wildlife friendly fencing shall be required. The Town of Rochester Planning Board shall determine the type of

fencing. The Planning Board may determine, upon Site Plan and Special Use review, further screening by landscaping is required.

- (l) Signs. A sign no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number shall be posted. In addition, "No Trespassing" or other warning signs may be posted. All signage shall be maintained in legible condition and contain accurate information. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations. Warning signage shall be posted at all access points. No signage of any kind shall be allowed to be attached to solar panels or support structures, except any required safety warnings.
- (m) Property operation and maintenance plan. A Property Operating & Maintenance Plan shall be prepared for the life of the system and shall describe continuing photovoltaic maintenance and property upkeep, such as but not limited to the frequency and methodology of mowing and trimming, landscaping maintenance, snow clearing, and fence inspection and repair. Any and all disused or non-functioning panels or equipment shall not be stockpiled on the site and shall be removed and disposed of as detailed in §140-37 (K) at the occurrence of non-use.
- (n) A decommissioning plan, as detailed in § 140-37K, shall be prepared. The decommissioning plan shall be fully bonded with the Town. The decommissioning plan shall be established with a 15% overage premium and shall have an annual CPI inflation adjustment or as specified by the Town Attorney Compliance with and bonding of this plan shall be made a condition of the issuance of a special use permit under this section.
- (o) The solar energy production facility shall comply with § 140-20, General commercial and industrial standards.

J. Registration of large-scale solar energy production facilities.

- (1) Purpose. The Town of Rochester desires to develop a registration system to ensure all large-scale solar energy production facilities are properly maintained and to ensure all owners properly maintain and inspect their facilities.

- (2) All owners of large-scale solar energy production 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 60 days from the filing of this chapter to register.
- (3) The Code Enforcement Office shall administer the local large-scale solar energy production facility registration system. The Town Board shall establish the fees structure for the registration which may be amended by resolution from time to time. 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.
- (4) 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 solar energy production 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) Written certification the large-scale solar energy production facility is in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations.
  - (d) Written certification onsite vegetation has been maintained to ensure the desired screening effect.
- (5) Inspection of facilities. The owner and any and all lessees, renters, and/or licensees of large-scale solar energy production facilities shall agree in writing to allow the Code Enforcement Officer or their assignee 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, solar panels, support structures, 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.

- (6) Notification of termination of use. The owner shall sign a letter of commitment, which shall commit the large-scale solar energy production facility owner and its successors and assigns to notify the Code Enforcement Officer 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 Chapter. Notwithstanding this provision, the Code Enforcement Officer 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 situated by certified mail, return receipt requested. Sixty days after 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 Code Enforcement Officer and the Town of Rochester may commence legal proceedings and have the facility removed from the site in accordance with all applicable law.
- (7) Annual certification. Recertification by the facility owner of the following 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 solar energy production 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 large-scale solar energy production facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations.
  - (d) Decommissioning plan changes shall be reported and filed with the annual certification.
- (8) Renewal of registration. Registrations shall be required to be renewed beginning with a period of time 90 days prior to expiration until the anniversary date of the registration.

- (9) Changes in registration information. The owner shall provide notice to the Town of any changes in registration information within 30 days of such change.
- (10) Changes in registration information. The owner shall provide notice to the Town of any changes in registration information within 30 days of such change.

K. Decommissioning plan for solar energy systems.

- (1) Any use which requires approval by the Planning Board shall include a decommissioning plan and decommissioning bond approved by the Planning Board. The decommissioning bond shall be established with a 15% overage premium and shall have an annual CPI inflation adjustment or as specified by the Town Attorney
- (2) The decommissioning plan shall specify that after the solar energy system will no longer be used, it shall be removed by the applicant or any subsequent owner and shall include a signed statement from the party responsible for completing the decommissioning plan acknowledging such responsibility.
- (3) The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state or improved environmental habitat prior to construction.
- (4) The plan shall state disposal of all solid and hazardous waste shall be in accordance with local, state, and federal waste and environmental disposal regulations at the time of remediation.
- (5) The plan shall include an expected timeline for execution.
- (6) The plan shall include a cost estimate detailing the projected cost of executing the decommissioning plan prepared by a professional engineer or contractor. Cost estimations shall consider inflation.
- (7) Removal of solar energy systems must be completed in accordance with the decommissioning plan. If the solar energy system is not decommissioned after being considered abandoned, the municipality may remove the system, restore the property, and impose a lien on the property to cover these costs to the municipality.

L. Abandonment and removal of energy systems.

- (1) Any solar energy 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 solar energy facility and its equipment on a continuous basis for a period of one year.
- (2) In the event the solar energy 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 solar energy 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 30 days' notice to such owner. Upon a finding that the solar energy 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 solar energy facility be removed within 120 days. If the solar energy 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 Code Enforcement Officer, the Town Board may waive or defer the requirement that a solar energy 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 solar energy facility pursuant to this subsection, the Town shall chargeback any costs against the owner and/or applicant. If the owner of said property does not pay said charges, they shall be included as a part of the next Town tax bill and said charge shall be due and payable by said owner at the time of payment of said bill.

**§ 140-38, Contractor Storage Yards**

**A. Purpose**

To provide for the use of a parcel for the storage of tools, equipment, materials, and vehicles that is not ancillary to an existing or proposed onsite residential or commercial use. This use shall be considered a separate use of a parcel subject to the Schedule of Development Standards.

- B.** Storage of building materials, supplies, parts, etc., shall be indoors unless otherwise permitted by the Planning Board.
- C.** Storage yards, equipment and vehicles shall not be located within 100 feet of any property line.
- D.** Storage yard equipment and vehicles related to the contractor's business shall be parked in the rear of the property or be screened from adjacent properties and the public right-of-way per §140-20.
- E.** No more than 15% of the total lot area or 1 acre, whichever may be less, may be used for the stockpiling of material used by the contractor for a storage yard.
- F.** No more than 4 vehicles propelled by their own power (i.e., not including trailers) with a gross vehicle weight of 26,000 pounds or more shall be stored outdoors at a contractor's storage yard, unless mitigating measures are authorized by the Planning Board at Site Plan approval.

Article VI  
Non-Conforming Uses and Structures

§ 140-39, Definitions

- A. All definitions defined in this section shall apply to all subsections of Article VI of Chapter 140.

ALTERATION

Changes made such as adding or removing windows or doors, 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.

DAMAGE(D)

Injury to real property by negligence, willful destruction, or by an act of nature.

EXISTING BUILDING OR STRUCTURE

See §140-4 Specific Definitions.

EXISTING USE

See §140-4 Specific Definitions.

EXPANSION

An extension of a pre-existing nonconforming use in conformance with current applicable codes, or a pre-existing non-conforming building/structure increasing beyond its original footprint not to exceed twenty-five percent (25%)

NONCONFORMING BUILDING OR STRUCTURE

See §140-4 Specific Definitions.

NONCONFORMING USE

See §140-4 Specific Definitions.

RE-ESTABLISHMENT

The continuation of abandoned use, building, structure, or lot within required time frame as per §140-43 (B).

REPLACEMENT

The removal of pre-existing non-conforming building/structure followed by new building/structure constructed upon same or smaller footprint.

## REPLACEMENT WITH EXPANSION

Removal of pre-existing non-conforming building or structure followed by a complete rebuilding of building/structure with expansion outside its original footprint but within current zoning district setbacks. This expansion shall not exceed twenty- five percent (25%) of original ground-based footprint except that vertical expansion shall be limited by height restriction for the underlying zoning district.

## RESTORATION

Bringing a damaged pre-existing nonconforming building/structure up to original, pre-damage conditions, in conformance with NYS Uniform Fire Prevention and Building Code.

### § 140-39.1 Rights to continue nonconforming uses.

- A. A use, building or structure lawfully in existence as of the effective date of this chapter and nonconforming 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 nonconforming 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 nonconforming 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 nonconforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this chapter, 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 nonconforming use and to establish when Town review and approval shall be required for such actions.
- D. The protections extended by this article to existing nonconforming uses, buildings, lots, or structures, commonly known as "grandfathering," shall not extend to any nonconforming activity occurring subsequent to the effective date of this chapter, as amended.

### § 140-39.2 **Preexisting nonconforming camps.**

Upon the effective date of this Zoning Chapter, legally existing, nonconforming camps shall not be required to obtain a special use permit, except as set forth below.

Notwithstanding the provisions of this section, the discontinued use or vacancy of a particular building or structure within an existing nonconforming camp shall not be deemed an abandonment provided the camp use on the parcel has not been discontinued for 24 months or more. The alteration or expansion of any such nonconforming camp shall be allowed as follows:

1. The addition or alteration of structures, other than cabins or other sleeping quarters, within the same limits of disturbance, shall require site plan review and approval under Article VII of this Chapter. The changes shall meet the special use standards set forth in Section 140-20 but shall not require a special use permit. This subsection shall not apply to interior alterations of structures not increasing camp capacity.
2. The addition or alteration of structures, other than cabins or other sleeping quarters, that expands the limits of disturbance, shall require site plan review and approval under Article VII of this Chapter. The changes shall meet the special use standards set forth in Section 140-20 but shall not require a special use permit.
3. The conversion of any existing buildings to cabins and other sleeping quarters, which increases the sleeping capacity of the camp, or which requires changes to any water or sewer systems serving the camp, and which does not increase said capacity by more than thirty-five percent (35%) of the of the septic capacity as documented by the Department of Health permits in effect on the effective date of this Chapter and which does not increase the limits of disturbance, but otherwise meeting the bulk and zoning requirements applicable to the zoning district within which the camp is located, shall require Site Plan review and approval under Article VII of this Chapter. The 35% increase in septic capacity shall be calculated cumulatively and include the increase that results from all changes that occur after the effective date of this Chapter. The changes shall meet the special use standards for camps set forth In Section 112-41 but shall not require a special use permit.
4. The conversion of any existing buildings to cabins and other sleeping quarters, which increases the sleeping capacity of the camp, which increases said capacity by more than thirty-five percent (35%) of the septic capacity as documented by the Department of Health permits in effect on the effective date of this Chapter, or the construction of new cabins or other sleeping quarters shall require special use permit and site plan review and approval under Article VII of this Chapter and said expansion shall be subject to the special use permit standards and requirements of Section 1. The 35% Increase in septic capacity shall be calculated cumulatively and include the increase that results from all changes that occur after the effective date of this Chapter.
5. The expansion of any existing camp to any adjacent parcel of property not part of the existing camp development shall require special use permit and site plan review and approval under Article VII of this Chapter and said expansion shall be subject to the special use permit standards and requirements of Section 140-20. This subsection shall not apply to lot line adjustments where no new camp development or camp use is proposed on the expanded lot area until such time as new camp development or camp use is proposed on the expanded parcel.

§ 140-40, Normal Maintenance and Repair

- A. Normal maintenance and repair activities, such as painting, or fixing gutters, shall be permitted by right. 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 nonconforming use of a building, lot, or structure.
- B. Alterations such as roof replacement or interior renovations that structurally alter buildings, add living areas, or result in extended or increased nonconforming use of a structure and/or lot shall require a building permit.
- C. 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 chapter. 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, Replacement, or Replacement with Expansion

If any nonconforming use, building, or structure is damaged,

- A. Restoration of buildings or structures is permitted by obtaining a building permit within 18 months of the date of damage. Permits requested after 18 months of the damage will be treated as reconstructions (see §140-41 B).
- B. Replacement of buildings or structures shall be permitted by obtaining a building permit and site plan approval.
- C. Replacement with Expansion, as defined herein, of building or structure shall be permitted by Special Use permit.

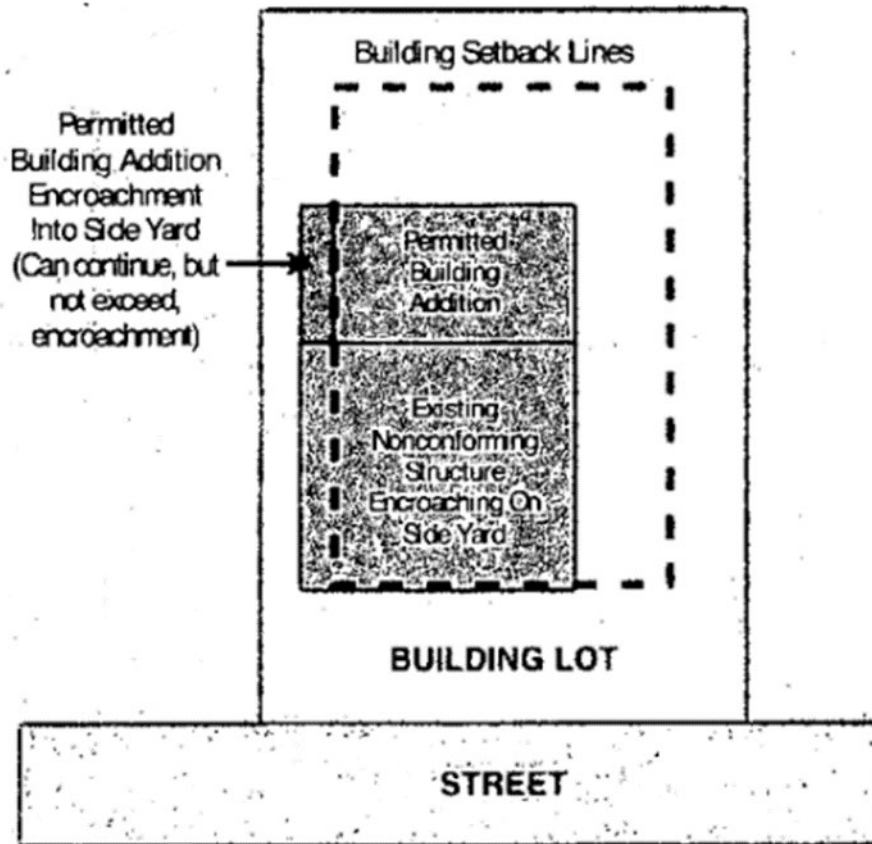
§ 140-42, Changes, Additions, and Expansions

Excepting for by right activities provided for in 140-40, single- and two-family residential uses, and accessory uses and alterations; all changes, additions, and expansions to nonconforming uses shall be considered special uses. Permits for changes in use, reconstructions, additions, or expansions shall be granted only after a determination by the Planning Board under special use review that the following conditions have been, or will be, satisfied.

- A. There shall be no expansion in the amount of land area outside a nonconforming facility (outdoor area) used for storage of materials, supplies and/or products, except as provided herein.
- B. Where the nonconforming 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; however, a nonconforming single- or two-family residential use shall be granted an exception from this requirement upon receipt of an area variance from the Zoning Board of Appeals.



- D. There shall be no increase in the amount of stormwater runoff for the site over what was existing prior to the changes, additions, and expansions. A professional engineer or other appropriate professional such as, but not limited to, the U.S.D.A. Soil Conservation Service may be relied upon to determine and recommend appropriate measures to control stormwater 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 nonconforming 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 chapter 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 chapter, the Planning Board may require vegetative screening of the parking area from nearby residential areas.

- F. The use shall not be eligible for expansion or extension onto another property of record.
- 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 chapter, the requested expansion or extension shall be denied.

#### § 140-43, Abandonment and Re-establishment

- A. A non-conforming use, building, or structure shall 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 which demonstrate the enterprise is going out of business or the use is otherwise ending; or
  - 2) A residential dwelling has not been resided in for 24 months or more and the building shows signs of deterioration as defined in §66-3 Town of Rochester Code; or
  - 3) A commercial building or structure has not been occupied or a use not exercised, or the equipment and furnishings used in furtherance of the non-conforming use have been removed from the premises for 24 months or more; or
  - 4) The non-conforming use has been replaced by a conforming use or changed to another use under permit from the Town.
- B. The Building Inspector, upon determining any of the above circumstances exist, shall, by certified mail, so notify the property owner of record, informing the owner the use, building or structure is considered abandoned. 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.
- C. An owner may seek to re-establish the use, building, or structure within a period of 6 months after notification of abandonment by sending certified mail to the Code Enforcement Officer.

#### § 140-44, Use of Existing Non-Conforming Lots of Record

- A. A principal structure may be erected on any vacant non-conforming lot of record, existing at the time this chapter is enacted; provided no front yard setback is reduced in size and no side yard setback 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.

- B. Accessory structures proposed to be placed on non-conforming lots of record in association with a zoning permit application for a building permit, site plan, special use permit, made after the effective date of this law, shall comply with Section 140-13 of this Law, Accessory Structures and Uses.
- C. Where two or more adjacent lots, one or more of which is nonconforming, are owned by the same owner, and the ownership of the lots is concurrent, such lots shall be combined to create conforming lots, or to lessen the non-conformity if it is not possible to create all conforming lots.
- D. Further nonconformance of pre-existing nonconforming lots by combination, subdivision, conveyance of lands, lot line adjustment, or other land use alterations with adjacent properties with common ownership is prohibited except by granting of an area variance.

Article VII  
Special Use and Site Plan Review Procedures

§ 140-45 Review of applications.

The Town of Rochester Planning Board is authorized, in accordance with §§ 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.

§ 140-45.1 Sketch Plan

- A. An applicant for a special use permit or site plan review shall submit a sketch plan as a minimum prerequisite for special use permit or site plan review and advisement 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.
- B. Should such sketch plan involve a one-time addition-of -less than 10% or less or a maximum of 200 square feet of floor area or accessory uses or structures, the Building Department may review and approve the sketch plan on its own during the building permit process.
- C. 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 Planning Board and a detailed site plan providing the following information has been submitted:

- A. The site plan shall include:

1. Aerial photo base map with site plan overlay. Aerial photos at a minimum of 50 cm resolution showing existing conditions shall be provided such as but not limited to aerial photos obtainable on Ulster County Parcel Viewer, NYS DEC Natural Resources Mapper, Google Earth, or others.
2. 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.
3. All known natural resource restrictions, floodplains, wetlands, ecologically sensitive areas, etc., extending beyond the project boundaries a distance of 200 feet.
4. Where there is evidence of a potential or existing wetland, an Ulster County Core Habitat, or other ecologically significant lands the Planning Board may require a wetland delineation or habitat study to determine the exact boundaries and to evaluate potential impacts of development on said wetlands or ecologically significant lands.
5. 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.
6. Explanation of how the applicant is creating a site with as small a carbon footprint as possible, or reducing the carbon footprint of an existing structure(s) or the site,
7. 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.
8. The location, dimensions and capacity of any proposed roads, off-street parking areas, EV charging stations, and loading berths, including typical cross-sections for all paving or regrading involved.
9. The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelization, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.
10. The location and identification of proposed open spaces, parks, or other recreation areas.
11. The location and design of buffer areas and screening devices to be maintained.

12. The location of trails, walkways and all other areas proposed to be devoted to pedestrian use.
  13. The location of public and private utilities, including maintenance facilities.
  14. The specific locations of all signs existing and proposed, including a visual depiction of the latter.
- B. 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.
  - C. A completed SEQRA environmental assessment form
  - D. Topography of the site using two-foot contour intervals unless otherwise specified by the Planning Board,
  - E. 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.
  - F. A map and report detailing the proposed conveyance, storage, distribution, generation, use, treatment or disposal of any stormwater 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 thirty-day period shall include a hydrogeological report prepared by a qualified hydrogeologist or engineer.
  - G. 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.
  - H. The stormwater 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. The use of green stormwater techniques, even for sites not requiring an SWPPP, should be considered.
  - I. An agricultural data statement, if applicable.
  - J. The location of historic properties, structures, or districts within 500 feet of the site.
  - K. Wetlands as mapped by the New York State Department of Environmental Conservation and the Army Corps of Engineers, including any soils identified as hydric.

- L. The site plan shall contain blank approval blocks for the Town Planning Board stamp and signatures on every sheet of the set of plans, table of plan changes, and dates and a block for map notes.
- M. Any other information required by the Planning Board that is clearly necessary to ascertain compliance with the provisions of this chapter (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 § 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 therefore 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 reuse 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 chapter 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. 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 chapter to the extent of 15% of the stated criteria where the Planning Board determines following public input that protection the health safety and welfare of the public and implementation of the goals of the Comprehensive plan merit additional protections beyond those provided elsewhere within Chapter 140.
- G. 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 a hearing at least five 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 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 § 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 § 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 approval 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 approval and/or special use permit shall remain effective, as an authorization to establish the use, for a maximum of one year from the date of approval. The Planning Board shall have the authority to grant an extension within the one-year time frame in writing, provided the applicant has diligently pursued the implementation of the plans. Such extensions shall be granted in 6-month increments up to a maximum of 4. Absent such an extension, the site plan approval and/or special use permit shall be deemed to have expired.
- C. A special use which has been discontinued or not been exercised, as defined in §140-43 of this chapter, 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 the 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 to, 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 chapter and the Town's Comprehensive Plan are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.
- F. Whether the proposed use has an adequate water supply in terms of quantity and quality to meet the specified needs.

§ 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 systems.
  - (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.

§ 140-57      Reserved for Future Use

§ 140-58      Reserved for Future Use

## Article VII

### Administration and Enforcement

#### §140-59, Code Enforcement Officer or Building Inspector

The Town Board shall provide for the services of a Code Enforcement Officer and/or Building Inspector, which may be the same person, to simultaneously enforce the provisions of this chapter and other applicable Town of Rochester codes and the New York State Uniform Fire Prevention and Building Code Enforcement Law. Such Code Enforcement Officer or 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 chapter, 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 chapter 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 chapter, 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 Code Enforcement Officer or 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 chapter, 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 Code Enforcement Officer or Building Inspector, provided all construction has been in accord with the building permit granted and/or the proposed use is in compliance with this chapter. The Building Inspector shall be authorized to make such inspections as he deems necessary to ensure that construction does, in fact, comply with this chapter.

- D. The Code Enforcement Officer or 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 have secured an Ulster County Department of Health permit, if required. 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 chapter, and that all other reviews and actions, if any, called for in this chapter 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 chapter, 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 chapter. 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 chapter, without first procuring a certificate of occupancy, provided, however, that a 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 chapter 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 Code Enforcement Officer or Building Inspector. Applications shall include plot plans survey, or such other information as is required to determine compliance with the requirements of this chapter.
- L. A building permit shall expire after 24 months if the applicant fails to complete the improvements as approved. An extension may be approved by the Code Enforcement Officer or 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. A zoning permit shall expire after 24 months if the applicant fails to complete the improvements as approved. An extension may be approved by the Code Enforcement Officer 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.
- N. The Code Enforcement Officer or 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.
- O. No permits shall be issued for any new uses where there are unremedied existing violations.
- P. 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 chapter 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 chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer or 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 Code Enforcement Officer or Building Inspector to act on a violation absent a complaint. Whenever the Code Enforcement Officer or 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 chapter, the Town Board, Code Enforcement Officer, 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 chapter occurs, the Code Enforcement Officer or Building Inspector may bring action in Town Court for violators for fines specified in § 140-62D. The Town Board may authorize further action as deemed necessary.
- D. Whenever a violation of this chapter occurs, the Code Enforcement Officer or Building Inspector, upon resolution by the Town Board, may bring action Ulster County Court or NYS Supreme Court.
- E. A violation of this chapter is hereby declared to be an offense punishable by a fine not exceeding \$350; for conviction of a second offense within five years, punishable by a fine of not less than \$350 nor more than \$700; and, upon conviction for a third or subsequent offense within five years, punishable by a fine not less than \$700 nor more than \$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 **B(1)** 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 For Future Use

Article IX  
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 members of staggered five-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 chapter 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 chapter, 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 chapter 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 chapter, 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.
- (3) 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 chapter 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 7 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 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 chapter. 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 an 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 60 days after the filing of any order, requirement, decision, interpretation, or determination of the administrative officials charged with the enforcement of this chapter 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 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 rehearing 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 business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- K. At least five 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 § 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 members of the Board if it shall determine to approve an application which the County has recommended it disapprove or modify.

§ 140-68 Reserved for Future Use

Article X  
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 of the Town of Rochester Code.

<b>Appendix A</b>	<b>Zoning Map</b>
<b>Appendix A1</b>	<b>Floodplain Overlay District</b>
<b>Appendix A2</b>	<b>Aquifer Protection Overlay District</b>
<b>Appendix A3</b>	<b>Economic Enterprise Overlay District</b>
<b>Appendix A4</b>	<b>Historic Preservation Overlay District</b>
<b>Appendix B</b>	<b>Schedule of Lot Development Standards</b>
<b>Appendix C</b>	<b>Schedule of District Uses</b>

## Section 2. 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 3. Effective Date

This local law shall become **effective concurrently with Chapter 125, Subdivision of Land upon the filing of both amended local laws in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law**

**Appendix B**  
**Schedule of Lot Development Standards**

DISTRICT	A-3		AB-3		R-1	
	Local Agricultural		Agricultural Business		Neighborhood Residential	
Minimum	Residential	Non-Residential	Residential	Non-Residential	Residential	Non-Residential
Lot Area (without S/W)	3.0 acres	3.0 acres	3.0 acres	3.0 acres	1.0 acre	1.0 acre
Lot Area (with S/W)	3.0 acres	3.0 acres	3.0 acres	3.0 acres	0.5 acre	0.5 acre
Lot Width (feet)	160	160	160	160	100	100
Lot Depth (feet)	160	160	160	160	100	100
Lot Frontage (feet)	50	50	50	50	50	50
Front Yard (feet)	35	35	35	35	10	10
Side Yard (feet)	40	40	40	40	25	25
Rear Yard (feet)	40	40	40	40	25	25
<b>Maximum</b>						
Lot Coverage	20%	35%	20%	35%	40%	40%
Building Height (feet)	35	35	35	35	35	35
Building Stories	2.5	2.5	2.5	2.5	2.5	2.5

DISTRICT	R-2		R-5		PL-10	
	Low Density Residential		Rural Conservation		Preserved Land	
Minimum	Residential	Non-Residential	Residential	Non-Residential	Residential	Non-Residential
Lot Area (without S/W)	2.0 acres	2.0 acres	5.0 acres	5.0 acres	10.0 acres	10.0 acres
Lot Area (with S/W)	2.0 acres	2.0 acres	5.0 acres	5.0 acres	10.0 acres	10.0 acres
Lot Width (feet)	160	160	200	300	200	200
Lot Depth (feet)	160	160	200	300	300	300
Lot Frontage (feet)	50	50	50	50	75	75
Front Yard (feet)	35	35	50	75	75	100
Side Yard (feet)	40	40	50	75	75	100
Rear Yard (feet)	40	40	50	75	75	100
<b>Maximum</b>						
Lot Coverage	30%	30%	10%	20%	10%	15%
Building Height (feet)	35	35	35	35	35	35
Building Stories	2.5	2.5	2.5	2.5	2.5	2.5

**Notes**

S/W = central sewer and central water

Some exceptions as detailed in the text may apply

Performance standards of §140-20 may apply.

**Appendix B**  
**Schedule of Lot Development Standards**

DISTRICT	H		B		I	
	Hamlet		Business		Industrial	
Minimum	Residential	Non-Residential	Residential	Non-Residential	Residential	Non-Residential
Lot Area (without S/W)	1.0 acre	1.0 acre	1.0 acre	1.0 acre	1.5 acre	1.5 acre
Lot Area (with S/W)	13,000 sq. ft.	13,000 sq. ft.	0.5 acre	0.5 acre	1.5 acre	1.5 acre
Lot Width (feet)	50	50	100	100	160	225
Lot Depth (feet)	75	75	100	100	160	225
Lot Frontage (feet)	35	35	50	50	50	50
Front Yard (feet)	10	10	35	35	75	75
Side Yard (feet)	10	10	25	25	35	75
Rear Yard (feet)	15	15	25	25	35	75
<b>Maximum</b>						
Lot Coverage	50%	50%	50%	50%	30%	50%
Building Height (feet)	35	35	35	35	35	45
Building Stories	2.5	2.5	2.5	2.5	2.5	N/A

DISTRICT	NR		CS
	Natural Resources		Community Services
Minimum	Residential	Non-Residential	All Uses
Lot Area (without S/W)	1.5 acre	1.5 acre	N/A
Lot Area (with S/W)	1.5 acre	1.5 acre	N/A
Lot Width (feet)	160	225	N/A
Lot Depth (feet)	160	225	N/A
Lot Frontage (feet)	75	75	N/A
Front Yard (feet)	35	100	N/A
Side Yard (feet)	35	75	N/A
Rear Yard (feet)	35	75	N/A
<b>Maximum</b>			N/A
Lot Coverage	30%	50%	N/A
Building Height (feet)	35	45	N/A
Building Stories	2.5	N/A	N/A

**Notes**

S/W = central sewer and central water

Some exceptions as detailed in the text may apply

Performance standards of §140-20 may apply.

**APPENDIX C  
SCHEDULE OF USES**

USE	CATEGORY	DISTRICT										
		A-3	AB-3	R-1	R-2	R-5	PL-10	H	B	I	NR	CS
ADULT USE	INDUSTRIAL									SUP		
AGRICULTURAL LABOR HOUSING	AGRICULTURAL	ACC/SP	ACC/SP	ACC/SP	ACC/SP	ACC/SP	ACC/SP	ACC/SP				
AGRICULTURAL PROCESSING FACILITY	AGRICULTURAL	SUP	PP/SP			SUP	SUP	SUP	SUP	PP/SP	PP/SP	
AGRICULTURAL RETAIL SALES	AGRICULTURAL	PP/SP	PP/SP			SUP		SUP	PP/SP	PP/SP	PP/SP	
AGRICULTURAL TOURISM ENTERPRISE	AGRICULTURAL	PP/SP	PP/SP			SUP	SUP	SUP	PP/SP	PP/SP	PP/SP	
AGRICULTURAL USE, ANIMAL	AGRICULTURAL	PP	PP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	X	SUP	
AGRICULTURAL USE, NON-ANIMAL	AGRICULTURAL	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP
ANIMAL HOSPITAL	INSTITUTIONAL	PP/SP	PP/SP			SUP		SUP	SUP			
ANIMAL HUSBANDRY (See 140-14.1)	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	
ANIMAL SANCTUARY	COMMERCIAL	SUP				SUP	SUP					
AUCTION HOUSE or FACILITY < 4000 sq. ft.	COMMERCIAL		SUP					SUP	PP/SP			
AUCTION HOUSE or FACILITY > 4000 sq. ft.	COMMERCIAL							SUP	PP/SP			
BED-AND-BREAKFAST	RESIDENTIAL	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP			
BULK FUEL STORAGE	INDUSTRIAL								SUP	SUP	SUP	
CAMP, DAY	COMMERCIAL	SUP				SUP	SUP		SUP			PP
CAMP, OVERNIGHT	COMMERCIAL					SUP	SUP					
CAMP, SEASONAL	COMMERCIAL					SUP	SUP					
CAMPGROUND or RECREATIONAL VEHICLE PARK	COMMERCIAL					SUP			SUP			
CAMPING, PERSONAL	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
CANNABIS CONSUMPTION FACILITY, ON-SITE (See 140-32.1)	COMMERCIAL		SUP						SUP	SUP		
CANNABIS, MICROBUSINESS (See 140-32.1)	COMMERCIAL		SUP						SUP	SUP		
CANNABIS, REGISTERED ORGANIZATION WITH DISPENSING (See 140-32.1)	COMMERCIAL		SUP						SUP	SUP		
CANNABIS RETAIL DISPENSARY, ADULT USE (See 140-32.1)	COMMERCIAL		SUP						SUP	SUP		
CARGO or PORTABLE STORAGE CONTAINERS (see 140-13)	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
CEMETERY	COMMERCIAL	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP			
COMMERCIAL RECREATION	RECREATION	SUP	SUP			SUP	SUP		SUP			PP

KEY ACC = ACCESSORY USE

ACC/SP = ACCESSORY w/ SITE PLAN REVIEW

PP = PRINCIPAL PERMITTED USE

X = PROHIBITED USE

PP/SP = PRINCIPAL PERMITTED USE w/ SITE PLAN REVIEW

SP = SITE PLAN REVIEW

SUP = SPECIAL USE PERMIT

**APPENDIX C  
SCHEDULE OF USES**

	DISTRICT	A-3	AB-3	R-1	R-2	R-5	PL-10	H	B	I	NR	CS
<b>USE</b>	<b>CATEGORY</b>											
CONTRACTOR STORAGE YARD	COMMERCIAL	SUP	SUP			SUP			SUP	SUP		
CONVENIENCE MARKET	COMMERCIAL							SUP	SUP			
CONVERSION of RESIDENTIAL to NONRESIDENTIAL	COMMERCIAL	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	
CONVERSION of SEASONAL RESIDENTIAL COMMUNITY	RESIDENTIAL	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	
DAY-CARE CENTER, HOME BASED	COMMERCIAL	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP			
DAY-CARE CENTER, CENTER BASED	COMMERCIAL	SUP	SUP	SUP				SUP	SUP			SUP
DISMANTLING OPERATION	INDUSTRIAL									SUP	SUP	
DISTRIBUTION FACILITY	INDUSTRIAL								SUP	SUP	SUP	
DRIVING RANGE	RECREATION	SUP	SUP		SUP	SUP			SUP			
DWELLING, SINGLE-FAMILY	RESIDENTIAL	PP	PP	PP	PP	PP	PP	PP	PP	SUP	SUP	
DWELLING, TWO-FAMILY (new)	RESIDENTIAL	PP	PP	PP	PP	PP	PP	PP	PP			
DWELLING, TWO-FAMILY (conversion)	RESIDENTIAL	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP			
DWELLING, MULTIFAMILY	RESIDENTIAL	SUP	SUP	SUP	SUP	SUP		SUP	SUP			
DWELLING, ACCESSORY UNIT (ADU)	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC			
EDUCATION and CONFERENCE CENTER	COMMERCIAL					SUP		SUP	SUP			
ELECTRIC VEHICLE CHARGING STATION	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
EMERGENCY SERVICES	COMMUNITY		PP/SP	PP/SP	PP/SP	PP/SP		PP/SP	PP/SP			PP
FARM OPERATION	AGRICULTURAL	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	
FARM STAND	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
FAST FOOD RESTAURANT	COMMERCIAL							SUP	SUP			
FENCE or WALL	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
FENCE, AGRICULTURAL	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
FLEA MARKET (SWAP MEET) < 4000 sq. ft.	COMMERCIAL		SUP					SUP	SUP			
FLEA MARKET (SWAP MEET) > 4000 sq. ft.	COMMERCIAL								SUP			
GARAGE, PRIVATE	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
GIFT, ANTIQUE or CRAFT SHOP	COMMERCIAL		PP/SP	SUP		SUP		PP/SP	PP/SP			
GOLF COURSE	RECREATION					SUP			SUP			
GREENHOUSE, PERMANENT	AGRICULTURAL	PP	PP		SUP	SUP			SUP			
GREENHOUSE, TEMPORARY	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC			ACC

KEY ACC = ACCESSORY USE

ACC/SP = ACCESSORY w/ SITE PLAN REVIEW

PP = PRINCIPAL PERMITTED USE

X = PROHIBITED USE

PP/SP = PRINCIPAL PERMITTED USE w/ SITE PLAN REVIEW

SP = SITE PLAN REVIEW

SUP = SPECIAL USE PERMIT

**APPENDIX C  
SCHEDULE OF USES**

	DISTRICT	A-3	AB-3	R-1	R-2	R-5	PL-10	H	B	I	NR	CS
USE	CATEGORY											
GROUP HOUSING	RESIDENTIAL	PP	PP	PP	PP	PP	PP	PP	PP	SUP	SUP	
HOUSEHOLD/INDUSTRIAL WASTE COLLECTION and STORAGE FACILITIES	INDUSTRIAL	X	X	X	X	X	X	X	X	X	X	
HEALTH CARE INSTITUTIONS	COMMERCIAL		SUP			SUP		SUP	SUP			
HELICOPTER PAD	COMMERCIAL	SUP	SUP			SUP	SUP		SUP			
HOME OCCUPATION, CLASS I	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	
HOME OCCUPATION, CLASS II	RESIDENTIAL	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	ACC	PP/SP	PP/SP	
HOME OCCUPATION, CLASS III	COMMERCIAL	SUP	SUP			SUP	SUP	SUP	PP/SP	SUP	SUP	
HOTEL/MOTEL	COMMERCIAL								SUP			
HUNTING and FISHING CLUB	RECREATIONAL	PP	PP/SP			PP	PP					
INN	COMMERCIAL	SUP		SUP	SUP	SUP		PP/SP	PP/SP			
KENNEL	COMMERCIAL	SUP	SUP			SUP			SUP			PP
LIBRARY	COMMUNITY	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP		PP/SP	PP/SP			PP
LOT DEVELOPMENT w/ DISTURBANCE of 1 ACRE or GREATER (any use except agricultural)	N/A	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
LOW-IMPACT HEALTH CARE PRACTICE	COMMERCIAL	SUP	PP/SP	SUP		SUP		PP/SP	PP/SP			
LOW-IMPACT RETAIL/SERVICE ESTABLISHMENT	COMMERCIAL		SUP	SUP				PP/SP	PP/SP			
MANUFACTURED HOME PARK	RESIDENTIAL	SUP			SUP	SUP			SUP			
MANUFACTURING, GENERAL	INDUSTRIAL								SUP	SUP	SUP	
MANUFACTURING, LIGHT	INDUSTRIAL							SUP	SUP	PP/SP	SUP	
MINING, NYSDEC REGULATED (see 140-28)	INDUSTRIAL										PP/SP	
MINING, NYSDEC EXEMPT (see 140-28)	ACCESSORY	ACC/SP	ACC/SP			ACC/SP			ACC/SP	ACC/SP	ACC/SP	
MIXED USE (see 140-10)	RESIDENTIAL		SUP	SUP				PP/SP	SUP			
MOTORIZED RACETRACK	COMMERCIAL								SUP			
MULTIPLE PERMITTED USES as per 140-8	N/A	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	PP
MUSEUM, GALLERY and/or PERFORMANCE CENTER	COMMERCIAL		SUP			SUP	SUP	SUP	SUP			
NATURAL GAS and/or PETROLEUM EXPLORATION	INDUSTRIAL	X	X	X	X	X	X	X	X	X	X	X
NATURAL GAS and/or PETROLEUM EXTRACTION	INDUSTRIAL	X	X	X	X	X	X	X	X	X	X	X
NATURAL GAS and/or PETROLEUM EXTRACTION SUPPORT ACTIVITIES	INDUSTRIAL	X	X	X	X	X	X	X	X	X	X	X
NONPROFIT CLUB or RECREATION USE	RECREATIONAL	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	PP

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**APPENDIX C  
SCHEDULE OF USES**

	DISTRICT	A-3	AB-3	R-1	R-2	R-5	PL-10	H	B	I	NR	CS
<b>USE</b>	<b>CATEGORY</b>											
NURSERY, COMMERCIAL	COMMERCIAL	PP/SP	PP/SP			SUP		SUP	SUP		PP/SP	
OFFICE < 4000 sq. ft.	COMMERCIAL		SUP					PP/SP	PP/SP			
OFFICE > 4000 sq. ft.	COMMERCIAL							SUP	PP/SP			
PARKING (COMMERCIAL)	COMMERCIAL							SUP	SUP	SUP		
PARKING (MUNICIPAL)	COMMUNITY			SUP				SUP	SUP	SUP		PP/SP
PARKING AREA	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
PLACE OF WORSHIP	COMMUNITY	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP			
PRIVATE AIR STRIP	COMMERCIAL	SUP							SUP			
PRIVATE EDUCATIONAL FACILITY	COMMERCIAL	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP			
PUBLIC BUILDING	COMMUNITY											PP
PUBLIC PARK or PLAYGROUND	COMMUNITY	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP			PP
PUBLIC WATER SUPPLY	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
RADIOACTIVE MATERIALS TREATMENT, HANDLING, or STORAGE	INDUSTRIAL	X	X	X	X	X	X	X	X	X	X	X
RECORDING STUDIO	COMMERCIAL	SUP	SUP						PP/SP	SUP		
RESORT	COMMERCIAL		SUP			SUP			SUP			
RESOURCE RECOVERY FACILITY	INDUSTRIAL									SUP	SUP	SUP
RESTAURANT	COMMERCIAL		SUP	SUP				PP/SP	PP/SP			
RETAIL AND SERVICE ESTABLISHMENT	COMMERCIAL		SUP	SUP				SUP	PP/SP			
RETAIL ESTABLISHMENT (VEHICLE AND EQUIPMENT)	COMMERCIAL							SUP	SUP	SUP		
SAWMILL, COMMERCIAL	INDUSTRIAL									SUP	SUP	
SAWMILLS, TEMPORARY PORTABLE < THAN 90 DAYS	ACCESSORY	PP	PP		PP/SP	PP	PP		PP/SP	PP	PP	
SEASONAL LODGING UNITS	COMMERCIAL		SUP			SUP						
SELF-STORAGE FACILITY	COMMERCIAL									SUP	SUP	
SERVICE ESTABLISHMENT (VEHICLE AND EQUIPMENT)	COMMERCIAL							SUP	SUP	SUP		
SHORT-TERM TRANSIENT RENTAL (see 140-26.1)	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC			
SIGN (see 140-21)	ACCESSORY	VARIES - SEE CODE TEXT 140-21										
SOLAR ENERGY SYSTEM, GROUND-MOUNTED	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
SOLAR ENERGY SYSTEM, LARGE-SCALE	COMMERCIAL	SUP				SUP		SUP		SUP	SUP	SUP
SOLAR ENERGY SYSTEM, SMALL-SCALE	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC

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**APPENDIX C  
SCHEDULE OF USES**

	DISTRICT	A-3	AB-3	R-1	R-2	R-5	PL-10	H	B	I	NR	CS
<b>USE</b>	<b>CATEGORY</b>											
SOLAR ENERGY SYSTEM, SUBDIVISION USE.	RESIDENTIAL			PP/SP	PP/SP	PP/SP		PP/SP				
SOLID WASTE LANDFILL, PROCESSING, or STORAGE FACILITY	INDUSTRIAL	X	X	X	X	X	X	X	X	X	X	SUP
SPA or HEALTH CLUB	COMMERCIAL		SUP	SUP		SUP		SUP	PP/SP			
STABLE, PRIVATE	ACCESSORY	ACC	ACC		ACC	ACC	ACC		ACC	ACC	ACC	
STEEP SLOPE DEVELOPMENT of LAND >15% SLOPE	N/A	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
SWIMMING POOLS	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
TAVERN	COMMERCIAL		SUP	SUP				PP/SP	PP/SP			
TEMPORARY STRUCTURE	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
TIMBER HARVESTING, PERSONAL USE < 1 Acre	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	
TOOL SHED	ACCESSORY	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC	ACC
TRUCKING SERVICE	INDUSTRIAL								SUP	SUP	SUP	
VEHICLE JUNKYARD	INDUSTRIAL									SUP	SUP	
VETERINARY OFFICE	COMMERCIAL	PP/SP	PP/SP			SUP			SUP			
WAREHOUSE AND STORAGE FACILITY	INDUSTRIAL					SUP				SUP	SUP	
WHOLESALE USES	INDUSTRIAL								SUP	SUP	SUP	
WIND TURBINE (SMALL)	ACCESSORY	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP
WIRELESS TELECOMMUNICATIONS FACILITIES, TYPE A	INDUSTRIAL	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP	PP
WIRELESS TELECOMMUNICATIONS FACILITIES, TYPE B	INDUSTRIAL	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP	PP/SP
WIRELESS TELECOMMUNICATIONS FACILITIES, TYPE C	INDUSTRIAL	SUP	SUP	SUP	SUP	SUP		SUP	SUP	SUP	SUP	SUP
WIRELESS TELECOMMUNICATIONS FACILITIES, TYPE D	INDUSTRIAL	SUP	SUP			SUP			SUP	SUP	SUP	SUP
WORKSHOP	COMMERCIAL	SUP	SUP			SUP		PP/SP	PP/SP	PP/SP	PP/SP	
WRECKING FACILITY	INDUSTRIAL									SUP	SUP	

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