

Town of Rochester
Ulster County, New York

ZONING
LAW

Draft for Review and Discussion Only
June 30, 2007

Town of Rochester Zoning Law

TABLE OF CONTENTS

ARTICLE 1 — TITLE, AUTHORITY AND PURPOSES

§ 140-1 Authority.	1
§ 140-2 Purposes.	1

ARTICLE 2 — DEFINITIONS

§ 140-3 Word Usage.	3
§ 140-4 Specific Definitions.	3

ARTICLE 3 — BASIC DISTRICT REGULATIONS

§ 140-5 Enumeration of Districts.	12
§ 140-6 Zoning Map.	12
§ 140-7 Interpretations of District Boundaries.	12
§ 140-8 Schedule of District Regulations.	12
§ 140-9 Applicability of Regulations.	15
§ 140-10 Lot Development Standards.	15
§ 140-11 Height Restrictions.	16
§ 140-12 Yard Regulations.	16
§ 140-13 Accessory Structures and Uses.	16
§ 140-14 Animal Husbandry.	16
§ 140-15 Landscaping Requirements.	78
§ 140-16 [RESERVED]	16

ARTICLE 4 — GENERAL SUPPLEMENTARY REGULATIONS

§ 140-17 Parking, Loading, Access and Traffic Standards.	19
§ 140-18 Natural Resource Protection Overlay Districts.	22
§ 140-19 Home Occupation Regulations.	22
§ 140-20 General Commercial and Industrial Standards.	23
§ 140-21 Signs.	23
§ 140-22 Storm Water Management.	23

ARTICLE 5 — SUPPLEMENTARY REGULATIONS APPLICABLE TO PARTICULAR USES

§ 140-23 Recreational Vehicles, Campgrounds and RV Parks.	27
§ 140-24 Manufactured Homes and Parks.	31
§ 140-25 Planned Unit Development Districts.	33
§ 140-26 Multi-Family Residential Uses.	37
§ 140-27 Conversions of Residential or Non-Residential Structures.	41
§ 140-28 Sand, Gravel and Quarrying (Extraction or Mining) Uses.	42
§ 140-29 Telecommunications Facilities.	42
§ 140-30 Affordable Housing	51
§ 140-31 Conservation Subdivisions (Cluster Development).	58
§ 140-32 Adult Uses.	61
§ 140-33 Vehicle Junkyard and Wrecking Facilities.	63
§ 140-34 Transfers of Density Rights (TDR)	63
§ 140-35 [RESERVED]	63
§ 140-36 [RESERVED]	63
§ 140-37 [RESERVED]	63
§ 140-38 [RESERVED]	63

Town of Rochester Zoning Law

ARTICLE 6 — NONCONFORMING USES AND STRUCTURES

<u>§ 140-39 Rights to Continue Nonconforming Uses.</u>	71
<u>§ 140-40 Normal Maintenance and Repairs.</u>	71
<u>§ 140-41 Restoration, Reconstruction or Re-establishment.</u>	71
<u>§ 140-42 Changes and Additions.</u>	72
<u>§ 140-43 Use of Existing Non-conforming Lots of Records.</u>	73
<u>§ 140-44 [RESERVED]</u>	73

ARTICLE 7 — SPECIAL USE AND SITE PLAN REVIEW PROCEDURES

<u>§ 140-45 Preliminary Site Plan.</u>	74
<u>§ 140-46 Application and Site Plan Required.</u>	74
<u>§ 140-47 Waivers.</u>	75
<u>§ 140-48 Hearing and Decision.</u>	75
<u>§ 140-49 Conditions.</u>	75
<u>§ 140-50 Referrals.</u>	76
<u>§ 140-51 Appeals.</u>	76
<u>§ 140-52 Effect of Site Plan Approval.</u>	76
<u>§ 140-53 Renewal of Permits.</u>	76
<u>§ 140-54 Conformity with Other Plans, Laws and Ordinances.</u>	76
<u>§ 140-55 Special Use Review Criteria.</u>	77
<u>§ 140-56 Bonding for Site Improvements Related to Special Uses.</u>	80
<u>§ 140-57 [RESERVED]</u>	80
<u>§ 140-58 [RESERVED]</u>	80

ARTICLE 8 — ADMINISTRATION AND ENFORCEMENT

<u>§ 140-59 Building Inspector.</u>	82
<u>§ 140-60 Permit Requirements.</u>	82
<u>§ 140-61 State Environmental Quality Review Act Compliance.</u>	83
<u>§ 140-62 Violations and Penalties.</u>	84
<u>§ 140-63 Fees.</u>	84
<u>§ 140-64 [RESERVED]</u>	84

ARTICLE 9 — ZONING BOARD OF APPEALS

<u>§ 140-65 Establishment and Membership.</u>	85
<u>§ 140-66 Powers and Duties.</u>	85
<u>§ 140-67 Procedures.</u>	86
<u>§ 140-68 [RESERVED]</u>	86
<u>Official Zoning Map</u>	87

Town of Rochester Zoning Law

Article 1 Title, Authority and Purposes

§ 140-1 Authority.

This Chapter, which shall be known as the Town of Rochester Zoning Law, is enacted under the authority of Section 265 of the New York State Town Law and Section 10 of the New York State Municipal Home Rule Law. The Town of Rochester hereby exercises its authority under said Municipal Home Rule to specifically supersede the following provisions of New York State Town Law:

- A. Section 265 of the New York State Town Law is superseded to permit voiding of a zoning change to a planned unit development district, as provided under § 140-25 hereof, without resorting to further re-zoning procedures.
- B. Section 265 of the New York State Town Law is further superseded to permit the Town Board to classify unlisted uses, as provided under § 140-8 hereof, without resorting to a zoning amendment.
- C. Section 278.3(b) of the New York State Town Law is superseded to permit the Planning Board a cluster development or conservation subdivision to result in a permitted number of building lots or dwelling units that exceeds the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of this Chapter 140 applicable to the district or districts in which such land is situated to encourage the provision of additional open space and affordable housing.

§ 140-2 Purposes.

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

- A. Directing growth by encouraging concentrations of new residential and mixed-used, and nonresidential 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 green design principles in new development projects.
- E. Protecting historic resources.
- F. Protecting the quantity and quality of the water supply by strengthening measures to prevent groundwater contamination, assuring protection of surface waters, preserving wetlands and encouraging the provision of sewage collection and treatment to hamlets.
- G. Protecting important natural resources identified in the Town's Natural Resources Inventory.
- H. Minimizing disturbance to wildlife and vegetation from the effects of new development.

Town of Rochester Zoning Law

- I. Regulating flood plain development.
- J. Providing for continued commercial and industrial growth.
- K. Allowing for home-based occupations.
- L. Preserving productive farmlands as a viable industry resource and means for maintaining open space.
- M. Encouraging agri-tourism activities by farms and otherwise promoting and developing agriculture.
- N. Protecting the Catskills and the Shawangunk Ridge by limiting clearing and intensity of use so as to maintain existing character.
- O. Creating guidelines for new development and its landscaping that maintain a high-quality built environment while preserving and using natural beauty wherever possible.
- P. Recognizing historical neighborhoods and preserving small-scale mixed use development patterns in these areas.
- Q. Preventing intrusion of incompatible uses in residential areas so as to ensure privacy for residents and their freedom from nuisances.
- R. Ensuring signage in Town is both attractive and functional.
- S. Reducing traffic congestion and improve the safety of the roads in the Town.
- T. Requiring adequate setbacks and off-street parking for both residential and nonresidential uses.
- U. Encouraging alternatives to strip commercial development, by encouraging new development in hamlet areas and/or concentrated nodes that minimize the road frontage and curb cuts required.
- V. Ensuring new construction provides adequate access for emergency services.
- W. Encouraging the use of conservation subdivision, planned unit development, transfers of development rights and other flexible techniques for simultaneously preserving open spaces. protecting natural resources and accommodating new development.
- X. Protecting the community against unsightly, obtrusive and noisy land uses and operations.

Town of Rochester Zoning Law

Article 2 Definitions

§ 140-3 Word Usage.

- A. Unless otherwise listed below, the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the Merriam-Webster Dictionary.
- B. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the singular include the plural; words used in the plural include the singular; the word "herein" means in this law; the word "requirements" means the minimum requirements necessary for the purposes set forth in Article 1; and the words "this law" shall mean this local law and the schedules and maps included herein as enacted or subsequently amended.
- C. The word "person" as used in this chapter, shall be defined to include, but not be limited to, an individual, a partnership, a joint venture, a corporation, an unincorporated association, a firm or any other form or entity, contractors, subcontractors, or journeymen.
- D. The word "lot" includes the word "plot."
- E. The term "occupied" or "used", as applied to any land or building, shall be construed to include the words "intended", "arranged", or "designed to be occupied or used."
- F. "Shall" is always mandatory.

§ 140-4 Specific Definitions.

Accessory Use, Building or Structure — A subordinate use, building or structure customarily incidental to and located on the same lot occupied by the main use, building or structure.

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

Adjusted Tract Acreage — The net lot area of a tract used for purposes of calculating permitted density, after deducting from the gross acreage certain proportions of areas with natural limitations, land within public rights of way and roads, as provided for all subdivisions under § 125-22.A of the Town of Rochester Code. An Adjusted Tract Acre is one acre of this net lot area.

Agricultural Use — A use involving the production, keeping, or maintenance for sale, lease or personal use of plants

Town of Rochester Zoning Law

and animals useful to man, including but not limited to forages, grain and seed crops, dairy animals, poultry, beef, sheep, horses, pigs, bees, fur animals, trees, food of all kinds, vegetables, nurseries, and lands devoted to soil conservation or forestry management programs.

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

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

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

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.

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

Campground or Recreational Vehicle (RV) Park — The development or use of a lot, tract or parcel of land for the purpose of providing a site for travel trailers, truck campers, camper trailers, motor homes or tents for camping. "Campsites," "campgrounds" or "recreational vehicle parks," tent camping facilities and other similar facilities regardless whether rights to occupy a campground lot are conveyed by lease, rent, sale or any other means shall be included in this definition. Also, this definition shall include those situations where camping occurs with no specific rights of occupation offered but the use nonetheless permitted by the owner's direct or indirect action of lack thereof.

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

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

Town of Rochester Zoning Law

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

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 adult uses and racetracks.

Commercial Vehicle — Any motor vehicle of more than 10,000 pounds gross weight capacity that is required by law to bear any license plate other than that issued for passenger car or motorcycle use.

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

Conservation Subdivision — A form of development for single-family residential subdivisions that permits a reduction in lot area and other development standards, provided there is no increase in the number of lots permitted under a conventional subdivision, given the specific site conditions, and no less than 50% of the total land area is devoted to permanent open space.

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

Dwelling — A building designed or used as the living quarters for one or more families. The term "dwelling" shall include seasonal homes and mobile homes provided that they meet all the requirements of this law, the building code, and all other regulations or ordinances applicable to dwellings.

Dwelling, Multi-family — A building or portion thereof containing more than two dwelling units but intended for single ownership. Single ownership is not intended to preclude cooperative or condominium ownership.

Dwelling, Single-family -- A detached building designed or occupied exclusively by one family and erected on a permanent foundation, with/without basement, and equipped for year-round occupancy.

Dwelling, Two-family — A structure containing two dwelling units.

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.

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

Family — As many as six 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 or groups of more than six persons living together shall not be considered families for purposes of this Law unless affirmative evidence is presented to indicate to the satisfaction of the Building Inspector that the household or group meets the other criteria contained herein.

Farm Stand — A building, whether fully or partially enclosed, that is intended for the display and sale of primarily locally raised agricultural produce and products.

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

Town of Rochester Zoning Law

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

Greenhouse — An enclosed structures 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.

Home Occupation — Any use customarily conducted entirely within the principal structure 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. Such occupations may include, but are not limited to, professions and trades, real estate and insurance offices, and beauty and barber shops.

Hotel/Motel — A building or group of buildings containing rooms used 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 within the building or in an accessory building. Single-room occupancy residential projects shall be considered multi-family dwellings.

Junkyard — An area of land with or without buildings used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded materials, such as waste paper, rags, scrap metal, or discarded material; tires; or used building materials, house furnishings, machinery, or parts thereof; with or without dismantling, processing, salvage, sale or use or disposition of same; including Vehicle Junkyard and Wrecking facilities as further defined herein.

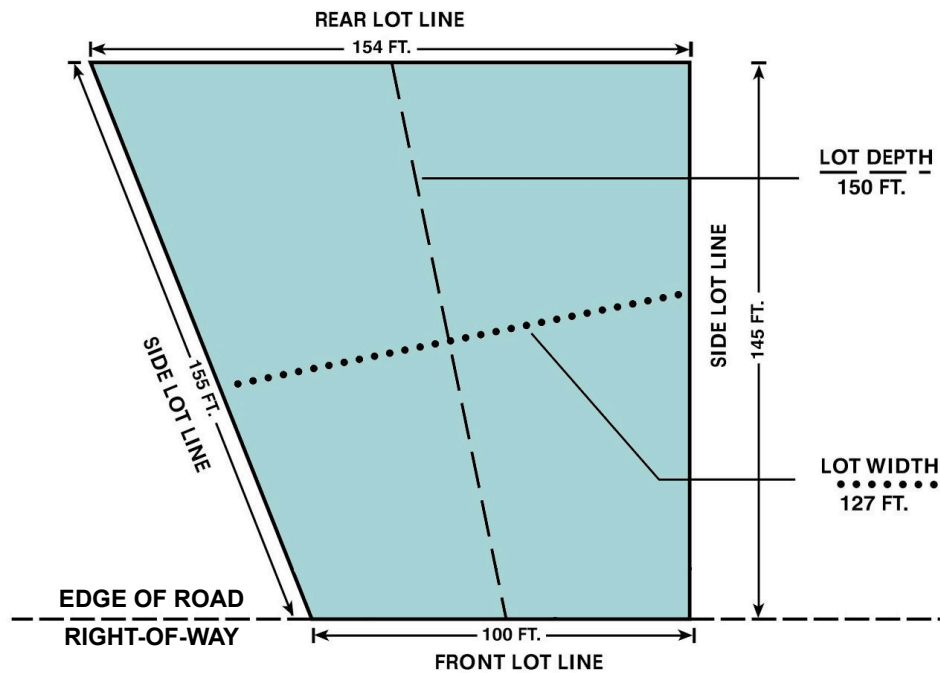
Kennel — An establishment in which more than six dogs or similar domesticated animals of more than six months in age are housed on a temporary or permanent basis.

Lot — A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development.

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

Lot Coverage — That portion of a lot covered by pavement, structures or other impervious surfaces.

Town of Rochester Zoning Law



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 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.

Manufacturing, Light — Industrial uses such as manufacturing, processing and assemblage that are of a nonpolluting nature, particularly in regard to reservoir and ground water resources, and in regard to ambient air quality, noise and light radiation.

Manufactured (Mobile) Home — A structure, transportable in one of 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.

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

Mining — The extraction, removal or recovery by any means whatsoever (including, but not limited to open excavations and quarries, and subsurface mining) of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water, land, on or beneath the surface thereof; said substances including but not limited to coal, limestone, shale, dolomite, sandstone, sand, clay, gravel, rock, stone, earth, ore, peat, soil, or other mineral.

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.

Nonprofit club or recreation use — An establishment operated for social, athletic, recreational or educational purposes but open only to members and not generally open to the general public.

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

Nursery — A place where trees, shrubs, vines and/or flower and vegetable plants are propagated or grown for a pe-

Town of Rochester Zoning Law

riod of at least six months and/or where flowers and vegetables of an annual variety are germinated before being offered for sale and transplanting.

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.

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.

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.

Research, Design and Development Laboratory — A building for experimentation in pure or applied research, design, development and production of prototype machines or of new products, and uses accessory thereto, wherein products are not manufactured for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed, and wherein there is no outside display of any materials or products.

Resort — A parcel of land providing lodging, recreation and entertainment primarily to vacationers. A primary place of residence, a medical or other rehabilitative facility or a single-room occupancy residential project shall not be considered a resort.

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

Retail Establishments — Stores and shops where goods 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; but excluding lumber yards, restaurants and fast-food restaurants. Outside storage or display of goods for such is permitted only with Site Plan approval by the Planning Board.

Retail and Service Establishments (Auto) — The use of any building, land area or other premise for the display, sale, repair or service of new and used automobiles or similar equipment of operable condition, including car washes, gasoline filling stations and the like, but excluding junkyards.

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.

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

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

A. Business or Institutional Identification Sign — A sign advertising a business or institution or identifying the

Town of Rochester Zoning Law

business or profession of the owner or occupant of the property on which it is placed.

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



- C. Contractor Sign — A sign of a builder or contractor that is erected and maintained while such persons are working on a property and is immediately removed when the work is complete.
- D. Freestanding Sign — A pole sign or ground sign.
- E. Ground Sign — A sign rising from a ground foundation and not over eight feet in height. The entire bottom of such sign is in contact with or in close proximity to the ground.
- F. Incidental Commercial Sign — An advertising sign on which is located a simple message directed only to persons on the lot, such as a gas pump sign, credit card sign or pricing sign placed in a window or on a door.
- G. Off-premises Advertising Sign — A sign advertising a business or service located off the premises on which the sign is located.
- H. Pole Sign — A sign supported by a poles(s) as a structure independent of any building. Pole signs are also separated from the ground by air.
- I. Portable Sign — A sign not permanently attached to the ground or a structure and designed to be transported, including signs on wheels, A or T frames or any other movable device or vehicle.
- J. Real Estate Sign — A sign which advertises the availability of land, buildings or spaces within buildings as being for sale or rent.
- K. 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.
- L. Wall Sign — A sign painted on or attached flush with a structural wall of a building, including window signs occupying more than 50% of the window or door surface and projecting signs not extending out from the structural wall surface more than 18 inches.

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

Sign Surface Area — The size of any sign, computed by multiplying its greatest length by its greatest height. Sign supports or foundations not exceeding three feet in height and 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.

Town of Rochester Zoning Law

Specified Anatomical Areas — 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 human male genitals in a discernible turgid state even if completely and opaquely covered.

Specified Sexual Activities — Human genitals in a state of sexual stimulation or arousal; or acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

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 Section 274-a 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.

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

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

Street — A road shown on the official map of the Town of Rochester, or an existing town, county, state highway or street shown on an approved subdivision plat, or a street shown on a plat filed with the County Clerk prior to the Planning Board's authorization to review subdivision.

Structure — Structure means a combination of materials to form a building or other construction that is safe and stable and includes, among other things, stadiums, radio towers, sheds, storage bins, billboards and display signs.

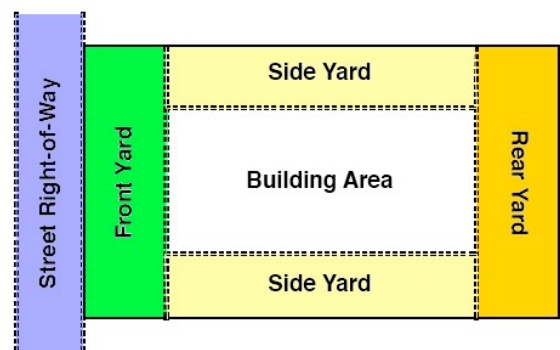
Variance — A relief from the regulations of this law, granted on grounds of practical difficulties or unnecessary hardships, not self-imposed, by the Zoning Board of Appeals.

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.

Yard, Front — A yard extending between side lot lines across the front of a lot adjoining a public street. In the case of through lots or corner lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages.

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



Town of Rochester Zoning Law

other the rear yard.

Town of Rochester Zoning Law

Article 3 Basic District Regulation

§ 140-5 Enumeration of Districts.

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

- BD Business Development District
- CF Core Farm District
- HD Hamlet District
- ID Industrial District
- LD Low Density Residential District
- MD Moderate Density Residential District
- RC Rural Conservation District

Special FD Floodplain Overlay, AP Aquifer Protection Overlay, PCD Planned Commercial Development, PID Planned Industrial Development, PRD Planned Residential Development and POD Planned Institutional Organization Districts are also provided for herein (see Supplementary Regulations).

§ 140-6 Zoning Map.

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

§ 140-7 Interpretation of District Boundaries.

- A. Zoning district boundary lines are intended generally to follow or connect the center lines of rights-of-way; existing lot lines; the mean water level of rivers, streams and other waterways; 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 dimension or relationship to such a line.
- 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%. This is to permit more flexibility in the use of large parcels.
- C. When the specific location of a zoning district boundary line cannot be ascertained, the Building Inspector or Planning Board, as the case may be, shall request the Zoning Board of Appeals to render an interpretation which shall then be used as the basis for applying zoning standards.

§ 140-8 Schedule of District Regulations.

The restrictions and controls intended to regulate development in each district are set forth in the following Schedule of District Regulations which is then supplemented by other sections of this Law and other laws of the Town of Rochester. Any use identified as a Principal Permitted Use shall be permitted as a matter of right upon application to the Building Inspector, provided the proposed use is in compliance with these regulations. Some Principal Permitted Uses, however, do require Site Plan Review by the Planning Board. 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, Principal Permitted and Special Uses. Permits for these Accessory Uses shall be issued directly by the Building Inspector.

Town of Rochester Zoning Law

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

Town of Rochester Zoning Law

Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
				Residential	Nonresidential
CF Core Farm District: This district is intended to recognize and preserve the high-valued agricultural lands of the Town, securing for farmers the ability to conduct a wide variety of agricultural business activities while protecting these areas from intensive residential development of an incompatible nature. The district is further intended to complement the New York State Ag District program and maintain full rights-to-farm within	Accessory apartment* Agriculture (animal) Agriculture (non-animal) Bed and breakfast* Cemetery* Conservation subdivision Fire houses, libraries and other public buildings* Gift, antique or craft shops* Hunting and fishing clubs Manufactured homes Nursery or greenhouse* One-family dwellings Places of worship Public parks and playgrounds* Sawmills, temporary portable onsite less than 90 days Stables (commercial) Two-family dwellings Veterinary office, animal hospital or kennel* * Requires site plan review by Planning Board	Agricultural processing facilities Agricultural retail sales Agricultural tourism enterprises Airports Camping resort or RV park Commercial recreation uses Commercial sawmills Golf course or driving range Health care institutions Radio, television and other stations and towers Resort hotel, camp, ranch or lodge Restaurants and taverns Seasonal lodging units	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Stables (private) Tool sheds	Minimums: Lot area: 1.0 acre Lot width (feet): 160 Lot depth (feet): 160 Lot frontage (feet): 50 Front yard: 60 Side yard: 40 Rear yard: 40 Maximums: Lot coverage: 30% Building height (feet): 35 Building stories: 2.5 Density (dwellings/acre): 0.20*	1.0 acre 160 160 50 60 40 40 30% 35 2.5 NA
				* Does not apply to principal residence connected with any farming operation or farm labor housing.	
Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
				Residential	Nonresidential
LD Low Density Residential District: This district is intended to recognize and preserve the integrity of predominantly low-density rural residential areas of the Town and to protect them from intrusions of incompatible uses.	Accessory apartment* Agriculture (animal)* Agriculture (non-animal) Bed and breakfast* Cemetery* Conservation subdivision Fire houses, libraries and other public buildings* Nonprofit club or recreation use* One-family dwellings Places of worship* Public parks and playgrounds* Two-family dwellings * Requires site plan review by Planning Board	Golf course or driving range Nursery or greenhouse	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Stables (private) Tool sheds	Minimums: Lot area: 2.0 acre Lot width (feet): 160 Lot depth (feet): 160 Lot frontage (feet): 50 Front yard: 60 Side yard: 40 Rear yard: 40 Maximums: Lot coverage: 30% Building height (feet): 35 Building stories: 2.5 Density (dwellings/acre): 0.50	2.0 acre 160 160 50 60 40 40 30% 35 2.5 NA
Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
				Residential	Nonresidential
MD Moderate Density Residential District: This district is intended to recognize and preserve the integrity of predominantly moderate-density residential areas of the Town and to protect them from intrusions of incompatible uses.	Accessory apartment* Agriculture (non-animal) Bed and breakfast* Cemetery* Conservation subdivision Fire houses, libraries and other public buildings* One-family dwellings Places of worship* Public parks and playgrounds* Two-family dwellings * Requires site plan review by Planning Board	Golf course Multi-family dwellings	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Tool sheds	Minimums: Lot area (without sewer): 1.0 acre Lot area (with sewer): 0.5 acre Lot width (feet): 100 Lot depth (feet): 100 Lot frontage (feet): 50 Front yard: 35 Side yard: 25 Rear yard: 25 Maximums: Lot coverage: 40% Building height (feet): 35 Building stories: 2.5 Density (dwellings/acre): 1.00	1.0 acre 0.5 acre 100 100 100 35 25 25 40% 35 2.5 NA

Town of Rochester Zoning Law

Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
RC Rural Conservation District: This district is intended to conserve large open areas of the Town that are difficult to develop while allowing for very low density residential development and compatible uses requiring large acreages.	Accessory apartment* Agriculture (animal) Agriculture (non-animal) Bed and breakfast* Cemetery* Conservation subdivision Fire houses, libraries and other public buildings* Hunting and fishing clubs One-family dwellings Places of worship* Public parks and playgrounds* Sawmills, temporary portable onsite less than 90 days Stables (commercial) Two-family dwellings	Agricultural processing facilities Agricultural retail sales Agricultural tourism enterprises Camping resort or RV park Commercial recreation uses Commercial sawmills Gift, antique or craft shops Golf course or driving range Health care institutions Nursery or greenhouse Radio, television and other stations and towers Resort hotel, camp, ranch or lodge Seasonal lodging units	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Stables (private) Tool sheds	Residential Minimums: Lot area (without sewer): 3.0 acres Lot area (with sewer): 3.0 acres Lot width (feet): 200 Lot depth (feet): 200 Lot frontage (feet): 50 Front yard: 50 Side yard: 50 Rear yard: 50 Maximums Lot coverage: 15% Building height (feet): 35 Building stories: 2.5 Density (dwellings/acre): 0.33	Nonresidential 5.0 acres 5.0 acres 300 300 50 100 75 75
Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
HD Hamlet District: This district is intended to create designated neighborhood shopping centers complemented by higher density residential development that can access those shopping areas as pedestrians or with very short drives.	Accessory apartment* Agriculture (non-animal) Bed and breakfast* Cemetery* Conservation subdivision Fire houses, libraries and other public buildings* Gift, antique or craft shops Low-impact retail and service establishments* Offices* One-family dwellings Places of worship* Public parks and playgrounds* Restaurants and taverns* Two-family dwellings	Agricultural retail sales Agricultural tourism enterprises Health care institutions Multi-family dwellings Nursery or greenhouse Parking (commercial) Radio, television and other stations and towers Retail and service establishments (non-auto)	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Tool sheds	Residential Minimums: Lot area (without sewer): 1.0 acre Lot area (with sewer): 0.5 acre Lot width (feet): 100 Lot depth (feet): 100 Lot frontage (feet): 50 Front yard: 35 Side yard: 25 Rear yard: 25 Maximums Lot coverage: 40% Building height (feet): 35 Building stories: 2.5 Density (dwellings/acre): 1.00	Nonresidential 1.0 acre 0.5 acre 100 100 50 35 25 25
Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
ID Industrial District: This district is intended to recognize existing areas of industrial and mining activity and to protect these uses from intrusions of incompatible uses.	Agriculture (animal) Agriculture (non-animal) Agricultural processing facilities* Agricultural retail sales* Nursery or greenhouse*	Automobile junkyards and dismantling operations Commercial and industrial sawmills Light manufacturing Mining Radio, television and other stations and towers Trucking services Wholesale uses	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Tool sheds	Residential Minimums: Lot area (without sewer) Lot area (with sewer): Lot width (feet): Lot depth (feet): Lot frontage (feet): Front yard: Side yard: Rear yard:	Nonresidential 5.0 acres 5.0 acres N/A 300 300 50 100 75 75
Note: Performance standards for noise, light, traffic management, dust, odors and buffering also apply.					

Note: Performance standards for noise, light, traffic management, dust, odors and buffering also apply.

Town of Rochester Zoning Law

Town of Rochester Zoning Law - Schedule of District Regulations Draft Revised Version - June 25, 2007					
District Intent	Principal Permitted Uses	Special Uses	Accessory Uses	Development Standards	
				Residential	Nonresidential
BD Business Development District: This district is intended to provide areas for highway-related commercial uses requiring large land areas and high visibility.	Accessory apartment* Agricultural retail sales* Agricultural tourism enterprises* Agriculture (animal) Agriculture (non-animal) Bed and breakfast* Cemetery* Conservation subdivision Fire houses, libraries and other public buildings* Gift, antique or craft shops Low-impact retail and service establishments* Offices* One-family dwellings Places of worship* Public parks and playgrounds* Retail and service establishments (non-auto)* Two-family dwellings Restaurants and taverns* * Requires site plan review by Planning Board	Agriculture (animal) Airports Camping resort or RV park Commercial recreation uses Golf course or driving range Multi-family dwellings Nursery or greenhouse Parking (commercial) Radio, television and other stations and towers Retail and service establishments (auto) Trucking services Veterinary office, animal hospital or kennel Wholesale uses	Farm stands Home occupations Other customary accessory uses Parking areas Private garages Signs Stables (private) Tool sheds	Minimums: Lot area (without sewer): 2.0 acres Lot area (with sewer): 1.0 acre Lot width (feet): 200 Lot depth (feet): 200 Lot frontage (feet): 50 Front yard: 75 Side yard: 50 Rear yard: 50 Maximums Lot coverage: 40% Building height (feet): 35 Building stories: 2.5 Density (dwellings/acre): 0.50	1.0 acre 0.5 acre 100 100 50 35 25 25 40% 35 2.5 N/A

Town of Rochester Zoning Law

§ 140-9 Applicability of Regulations.

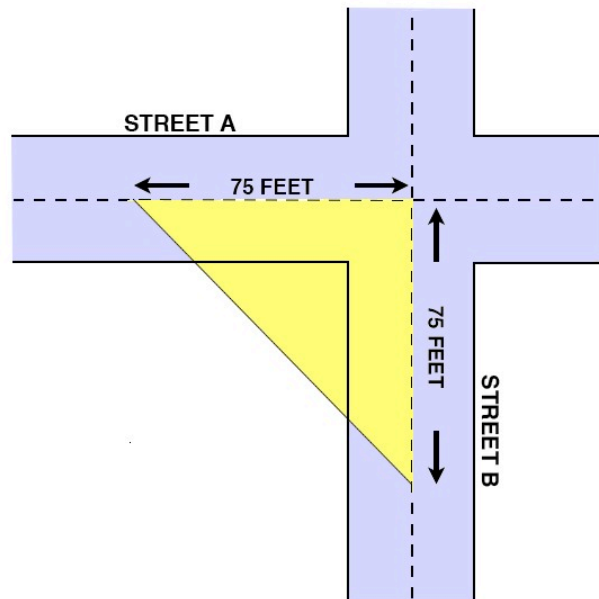
Whenever any owner or occupant of property in the Town of Rochester shall, for any purpose or in any manner;

- A. establish a new use,
- B. clear, excavate or grade more than 10,000 square feet of land,
- C. change an existing use,
- D. make permanent structural improvements to a property,
- E. erect a new building, or
- F. move, alter, add to or enlarge any existing land use or building;

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

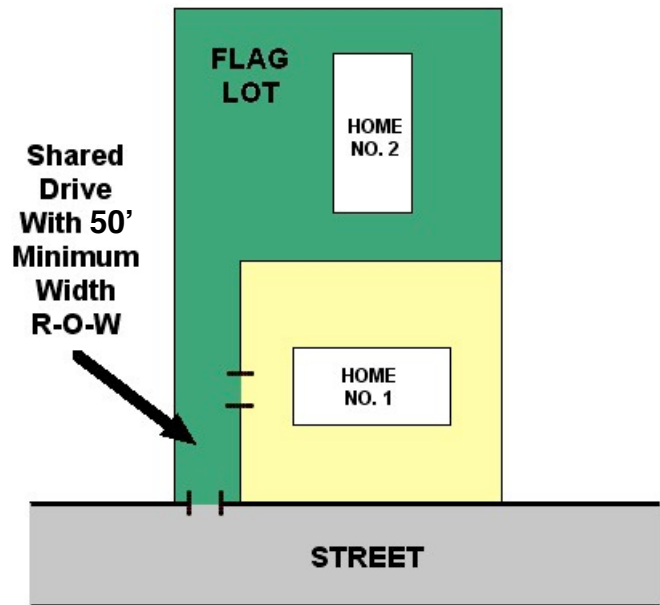
§ 140-10 Lot Development Standards.

- A. Minimum development standards. The development standards contained herein are minimums and shall apply to each dwelling unit or use, unless otherwise specifically provided. A two-family dwelling shall, for example, require the equivalent of two minimum sized lots insofar as lot area, as will any two dwelling units on the same property. Single studio apartments occupied by immediate family members shall, however, be exempt from this requirement. Multiple uses are permitted on a given lot, provided development standards for the combined uses are met, including the combined lot area and lot coverage. Yard requirements shall apply to the lot perimeter in such instances, provided that building separations, if any, meet State Building Code requirements.
- B. Corner lots. No obstruction to vision (other than an existing building, post, column or tree) exceeding 30 inches in height above the established grade of the street at the property line shall be erected or maintained on any lot within the triangle formed by the street lot lines of such lot and a line drawn between points along such street lot lines 75 feet distant from their points of intersection. See illustration.
- C. Through lot requirements. A through lot shall be considered as having two street frontages, both of which shall be subject to the front yard requirements of this law.
- D. Minimum lot frontage. All residential lots shall have a front lot line with a minimum length of 50 feet.
- E. Flag lots. The development of interior lots with limited lot frontage consisting of only an access right-of-way shall be permitted provided:



Town of Rochester Zoning Law

- (1) The right-of-way is a minimum of 50 feet in width. See illustration.
- (2) The lot area shall be exclusive of that portion used as a right-of-way for purposes of meeting minimum lot area and all other development standards for the District.
- (3) No right-of-way shall be established over an existing parcel of land to reach a new lot to the rear which would reduce the length of the front lot line of the existing parcel to less than 150 feet.
- (4) All flag lot access right-of-ways 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. Such owner shall bear responsibility for maintenance of the improvements.



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

F. Maximum density. Maximum density shall be determined for a given parcel as a whole at the time of subdivision or site plan approval. Such maximum density shall be enforced by a developers agreement with the Town of Rochester, imposition of a restrictive covenant or conservation easement or combination thereof as the Planning Board shall determine. The maximum density provisions of this law shall not apply to any subdivision or residential development project of less than five dwelling units. Maximum density shall not be construed as a guarantee of rights to develop at a certain density, but, rather, serve to establish an upper limit for such density.

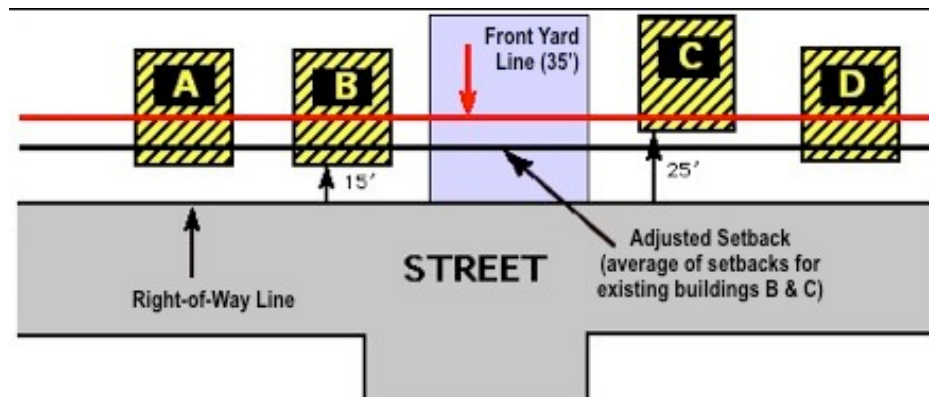
§ 140-11 Height Restrictions.

No building or structure shall exceed in building height or maximum stories the number of feet permitted as a maximum on the Schedule of District Regulations for the district where such building or structure is located.

§ 140-12 Yard Regulations.

- A. Side yard exception. Where the side wall of a building is not parallel with the side lot line or is irregular, the side yard may be varied. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than one-half the otherwise required minimum width. The Building Department shall have discretion to interpret and clarify this provision as it applies to individual structures of an irregular nature.
- B. Front yard exception. When an unimproved lot is situated adjacent to or between improved lots already having a principal building within the required front yard, the front yard for the unimproved lot may be reduced to the average depth of the front yards for the two nearest adjoining improved lots, but not less than 10 feet.

Town of Rochester Zoning Law



- C. Front yard determination. Front yards shall be measured from the edge of the road right-of-way, which shall be assumed to be 50 feet in width in all cases where unknown. The assumed edge of right-of-way in such instances shall be measured from the centerline of pavement and established at a distance of 25 feet from such centerline.
- D. Provision of yard or other open space. No yard or other open space provided about any buildings for the purpose of complying with the provisions of the law shall be considered as providing a yard or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- E. Waterfront yards. Any yard which borders on a New York State Department of Environmental Conservation classified lake, stream or body of water shall be not less than 100 feet in depth, as measured from the high water mark of the water body, except for boathouses and docks.

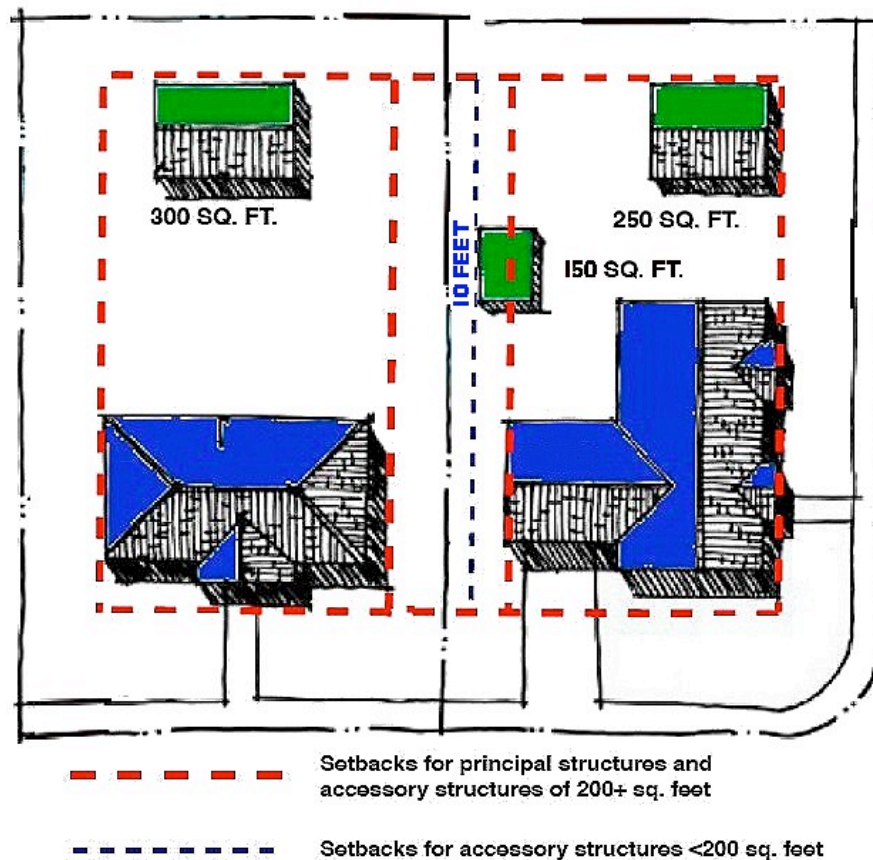
§ 140-13 Accessory Structures and Uses.

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

- A. No accessory building permitted by this law shall be placed in any required side or front yard except as provided in this Article 3.
- B. The aggregate ground area covered by any accessory buildings in any rear yard shall not exceed 25% of the rear yard area.
- C. Accessory structures not attached to a principal structure shall:
 - (1) Be located not less than 10 feet from any side or rear lot line or in such a fashion as to prevent emergency firefighting access or to shade a residential structure on an adjoining lot. Any structure over 200 square feet in floor area shall meet setbacks for principal structures.
 - (2) Be no closer to the street than any principal structure on the lot, except in the case of farm buildings. Accessory buildings to principal structures located more than 100 feet from a lot line shall also be exempt. Accessory structures may, in these situations, be located in front of residences but not in required front yard areas.

See illustration following for examples of these principles.

Town of Rochester Zoning Law



- D. When an accessory structure 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.
- E. Railroad cars, manufactured home units and recreational vehicles shall not be used for purposes of accessory or principal structures in connection with any use. The use of storage trailers or bulk/shipping containers as an accessory use in connection with a commercial or institutional use shall be permitted with Site Plan Review where the trailers or containers can be substantially screened from view with evergreen plantings, fencing or earthen berms as may be required to accomplish the purpose.
- F. Above ground or inground swimming pools, incidental to the residential use of the premises and not operated for gain shall require permits if more than two feet deep and be subject to New York State Building Code requirements as shall apply.

§ 140-14 Animal Husbandry.

The following standards shall apply to animal husbandry uses. However, nothing herein shall apply to the keeping of household pets indoors or property assessed as agricultural use or any property in a New York State Agricultural District that is actively employed in agriculture qualifying for agricultural assessment.

- A. Private horse stables are permitted in any district subject to the following conditions:
 - 1) A minimum parcel of two acres shall be required for each combination of residence and stable.

Town of Rochester Zoning Law

- 2) No more than one horses shall be kept except that one additional horse may be kept for each additional one acre of land.
 - 3) A total of 100 square feet of stable building area shall be provided for each horse kept on the property.
 - 4) No manure storage area shall be located within 100 feet and no stable building shall be located within 50 feet of any adjoining property line or road right-of-way. Fences, unless jointly maintained, shall be set back a minimum of 10 feet from any adjoining property line other than the road right-of-way.
 - 5) All horses shall be restricted from unauthorized grazing or intruding upon any adjoining property.
- B. The following standards shall apply to commercial stables:
- 1) A minimum parcel of ten (10) acres shall be required for a commercial horse stable operation.
 - 2) No more than one horse shall be kept for each one acre of land. Notwithstanding this limitation, a horse training or similar facility where horses are exercised using a track rather than being turned out, shall not be restricted as to the number of horses kept, provided the facility encompasses a minimum of 25 acres of land and other standards of this section are met. Such facilities shall be subject to Special Use approval and Site Plan Review, however.
 - 3) A total of 100 square feet of stable building area shall be provided for each horse kept on the property.
 - 4) No manure storage area shall be located within 200 feet and no stable building shall be located within 100 feet of any adjoining property line or road right-of-way. Fences, unless jointly maintained, shall be set back a minimum of 10 feet from any adjoining property line other than the road right-of-way.
 - 5) All horses shall be restricted from unauthorized grazing or intruding upon any adjoining property.
- C. Kennels (including animal day care centers where animals are boarded for any length of time, refuges and shelters) shall, where permitted, be subject to the Special Use review criteria and the following standards:
- 1) A minimum parcel of three acres shall be required for any kennel housing 10 or fewer dogs of six months of age. An additional 10,000 square feet of lot area shall be required for each additional dog in any kennel with more than 10 dogs of six months of age.
 - 2) No structure used for the keeping of kennel animals shall be located closer than 125 feet to any property line or 100 feet to any public or private road.
 - 3) A noise buffer 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.
 - 4) All animals shall be restricted from using areas not fully enclosed in a building from 8:00 PM to 8:00 AM.
 - 5) Kennels housing more than 10 dogs of six months of age shall be supervised by an on-site contact person during the day.
 - 6) Animal refuges and shelters where more than 25 dogs, cats or other animals are kept temporarily or permanently to protect the animals or the general public from their running at wild or destruction shall be restricted to the CF Core Farm District and require a minimum of 10 acres in lot area. The above require-

Town of Rochester Zoning Law

ments 1 through 5 shall also be met in the case of such uses, which shall be considered kennels.

The Planning Board may modify setbacks and buffer requirements in instances of isolated or heavily wooded parcels or where the adjoining uses are non-residential in nature.

- D. The keeping of other animals such as cows, steers, goats, sheep, swine, llamas and other similar domesticated animals shall be permitted in any District in accord with the following criteria, excepting that the regulations of this subsection shall not apply to the keeping of horses (see instead the above for applicable standards) or household pets such as dogs and cats.

- (1) Not more than the following number of animals shall be kept:

Permitted Animal Densities		
Animal	Minimum Acres for One	Animals Per Acre
Cows or steers*	2.00 acres	1.0 animal
Swine*	1.00 acre	2.5 animals
Goats or sheep*	1.00 acre	2.5 animals
Fowl/poultry*	0.02 acre	50.0 animals
* Not including commercial operations covered by State Department of Agriculture and Markets definition.		

These numbers shall not be applied on a cumulative basis. Two acres shall be required to keep one sheep and one swine, as an example. Other animals shall be classified based on similar sized animals.

- (2) No stable building, pen, feed lot, corral, manure storage area or other area where animals are concentrated, except for grazing paddocks, shall be located less than 100 feet from any adjoining property line and any public or private road.

§ 140-15 Landscaping Standards Applicable to Special Uses.

- A. The Planning Board may, to assure an acceptable buffer between adjacent residential and non-residential uses and create a healthy, safe and aesthetically pleasing environment in the Town, require a landscape plan be prepared as part of any Special Use application. Such a plan may also be required whenever any non-residential use is proposed in any district so as to buffer parking areas and buildings from the highway, each other and other uses. Where it is determined that a proposed Special Use would not have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be appropriately modified by the Planning Board.
- B. The landscape plan, if required, shall specify locations of all mature shade trees or other species of six inch caliper or greater and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors, and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the highway or adjoining properties. Specific locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall, too, be provided as part of the plan.
- C. The Planning Board, in reviewing a landscape plan, may employ the assistance of design professionals. The Planning Board shall also specifically consider the following before approving, approving with modifications or disapproving the Special Use:

- (1) The plan should promote attractive development, preserve existing vegetation to the maximum extent

Town of Rochester Zoning Law

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, structures and native plant species and be of sufficient size and quality to accomplish its intended purposes.
- (4) The plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment.
- (5) The plan should be realistic in terms of maintenance and use materials which, as a minimum, are winter hardy to Zone 4.

Consideration and determination of the adequacy of the above plan requirements are at the Planning Board's discretion.

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

- (1) The minimum branching height for all shade trees should be six feet.
- (2) Shade trees should have a minimum caliper of three inches (measured 4 feet above grade) and be at least 12 feet in height when planted.
- (3) Evergreen trees should be a minimum of six feet in height when planted.
- (4) Shrubs should be a minimum of 24 inches in height when planted. Hedges shall form a continuous visual screen within two years after planting.
- (5) A buffer screen at least 15 feet in width along any residential lot line should be provided. It shall include, at a minimum, an opaque wooden stockade fence six feet in height and one evergreen tree for every 15 linear feet of property line. An additional row of evergreens meeting these standards, and offset such that each row serves to place trees between the gaps of the other, should be permitted as a substitute for the stockade fence.
- (6) A landscape strip at least 15 feet in width, that includes at least one deciduous tree for every 35 linear feet of perimeter lot line should be required for any non-residential use. Such deciduous trees should also be accompanied by smaller shrubs and ground cover as may be required to effectively separate and buffer the activity from the highway but still allow for visibility of the use. The width of this buffer may be reduced along the rear and side lot lines for good cause, but not along the front lot line.
- (7) All lot area (except where existing vegetation is preserved) should be landscaped with grass, ground cover, shrubs, or other appropriate cover.
- (8) The preservation of mature shade trees should be required unless there is no alternative but to remove them. These may be used to meet requirements of this section provided the Building Inspector or Planning Board, as the case may be, determines the purpose of this section is achieved.

- E. A performance guarantee in a form acceptable to the Town Attorney in the amount of 125% of the cost of materials and installation may be required to assure that all landscaping survives in a healthy condition one full year. The Building Inspector or Planning Board, as the case may be, shall determine the amount of the

Town of Rochester Zoning Law

guarantee and consider financial impacts of this requirement on the project. The Building Inspector shall have the right to enter upon the property to inspect the landscaping and, after notifying the owner of any deficiencies, to require that the guarantee be used to pay for the replacement of any dead, dying, diseased, stunned or infested plant materials.

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

§ 140-16 [RESERVED]

Town of Rochester Zoning Law

Article 4 General Supplementary Regulations

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

A. Off-street parking, loading and unloading facilities shall be provided as necessary in connection with every use. One-family and two-family residential uses shall be provided with two off-street parking spaces per dwelling unit. Parking needs with respect to all other uses shall be determined in conjunction with Site Plan Review. The amount of parking required shall be as follows:

- (1) The following parking standards shall apply to all applications for new, expanded or modified land uses, and apply cumulatively in the case of mixed-use projects such as resorts, provided that adjustments may be made by the Planning Board to reflect the likelihood of shared parking within the project:

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

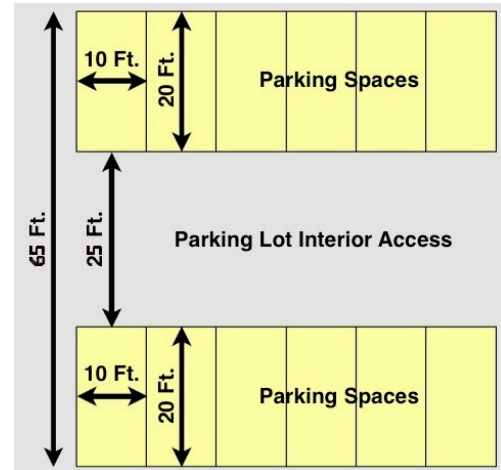
- (2) Any applicant may also request a modification of parking standards. The amount of parking may, in such instances, or others where the above standards are not directly applicable, be reduced or increased by the Planning Board based upon the following criteria:

- (a) Industry studies of parking needs for the type of use proposed or actual case-study comparisons for projects of similar character. The Planning Board may require the developer or applicant to gather and submit such data in support of its proposed parking provisions. The National Parking Association and the Urban Land Institute are examples of such industry sources.
- (b) The characteristics of the proposed customers, residents, occupants or visitors to a given facility. Housing for the elderly would, for example, require fewer spaces per dwelling unit than time-shared recreational units, even though the number of dwelling units is the same.
- (c) The expected occupancy rates, traffic levels and numbers of employees in connection with any enterprise and the degree to which these directly relate to parking requirements.
- (d) Recommendations, if any, from Town consultants, other public agencies or information sources that suggest, based on experience, the appropriate amount of parking in connection with a given use.
- (e) The likelihood that parking will be shared with adjoining facilities, the impact of daily peak visitation or use periods on demand and the hours of operation as compared to other neighborhood activities.
- (f) The availability of reserve areas designated on the site plan for future parking development in the event of demonstrated need, as determined and directed by the Building Inspector or Planning Board.

Town of Rochester Zoning Law

The Planning Board shall apply a similar approach in determining parking needs in cases of unlisted uses.

- B. Garages, carports, and driveways not in the public right-of-way may be considered parking spaces. Parking spaces shall be a minimum of 10 feet wide and 20 feet deep. Perpendicular parking spaces shall be accessed by an interior drive of no less than 25 feet in width for turning purposes (see illustration). This distance may be reduced to 20 feet for 60 degree angle parking, 15 feet for 45 degree angle parking and 13 feet for 30 degree angle parking.



- C. Any lighting used to illuminate any off-street parking shall be so shielded as to deflect the light away from adjoining premises and public right-of-ways and avoid light spillage onto adjacent properties.
- D. All parking areas which are designed to accommodate 12 or more vehicles shall be landscaped using materials of sufficient growth and height to aesthetically balance the impact of the open paved area and provide effective stormwater control. The following are guideline standards the Planning Board may apply:

- (1) No more than 12 parking spaces should be allowed in a continuous row uninterrupted by landscaping. Maintenance guarantees may be required to ensure replacement of damaged or dead landscape materials.
- (2) No parking areas should be designed such that a vehicle might directly back out onto a public highway or through road within the development. Traffic flows through a parking area should be minimized and limited to connections from one lot to another and to the public highway or through road. Circular drives shall be discouraged.
- (3) Commercial parking areas, where possible, should generally be located in the rear yard of any use, with the principal building situated near the front lot line as permitted by Schedule of District Regulations. This is for the purpose of maintaining the continuity of the building line along any highway and avoiding the effective merger of parking areas along a highway into one mass of pavement where entrances and exits become difficult to identify.



- E. Any building erected, converted or enlarged for commercial, office, manufacturing, wholesale, institutional or similar uses shall, in addition to the off-street parking space required above, provide adequate off-street areas for loading and unloading of vehicles. Public rights-of-way shall, under no circumstance, be used for loading or

Town of Rochester Zoning Law

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. It shall be accessible by driving in and not require backing in from off the public right-of-way.

- F. Access to and from all non-residential off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well defined separate or common entrances and exits and shall comply with the following provisions:
- (1) Access drives shall comply with all requirements of the Town of Rochester. Access drives onto State and County highways shall be subject to New York Department of Transportation and Ulster County standards, as the case may be.
 - (2) Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrance and exits.
 - (3) All access drives shall be subject to the requirement of obtaining a driveway permit from the Town of Rochester Highway Superintendent, the Ulster County Department of Public Works or the New York State Department of Transportation, as the case may be, and approval of any permits hereunder may be conditioned upon the application for and/or receipt of such permits from these authorities.
 - (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.
 - (7) The maximum grade for new driveways accessory to uses other than single-family dwellings and connecting the required off-street parking area to the street shall not exceed 10%. All driveways shall have a negative 2% grade within 50 feet of the center line of the traveled way of the street, or within 25 feet of the property line of the street, whichever distance is greater. The Planning Board may require increased platform areas of this type in situations where, because of the nature of the proposed use, substantial traffic volumes are anticipated.
 - (8) Clear visibility shall be provided in both directions at all exit points so that the driver of an automobile stopped on the platform portion of any new driveway will have an unobstructed view of the highway for a reasonable distance (commensurate with the speed and volume of traffic on such highway) and so that there is a similar view of the automobile in the driveway.
- G. Access to Routes 44/55 and 209.
- (1) No tract shall be provided direct access to Routes 44/55 or 209 if adequate alternate access can be provided by way of another road, a frontage or parallel access drive or a cross access drive.

Town of Rochester Zoning Law

- (2) No driveway shall be permitted within 100 feet of a public highway intersection on Routes 44/55 or 209. Spacing between driveways on Routes 44/55 and 209 shall be as follows, measured from the midpoint of each driveway or intersecting roadway:

Required Driveway Spacing	
Posted Speed (Mph)	Minimum Spacing (feet)
30	125
35	150
40	175
45	200
55	250

- (3) Required driveway spacings on Routes 44/55 and 209 are based on average vehicular acceleration and deceleration rates and are considered necessary to maintain safe stopping distances and traffic operations. 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 an access permit being granted.
 - (b) The landowner may seek an exception from these requirements when the above cannot be fulfilled at the time of application. The landowner shall, in such case, provide proof of an attempt to secure access from a common driveway or cross access drive. The Planning Board shall impose the condition in such instance that the approved driveway is a temporary driveway and the landowner shall submit a deed agreement with the Town of Rochester agreeing to close the driveway and to seek to establish a joint driveway or cross access driveway, if feasible, when an adjoining property is developed or redeveloped.
- (4) All land owners submitting a subdivision or site plan for property on Route 44/55 or 209 shall address the feasibility of the use of joint access driveways, cross access drives and linked or shared parking lots. Use of such techniques shall be required wherever feasible.
- (5) Retail and service businesses subject to Site Plan Review shall, where practical, be required to provide pedestrian connections to adjoining retail and service properties along the frontage of regulated routes.
- (6) No tract shall be provided with more than one point of direct access to Route 44/55 or 209, except for secondary emergency only accesses. However, if determined to be in the best interest of traffic operations, one driveway solely for ingress and one driveway solely for egress may be considered as one access point. Tracts with frontage of at least six-hundred (600) feet may be permitted two access points in those instances where traffic operations will be demonstrably improved by such a design. Such driveways shall be separated from each other and from any intersecting street or driveway on an adjoining property by a minimum of 350 feet, as measured along the frontage of Route 44/55 or 209, unless physical circumstances prohibit such separation.
- (7) 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 estab-

Town of Rochester Zoning Law

lish 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.

- (8) A curblin opening along Route 44/55 or 209 for other than single-family residences shall be between 24 and 60 feet. However, the curblin opening for high volume uses generating more than 1,500 vehicles per day may be greater than 60 feet, if the opening conforms to New York State Department of Transportation standards.
 - (9) Access points may be restricted to right-turn in, right-turn out if determined to be in the best interest of traffic operations. The Planing Board may require signs and barriers be installed to enforce such restrictions to the maximum degree practical.
 - (10) When two adjacent landowners agree to combine access points, the Planning Board may grant an incentive bonus. The total lot size and road frontage normally required may be reduced by 15% for both landowners. The required number of parking spaces may, in addition, be reduced by 15% for each development. However, if the adjoining land uses are determined to have the same peak hour for parking generation, the Planning Board may withdraw the incentive bonus or require the developer set aside land, clearly indicated on the site plan for future paving for parking, to meet statutory requirements if an analysis conducted within one year after occupancy determines parking is insufficient.
- H. All non-residential parking and loading areas and parallel circulation and service lanes shall be separated from the paving edge of a public thoroughfare or adjoining property lines by a planting strip at least 20 feet in depth landscaped as required herein.
- I. Traffic study. The Planning Board, at its discretion, may require a traffic impact study by an independent engineer with any Special Use application involving an activity likely to generate more than five-hundred (500) trip-ends per day based on the following daily rates:

Traffic Study Criteria	
Land Use	Criteria
Residential uses	9.6 trip-ends per dwelling unit
Industrial uses	3.3 trip-ends per employee
Restaurants	7.9 trip-ends per seat
Fast-food restaurant	23.9 trip-ends per seat
Convenience market	605.6 trip-ends per 1,000 sq. ft. gross floor area
Supermarket	177.6 trip-ends per 1,000 sq. ft. gross floor area
Car wash	108.0 trip-ends per car stall
Offices	6.0 trip-ends per employee
Other commercial uses	50.0 trip-ends per 1,000 sq. ft. gross floor area
Institutional uses	4.0 trip-ends per employee
Other uses	See <i>Trip Generation</i> . Institute of Transportation Engineers

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

Town of Rochester Zoning Law

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.

§ 140-18 Natural Resource Protection Overlay Districts.

A. AP Aquifer Protection Overlay District.

There is hereby created a special zoning district, the boundaries of which shall be congruent with those areas identified as AP District on Figure 16 of the 2006 Town of Rochester Ground Water Protection Plan . 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 which does not comply with the following standards:

- 1) The maximum amount of impervious surface area for proposed uses and activities shall not exceed 15% outside the BD Business Development, HD Hamlet, ID Industrial and MD Moderate Density Residential Districts.
- 2) The following uses and activities are specifically prohibited in the Aquifer Protection Overlay District:
 - a) Asphalt, concrete or coal tar plants.
 - b) Chemical and biological testing or research laboratories.
 - c) Drilling of wells used for oil, gas, gas storage, solution mining or brine disposal.
 - d) Hazardous waste treatment, handling, storage or disposal facilities.
 - e) Junkyards, salvage yards or impoundment yards.
 - f) Landfills, dumps or other solid waste management facilities.
 - g) Chemical or petroleum product manufacturing.
 - h) Wood preserving or treating facilities.
 - i) Radioactive materials treatment, handling, storage or disposal facilities.
 - j) Regulated medical waste storage, treatment, disposal or destruction facilities.
- 3) Any use or activity with projected on-site groundwater withdrawals and/or on-site sewage disposal flows averaging 2,000 gallons per day or more during any single 30-day period shall be subject to site plan review by the Town of Rochester Planning Board regardless of its classification on the Schedule of District Regulations.
- 4) The following additional information shall be provided for a proposed 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 treat-

Town of Rochester Zoning Law

ment of any wastes (except sewage) or hazardous substances.

- c) A map and report detailing the proposed conveyance, storage, distribution, generation, use, treatment or disposal of any storm water and sewage including an estimate of the total daily flows. An application for any proposed use with projected on-site sewage disposal flows averaging 2,000 gallons or more per day during any single 30-day period shall include a hydrogeological report prepared by a qualified hydrogeologist or engineer.
- d) A description of the proposed means of water supply, including if applicable an estimate of the total daily groundwater withdrawal rate. An application for any proposed use or activity with projected on-site groundwater withdrawals averaging 2,000 gallons per day during any single 30-day period shall include a hydrogeological report prepared by a qualified hydrogeologist or engineer.

B. FD Floodplain Development Overlay District.

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

§ 140-19 Home Occupation Regulations.

- A. Home occupations, including businesses which rely upon attraction of the general public (e.g. retail sales) are permitted as Special Uses in certain districts, provided they do not detract from the residential character, appearance (handicapped access notwithstanding), or make-up of the neighborhood in which the business is located. Because of the need these types of businesses may have for advertising and display, and the unpredictability of traffic generation, owners of such businesses must be very cautious about how they operate their business to ensure they do not adversely impact the surrounding neighborhood. The following factors shall be used to determine if a home occupation will comply with or is in violation of this Law. The determination can be made on any one, or a combination, of these factors and shall be made by the Building Inspector, who may consult the Planning Board in making such determination.
 - (1) Extent of the business — whether or not the residential use is still the primary use of the property. Factors that shall be used to determine the primary use of the property shall include, but are not limited to, the area of the property used for the business and the amount of time the business is operated on a daily basis. Employees on-site shall be limited to two other than immediate family members.
 - (2) Appearance from an adjacent street — whether or not the use of the property as a business is distinguishable from an adjacent street. Except for a non-illuminated, permanent identification sign no larger than six square feet in size attached to the principle structure and occasional deliveries, there shall be nothing that occurs on the property that can be observed from adjacent streets that make it readily apparent that a business is being operated on the premises. In cases where the principal structure is obscured from the street, or the structure is setback more than 50 feet from the property line, a non-illuminated ground sign not to exceed 12 square feet may be used. Factors for evaluating this standard shall be that the residential dwelling not be altered to change its residential appearance, and no activity related to the conduct of the home occupation shall be permitted to occur in such a manner as to be obtrusive to the neighborhood, attract attention to the business or adversely impact the residential character of the neighborhood. No

Town of Rochester Zoning Law

such sign shall impede driver sight distance.

- (3) Impact on the neighborhood — whether or not the business activity is causing a nuisance to surrounding property owners; is adversely impacting the peace, health, or safety of neighborhood residents; and/or is causing a deviation from the residential character of the neighborhood. Factors for evaluating this standard shall be:
 - (a) Traffic — whether or not the business is generating traffic that is excessive and/or detrimental to the neighborhood. A home occupation will be allowed to generate no greater than 25 vehicle trips per day, based on estimates provided by the Institute of Transportation Engineers. However, based on the characteristics of a specific neighborhood, these amounts may be lowered or raised, at the discretion of the Planning Board. The factors which shall be used for such a determination include, but are not limited to, pertinent characteristics of the neighborhood such as width of properties, width of the streets, hills, curves, and the number of children present.
 - (b) Parking — whether parking problems could result from the business use. Factors used to evaluate this criteria shall include, but are not limited to the following: a) parking required for the business shall be provided on-site; b) parking on the property shall be on a surface equal in quality to the paving surface of any existing driveway unless there is no surface other than the ground, in which case a gravel surface shall be provided at a minimum; and c) no home occupation shall be permitted which requires parking of tractor-trailer combinations along the street on a continuing basis.
 - (c) Nuisance — whether or not the business activity is causing a nuisance to surrounding property owners or is deviating from the residential character or appearance of the neighborhood.
- B. No home occupation, having once been permitted or established, shall be added to, expanded, enlarged or otherwise increased or changed substantially in character without complying with this law and such permission or establishment shall not be a basis for a later application to establish a principal commercial use. Moreover, the conversion of a residence with a home occupation to a commercial use by the abandonment of the residence or sale, rent or transfer of the business to a party that does not reside on-site is strictly prohibited unless the business is then moved offsite.
- C. Home occupations involving the use of contractor 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, which such inside storage area shall be confined to the principal structure or an accessory building not exceeding 25% of the total living space involved.

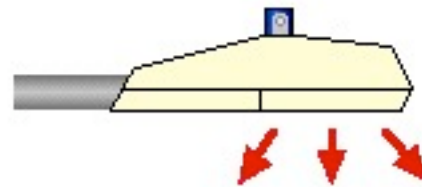
§ 140-20 General Commercial and Industrial Standards.

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

- A. Commercial/residential buffers. Where a commercial or manufacturing use is contiguous to an existing residential use (including those situated on the opposite side of a highway) or any approved residential lot, the Planning Board may require that the minimum front, side and rear yards be increased by up to 50%. The Board may also require, for purposes of separating incompatible activities or shielding the residence from negative impacts, that a buffer consisting of a solid fence of wood and/or a 20 feet wide dense evergreen planting not less than six feet high be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded.

Town of Rochester Zoning Law

- B. Inflammables. All activities involving the manufacturing, production, storage, transfer or disposal of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Firefighting and fire suppression equipment and devices shall be provided pursuant to National Fire Protection Association guidelines. Burning of waste materials in open fires is prohibited. Details of the potential hazards and planned safety and accident response actions shall be provided by the applicant and the Planning Board may require greater front, side and rear yards and/or fencing.
- C. 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.
- D. Noise.
- (1) No land use shall generate sound levels, at or beyond any lot line, that exceeds the ambient noise level by more than 10 decibels. Any sound of 5 to 10 decibels above the ambient noise level shall be attenuated or mitigated to the maximum degree practical, as shall be determined by the Planning Board during Site Plan Review. The ambient noise level shall be determined for all lot lines at the site where the project is to take place and any other locations as shall be specified by the Planning Board. It shall be measured on an equivalent sound level basis [LEQ(12) using fast time], as defined by the New York State Department of Environmental Conservation (see *Assessing and Mitigating Noise Impacts* Program Policy) over a 12 hour period, 7:00 AM – 7:00 PM, on a Sunday at the site of the proposed project.
 - (2) The sound pressure level shall be measured with a Sound Level Meter conforming to standards prescribed by the American National Standards Institute (ANSI). The Planning Board may, as a condition of Site Plan Review and approval, require additional setbacks, buffers and fencing, or limit the hours of operation to attenuate or mitigate any potential noise impacts of any proposed use.
 - (3) The maximum permissible sound levels of this section shall not apply to emergency or security alarms, repair or construction work to provide public utilities, construction operations between the hours of 7:00 AM and 7:00 PM, emergency repairs, agricultural activities other than kennels, motor vehicles when used on public streets in accord with state regulations, aircraft, government authorized public celebrations, un-amplified human voices or routine ringing of bells or chimes by a place of worship or similar facility.
- E. Vibration. No vibration shall be permitted on a regular or continuing basis which is detectable without instruments at the property line.
- F. Lighting.
- (1) Lighting for all commercial, residential, institutional and industrial uses shall be shielded to prevent glare and spillover of light onto adjoining properties.
 - (2) All lighting shall be designed so as to avoid unnecessary or unsafe spillover of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source.
 - (3) No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or other sources, so as to be visible at the property line on a regular or continuing basis, shall be permitted.



Town of Rochester Zoning Law

- (4) Lighting contours shall be required on site plans for purposes of determining compliance with this section. Average foot-candles at the property line shall be less than 1.0 except at site entrances.
 - (5) Globe lights shall ordinarily not be permitted, except for limited aesthetic and sidewalk lighting as part of a site plan subject to review by the Planning Board.
 - (6) Light pole heights shall not exceed building heights and none shall exceed 25 feet in height.
 - (7) All lighting over 2,000 lumens in strength shall meet the full cut-off standard of the Illuminating Engineering Society of North America (IESNA).
 - (8) All site activity areas, including parking lots and walkways, shall meet minimum IESNA standards and exceed those standards by no more than 25%.
 - (9) All gasoline canopy lighting shall be fully recessed and the average light level under the vehicular canopy shall not exceed 20 horizontal maintained foot candles.
- G. Air pollution. 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.
- H. Water pollution. 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.
- I. Vehicle and equipment sales. Whenever a vehicle and equipment sales, mechanical and body repair use is proposed as a Special Use, or as an expansion of an existing non-conforming use, the following additional performance standards shall apply:
- (1) All mechanical and body repair work shall be performed within buildings.
 - (2) All automobile or vehicle parts, new or used, shall be stored within buildings.
 - (3) Vehicles that are temporarily on the property awaiting to be repaired, shall be stored in an area which meets the minimum yard and buffer requirements applicable for the district and the use.
 - (4) Vehicle and equipment sales shall not be combined with other uses, including vehicle and equipment repair or services (e.g., gasoline sales), without first obtaining separate Special Use and Site Plan Review approval for the sales operation. Such sales shall be limited to those districts specified on the Schedule of District Regulations and be subject to the following additional regulations:
 - (a) A site plan designated and improved parking space meeting the standards contained herein shall be provided for each vehicle or piece of equipment displayed.
 - (b) Display areas for vehicles and pieces of equipment shall comply with front and side yard setbacks applicable to principal structures.
 - (c) Signs connected with vehicle and equipment displays shall be limited to permanent or temporary signs otherwise permitted hereunder.

Town of Rochester Zoning Law

- (d) Additional off-street parking areas shall be provided for the use of customers at the rate of one space for each 10 vehicles or pieces of equipment displayed outdoors. No on-street parking shall be permitted.
- (e) Lighting of outdoor vehicle and equipment sales areas shall be limited to pole or wall lighting meeting the standards contained herein for commercial lighting.
- (f) The Planning Board shall require landscaping of all vehicle and equipment sales operations, as provided herein, to separate and buffer them from the public right-of-way and adjoining properties.
- (g) All vehicle and equipment sales operations shall provide a permanent (suitable for year-round use), heated sales office of no less than 150 square feet in size and rest room facilities.

§ 140-21 Signs.

- A. Purpose. It is the purpose of this section to help residents and visitors find what they need without difficulty; to improve the appearance of the Town; and to promote public safety by regulating the location, quality, construction and maintenance of signs.
- B. Application. All signs shall meet the standards herein and on the attached Schedule of Sign Regulations. An application for a permit, for any sign requiring one, shall be made on a form supplied by the Building Inspector and submitted with fees required. Applications shall include drawings to scale depicting locations of the signs, methods of illumination, graphic design (including symbols, letter, materials and colors) and visual message, text copy or content. Written consent of property owners shall also be provided. Applications not requiring a Planning Board finding shall be acted upon within 15 days of receipt. Applications submitted to the Planning Board shall be acted upon within 30 days of receipt and such Board shall have the authority to approve, approve with modifications or disapprove the application using the review criteria found below. Findings shall be provided to the applicant and set forth in detail the reasons for the action.
- C. Sign review criteria. Signs shall be approved, approved with modifications or disapproved based on the specific requirements contained herein and the following design criteria:
 - (1) Signs should be a subordinate part of the streetscape;
 - (2) Signs should not interfere with views of other enterprises or residences;
 - (3) Whenever feasible, multiple signs should be combined to avoid clutter;
 - (4) Signs should be as close to the ground as possible and pole signs shall be discouraged in favor of ground signs wherever possible;
 - (5) Signs should blend with and not cover any architectural features and be sized and located in proportion to buildings.
 - (6) Vivid colors may be used but should not dominate a building or site.
 - (7) Signs should be located so as to not interfere in any way with the clear views required for public safety by highway travelers or pedestrians.
 - (8) Signs must not present an overhead danger or obstacle to persons below.

Town of Rochester Zoning Law

- (9) Sign sizes should achieve ready visibility without becoming an unnecessary distraction from the highway view or detriment to the highway scenery.
 - (10) Signs should never block the view of other signs.
 - (11) Signs should be easy to maintain and provide for wind resistance such that signs will not deteriorate or collapse after an extended period.
 - (12) Sign materials and design should blend with surrounding natural landscapes.
 - (13) Freestanding signs shall generally require landscaping around the sign base.
 - (14) Signs should generally not be placed on the roof or above the roof line of the building to which they are attached.
- D. General regulations. The following regulations shall apply to all signs:
- (1) Signs shall be permitted only in connection with permitted uses or for the purposes of specifically directing travelers to businesses or services. This shall not, however, prohibit off-premises signs erected for these purposes.
 - (2) No part of any sign shall project above the top or beyond the ends of the wall surface on which it is located.
 - (3) Signs, other than official traffic signs, which exceed 24 square feet in surface area shall be setback at least five (5) feet from the side lot line.
 - (4) Advertising signs shall not use the words "stop," "danger," or any other word, phrase or symbol in a manner which could be interpreted by a motorist as being a public safety warning or traffic sign.
 - (5) No light shall be permitted that by reason of intensity, color, location, movement or directions of its beam may interfere with public safety.
 - (6) No sign shall be attached to a tree, utility pole or object not so intended, except for "no trespassing" signs placed on trees.
 - (7) Portable signs shall be subject to all freestanding sign regulations.
 - (8) No sign shall exceed in height one-half its distance from the highway right-of-way, notwithstanding any other height limitations.
 - (9) Traffic directional signs shall be exempt from these regulations.
 - (10) Signs shall be illuminated only by a steady, stationary (except for time and temperature reading) and shielded light source directed solely at the sign, without causing glare for motorists, pedestrians or neighboring premises.
- E. Temporary signs. Temporary signs, including signs advertising yard sales or other noncommercial events may be allowed subject to the following:
- (1) Such signs shall be limited to 12 square feet each in surface area and not be illuminated.

Town of Rochester Zoning Law

- (2) Yard sales and comparable events shall be advertised with signs for no more than 21 days per year.
 - (3) Other temporary signs shall be erected no sooner than 45 days before the event they advertise and be removed within three days after such event. A general permit encompassing all signs to be placed in regard to such event (excepting yard sales conducted no more than twice per calendar year), shall be required prior to the placement of any such signs. The applicant shall pay a fee as shall be established by the Town Board plus a \$25.00 refundable deposit to cover the cost of timely removing said signs. Such signs shall:
 - (a) Not be placed on any utility pole or public structure, except for "no trespassing" signs.
 - (b) Be erected only with express consent of property owners.
- F. Non-conforming signs. Existing non-conforming signs may be repaired or reconstructed on the same site, but shall not be relocated or increased in size except as provided herein. Any non-conforming sign connected with a change of use, abandoned for sign purposes for more than 90 days, damaged to the extent of 50% or more of the replacement cost value or illegally established, shall be immediately removed. In the event such a sign is not removed within 30 days after written notice has been given to the owner of the sign or lessee of the land upon which the sign is located, the Town Board may institute appropriate civil or criminal actions to prevent the violation, abate the nuisance and assess the costs associated therewith to the violator by attachment to the real property tax bill for the parcel in question.
- G. Sign maintenance.
- (1) 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. Also, any sign referencing a location, business, operation, service or product which no longer exists or continues to offer service to the public shall be removed within six months of such discontinuance, unless a waiver shall be granted by the Town Board, as the case may be.
 - (2) In the event such a sign is not repaired or properly restored or removed within 30 days after written notice has been given to the owner of the sign or lessee of the land upon which the sign is located, the governing body may institute appropriate civil or criminal actions to remedy the violation, abate the nuisance and assess the costs associated therewith to the violator by attachment to the real property tax bill for the parcel in question. The Town Board may also establish annual inspection and licensing requirements for the purpose of ensuring sign maintenance.

Town of Rochester Zoning Law

Town of Rochester Zoning Law § 140-21, Schedule of Sign Regulations					
Prohibited Signs	Signs Allowed Without Permits	Signs Allowed with Permits from Enforcement Officer	Maximum Sign Surface Area Allowed for All Permitted Signs on a Lot Combined		Signs Permitted Upon Review by Planning Board
			Freestanding	Wall Signs	
Animated, moving or flashing signs Portable and wheeled signs Projecting signs extending more than 15 inches from an exterior wall Roof signs Signs on vehicles parked to create a sign effect with being regularly in the normal course of business Signs on utility poles Signs not specifically permitted under this Law or by the authority of the Town Board or Planning Board Signs resembling traffic signals or official traffic signs Signs that emit sound, odor or smoke Signs unrelated to permitted uses on a property Signs within the cartway of a public road Signs within 10 feet of power and telephone and television cable lines Signs of more than 15 feet in height	Awning, canopy or marquee signs of 4 sq. ft. in aggregate per lot Bus shelter signs of 10 sq. ft. no more than two per shelter or lot Civic and religious signs of 2 sq. ft. Directional and instructional signs of 4 sq. ft. in aggregate per lot Non-commercial flags, emblems, insignia and temporary signs Governmental signs Holiday decorations Interior signs not classified as window signs Name and address plates and plaques of 2 sq. ft. each in area and 4 sq. ft. in aggregate per lot No trespassing, no dumping and similar signs of 2 sq. ft. in area Real estate, temporary construction and contractor signs of 12 sq. ft. Parking lot entrance/exit sign (1) of 4 sq. ft., no more than 5 feet high Parking lot directional signs of 8 sq. ft. (16 sq. ft. in aggregate), no more than 7 feet high Sports patron advertising signs of 32 sq. ft. in area Temporary signs of 6 sq. ft. each and 24 sq. ft. in aggregate erected no more than 5 times or 60 days per calendar year aggregate Incidental signs of 2 sq. ft. each and 8 sq. ft. in aggregate per lot Warning of danger signs removed within 3 days of end of danger	Multi-family building signs of 4 sq. ft. each, no more than 1 per building, Residential development entrance ground signs (2 per road) of 24 sq. ft.	Fifty (50) sq. ft. in aggregate, or 1 sq. ft. per 5 feet of lot frontage (whichever is less), no individual sign to exceed 24 sq. ft. in area or 15 feet in height.	Five percent (5%) of any single building facade or thirty-two (32) sq. ft. per unit or lot in aggregate, whichever is less. Window wall signs shall not occupy more than 25% of any window.	Other on-premises non-residential use advertising signs for principal permitted, special and existing non-conforming uses subject to Maximum Sign Surface Area for all signs on the lot as set forth in the two columns to the left.

(LD, MD)
Residential Districts

Town of Rochester Zoning Law

Town of Rochester Zoning Law § 140-21, Schedule of Sign Regulations				
Prohibited Signs	Signs Allowed Without Permits	Signs Allowed with Permits from Enforcement Officer	Maximum Sign Surface Area Allowed for All Permitted Signs on a Lot Combined	
			Freestanding	Wall Signs
<p>Animated, moving or flashing signs</p> <p>Portable and wheeled signs</p> <p>Roof signs</p> <p>Signs on vehicles parked to create a sign effect with being regularly in the normal course of business</p> <p>Signs on utility poles</p> <p>Signs not specifically permitted under this Law or by the authority of the Town Board or Planning Board</p> <p>Signs resembling traffic signals or official traffic signs</p> <p>Signs that emit sound, odor or smoke</p> <p>Signs unrelated to permitted uses on a property</p> <p>Signs extending beyond the edge of a sidewalk or within the carway of any public road, whichever is greater</p> <p>Signs within 10 feet of power and telephone and television cable lines</p> <p>Signs of more than 15 feet in height</p>	<p>Awning, canopy or marquee signs of 4 sq. ft. in aggregate per lot</p> <p>Bus shelter signs of 10 sq. ft. no more than two per shelter or lot</p> <p>Civic and religious signs of 2 sq. ft.</p> <p>Directional and instructional signs of 4 sq. ft. in aggregate per lot</p> <p>Non-commercial flags, emblems, insignia and temporary signs</p> <p>Governmental signs</p> <p>Holiday decorations</p> <p>Name and address plates and plaques of 2 sq. ft. each in area and 4 sq. ft. in aggregate per lot</p> <p>No trespassing, no dumping and similar signs of 2 sq. ft. in area</p> <p>Parking lot entrance/exit sign (1) of 4 sq. ft., no more than 5 feet high</p> <p>Parking lot directional signs of 8 sq. ft. (16 sq. ft. in aggregate), no more than 7 feet high</p> <p>Real estate, temporary construction and contractor signs of 16 sq. ft.</p> <p>Sandwich board or A-frame sign (1) of 10 sq. ft. placed no more than 10 feet from principal building entrance</p> <p>Sports patron advertising signs of 32 sq. ft. in area</p> <p>Temporary signs of 16 sq. ft. each and 64 sq. ft. in aggregate erected no more than 5 times or 60 days per calendar year aggregate</p> <p>Incidental signs of 4 sq. ft. each and 12 sq. ft. in aggregate per lot</p> <p>Warning of danger signs removed within 3 days of end of danger</p>	<p>Multi-family building signs of 4 sq. ft. each, no more than 1 per building.</p> <p>Residential development entrance ground signs (2 per road) of 24 sq. ft.</p> <p>Awning, canopy or marquee signs of 16 sq. ft. each provided no more than 50% of awning, canopy or marquee is used for signage</p> <p>One permanently mounted changeable letter or fuel price sign of 36 sq. ft.</p> <p>Non-governmental flags of 24 sq. ft. suspended from poles of up to 36 feet in height</p> <p>One freestanding sign of 32 sq. ft., or one projecting sign of 32 sq. ft., 10 feet above the sidewalk or the ground, for non-residential use identification purposes</p> <p>Wall signs subject to the Maximum Sign Surface Area limitations to the right for such signs</p>	<p>Seventy-five (75) sq. ft. in aggregate or 1 sq. ft. per one foot of lot frontage (whichever is less), no individual sign to exceed 32 sq. ft. in area or 15 feet in height.</p>	<p>Ten percent (10%) of any single building façade or sixty-four (64) sq. ft. per unit or lot in aggregate, whichever is less. Window wall signs shall not occupy more than 25% of any window.</p>
Signs Permitted Upon Review by Planning Board			<p>Other on-premises non-residential use advertising signs for principal permitted, special and existing non-conforming uses subject to Maximum Sign Surface Area for all signs on the lot as set forth in the two columns to the left.</p> <p>Off-premises non-residential use directional signs subject to maximums provided on this Schedule for all permitted signs. Commercial directory signs as defined herein (see Definitions section).</p>	

Town of Rochester Zoning Law

Town of Rochester Zoning Law § 140-21, Schedule of Sign Regulations					
Prohibited Signs	Signs Allowed Without Permits	Signs Allowed with Permits from Enforcement Officer	Maximum Sign Surface Area Allowed for All Permitted Signs on a Lot Combined		Signs Permitted Upon Review by Planning Board
			Freestanding	Wall Signs	
<p>Animated, moving or flashing signs</p> <p>Portable and wheeled signs</p> <p>Projecting signs extending more than 15 inches from an exterior wall</p> <p>Roof signs</p> <p>Signs on vehicles parked to create a sign effect with being regularly in the normal course of business</p> <p>Signs on utility poles</p> <p>Signs not specifically permitted under this Law or by the authority of the Town Board or Planning Board</p> <p>Signs resembling traffic signals or official traffic signs</p> <p>Signs that emit sound, odor or smoke</p> <p>Signs within the cartway of a public road</p> <p>Signs within 10 feet of power and telephone and television cable lines</p> <p>Signs of more than 15 feet in height (except as provided for non-residential use advertising signs in § 1308 of this Law)</p>	<p>Awning, canopy or marquee signs of 4 sq. ft. in aggregate per lot</p> <p>Bus shelter signs of 10 sq. ft. no more than two per shelter or lot</p> <p>Civic and religious signs of 2 sq. ft.</p> <p>Directional and instructional signs of 4 sq. ft. in aggregate per lot</p> <p>Non-commercial flags, emblems, insignia and temporary signs</p> <p>Governmental signs</p> <p>Holiday decorations</p> <p>Name and address plates and plaques of 2 sq. ft. each in area and 4 sq. ft. in aggregate per lot</p> <p>No trespassing, no dumping and similar signs of 2 sq. ft. in area</p> <p>Real estate, temporary construction and contractor signs of 16 sq. ft.</p> <p>Parking lot entrance/exit sign (1) of 4 sq. ft. no more than 5 feet high</p> <p>Parking lot directional signs of 8 sq. ft. (16 sq. ft. in aggregate), no more than 7 feet high</p> <p>Sandwich board or A-frame sign (1) of 10 sq. ft. placed no more than 10 feet from principal building entrance</p> <p>Sports patron advertising signs of 32 sq. ft. in area</p> <p>Temporary signs of 16 sq. ft. each and 64 sq. ft. in aggregate erected no more than 5 times or 60 days per calendar year aggregate</p> <p>Incidental signs of 4 sq. ft. each and 12 sq. ft. in aggregate per lot (up to 6 sq. ft. each and 16 sq. ft. in aggregate within RU Districts</p> <p>Warning of danger signs removed within 3 days of end of danger</p>	<p>Multi-family building signs of 4 sq. ft. each, no more than 1 per building.</p> <p>Residential development entrance ground signs (2 per road) of 24 sq. ft.</p> <p>Awning, canopy or marquee signs of 16 sq. ft. each provided no more than 50% of awning, canopy or marquee is used for signage</p> <p>One permanently mounted changeable letter or fuel price sign of 36 sq. ft.</p> <p>One freestanding sign of 32 sq. ft. for non-residential use identification purposes</p> <p>Wall signs subject to the Maximum Sign Surface Area limitations to the right for such signs</p>	<p>One-hundred (100) sq. ft. in aggregate or 1 sq. ft. per two foot of lot frontage (whichever is less), no individual sign to exceed 32 sq. ft. in area or 15 feet in height.</p>	<p>Ten percent (10%) of any single building facade or sixty-four (64) sq. ft. per unit or lot in aggregate, whichever is less. Window wall signs shall not occupy more than 25% of any window.</p>	<p>Other on-premises non-residential use advertising signs for principal permitted, special and existing non-conforming uses subject to Maximum Sign Surface Area for all signs on the lot as set forth in the two columns to the left.</p> <p>Off-premises non-residential use directional signs subject to maximums provided on this Schedule for all permitted signs.</p> <p>Commercial directory signs as defined herein (see Definitions section).</p> <p>Other PUD District signs of 64 sq. ft., per subject to a maximum of 1 sq. ft., per 2 feet of lot frontage</p>
All Other Districts (BD, CF, ID, RC)					

Town of Rochester Zoning Law

§ 140-22 Storm Water Management.

Every application for a new or substantially modified Special Use or any other use requiring Site Plan Review by the Town of Rochester Planning Board shall include provisions for storm water management as required by the New York State Department of Environmental Conservation (DEC) and the standards of this section. Additionally, should any person intend to make land changes by grading, filling, excavating or the removal or destruction of the natural topsoil or vegetative covering thereon in accordance with a site plan submitted to the Town, the same shall only be approved and accomplished after the developer has submitted to the Town a Storm Water Pollution Prevention Plan in compliance with the DEC regulations. Applicants shall, when required by the Town Planning Board, submit the following for review and approval by the Town:

- A. An Erosion and Sedimentation Control Plan (Basic SWPPP) prepared in accordance with DEC requirements. The plans shall illustrate those measures to be employed during construction and as may be necessary to prevent loss of soil from erosion and to prevent resulting property damage, siltation and contamination of water courses or impoundments.
- B. A Storm Water Pollution Prevention Plan (SWPPP) prepared in accordance with the "New York State Stormwater Management Design Manual" published by DEC. Such plan shall be subject to review by both the Town of Rochester and New York State DEC and meet both sets of standards. Where such standards conflict the higher standard shall apply. The SWPPP shall identify those practices employed after construction and as may be necessary to prevent property damage by and pollution of associated water courses or impoundments.
 - (1) Proposed areas of disturbance shall be drawn to scale and quantified in support of applicable SWPPP requirements (including a Basic SWPPP).
 - (2) Post construction stormwater practices shall reduce stormwater peak runoff to 75% of the preconstruction peak runoff for the 10 year event. The Planning Board shall be authorized to modify these criteria if immediate discharge is appropriate.
 - (3) Post construction stormwater practices shall reduce stormwater peak runoff to 90% of the preconstruction peak runoff for the 100 year event. The Planning Board shall be authorized to modify these criteria if immediate discharge is appropriate.
 - (4) A certified copy of a completed the notice of intent to proceed (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.
 - (5) Storm drainage facilities shall be designed to handle the anticipated peak discharge from the applicable catchment for a 10 year event with one foot of freeboard remaining at peak flow.
 - (6) All drainage structures required to accommodate stream flows with a cross sectional area less than 25 square feet during a 10 year rainfall event, shall be designed and constructed to provide one foot of freeboard during the 10 year rainfall event.
 - (7) All drainage structures required to accommodate stream flows with a cross sectional area greater than 25 square feet during a 10 year rainfall event, shall be designed to provide two feet of freeboard during a 50 year rainfall event, and safely pass a 100 year rainfall event. Drainage structures in this category shall have a design life of at least 50 years, be designed by a licensed Professional Engineer and be approved by the Town Highway Superintendent or the Superintendent's designee.
 - (8) Applicants shall use infiltration practices 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.
 - (9) All storm water management improvements shall be properly maintained so as to continue to perform in

Town of Rochester Zoning Law

their intended manner. Sediment shall, at a minimum, be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent. The Town Building Inspector, upon observing that such improvements are not being so maintained, may direct a property owner to undertake such maintenance. Failure to comply after a minimum of 30 days notice shall constitute a violation of this law.

- (10) No person shall allow, or cause to allow, storm water discharges, into any separate storm sewer systems of the Town, that are not composed entirely of storm water, discharges from fire fighting, water from foundation drains, flows from natural sources and flows from other similar uncontaminated sources. No drain or conveyance, whether on the surface or subsurface, that allows any other water discharge or wastewater (including floor drains and the like) to enter such a separate storm sewer system shall be permitted.

Town of Rochester Zoning Law

Article 5 Supplementary Regulations Applicable to Particular Uses

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

A. Licenses and fees.

- (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 license has been obtained as herein provided.
- (2) The Town Code Enforcement Officer of the Town of Rochester shall issue a license after approval of the application by the Town Planning Board pursuant to Special Use procedures. Such application shall be also be subject to Site Plan Review. Said license shall be effective from the date of issuance until surrendered by the licensee or revoked by the Code Enforcement Officer.
- (3) No license 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.
- (3) All licenses issued hereunder shall be valid until December 31 of the same year. No later than October 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. Absent a finding of such compliance, the Town Planning Board shall, subject to a public hearing, approve, disapprove or approve with modifications any renewal.
- (4) Any person holding a license for a campground or RV park who desires to add additional lots or spaces to such park shall file an application for a supplemental license. The application for such supplemental license must be accompanied by 10 sets of plans and specifications and shall be filed and processed as provided herein for new campgrounds or parks.
- (5) Each application for a new or supplemental campground or RV park license 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 license. Each license application shall be accompanied by site plans and other data as shall be required herein for Special Use and Site Plan Review applications.
- (6) The applicant, for any new license or transfer, shall pay the Town a fee as shall be established modified from time to time by resolution of the Town Board.

B. Design standards and general requirements.

- (1) A campground or RV park shall have a gross area of at least 25 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:

Town of Rochester Zoning Law

Campground/RV Park Standards		
Standard	Transient Campgrounds/RV Parks	Nontransient Campgrounds/RV Parks
Minimum Campground Lot Area	1,500 sq. feet	5,000 sq. feet
Minimum Campground Lot Width	30 feet	50 feet
Maximum Density*	6.0	4.0
* Number of campground lots per Adjusted Tract Acre of campground.		

- (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) At least one off-street parking space shall be provided for each site, in addition to the site for placement of the recreational vehicle or tent.
- (5) The residential street design standards contained in Town of Rochester Subdivision Regulations shall apply to streets within non-transient campgrounds and RV parks. Transient recreational land development streets shall be cleared, graded and improved to a 12 feet width for one-way traffic and 20 feet width for two-way traffic.
- (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) No permanent external appurtenances, such as carports, cabanas or patios, may be attached to any travel trailer or other recreational vehicle parked in a campground or RV park, and the removal; of wheels or placement of the unit on a foundation in such a park is prohibited.
- (8) A campground or RV park shall possess a minimum of 500 feet of frontage on a state, county or town highway.
- (9) A minimum of 10% 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.
- (10) 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. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and the radii of curbs and pavements at intersections shall be such as to facilitate easy turning movement for vehicles with trailer attached. No intersection of an entrance and/or exit with a state, county or town highway shall be located where less than 500 feet of sight distance exists in either direction along the state, county or town highway, nor shall such intersection be located within one hundred (150) feet of any other intersection.
- (11) 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

Town of Rochester Zoning Law

given written permission for such use. Each campground or RV park operator shall provide off-street parking, loading and shall be responsible for violations of these requirements.

- (12) Campground or RV park lots shall be used only for camping purposes. 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 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 30 days in a transient campground or RV park or 120 days in a nontransient campground or RV Park. No campground or RV park lot shall be the primary and principal residence of the owner or any other 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. The Town Code Enforcement Officer may require any owner to remove a recreational vehicle from the campground for a period of seven (7) days, unless such owner can establish a prior removal or storage without occupancy within the immediately preceding 30 days. These requirements shall be attached to each campground or RV park lot sale or membership in nontransient campgrounds or RV parks by restrictive covenant. As a mechanism to enforce these provisions, the Town Board may, by resolution, require that all persons bringing a recreational vehicle into the Town of Rochester first obtain a permit of limited duration to do so, which permits shall be issued by the Town Code Enforcement Officer.
- (13) 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. 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.
- (14) 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.
- (15) 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.
- (16) 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 any burning 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.

Town of Rochester Zoning Law

- (17) 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.
- (18) No person shall burn trash, garbage or other like refuse on any campground or RV park lot. All such refuse be placed and kept in airtight receptacles for the same, which shall be provided by the owners of the campground or RV park lots. No owner or occupant shall permit the accumulation of litter or refuse or junk vehicles on a campground or RV park lot.
- (19) 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.
- (20) No recreation vehicle shall be parked on any street or roadway within the development.
- (21) Potable water drinking supplies shall be provided within three hundred (300) feet of each campground or RV park lot and be operational during any period of occupancy.
- (22) Every campsite shall be accessible by fire and emergency equipment and shall be maintained in such condition, free of obstacles to access.
- (23) 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.
- (24) The operational standards contained in this section shall be incorporated in restrictive covenants attached to the deeds for lots in nontransient campgrounds or RV parks and shall be made part of a management plan for any transient campgrounds or RV parks, which covenants 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 covenants which does not adequately provide for conformance with this section shall not be approved. The plan and/or covenants 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 covenants.

F. Revocation of license.

- (1) If the Code Enforcement Officer finds that a campground or RV 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 the provisions of this chapter, he may service personally or by certified mail upon the holder of the license a written order which will require the hold of the license to correct the conditions specified in such order within 10 days after the service of such order.
- (2) If the holder of such license shall refuse or fail to correct the condition or conditions specified in such order, the Code Enforcement Officer shall revoke such license and the holder of the license shall thereupon immediately terminate the operation of such campground or RV park and held to be in violation of this law.
- (3) However, if the owner or operator of such recreational vehicle park shall thereafter correct such conditions

Town of Rochester Zoning Law

and bring the recreational vehicle park into compliance with this chapter, such owner may then apply for issuance of a new license for such park, and if the application is approved and license is granted, the applicant shall pay to the town the fee required by this chapter without any credit for the fee paid for the license which was revoked.

G. Penalties for offenses; additional remedies.

The Code Enforcement Officer may, in the case of violations of the foregoing provisions by any campground or RV park lot occupant, and in addition to other remedies available under this Zoning Law and, regardless whether or not such campground or RV park has a current license, 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.

H. 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.
- (3) Camping by the owner on his or her own vacant property for a maximum of 30 days in consecutive days.

§ 140-24 Manufactured Homes and Parks.

- A. The MHP District (Manufactured Housing Park District) is established to provide for the location of manufactured (mobile) homes in manufactured housing parks. This district is to be an overlay district of the entire town. A manufactured housing park may be permitted as a special use in any area of the Town that meets the requirements of § 140-24.B and C below, upon the application for and approval of a special use permit by the Planning Board. Existing mobile home parks located within the Town, although recognized in their nonconforming status, will be subject to the provisions of the MHP District if any lot location is altered or if the park is expanded in any manner. Preapproved home sites that are not currently occupied are not considered a relocation or expansion. A lot relocation alteration is defined as the relocating or replacement of any currently approved home sites. An expansion of a park is defined as the application for the addition of any new home lots above the currently approved number.
- B. For a parcel to qualify to be a part of the MHP District it must meet the following criteria:
- (1) The parcel must have a minimum of 15 acres in total gross area.
 - (2) The property must front a county or state highway.
 - (3) The property must have a road frontage of a minimum of 200 feet.
 - (4) There may be no other manufactured housing park, either existing or proposed, located within 1/2 mile of the parcel.

Town of Rochester Zoning Law

- (5) The total density or maximum number of lots per park shall not exceed the permitted density for the underlying zoning district it lies within, applying the Adjusted Tract Acreage provisions of § 125-22.A of the Town of Rochester Code.

C. License requirements.

Any person or legal entity, being the owner or occupant of any land within the Town, shall not use or allow the use of such land for a manufactured housing park, unless a license has been obtained as herein provided from the Code Enforcement Officer shall issue a permit 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; and
- (f) A resolution from the Planning Board approving issuance of a Special Use permit for said manufactured home park.
- (g) 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.

C. 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.

Town of Rochester Zoning Law

- (d) A copy of the regulations and rules for residents of the park as imposed by the park owner must accompany the application for a permit.
 - (e) If said application is for a new manufactured housing park or for the expansion of the same, an application for a Special Use permit must be made to the Planning Board in accordance with the procedures provided in this chapter for such permits.
- (2) License renewal.
- (a) An application for the renewal of any manufactured housing park license must be filed with the Code Enforcement Officer on or before October 1 of the year preceding the expiration of the permit.
 - (b) Upon a satisfactory inspection of the premises and the approval by the Code Enforcement Officer, a renewal license shall be issued to be effective upon the expiration of the previous license and to continue in force for a period of one year.
 - (c) At the time the license is applied for the applicant shall pay a fee in the amount established by the Town Board.
 - (d) Such renewal license shall not be transferable or assignable to any other individual, group, corporation or association.
 - (e) All required improvements and community utilities within a manufactured housing park shall be continuously maintained in a safe manner, and all required services shall be continuously provided in order to secure the annual permit. The Code Enforcement Officer, County Health Inspector, Fire Inspector, or any other government or safety inspector shall have full access to any public spaces located within the park boundaries at any time for inspection purposes.
- D. Application for preexisting manufactured housing parks. A manufactured housing park that is in existence or applied for prior to November 10, 2004, may continue in existence, provided it complies completely to the standards and requirements of the Ulster County Department of Health and receives a satisfactory, written inspection report with no safety, health, or Town Code violations from the Code Enforcement Officer. However, any additions, extensions, or supplements to such preexisting park must be made pursuant to this chapter, and all regulations hereof apply thereto.
- E. 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 permit and impose the levy of a daily fine (as set by Town Board schedule), and the holder of the same shall thereupon terminate the operation of such manufactured housing park. All the enforcement provisions of this chapter, shall apply in such case.

Town of Rochester Zoning Law

- (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 permit 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.

F. 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.
 - (c) Existing development, including a location map depicting all land within 200 feet of the proposed park; all structures on the land which abuts the proposed park; the location, names, and widths of all adjacent streets; and the location of all water lines and utilities within and adjacent to the proposed site.
 - (d) 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 shall be submitted as part of the park plan. The size, type, and location of all trees and vegetation must be shown and adhered to in final application. Such landscaping must be actively maintained and replaced if diseased or dead. As much of the natural landscaping and terrain shall be retained as is possible. All lots and public areas shall be landscaped, planted, seeded, and maintained so as to provide a park-like setting.

Town of Rochester Zoning Law

- [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) Detailed drainage plans and calculations shall be required to ensure that stormwater runoff does not present a hazard to neighboring properties, waterways, or wetlands.
- (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) No development of any kind shall be permitted within 150 feet of the bank of any stream or other natural waterway.

(3) Buffer zone.

- (a) A minimum of a 50 feet wide landscaped buffer zone shall be constructed and maintained around the perimeter of the manufactured housing park, provided that this requirement may be modified or waived where the area is already wooded or the park adjoins property that is otherwise naturally buffered.
- (b) The area encompassed by this buffer zone that is adjacent to any neighboring properties or public roadways shall be planted with at least two rows of evergreen trees staggered and spaced not more than 16 feet apart. The minimum height at planting shall be no less than six feet. The plantings shall form a hedgerow or natural visual screen from adjoining properties and roadways. The owner of the park shall be responsible for the maintenance of this landscaping and, should it become necessary, the replacement of these trees.
- (c) The Planning Board may also require a fence or berm for an additional visual screen or noise buffer if deemed appropriate.
- (d) Where natural vegetation exists that meets or exceeds the above requirement within the 50 feet

Town of Rochester Zoning Law

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 25% 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. The area of the site that lies within designated wetlands and the fifty-foot buffer zone shall not be counted as open space.
 - (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 equally 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.

Town of Rochester Zoning Law

- (e) Each designated manufactured home lot shall be not less than 15,000 square feet in area; have a minimum of 80 feet of frontage on an interior park roadway; be not closer than 60 feet to a public street or other property line; and otherwise comply with development standards applicable to conservation subdivisions (see Chapter 122 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) All manufactured homes shall be placed on each lot diagonally or with the long side parallel to an interior park roadway. 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 50 feet from the nearest edge of any interior roadway within the park. An outbuilding 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 county or state highway. Such accesses shall be at least 125 feet apart and be at right (90 degree) angles to the public roadway.
 - (b) Streetlighting 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, 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

Town of Rochester Zoning Law

Chapter 122, 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 cul-de-sac standards provided in Chapter 122 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 or shall remain wooded and/or otherwise unimproved to preserve the rural atmosphere and aesthetic characteristics of the Town of Rochester.

Town of Rochester Zoning Law

- (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) Automobile parking.
- (a) A manufactured home lot shall have two adjacent off-street parking spaces.
 - (b) No unregistered and/or unlicensed vehicles may be stored on a manufactured housing park lot.
 - (c) No commercial vehicles, except pickup trucks, passenger vans, or other recognized personal-use vehicles registered commercially, shall be permitted to be parked on a manufactured housing park lot.
 - (d) Visitor parking at the rate of one space per every four manufactured housing lots shall be allowed for. These shall be located as near the individual lots they service as is possible.
 - (e) No on-street parking or parking in nondesignated 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

Town of Rochester Zoning Law

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 permit application.
- (b) There shall be a clear numbering system for all units within a manufactured housing park. The numbers shall be not less than four inches in height, Arabic writing, made of reflective material, and prominently displayed on the manufactured home where it is visible from the interior access roadways.
- (c) A copy of the layout map shall be filed with the applicable fire and rescue agencies.
- (d) An easily visible, posted layout map showing the location and numbering of each lot in the park shall be also required at each entrance to the park from the public roadway.
- (e) Water supplies to aid in fighting fire shall be adequate as determined by the Ulster County or local Fire Commissioners, whether the supply is derived from hydrants connected to an underground water supply system or a reservoir or other water supply system.
- (f) No flammable materials may be stored beneath any manufactured home unless the manufactured home has been placed on a foundation with a basement.
- (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.

Town of Rochester Zoning Law

§ 140-25 Planned Unit Development Districts.

A. Purposes.

- (1) It is the purpose of this section to permit but not require, upon receipt and approval by the Town Board of an applications by landowner(s), the establishment of special zoning classifications for planned unit developments. These special floating districts may include PCD Planned Commercial Development, PID Planned Industrial Development, PRD Planned Residential Development Districts and POD Planned Institutional Organization Districts. Such districts may be permitted for the following purposes, among other reasons:
 - (a) Offering choices in types of housing, lot sizes and community facilities available to residents.
 - (b) Creating more usable open space and recreation areas and preserving natural areas.
 - (c) Conveniently locating businesses and services with respect to neighborhoods.
 - (d) Developing commerce and industry in planned units compatible with other uses.
 - (e) Facilitating development that allows an orderly transition from rural to urban uses.
 - (6) Providing for the efficient use of land and the placement of utilities and streets in ways that lower development costs and impacts.
 - (7) Implementing the Town of Rochester Comprehensive Plan.
 - (8) Encouraging innovation not possible under strict application of subdivision and zoning regulations.
 - (9) Promoting the expansion of existing hamlets and development of new centers.
 - (10) Promoting traditional neighborhood and mixed-use development patterns.
- (2) Generally, these floating districts are intended to provide landowners who wish to develop functionally integrated communities or complexes with the flexibility to do so, provided that sufficient open space will be preserved and the development is designed with safeguards to protect the public health, safety and welfare.

B. Procedures. The Town Board shall establish planned unit development districts in the following manner:

- (1) The owner(s) of the land in a proposed district shall initially apply to the Town of Rochester Planning Board for the establishment of a PCD, PID or PRD District. The application shall be in writing and include a sketch plan drawn to scale. The application and sketch plan shall include the following information:
 - (a) The location and types of the various uses and their areas in acres.
 - (b) Calculation of proposed densities for each category of uses.
 - (c) A general depiction of the exterior and proposed interior road system.
 - (d) Location, area and proposed ownership and use of open space.

Town of Rochester Zoning Law

- (e) General provisions for sewer, water, drainage and other required utilities.
 - (f) Uses and ownership of abutting lands.
 - (h) The proposed phasing plan for the planned unit development.
 - (i) A Generic Environmental Impact Statement for the proposed district and project.
 - (j) Evidence the proposal is compatible with the goals of the Town of Rochester Comprehensive Plan.
 - (k) The proposed zoning amendment, together with evidence of compliance with §§ C hereof.
- (2) The Planning Board shall review the sketch plan and related documents and render a report to the applicant and the Town of Rochester Town Board on the acceptability of the proposal along with recommendations for changes or improvements, if any. An unfavorable report shall state clearly the reasons therefor and, if appropriate, advise the applicant what revisions are necessary to receive acceptance. A favorable report shall include any recommendations for changes or conditions with respect to the proposed development plan. The Planning Board shall issue its report within 62 days of receipt of a complete sketch plan and application. If the Planning Board shall fail to render a report, an applicant shall be authorized to proceed directly to the Town Board.
- (3) The Town Board shall then proceed to consider amendment of the law in accord with the Town Law, conducting a hearing within 62 days of the meeting at which the Planning Board's report and/or application is received. The Town Board shall approve the plan if it finds:
- (a) The proposed uses will not be detrimental to present and potential uses in the area surrounding the proposed district.
 - (b) Existing and future highways are suitable and adequate to carry anticipated traffic associated with the proposed district.
 - (c) Existing and future utilities are or will be adequate for the proposed development.
 - (d) The development plan complies with the requirements of this Law and is consistent with the Town of Rochester Comprehensive Plan.

Should the Town Board approve the proposed amendment creating a planned unit development district it may attach conditions to such approval. If a planned unit development district has been approved and is not substantially developed in accordance with the approved preliminary development plan for a period of five (5) years from the effective date of its establishment, and provided that it shall then appear that rights vested in persons acting in good faith in reliance on such zoning classification will not be prejudiced thereby, the Town Board, upon resolution and no earlier than 62 days following written notice to the applicant and general publication in a newspaper of general circulation, may declare the change in classification to a planned unit development district voided.

- (4) The applicant may, upon creation of the proposed planned unit development by the Town Board, submit a preliminary development plan for the project to the Planning Board, including but not limited to all information required under the Town of Rochester Subdivision Law and the Special Use and Site Plan Review criteria contained in this Law.
- (5) The Planning Board shall, within 62 days of its acceptance of a completed preliminary development plan,

Town of Rochester Zoning Law

conduct a public hearing on the development plan, which shall be completed no later than an additional 62 days thereafter. Following close of the public hearing, the Planning Board shall, within another 62 days, approve, disapprove or approve with the modifications the preliminary development plan. Preliminary approval may also include requirements pertaining to the final site plan. If the preliminary development plan is disapproved, the Planning Board shall inform the applicant of the reasons for disapproval, in writing, within 15 days of such action. Failure to act within these specified time periods shall entitle the applicant to a default approval.

- (6) Following Planning Board approval of the preliminary development plan, the applicant shall install or financially guarantee all proposed improvements and prepare a final development plan, as provided under the Town of Rochester Subdivision Law. Where more than five (5) years have elapsed between the date of preliminary approval and the time of submission of the final development plan, and where the Planning Board finds that conditions affecting the plan have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary development plan for further review and possible revision prior to accepting the proposed final development plan for approval by the Planning Board. The applicant may, or the Planning Board may require, the applicant submit the final development plan in phases.
- (7) The final development plan shall conform substantially to the preliminary development plan approved by the Planning Board and meet all requirements set forth in the Subdivision Law pertaining to final plans. It shall incorporate any modifications required by the Planning Board at the time of preliminary approval. The Planning Board shall, within 62 days of the receipt of a completed application for final development plan approval, review and act on such submissions and so notify the Town Board. If no decision is made within 62 days, the final development plan shall be considered approved. Upon approving an application, the Planning Board shall endorse its approval on a copy of the final development plan and shall forward it to the Building Inspector, who may then issue building permits to the applicant if the project conforms to all other applicable requirements of the Town. Final development plan approval shall constitute final Development Plan approval under the Town Subdivision Law and a copy shall be filed in the Ulster County Clerk's office.
- (8) No building permits shall be issued for construction within a planned unit development district until all requirement improvements are installed or financial guarantees are posted in accordance with the procedures provided by the Town Subdivision Law.

C. General requirements.

- (1) PCD Planned Commercial Development Districts.
 - (a) Location. A PCD District may be permitted within any existing CF, RC or BD District, provided the property involved has direct access to Routes 44/55, Route 209 or Lucas Turnpike (C.R. No. 1) or is located within 1,500 feet of these highways.
 - (b) Minimum site area. A PCD District shall comprise at least 10 contiguous acres of land.
 - (c) Maximum lot coverage. PCD District lot coverage shall be limited to a maximum of 30%.
 - (d) Building size. A free-standing building containing no more than one commercial establishment shall not exceed 20,000 square feet of gross floor area. A building that contains two or more commercial establishments shall not exceed 30,000 square feet of gross floor area.
 - (e) Building appearance. All structures shall have a unified, attractive, architectural theme reflective of the character of nearby buildings in the Town. Buildings shall be designed to avoid massive walls or

Town of Rochester Zoning Law

facades, flat roofs and box-like building appearances.

- (f) **Building setbacks.** Setbacks from lot lines, including the right of way lines for public and private roads abutting the site or serving the interior of the site, shall be determined for the PCD by the Planning Board, based on the number, type and size of buildings in relation to the lot size, proximity to adjacent uses and the need for buffering of the project from such uses. The front yard, side yards, and rear yard shall be kept clear and unobstructed and shall not be used for the storage or disposal of any materials, except in approved locations within the PCD for off-street parking and for loading and unloading, but shall be screened or landscaped.
 - (g) **Landscaping.** Existing mature trees shall not be removed except as may be necessary to accommodate approved improvements. Significant existing vegetation that is proposed to be removed shall be illustrated on the site plan and no removal shall take place in advance of such approval. Landscaped buffers shall be provided as may be necessary to protect adjoining properties, reduce the visual impact of larger buildings, provide shade, and improve building appearances. Earthen berms may also be required to improve the screening capabilities of the landscaped area.
 - (h) **Signs.** PCD signs shall be in accordance with a Master Signage Plan to be submitted with the Preliminary Site Plan. Drawings illustrating sign design, size, location and lighting shall be submitted for review and approval as part of the Preliminary Development Plan.
 - (i) **Utilities.** All uses situated in a PCD District shall be served by community water and sewerage systems. All water, sewer and gas lines (where available) and all other lines providing power and communication service shall be installed underground in the manner prescribed by the appropriate state and local agency and/or utility company having jurisdiction.
 - (j) **Permitted uses.** All office and retail and service uses, except vehicle and equipment sales, shall be permitted in PCD Districts. A PCD may also include hotel, motel and recreational uses when designed as integral parts of the same project where the various elements are designed to serve each other. Residential uses may also be permitted, if limited to no more than 25% of the PCD floor area and constructed concurrently with commercial uses.
 - (k) **Other zoning regulations.** With the exception of lot and yard requirements which may be waived or modified by the Planning Board, the PCD District shall comply with all other provisions of this Law.
 - (l) **Ownership.** The land proposed for a PCD District may be owned, leased or controlled either by an individual, corporation or by a group of individuals or corporations. PCD District applications shall be filed by the owner or jointly by all owners of the property included in the application. In the case of multiple ownership, the approved plan shall be binding on all owners.
- (2) **PID Planned Industrial Development Districts.**
- (a) **Location.** A PID District may be permitted within any existing CF, RC or HD District.
 - (b) **Minimum site requirements.** A PID District shall comprise at least 25 contiguous acres of land in the CF and RC Districts and 5 contiguous acres in a HD District. A PID District shall have direct access to a County or State highway or be located within 1,500 feet of such a highway. A PID District shall not be located on any highway where existing traffic operates at less than Level of Service C.
 - (c) **Maximum lot coverage and land disturbance.** PID District lot coverage as a whole shall be limited to a maximum of 40% and land disturbance as a whole shall be limited to a maximum of 50%. Individ-

Town of Rochester Zoning Law

ual lots within PID Districts shall be limited to a maximum lot coverage of 50% and a maximum land disturbance of 60%, provided total lot coverage and total land disturbance for the PID District as a whole shall not exceed 40% and 50%, respectively. .

- (d) Outdoor storage. The outdoor storage of goods or materials, open sided covered structures, truck loading and unloading areas and all equipment, electrical substations, and mechanical devices shall be shielded from view from any public highway and any adjoining property that has an existing dwelling.
- (e) Utilities. All electric, telephone, telecommunications, and other service lines shall be underground or routed along the rear of lot lines wherever possible.
- (f) Performance standards. No land or structure in a PID district shall be used, occupied or operated in any manner that creates dangerous, injurious, noxious or otherwise objectionable conditions that may affect other properties. All uses shall comply fully with performance standards of this chapter pertaining to noise, lighting, odors, vibrations, smoke and related matters. A management plan and covenants and restrictions for the planned industrial park to ensure long-term maintenance of properties and improvements, address hours of operation and deal with other matters potentially having an impact on adjoining properties, shall be submitted for review and approval by the Town Board at the time the PID District is proposed.
- (g) Parking. On street parking on public highways or access roads within the PID District shall not be permitted under any circumstance. No parking lot where vehicles will be parked and idled for extended periods of time shall be constructed within 250 feet of any existing dwellings.
- (h) Landscape and design requirements. Landscape and facade design requirements to be incorporated in project covenants and restrictions shall be developed and submitted for approval. A landscaped planting screen of no less than 75 feet in width shall be required along the border of the PID District with any adjoining property and any public highway. Such buffer area shall be in place prior to the issuance of a Certificate of Occupancy and substantially screen proposed structures from view within a period of five (5) years. Existing trees and vegetation shall be maintained where ever possible in such buffer areas and interplanted as may be necessary to accomplish screening objectives. All buildings, structures and land disturbances shall be setback a minimum of 100 feet, which distance may be increased by the Town Board as may be necessary to protect adjoining properties and preserve neighborhood character when creating a PID District.
- (i) Minimum lot area. Individual lots within a PID District shall be a minimum of three acres in size. This shall not apply, however, to lots used for the purpose of locating utility structures.
- (j) Building heights. Structures within PID Districts shall not exceed a height of 45 feet, except for unoccupied areas used for mechanicals, elevators, antennas and industrial processes, which shall be limited to a maximum of 75 feet. Structures over 35 feet in height shall require evidence from the local fire department that substantiates capacity to provide fire protection services related to the structure.
- (k) Permitted uses. A PID District created within any existing CF or RU District may include the full range of uses permitted in the ID Industrial District. A PID District created within a HD Hamlet District shall be limited to business and professional offices, electronic data processing and back office operations, packaging of retail goods, plastic product injection molding, printing facilities, research and development facilities, light metal fabrication and other light manufacturing, wholesale businesses, production greenhouses and similar enterprises as shall be defined by the Town Board in creating a

Town of Rochester Zoning Law

PID District.

- (l) Prohibited uses. Fuel distribution or processing operations, junkyards, recycling facilities, salvage operations, solid waste disposal facilities, mini-storage facilities (mini-warehouses) for consumer use, and truck terminals shall be prohibited in all PID Districts. Mining and other natural resource processing, including sawmills and storage yards for forest products and stone shall be prohibited in PID Districts created within HD Hamlet Districts.
 - (m) Other zoning regulations. With the exception of lot area requirements which may be waived or modified by the Planning Board, the PID District shall comply with all other provisions of this Law.
 - (n) Ownership. The land proposed for a PID District may be owned, leased or controlled either by an individual, corporation or by a group of individuals or corporations. PID District applications shall be filed by the owner or jointly by all owners of the property included in the application. In the case of multiple ownership, the approved plan shall be binding on all owners.
- (3) PRD Planned Residential Development Districts.
- (a) Location. A PRD District may be permitted within any existing RC, LD, MD, HD or BD District.
 - (b) Minimum site area. A PRD District shall comprise at least 50 contiguous acres of land.
 - (c) Maximum density. Maximum density within a Planned Residential Development shall not exceed that otherwise permitted for the various uses proposed within the underlying zoning district where the PRD District is to be located, provided that the Town Board may allow for up to 30% additional density for purposes of encouraging open space preservation or the creation of affordable housing. The Town Board may also, in the case of tracts of 500 acres or more in size where large buffers can be provided and the project is designed as a self-contained community or full-service resort, establish a higher density commensurate with the tract's capabilities and the availability of infrastructure. However, notwithstanding this or any other provisions of this law, total density within a planned residential development shall not exceed one dwelling unit per Adjusted Tract Acre as defined herein and in the Town Subdivision Law. Density for nonresidential uses within the PRD shall be determined on the basis of projected sewage flows, with an equivalent dwelling unit being that amount of flow normally associated with a one-family dwelling.
 - (d) Open space. The open space standards applicable to conservation subdivisions under the Town Subdivision Law shall also apply to all PRD projects, provided that golf course acreage may be counted toward open space at a ratio of 75%.
 - (e) Utilities. All uses situated in a PRD District shall be served by community water and sewerage systems. All water, sewer and gas lines (where available) and all other lines providing power and communication service shall be installed underground in the manner prescribed by the appropriate state and local agency and/or utility company having jurisdiction.
 - (e) Permitted uses. All residential uses, except manufactured (mobile) homes, shall be permitted in PRD Districts. A PRD may also include hotel, motel, resort, recreational and convenience retail and service uses when designed as integral parts of the same project where the various elements are designed to serve each other. Retail and service uses shall be designed to primarily serve residents of the PRD. Nonresidential uses shall be limited to no more than 5% of the land area involved in any PRD, provided that the Town Board, in creating the PRD District, may otherwise provide for large recreation uses such as golf courses.

Town of Rochester Zoning Law

- (f) Other zoning regulations. With the exception of lot and yard requirements which may be waived or modified by the Planning Board, the PRD District shall comply with all other provisions of this Law.
 - (g) Ownership. The land proposed for a PRD District may be owned, leased or controlled either by an individual, corporation or by a group of individuals or corporations. PRD District applications shall be filed by the owner or jointly by all owners of the property included in the application. In the case of multiple ownership, the approved plan shall be binding on all owners.
 - (h) Organization. A PRD District may be organized as a condominium, a cooperative, a leasehold or held in individual or corporate ownership. If a home owners' association (HOA) or similar organization is to be established, such entity shall be organized as provided for conservation subdivisions in the Town Subdivision Law.
- (4) POD Planned Institutional Organization Districts.
- (a) Location. A POD District may be permitted within any existing CF, RC or BD District.
 - (b) Minimum site area. A PRD District shall comprise at least 20 contiguous acres of land.
 - (c) Maximum density. Maximum density within a POD District shall not exceed four client residents per Adjusted Tract Acre as defined herein and in the Town Subdivision Law. Density for nonresidential uses within the POD shall be determined on the basis of projected sewage flows, with an equivalent dwelling unit being that amount of flow normally associated with a one-family dwelling.
 - (d) Open space. The open space standards applicable to conservation subdivisions under the Town Subdivision Law shall also apply to all POD projects.
 - (e) Utilities. All uses situated in a PRD District shall be served by community water and sewerage systems. All water, sewer and gas lines (where available) and all other lines providing power and communication service shall be installed underground in the manner prescribed by the appropriate state and local agency and/or utility company having jurisdiction.
 - (e) Permitted uses. A POD District may include: hospitals, nursing homes, residential care facilities and similar group housing as well as other comparable institutions; colleges and universities; educational and vocational training centers; and schools. Other permitted uses shall be determined by the Town Board upon creation of the district. Such uses may include administrative office use; personal or professional service uses which include all uses whose primary function is to provide services directly to an individual; medical care and support facilities. Ancillary services to provide residential lodging for staff or consumers of the service to those persons working within or obtaining services at the site may also be permitted at the discretion of the Town Board.
 - (f) Other zoning regulations. Excepting lot and yard requirements, which may be waived or modified by the Planning Board, the PRD District shall comply with all other provisions of this Law. However, all POD Districts shall include buffers of no less than 100 feet in width from adjoining properties, the character of such buffers to be determined in conjunction with Special Use and Site Plan Review.
 - (g) Ownership. The land proposed for a PRD District may be owned, leased or controlled either by an individual, corporation or by a group of individuals or corporations. PRD District applications shall be filed by the owner or jointly by all owners of the property included in the application. In the case of multiple ownership, the approved plan shall be binding on all owners.

Town of Rochester Zoning Law

§ 140-26 Multi-Family Residential Uses.

- A. Multi-family dwelling projects shall be considered major subdivisions and require both Special Use and subdivision approval. 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. Application for preliminary approval of multi-family dwelling projects, accordingly, will be made to the Town in the manner provided under the Town Land Subdivision Law. The subdivider shall also submit all information required by such Regulations plus the following additional data;
- (1) An application for approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the criteria set forth herein.
 - (2) A proposed plot plan showing the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this Law. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and sizes of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in Town of Rochester. Setbacks from property lines, improvements and other buildings shall also be indicated.
 - (3) A schedule or plan and proposed agreement(s) either with the Town or a property owners' association for the purpose of dedicating, in perpetuity, the use and/or ownership of the recreation area and open space required by this Law to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed covenants and restrictions, 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.
- B. 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.
- C. Following Preliminary Plan approval, 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. Building improvements shall similarly be completed or guaranteed prior to the applicant's request for Final Development Plan approval. No Certificate of Occupancy (where the same is required) shall, however, be issued until such time as; (1) Final Development Plan approval shall have been granted in accordance with the procedures and requirements of this Law and (2) buildings have been completed and inspected by the Town Building Inspector.
- D. Complete final building plans shall also be submitted as part of the Final Development Plan Application.

Town of Rochester Zoning Law

- E. No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this Law, unless and until Final Development Plan approval shall have been granted (unless the improvements shall have been guaranteed), and the Plan has been recorded in the Office of the Ulster County Clerk.
- F. Multi-family dwelling density shall be granted a 100% density bonus above the number of dwelling units per acre which would be permitted within the district if the parcel on which the units are to be constructed were to be developed for one-family residential use. Density shall be calculated by taking the total acreage of the development and deducting the following acreages;
- (1) Land contained within public rights-of-way;
 - (2) Land contained within the rights-of-way of existing or proposed private streets. (where formal rights-of-way are not involved, the width shall be assumed to be 50 feet);
 - (3) Land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service;
 - (4) All wetlands, floodplains, slopes of 25% or greater grade, water bodies and other undevelopable areas; and dividing by the number of proposed units.
- G. All areas of a multi-family development not conveyed to individual owners; and not occupied by buildings and required or proposed improvements shall remain as permanent open space or be dedicated to recreation area to be used for the sole 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 sole benefit and enjoyment of the residents of the particular units proposed. Recreation areas (as distinct from other open space) shall be immediately adjacent (part of the same parcel and contiguous) to the proposed units and freely and safely accessible to all residents of the development. They shall not be used to fulfill open space requirements or provide recreational areas for residents of other units, excepting as provided for in subsection (2) below. They shall be usable for active recreational activities and shall not include wetlands, quarries, slopes over 15% in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas.
 - (2) Land designated as open space shall be permanently maintained as such and not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed excepting that a holding zone may be reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all Development Plans. Such lands shall not be included in calculating permitted density for the proposed development. These provisions, however shall not be construed as granting or reserving to the developer any rights or privileges to develop on the basis of a "pre-approved plan" if density or other zoning requirements shall have been modified to preclude such development.
 - (3) Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas may be owned, preserved and maintained by dedication to a property owners association which assumes full responsibility for maintenance of the open space and/or deed-restricted private ownership which shall prevent development of the open space, provide for its

Town of Rochester Zoning Law

maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/developer to retain ownership and use of a portion of the property (for hunting, fishing, etc.) provided the permanence of the open space is guaranteed.

- (4) Whichever maintenance mechanism(s) is used, the developer shall provide, to the satisfaction of the Town Attorney and prior to the granting of any Final Development Plan approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.
 - (5) Developments of 50 units or more shall provide one-half acre of playground area per 50 units unless restricted to adult occupancy only.
- H. All multi-family developments shall be served with community wastewater facilities and water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multi-family buildings and structures as a minimum.
- I. The following design criteria shall apply to multi-family developments;
- (1) There shall be no more than 10 dwellings in each multi-family building.
 - (2) No structure shall be constructed within 50 feet of the edge of any access road to or through the development or within 10 feet of the edge of any parking area.
 - (3) Access roads through the development shall comply with minor street requirements as specified in this Law and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
 - (4) No multi-family development shall be served by more than one entrance and one exit from any public highway, unless topography or other physical circumstances would preclude the use of a single entrance in a safe manner.
 - (5) 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.
 - (6) No more than sixty (60) parking spaces shall be provided in one lot, nor more than 15 in a continuous row without being interrupted by landscaping. All off-street parking shall be adequately lighted and so arranged as to direct lighting away from residences.
 - (7) No structure shall be erected within a distance equal to its own height of any other structure.
 - (8) All multi-family structures shall be a minimum of 100 feet from any of the exterior property or boundary lines of the particular project involved and 75 feet from any public right-of-way.
 - (9) Where a property line is not wooded, a planting strip of 50 feet in width shall be required to buffer adjoining property owners and ensure privacy. Similar buffering of areas adjoining County and State highways shall be required. A landscaping plan shall also be prepared and submitted to the Planning Board for approval.
 - (10) Multi-family developments shall be subject to the stormwater management requirements of this Law.

Town of Rochester Zoning Law

Facilities shall be designed to accommodate storms of a 25 year average frequency unless a more stringent standard shall be recommended by the Town Engineer. The general performance standard shall be that the amount of uncontrolled stormwater leaving the site along any property line after development shall not exceed that estimated for the site prior to development.

- (11) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.
- J. Maintenance of a multi-family project shall be vested in (1) an association or other legal entity organized prior to the offering of the first unit for occupancy, or (2) a manager, who may be the developer, or a person designated by the developer before the developer offers a unit for occupancy, or (3) the owners or occupants of units themselves if the total number of owners or occupants within the development is not more than five (5). If the developer shall opt to manage the project or designate a manager, the preliminary application shall include financial statements, a description of previous management experience and other data sufficient for the Planning Board to ascertain the financial responsibility of the manager.
- K. 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. The project instruments shall specify the expenses that the maintenance organization may incur and collect from purchasers as a maintenance fee and secure maintenance of the project and enforcement of applicable covenants and restrictions in perpetuity. The Planning Board may require that a Certified Public Accountant review such financial data to determine proposed fees are, in fact, adequate to secure maintenance on a continuing basis.
- L. The developer shall, in filing a Preliminary Development Plan, provide a narrative description of how responsibility for maintenance and care of the units and common areas will be assured and a pro forma operating budget for the maintenance organization including a breakdown of the common expense to be borne by the maintenance organization and a separation of long-term maintenance costs from on-going routine maintenance costs. There shall also be provided a narrative description of how the developer proposes to assure maintenance of the units and common facilities during any sales program. The Planning Board may require additional temporary facilities to accommodate service demands. Copies of all applicable instruments shall be provided, for purposes of determining that long-term arrangements for maintenance of common facilities have, in fact, been made by the developer.
- M. Any developer who proposes to construct multi-family dwellings and convey the common elements of said multi-family dwelling project, including recreation areas, to an association of purchasers of units therein shall submit a maintenance bond or other performance guarantee acceptable to the Town Board and Town Attorney ensuring long-term maintenance and repair of said common elements. Such maintenance bond or other guarantee shall;
- (1) Be for a period of not less than 15 years from the date of the final approval of said multi-family dwelling-transient use by the Town;
 - (2) Be in an amount equal to the amount collected or to be collected for long-term maintenance (as indicated in the budget referenced above) by the developer or other responsible parties from each purchaser during the first year after sales to such purchases begin, multiplied by the total number of expected purchasers.
- N. If the development shall be subject to the New York State statutes governing the sale of real property used for multi-family occupancy, the developer shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this subsection such certification shall suffice as to conformance with these requirements.

Town of Rochester Zoning Law

- O. Conversions of motels, hotels or other existing structures to multi-family dwelling use regardless of whether such conversions involve structural alterations, shall be subject to the provisions of this Law. If the proposed project does involve structural alterations, the Preliminary Development Plan shall include a certification of a registered architect or engineer to the effect that the existing building is structurally sound and that the proposed conversion will not impair structural soundness. However, the conversion of an existing one-family detached dwelling or single family semi-detached dwelling into not more than three residential units shall be exempt from these requirements, unless such units are intended to be a condominium. This shall not, however, exempt an owner from any requirements of the State Building Code or the Town Zoning Law as they may pertain to such activities.

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

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

- A. There shall be adequate parking to accommodate the new use in combination with other activities on the property or in the vicinity.
- B. There shall be demonstrated sewage treatment and water supply capacity to serve any increased needs connected with the new use.
- C. The conversion shall not result in increased residential density exceeding that permitted within the district. If, for example, the minimum lot size is two acres then no more than one equivalent dwelling unit shall be permitted per two acres of lot area.
- D. Conversion of a residential structure to a non-residential use shall not be permitted where the new use is not otherwise allowed. Adaptations of any such structure should preserve its architectural integrity and residential character, except for minimal signage, required parking and other features mandated by the nature of the business.

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

- A. All currently existing and permitted industries shall comply fully with the Mined Land Reclamation (MLR) Law and provide evidence of such compliance in connection with any Special Use application. Special Use Permits shall run coterminous with MLR permit. Renewals for Special Use permits shall be reviewed by the Town Planning Board, a SEQR determination of significance shall be rendered and a public hearing held in order to determine if community residential growth requires mitigation of impacts related to dust, traffic and setbacks. Should noise be an issue, the Planning Board shall request of the NYSDEC to review noise impacts and mitigate to less than 10 dBA above ambient level, as defined in § 140-20 D (1) per NYSDEC Assessing and Mitigating Noise Impacts Guidance.
- B. The manufacturing or processing of asphalt shall not be considered part of any extraction industry and proposals for such uses, if and where permitted, shall be fully subject to the requirements of this law, notwithstanding pre-emptions of authority under the Mined Land Reclamation Law.
- C. The storage and/or burial of machinery, junk, debris, or any other non-mine related items shall not be allowed on site. The site shall not be used to park commercial trucks or heavy equipment not directly involved with the currently permitted mining operation.
- D. All new sand, gravel and quarrying operations permitted within PID Districts shall be subject to §140-20 and

Town of Rochester Zoning Law

§140-25C(2). In addition to the provision hereof as relates to traffic, the Planning Board may require traffic studies to determine the need for special entrance designs, the construction of acceleration and deceleration lanes and the like.

- E. Excavation of less than 1,000 tons per year for the purposes of soil mining, such as gravel pits, quarrying or any subsoil removal, shall be allowed only by Special Use permit in CF, RC and ID Districts, and the following provisions. Notwithstanding and regardless of whether a special permit has been issued, property owners may utilize gravel, stone quarrying or subsoil excavation on their own property for fill or leveling without restriction. Farm related mining of less than 1,000 tons per year is exempt from Special Use Permit requirement but shall comply with §§ E(3), (5) and (6). For soil mining operations that are not subject to state jurisdiction by virtue of involving the removal of 1,000 tons or less per year, the following provisions shall apply:
- (1) Before a special permit is issued, the applicant shall submit to the Planning Board 10 copies of a map at a scale of one inch equals no more than 100 feet, showing all lands within 200 feet thereof with exact locations of all buildings, streets, utilities, drainage or other easements, watercourses, lot lines, block and lot numbers and names of the land owners. Such map shall also show the present topography at two-foot contour intervals or as otherwise determined appropriate by the Planning Board. The map shall be signed by a licensed engineer or land surveyor for certification of its accuracy.
 - (2) The applicant shall also submit to the Planning Board 10 copies of the proposed plan of excavation at the same scale as above, showing the proposed finished elevations at two-foot contour intervals, or as otherwise determined appropriate by the Planning Board, and the proposed drainage plan.
 - (3) During excavation or quarry operations, open pits and quarry walls shall be entirely surrounded by a substantial temporary movable fence at least six feet high located no less than 50 feet from the mine excavation in order to safeguard the public and to prevent an attractive nuisance. Such fence is to be erected so as to effectively block access to the area, with suitable gates provided with locks. Top and/or toe of slope shall not be closer than 40 feet to a property line.
 - (4) The Planning Board may require the applicant to submit a screening and buffer plan to minimize visual impacts on surrounding properties or adjacent roadways. Such plan shall identify the location, height, type and other appropriate details of all proposed perimeter fencing, berming, landscaping or other screening and buffering measures.
 - (5) Excavation, quarrying and mining operations may be conducted between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, and between 8:00 a.m. to 12:00 noon on Saturday, and shall not be conducted on Sunday nor on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.
 - (6) Rock crushing, screening, cement plant, other crushing, grinding, polishing or cutting machinery, or other physical or chemical process for treating the product of such excavation, shall not be permitted.
 - (7) The proposed finished grading plan shall show the land to be smooth-graded and topsoil re-spread to a minimum depth of four inches; slopes shall not exceed the normal angle of repose of the material removed.
 - (8) The applicant shall be required to furnish a performance bond, in an amount determined by the Code Enforcement Officer or Planning Board Consultant, to be sufficient to guarantee completion of the finished grading and drainage plan. Such bond shall be released only upon certification by the Code Enforcement Officer that all requirements, including the finished grading and drainage, have been complied with.

Town of Rochester Zoning Law

- (9) No special permit for excavation operations or soil mining shall be granted for a period of more than three years, but such permit may be extended for additional two-year periods, upon approval of the Planning Board.

§ 140-29 Telecommunication Facilities.

The provision of telecommunications facilities, which shall be permitted as Special Uses in all zoning districts, shall be governed by Chapter 130 of the town of Rochester Code. References therein to R-1, R-2, A and Hamlet Districts shall apply to LD, MD, RC, CF and HD Districts.

§ 140-30 Affordable Housing.

- A. Findings. The Town Board of the Town of Rochester hereby finds that the need for affordable housing warrants the establishment of a system by which specific incentives or bonuses are granted for this purpose. The Town Board further finds that several social benefits will inure to the community, the need for affordable housing being an inherent element of the Town Comprehensive Plan. These benefits include the ability to accommodate the location, within the Town, of first-time homebuyers and households otherwise transitioning to home-ownership and encouragement of property maintenance from the assuming of household ownership responsibilities. This Section 140-30, pursuant to the authority of Section 261-b of the New York State Town Law, offers adjustments in the permissible population density, area, height, open space, use, and other provisions of this law for the specific purpose of encouraging long-term development of affordable owner-occupied housing. This Section 140-30 also supersedes Section 261-b of the Town Law so as to not only offer a system of bonuses and incentives for affordable housing, but also to mandate its use in the case of owner-occupied residential dwelling projects of 25 dwelling units or more in total. All new residential dwelling projects or project additions of 25 or more cumulative dwelling units hereafter created on the same parcel of land or as part of a common scheme or plan of development shall provide for affordable housing as set forth herein.
- B. Definition. Affordable housing shall consist of owner-occupied dwelling units marketed at a "Net Affordable Purchase Price" (NAPP) per square foot of individual unit floor area, including all fees. Floor area, for this purpose, shall not include decks and patios. Floor area shall also not include separate building storage areas, separate building mechanical space and common areas, all of which shall be considered common area and not considered in the purchase price. Initially, the NAPP shall be \$XXX per square foot in 2007 dollars. However, the NAPP shall be reviewed and may be amended from time to time by resolution of the Town Board.
- C. Administration. The Town Board shall administer the system of bonuses, incentives and requirements provided herein for affordable housing. It shall bear responsibility, also, for adjusting the definition of affordable housing as provided herein, establishing the income limits pertaining to this program, assuring compliance with these requirements, administering associated programs and otherwise promoting affordable housing in the Town of Rochester. The Town of Rochester Planning Board shall also apply these requirements in reviewing and approving subdivision and site plans for new housing projects subject to this Section 140-30.
- D. Minimum allocation. A minimum of 10% of the dwelling units in new residential projects or subdivisions of 25 or more cumulative dwelling units in total on the same parcel of land, or part of a common scheme or plan of development, shall be dedicated to affordable housing units as defined herein. Such units shall be marketed to eligible households, as defined herein, and at the NAPP set forth above. The Town Board may, from time to time by resolution, adjust the minimum allocation as appropriate to reflect changing community needs. Any rental units created subsequent to adoption of this section and thereafter offered for sale as individual units shall also be subject to these requirements. The Town Planning Board, in approving new rental projects, shall require the adoption of deed covenants so restricting any future sale of such rental units.
- E. Quality and size of units. Affordable housing dwelling units shall be of a comparable construction quality and

Town of Rochester Zoning Law

appearance to other dwelling units in a given project that are not marketed as affordable housing. Purchasers must accept units in a basic “as depicted” physical condition conforming to submitted plans, provided they meet New York State building standards, the standards of this section and other zoning requirements. Purchasers shall be entitled to no modifications except as may be required by law for handicapped access. Moreover, developers of affordable housing shall not comply with purchaser requests for any extra options or upgrades to be financed by the developer, the purchasers of such units, or others. All affordable units shall be fully ready to occupy, except for appliances, prior to sale.

- F. Review and approval. Prior to the approval of any affected subdivision or issuance of a building permit, the Town of Rochester Planning Board shall review and approve the subdivision, site and building plans to ensure the project meets the requirements of this Section 140-30. Prior to issuance of any Certificate of Occupancy all requirements of this section shall be met. Any Certificate of Occupancy issued without compliance with this chapter shall be null and void. The seller of any unit without a valid Certificate of Occupancy shall be liable in damages resulting from the lack of such Certificate.
- G. Bonuses and incentives. The Town of Rochester Planning Board, as provided in Section 125-29 of the Town of Rochester Subdivision Law, is hereby authorized to modify, when reasonable, with respect to subdivision and site plans for residential subdivisions and multi-family dwelling projects, the lot area, lot width and/or lot depth requirements provided in this zoning law. Such authority shall be limited to a maximum of 20% of the residential lots created and be further limited to those lots restricted to development for affordable housing, which shall be of the same type as the remainder of the subdivision or project (e.g. multi-family dwellings would not be permitted in a single-family development).
- H. Offering of affordable housing units. Affordable housing units shall be marketed, for owner-occupied housing only, to households approved for eligibility by the project owner or developers subject to provisions of this law and such additional guidelines as may be promulgated by the Town Board. Eligibility shall be limited to proposed owner households with combined earned and unearned income, averaged for the three most recent years, of less than 100% of latest median family income for the Town of Rochester as estimated by the U.S. Department of Housing and Urban Development, provided that the Town Board may employ an alternate measure of income if this estimate does not coincide with more recent local trends or other evidence. The Town Board may, also, based upon surveys of community housing needs, develop a system of owner-occupant selection priorities to be implemented and used by the project developer or owner in selecting owner-occupants.
- I. Verification. The Town Board may develop procedures and such implementing regulations as may be appropriate for this affordable housing program. The project owner or developer shall take applications, verify eligibility through documentation of income and otherwise assure compliance with the occupancies of affordable housing units provided under these regulations. Prior to the issuance of a Certificate of Occupancy for any affordable housing unit, the builder or developer shall provide the Town of Rochester Building Department with adequate evidence of sale to qualified households at the required price.
- J. Marketing of units. The project owner/developer shall determine whether a household is eligible for affordable housing provided hereunder and shall formally reply in writing to all applicants for such housing. Affordable housing unit availability shall be advertised in a newspaper of general circulation in the Town of Rochester at least 30 days prior to the units being offered for sale. Such newspaper shall include one designated or approved by the Town Board. Notice of the same shall concurrently be given in writing to the Town Board.
- K. Complaints. Any person aggrieved by the decision of an owner/developer in application of the eligibility and owner-occupant selection criteria or by the owner/developer's non-compliance with the standards of this section 140-30 may file a written complaint with the Town Board for a review of the owner/developer's conformance to the standards of this chapter, provided that such complaint is filed within 30 days of the owner/developer's action. The owner/ developer shall be entitled to a copy of the complaint. The Town Board shall make a finding

Town of Rochester Zoning Law

with respect to any such complaint within 60 days of receipt and upon finding may, in its sole discretion, pursue such administrative or other civil remedies as may be available to it by law, including but not limited to qualifying the applicant for future housing, requiring the owner/developer to make additional affordable units available or the filing of a lien for the value of the affordable housing not properly provided in accordance with this section.

- L. Re-sales of units. The purchaser of any affordable housing unit shall, for a period of 10 years following purchase, be obligated to resell such unit only to another household eligible, under these regulations, for affordable housing, except as provided below for market-rate sales. Notwithstanding this provision, an owner/developer may retain a right of first refusal with respect to such units provided that they are subsequently resold only for affordable housing pursuant to this law. However, rentals of such units shall not be permitted under any circumstances, by either the developer/owner or affordable housing purchaser.
- M. Market-rate sales. Any sales within the 10 years shall be subject to a payment to the Town of Rochester Affordable Housing Fund in an amount equal to the sale price less the base (original sale) price divided by 10 and multiplied by such number of years, to the nearest quarter, that occupancy fell short of the 10 years required. The base price may include up to 5% for approved improvements made to the unit and an adjustment for inflation based upon the Consumer Price Index.
- N. Redevelopment fees. Sales that take place within 10 years shall be subject, also, to a redevelopment fee of \$5,000 for each and every full year less than 10 that the unit is owned by the original purchaser, up to maximum of \$50,000. Such redevelopment fee shall be paid to the Town of Rochester Affordable Housing Fund for use in making additional affordable housing available within the Town. The Town Board shall have authority to waive or reduce this redevelopment fee in instances of documented hardship due to sudden changes in family situations or for other good cause, but shall be under no obligation to do so.
- O. Downpayments. No sales agreement for affordable housing unit subject to this Section 140-30 shall require a downpayment of more than 10% of the purchase price from an eligible household.
- P. Affordable Housing Fund. There is hereby created, pursuant to Section 10 of the New York State Municipal Home Rule Law, a Town of Rochester Affordable Housing Fund for the purpose of providing affordable owner-occupied housing for income qualified households. Such Fund shall be a segregated municipal fund controlled by the Town Board and used exclusively to provide for the acquisition, planning, construction, improvement, sale or resale, subsidy or other legal means of creating more owner-occupied affordable housing for income-qualified households within the Town of Rochester. Deposits into the Fund may include revenues of the Town from all authorized sources approved by the Town Board and shall include, at a minimum, all revenues from payments and fees collected by the Town pursuant to this Section 140-30. The Fund shall also be authorized to accept gifts. Interest accrued by monies deposited in the Fund shall be credited to the Fund. In no event shall monies deposited in the Fund be transferred to any other account unless determined to be in furtherance of the affordable housing goals of the Town.
- Q. Previously approved projects. This Section 140-30 shall not apply to site plans and subdivisions approved by the Town of Rochester prior to its enactment.
- R. Payments in Lieu of Affordable Housing. The Town Board may, in its sole discretion, agree to exempt a given project from affordable housing requirements where practical difficulties having to do with the physical nature of the site involved would make the provision of such additional units economically or physically impractical. The developer, in such instance, shall pay the Town a redevelopment fee in lieu of the minimum allocation of affordable housing units or such portion thereof as is not provided. Such fee shall be annually established by the Town Board based upon the cost of replacing the affordable housing elsewhere plus any additional development costs associated with relocation. Fees in lieu of affordable housing shall be deposited into the Affordable Housing Fund. The Town Board shall review and may adjust this redevelopment fee on at least an annual ba-

Town of Rochester Zoning Law

sis. The Town Board may also, in its sole discretion, agree to accept, as an alternative to such redevelopment fee, the provision, by the developer, of affordable housing units located elsewhere within the Town of Rochester. Such units shall otherwise meet all standards herein with respect to affordable housing, including but not limited to the quality of the units. Such units shall also require approval of the Town of Rochester Planning Board and be processed prior to or simultaneously with the review and approval of the market-rate units. Any approval of the market-rate units shall be conditioned upon the prior start of construction and imposition of affordable housing restrictive covenants with respect to the affordable housing units. The Town Board may also require the posting of a financial guarantee to ensure the timely construction and offering of affordable housing units no later than the market-rate units.

- S. Enforcement. All affordable housing sales agreements shall include restrictive covenants that ensure the enforceability of the above requirements. Such covenants shall survive the sales transactions, be inserted in deeds and include language setting forth that such restrictive covenants shall run until released by the Town Board. No Certificates of Occupancy shall be issued until such deed restrictions are recorded. The Town shall be represented at all closings for these purposes. The Town Board is further authorized to place liens on affected properties as may be required to enforce the provisions of this Section 140-30 and collect any amounts due the Town as provided herein. Release of any such liens shall require Town approval. Compliance with this section may be enforced by the Town and the cost to the Town of such enforcement may be assessed, levied, and collected in the same manner as Town taxes.
- T. Modifications and waivers. The standards provided herein for affordable housing shall be reviewed and may be modified from time to time by resolution of the Town Board to accommodate unique innovative projects that offer significantly greater value to households needing affordable housing, provided such households are not required to pay substantially greater prices for such housing and further provided that no such project shall provide substantially less than the minimum allocation of affordable housing. The Town Board may also waive specific requirements of this Section 140-30 where the imposition of such provisions would cause undue hardship as a result of unique circumstances or frustrate the ability to provide affordable housing as intended. The Town Board shall, in all such circumstances, ensure any modifications or waivers serve to further the goal of providing affordable housing in the Town of Rochester.

§ 140-31 Cluster Development (Conservation Subdivisions).

Conservation subdivisions shall be permitted in all zoning districts other than ID or PID Districts. Such subdivisions shall be subject to the provisions of Chapter 122 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 122.

§ 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

Town of Rochester Zoning Law

these adverse effects will not contribute to the blighting or downgrading of surrounding neighborhoods or land uses, increase crime or police calls, contribute to the spread of prostitution and AIDS, increase the quantity of transients in residential and commercial areas, cause a deterioration in the quality of life in residential neighborhoods, increase the accessibility of adult oriented material and entertainment to minors, and encourage residents and businesses to locate elsewhere.

- C. Definitions. As used in this Law, the following terms shall have the meanings indicated:

Adult Use

A use of a building or property for a business has adult materials as a significant portion of its stock-in-trade or involves the sale, lease, trade, gift or display of drug paraphernalia. Adult materials include any literature, book, magazine, pamphlet, newspaper, paper, comic book, drawing, computer or other image, motion picture, sound recording, article, instrument, display or any other written or recorded material which depicts or describes: a) any nudity; or b) the specific sexual activities listed herein. The Town shall also rely upon the general meaning given to these two terms by the State of New York and in the various decisions of the U.S. Supreme Court referenced herein, should further clarification be required.

For purposes of this law, adult oriented businesses shall also mean any nightclub, bar, tavern, restaurant, eating and drinking establishment, arcade, theater, motel, hotel, or any other establishment that regularly features, for economic gain or other consideration, entertainment in any form which is characterized by nudity or the depiction or display of specified sexual activities. This shall not exempt such a business from any requirements of this law or limitations on public displays of personal nudity.

Nothing in this definition shall be construed to incorporate breast-feeding, single-sex rest rooms and showers or items and displays of recognized artistic merit as previously interpreted by the U.S. Supreme Court or activities in a private residence by the occupants thereof.

Nudity

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

Specified Sexual Activities

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

Specified Anatomical Areas

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

- D. Separation requirements applicable to adult uses. Adult uses shall be limited to existing 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

Town of Rochester Zoning Law

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 (200) foot radius of any other residential or commercial zoning district or another adult use.
 - (2) No adult use shall be located within a one thousand (1,000) foot radius of the property of any residence, residential facility, institution, health facility, child care center, church, synagogue, other place of religious worship, school, public or semi-public use, public park or recreation facility, youth oriented center, playground or playing field, cemetery or any establishment that sells alcoholic beverages.
- E. Exterior display prohibited. No adult use shall be conducted in any manner that allows the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way. This provision shall apply to any display, decoration, sign, show window or other opening.
- F. Signage. Adult use signage shall be limited to one approved ground sign not to exceed a surface area of thirty-six (36) square feet for both sides combined.
- G. Non-conforming buildings. No non-conforming building or lot shall be used for an adult use.
- H. Activities. Because they are known to encourage prostitution, increase sexual assaults and attract criminal activity, the following activities shall not be permitted in any adult oriented or other business or any other public place within the Town of Rochester:
- (1) Public appearance by a person knowingly or intentionally engaged in specified sexual activities.
 - (2) The knowing and intentional public appearance of a person in a state of nudity.
 - (3) Touching of patrons or the performance by any entertainer in an adult use facility within six feet of the nearest patron.
 - (4) Sale of alcoholic beverages.
- I. Loudspeakers. No loudspeaker or similar audio equipment used to describe or discuss specified anatomical areas or specified sexual activities shall be audible beyond the exterior of the structure in which it is located.

§ 140-33 Vehicle Junkyard and Wrecking Facilities.

- A. Purposes. These regulations are enacted for the purpose of establishing minimum health and safety standards for junkyards in the Town of Rochester as well as controlling their location. They are enacted pursuant to the authority granted towns by § 136 of the General Municipal Law and § 136.1 of the Town Law.
- B. Scope. These regulations shall apply to all junkyards now existing or hereafter proposed in the Town of Rochester. No junkyard shall be created except in conformance with the standards herein, and all junkyards shall be required to conform to said standards or be removed at the owner's expense.
- C. Exemptions. The following land uses shall be exempt from these requirements provided they are not maintained in the manner of a junkyard and do not include a junkyard operation:

Town of Rochester Zoning Law

- (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.

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

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

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

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

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

F. Transfers of license. The license may be transferred to a new owner of a junkyard provided all of the requirements of this Law pertaining to new junkyards are met and a new application is submitted.

G. Disapprovals. Any disapprovals shall be in writing and include the reasons therefore. The Building Inspector shall not issue a license in any instance where the Planning Board has not approved the site plan and given

Town of Rochester Zoning Law

Special Use approval.

- H. Right to enter and inspect. The Building Inspector shall enforce all of the provisions of this Law and shall have the right, at all reasonable times, to enter and inspect any junkyard. The Town Board shall specify the frequency of such inspections, but no less than four times per year, and set fees by resolution to cover costs involved.
- I. Orders to correct. If the Building Inspector finds that a junkyard for which a license has been issued, is not being operated in accordance with the provisions of this Law, he may serve, personally or by certified mail to the holder of the license, a written order which will require the holder of the license to correct the conditions specified in such order within 10 days after the service of such order.
- J. Suspension of license. If the holder of such license shall refuse or fail to correct the condition or conditions specified in such order within 10 days after the service of such order, the Building Inspector may suspend such license and the holder of the license shall thereupon terminate the operation of such junkyard.
- K. Expiration of license. Any license which is not used for the purpose intended within 12 months of the date of issuance shall automatically expire and the junkyard shall be removed in its entirety.
- L. Standards applicable to new junkyards. All new junkyards shall conform to the following standards:
 - (1) No part of any junkyard shall be located closer than five-hundred (500) feet to an existing public right-of-way or adjoining property line, or one-thousand (1,000) feet to a church, school, health care facility, public building or place of public assembly.
 - (2) New junkyards shall, moreover, be permitted only in the Industrial (I-1) District.
 - (3) All new junkyards must erect and maintain a eight (8) foot fence or dense natural screening along the boundaries of the property adequate to discourage the entrance of children or others into the area and to contain, within such fence, all materials in which the owner or operator deals. Such fence or screening shall also substantially screen the junkyard from public view at all times of the year and otherwise comply with the requirements of § 136 of the General Municipal Law. The fencing or screening shall, in the case of properties that are upslope or downslope from the grade level of the adjoining highway, be adjusted in height and density so as to accomplish the purpose of screening the the junkyard from view. Any material within the junkyard shall be screened from view from adjoining highway(s) and properties.
 - (4) No junkyard shall be used as a dumping area for refuse or as a place for the burning or disposal of trash.
 - (5) All dismantling operations shall take place inside an enclosed structure and any parts of vehicles or equipment shall similarly be stored inside an enclosed structure. All vehicles awaiting dismantling or retained for sale or use intact shall be stored in paved surface parking areas specifically designated for this purpose, which areas shall be buffered as required in this section for the junkyard as a whole.
 - (6) The Planning Board, in acting upon the Special Use application for any new junkyard, shall consider aesthetics and the impact on surrounding property consistent with the demands of § 14036-7 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

Town of Rochester Zoning Law

administered by the Town Board based on the inspection and report of the Building Inspector as to compliance with the standards of this Law:

- (1) Existing nonconforming junkyards shall, within a period of one year following the effective date of this Law, be removed unless a license shall have been obtained for continued operation and the facility has been made to conform to the regulations provided below.
 - (2) Applications for licenses to continue operating existing non-conforming junkyards shall, unless the owners thereof have indicated in writing their intention to discontinue operations as provided above, be made within one year following the effective date of this Law. All licenses shall, thereafter, be renewed by April 1 of each calendar year.
 - (3) Applications for licenses to continue operation of existing non-conforming junkyards shall include a site plan depicting the existing operation and any planned improvements as may be required by this Law.
 - (4) All existing junkyards shall include an eight (8) foot high fence 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. Fencing and screening shall fully comply with all requirements applicable to new junkyards. Yards requirements applicable to new junkyards shall not be further violated.
 - (5) All fencing must be approved by the Town Board and produce a screen through which one generally cannot see. Various materials, including evergreen screening, may be used. The Town Board shall also take measures, such as securing injunctive relief, to ensure maintenance of such fencing or screening.
 - (6) The license application shall include other information as may be required to determine compliance with these regulations. The Town Board, in acting upon the application, shall consider the following:
 - (a) Impacts of the use on the enjoyment and use of adjoining properties and the community.
 - (b) The effectiveness of screening available or to be provided, visibility from the highway and the extent to which the operator's plans address various health, safety and aesthetic concerns.
 - (c) The extent to which dismantling operations can or do take place inside an enclosed structure and whether or not all parts of vehicles or equipment are similarly stored inside an enclosed structure. Likewise, the Town Board shall consider whether or not vehicles awaiting dismantling or retained for sale or use intact are or will be stored in paved surface parking areas specifically designated for this purpose.
- 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.
- O. Junkyard Application Standards. All applications to operate junkyards in the Town of Rochester shall include criminal records with respect to the applicant(s), including any owner with a 5% or more ownership. Should such criminal records reveal convictions for larceny or receiving stolen property, such application shall be denied. This procedure shall apply to both original license and transfer applications. Applications shall in other respects comply with Special Use and Site Plan Review procedures.

Town of Rochester Zoning Law

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

A. Purposes. This section is intended to:

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

B. Special definitions.

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

3. Applicability.

- (1) Owners of Sending and Receiving Properties may voluntarily commit to transfer residential density rights under this Zoning Law. Although the transfer of density rights shall only officially occur at the time of final approval of a subdivision or site plan, the process shall be initiated during the preliminary planning process. The approval of a preliminary plan shall then be conditioned upon compliance with this Section. As part of a preliminary and final plan application, the applicant shall present a draft Conservation Easement on the "Sending Property" and a written, signed and notarized agreement by the owner of the "Sending Property" acknowledging and agreeing to the application.
- (2) The Conservation Easement shall be drafted so that it is binding if the "Receiving Property" is granted Final Plan approval. The Conservation Easement shall be recorded 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. 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 CF or RC District. A Sending Property shall have a minimum lot area of 10 acres.
- (5) A Receiving Property shall be within the RC, LD, MD, HD, BD or ID Districts.
- (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

Town of Rochester Zoning Law

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 10 years, before being used on a Receiving Property(ies).

D. Determination of density.

- (1) Yield Plans shall be presented by the applicant. One Yield Plan shall be presented for the Receiving Property and one for the Sending Property. Such Yield Plans shall be a level of detail typically found in a sketch plan, including potential lots and roads, steep slopes, 100 year floodplains and suspected wetlands. Such Yield Plans shall estimate the number of new dwelling units that could be lawfully constructed on each property under Town regulations without any transfer of development rights. Detailed percolation tests are not required on all potential lots but deep pit soil testing may be required in areas of suspected marginal soil types for subsurface sewage disposal.
- (2) Such Yield Plans shall be reviewed by the Town Planning Board, with advice by the Town Engineer, to determine whether each represents a reasonably accurate estimate of the number of dwelling units possible on each site, both physically and legally. If such estimates are determined to not be accurate, the applicant shall be required by the Planning Board to revise such Yield Plan.
- (3) Based upon the Yield Plans, permission to develop a number of dwelling units may be transferred from the Sending Property to the Receiving Property. The potential to develop some or all of the dwelling units may be transferred from the Sending Property, depending upon the amount of land affected by the permanent Conservation Easement.
- (4) If, for example, the Yield Plan determines that 10 new dwelling units would be allowed under current zoning on the Sending Property, and the Sending Property will be preserved by a Conservation Easement, then the right to develop 10 additional dwelling units shall be transferred to the Receiving Property. The development of the Receiving Property shall still comply with all other requirements of this Zoning Law, except for the maximum density, which shall be regulated by this Section.
- (5) The Receiving Property shall be permitted to include the increased total number of dwelling units above the number that would otherwise be permitted, as approved by the Town Planning Board based upon the Yield Plan, provided that density shall not be increased by more than 50% under any circumstance. 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 given acre 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.

- E. Once a conservation easement is established under a transfer of density rights, it shall be permanent, regardless of whether the Receiving Property is developed. The approval to develop the Receiving Property in

Town of Rochester Zoning Law

a higher density shall be treated in the same manner as any other Final Subdivision or site plan approval. The Planning Board may extend time limits to complete the development of the Receiving Property in response to a written request.

- F. As part of a transfer of density rights, the development of the Receiving Property shall comply with all Town of Rochester zoning requirements, except for provisions specifically modified by this section.

§ 140-35 [RESERVED]

§ 140-36 [RESERVED]

§ 140-37 [RESERVED]

§ 140-38 [RESERVED]

Town of Rochester Zoning Law

Article 6 Nonconforming Uses and Structures

§ 140-39 Rights to Continue Nonconforming Uses.

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

§ 140-40 Normal Maintenance and Repairs.

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

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

- A. If less than 75% of the floor area of any non-conforming use, building or structure is damaged, it may be restored or reconstructed by building permit issued within 12 months of the date of the damage. If more than 75% is affected, then the replacement or reconstruction shall be permitted by Special Use permit. Single-family dwellings shall be exempt from this requirement provided a building permit is obtained.
- B. A non-conforming use, building or structure may be re-established within a period of 12 months after it has been discontinued or vacated, with an extension of six months allowable where proven necessary to the Building Inspector.
- C. A non-conforming use, building or structure shall be considered abandoned under any one of the following

Town of Rochester Zoning Law

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) The building has not been occupied for 12 months or more; or
 - (3) The non-conforming use has been replaced by a conforming use or changed to another use under permit from the Town; or
 - (4) The equipment and furnishings used in furtherance of the non-conforming use have been removed from the premises.
- D. The Building Inspector, on determining these circumstances exist, shall, by certified mail, so notify the property owner of record, informing the owner the use is considered abandoned and may not be re-established once a period of 12 additional months has expired. If an owner cannot be reached through the mail, the Building Inspector shall publish the notice once in a newspaper of general circulation in the Town and/or post the property and the owner shall be presumed to have been notified.

§ 140-42 Changes and Additions.

Excepting for activities provided for above and accessory uses, all changes and additions to non-conforming uses shall be considered Special Uses, and permits for alterations, changes in use or additions shall be granted only after a determination by the Planning Board that the following conditions have been, or will be, satisfied.

- A. There shall be no expansion in the amount of land area outside a non-conforming facility (outdoor area) used for storage of materials, supplies and/or products, except as provided herein.
- B. Where the non-conforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.
- C. No addition, change or expansion of a non-conforming use shall further violate setback and/or height regulations of the district in which it is located. Moreover, no change of use shall be to one of a more intensive classification (e.g. one with more employees, more traffic, more parking). A non-conforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use.
- D. There shall be no increase in the amount of storm water runoff for the site over what was existing as of the date of the enactment of this law. The U.S.D.A. Soil Conservation Service, a Professional Engineer or other appropriate professional may be relied upon to recommend appropriate measures to control storm water runoff. Such measures shall be attached as conditions of approval by the Planning Board.
- E. In no case will a change, addition or extension of a non-conforming use be allowed which would result in a traffic increase that would decrease the Level of Service for the highway, the diversion of traffic closer to a nearby residence or a reduction of any of the parking and unloading requirements of this law where additional parking or loading would otherwise be required due to the change, addition or expansion. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this law, the Planning Board may require vegetative screening of the parking area from nearby residential areas.
- F. The use may only be expanded or extended onto another property of record if; that property is immediately

Town of Rochester Zoning Law

adjacent to the lot on which the original structure or use was located as of the effective date of this law or amendments hereto and the use is not one which has been altogether prohibited as a new use under this law.

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

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

A structure may be erected on any existing lot of record, providing the owner does not own adjoining property; no front yard is reduced in size and no side yard is reduced to less than 50 percent of the requirement for the district in which it is located or 20 feet, whichever is greater; and a sewage disposal system meeting New York State standards, including well and septic isolation distances, can be placed on the lot should public facilities be unavailable.

§ 140-44 [RESERVED]

Town of Rochester Zoning Law

Article 7 Special Use and Site Plan Review Procedures

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

§ 140-45 Preliminary Site Plan.

An applicant for a Special Use permit may submit a preliminary site plan for review and advice by the Planning Board. Such a preliminary site 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 which could have a bearing on the project including the general topography and existing ground cover. This preliminary plan shall be used by the Planning 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 preliminary site 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 permit application until formal application has been made on forms provided by the Board and a detailed site plan providing the following information has been submitted:

- A. The location of all existing watercourses, wooded areas, rights-of-way, roads, structures or any other significant man-made or natural feature, if such feature has an effect upon the use of said property.
- B. 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.
- C. 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.
- D. The location, dimensions and capacity of any proposed roads, off-street parking areas or loading berths, including typical cross-sections for all paving or regrading involved.
- E. The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelizations, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.
- F. The location and identification of proposed open spaces, parks or other recreation areas.
- G. The location and design of buffer areas and screening devices to be maintained.
- H. The location of trails, walkways and all other areas proposed to be devoted to pedestrian use.
- I. The location of public and private utilities, including maintenance facilities.

Town of Rochester Zoning Law

- J. The specific locations of all signs existing and proposed, including a visual depiction of the latter.
- K. Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, height and general design or architectural styling.
- L. A completed SEQRA Environmental Assessment.
- M. Any other information required by the Planning Board which is clearly necessary to ascertain compliance with the provisions of this law and limited to such information.

§ 140-47 Waivers.

The Town of Rochester Planning Board shall, pursuant to Section 274-a(5) of the Town Law, have the right to waive, when reasonable, any of the procedural requirements of this article for the approval, approval with modifications or disapproval of Special Use permits and site plans submitted for approval. 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 inappropriate 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.
- C. Waivers shall be limited to those situations where the full application of the requirements contained herein would generate unnecessary data and create unnecessary costs 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. 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. It shall give public notice of such hearing at least five (5) days prior to it in a newspaper of general circulation in the Town and decide upon the application within 62 days after such hearing. It shall not, however, grant approval before a decision has been made with respect to environmental impacts pursuant to SEQRA. The decision of the Planning Board shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant within five (5) business days after such decision is rendered.

§ 140-49 Conditions.

Town of Rochester Zoning Law

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental the proposed Special Use permit or site plan. Upon approval of said permit and/or plan, any such conditions shall be met prior to the actual issuance of permits by the Town. These conditions may include requirements of the applicant to provide parkland or to provide fees in lieu thereof pursuant to Section 274-a(6) of the New York State Town Law for new lots and residential units of any kind.

§ 140-50 Referrals.

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

§ 140-51 Appeals.

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

§ 140-52 Effect of Site Plan Approval.

The site plan as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the Planning Board. The site plan shall remain effective, as an authorization to establish the use, for a maximum of two years from the date of approval unless the Planning Board shall have granted an extension in writing. Absent such an extension the Special Use shall be deemed to have expired. A Special Use which has been discontinued for a period of two or more years shall also be deemed to have lapsed.

§ 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 following public notice and hearing and may be withheld only 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 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. Conservation features, aesthetics, landscaping and impact on surrounding development as well as on the entire town shall be part of the Planning Board review. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. The Planning Board shall further consider the following:

- A. Building design and location. Building design and location should be suitable for the use intended and compatible with natural and man-made surroundings. New buildings, for example, should generally be placed along the edges and not in the middle of open fields. They should also be sited so as to not protrude above treetops or the crestlines of hills seen from public places and busy highways. Building color, materials and design should be adapted to surroundings as opposed to adaptation of the site to the building or the building to

Town of Rochester Zoning Law

an arbitrary national franchise concept.

- B. Large commercial buildings. Commercial facades of more than 100 feet in length should incorporate recesses and projections, such as windows, awnings and arcades, along 20% of the facade length. Variations in rooflines should be added to reduce the massive scale of these structures and add interest. All facades of such a building that are visible from adjoining streets or properties should exhibit features comparable in character to the front so as to better integrate with the community. Where such facades face adjacent residential uses, earthen berms planted with evergreen trees should be provided. Loading docks and accessory facilities should be incorporated in the building design and screened with materials comparable in quality to the principal structure. Sidewalks should be integrated into a system of internal landscape defined pedestrian walkways breaking up all parking areas.
- C. Lighting and signage. Improvements made to the property should not detract from the character of the neighborhood by producing excessive lighting or unnecessary sign proliferation. Recessed lighting and landscaped ground signs are preferred.
- D. Parking and accessory buildings. Parking areas should be placed in the rear whenever possible and provide for connections with adjoining lots. Accessory buildings should also be located in the rear with access from rear alleys. If placement in the rear is not possible, parking lots should be located to the side with screening from the street.
- E. Drainage systems. Storm drainage, flooding and erosion and sedimentation controls should be employed to prevent injury to persons, water damage to property and siltation to streams and other water bodies.
- F. Driveway and road construction. Whenever feasible, existing roads onto or across properties should be retained and re-sued instead of building new, so as to maximize the use of present features such as stone walls and tree borders and avoid unnecessary destruction of landscape and tree canopy. Developers building new driveways or roads through wooded areas should reduce removal of tree canopy by restricting clearing and pavement width to the minimum required for safely accommodating anticipated traffic flows. All driveways and streets shall be subject to Town of Rochester requirements and review by the Superintendent of Highways.
- G. Construction on slopes. The crossing of steep slopes with roads and driveways should be minimized and building which does take place on slopes should be multi-storied with entrances at different levels as opposed to regrading the site flat.
- H. Tree borders. New driveways onto principal thoroughfares should be minimized for both traffic safety and aesthetic purposes and interior access drives which preserve tree borders along highways should be used as an alternative. Developers who preserve tree borders should be permitted to recover density on the interior of their property through use of clustering.
- I. Development at intersections. Building sites at prominent intersections of new developments should be reserved for equally prominent buildings or features which will appropriately terminate the street vistas. All street corners should be defined with buildings, trees or sidewalks.
- J. Streets and sidewalks. Cul-de-sac and dead-end streets should be discouraged in favor of roads and drives which connect to existing streets on both ends. Streets within residentially developed areas should be accompanied by on-street parking and a sidewalk on at least one side of the street. Where the area is already served with sidewalks, sidewalk extensions should also be provided from new commercial development areas to adjacent residential areas and pedestrian access should be encouraged.

Town of Rochester Zoning Law

§ 140-55 Special Use Review Criteria.

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

- A. Whether the proposed use will result in an overconcentration of such uses in a particular area of the Town or is needed to address a deficiency of such uses. The Board shall, in this regard, consider the suitability of the site proposed for a particular use as compared to the suitability of other sites in the immediate area.
- B. 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.
- C. 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.
- D. Whether the use will have a positive or negative effect on the environment, job creation, the economy, housing availability or open space preservation.
- E. Whether the granting of an approval will cause an economic burden on community facilities or services, including but not limited to highways, sewage treatment facilities, water supplies and firefighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Town shall be authorized to demand fees in support of such services where they cannot be directly provided by the applicant. This shall specifically apply, but not be limited to, additional fees to support fire-district expenses.
- F. Whether the site plan indicates the property will be developed and improved in a way which is consistent with that character which this law and the Town's Comprehensive Plan are intended to produce or protect, including appropriate landscaping and attention to aesthetics and natural feature preservation.

§ 140-56 Bonding of Site Improvements for Special Uses.

- 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

Town of Rochester Zoning Law

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 that 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 fifty percent (50%) of the original amount of the performance security.
 - (7) The performance security shall be released or reduced only by the Town Board and only upon recommendation of the Planning Board after certification by the Town Engineer or the town's consulting engineer that all or part of the required site improvements have been completed in conformance with the approved final site plan and all applicable regulation.
- D. Site improvements subject to bonding. The following items are considered essential to the principles stated above and shall be included in the amount of the performance security to be set:
- (1) Site grading, including replacement of topsoil and seeding, and including necessary structural features such as retaining walls and ground cover.
 - (2) Drainage, including waterways, conduits and all necessary appurtenances and structures.
 - (3) Water and sewer systems, including all wells, conduits, structures and appurtenances as may be required by those government agencies having final jurisdiction for approval of those system.

Town of Rochester Zoning Law

- (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 that any required site improvements have not been installed as provided in this section within the term of the performance security, the Town Board may 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 that 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]

§ 140-58 [RESERVED]

Town of Rochester Zoning Law

Article 8 Administration and Enforcement

§ 140-59 Building Inspector.

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

§ 140-60 Permit Requirements.

- A. No person shall construct, erect, alter, convert or use any building or structure, or part thereof, nor change the use of any land, subsequent to the adoption of this law, until a building permit and/or Certificate of Occupancy has been issued by the Building Inspector. This shall specifically include, but not be limited to wells, sewage disposal systems, enlargements, alterations, building demolitions and removals, conversions, electrical installations, plumbing installations, pools, sheds (metal or wood), fences, roofing, siding and signs. Applications for such permits shall be made to the Building Inspector prior to any construction activity and/or change in the use of land. The Officer shall review such applications and act upon them according to the requirements of this law, taking no action, however, until the Planning Board and/or Zoning Board of Appeals has first taken action, should the approval of either Board be required. A building permit shall authorize the applicant to proceed with construction proposed.
- B. Prior to use of the structure or the change in use of the land, a Certificate of Occupancy shall be required and shall be issued by the Officer, provided all construction has been in accord with the building permit granted and/or the proposed use is in compliance with this law. The Building Inspector shall be authorized to make such inspections as he deems necessary to ensure that construction does, in fact, comply with this law.
- C. The Building Inspector, with approval of the Town Board, may issue a temporary permit for an otherwise non-conforming 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.
- D. The Building Inspector shall ensure that all water supply and sewage disposal facilities proposed in connection with any building permit or Certificate of Occupancy application shall conform with New York State Department of Health guidelines.
- E. It shall be the duty of the Building Inspector to issue a building permit, provided that he is satisfied that the structure, building, sign and the proposed use conform with all requirements of this law, and that all other reviews and actions, if any, called for in this law have been complied with and all necessary approvals secured therefor.
- F. When the Building Inspector is not satisfied that the applicant's proposed development will meet the requirements of this law, he shall refuse to issue a building permit or Certificate of Occupancy, as the case may be, and the applicant may appeal to the Zoning Board of Appeals.

Town of Rochester Zoning Law

- G. 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.
- H. No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this law. Any person desiring to change the use of his premises shall apply to the Building Inspector for a Certificate of Occupancy. No owner, tenant or other person shall use or occupy any building or structure or premises thereafter erected or altered, the use of which shall be changed after the passage of this law, without first procuring a Certificate of Occupancy; provided, however, that an Certificate of Occupancy, once granted, shall continue in effect so long as there is no change of use, regardless of change in tenants or occupants.
- I. Though compliance with the development and use standards of this Law will still be required, the following activities shall not demand permits, except as may be required by the New York State Uniform Fire Prevention and Building Code:
 - (1) Aboveground swimming pools of two feet or less in depth.
 - (2) Portable structures of less than one-hundred-forty-four (144) square feet 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).
- J. All applications shall be made on forms as shall be developed and periodically updated by the Building Inspector. Applications shall include plot plans and such other information as is required to determine compliance with the requirements of this law.
- K. 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 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.
- L. Accessory building permits shall not be issued in advance of permits for principal permitted or Special Uses or without an existing principal use in place and being operated on an on-going basis. Passive uses such forestry shall not qualify for this purpose. However, accessory uses for other agricultural activities or in connection with seasonal occupations (e.g. structures used to store equipment or hunt camp structures) may be permitted as Special Uses. Accessory uses permitted under such circumstances shall be limited to those with the tangible and primary purpose of serving the principal use.
- M. The Building Inspector may issue a Certificate of Occupancy and/or Compliance to any legally existing use, provided the owner thereof so certifies and the Officer's investigations do not indicate otherwise.
- N. No permits shall be issued for any new uses where there are unremedied existing violations.

§ 140-61 State Environmental Quality Review Act Compliance.

All actions taken with respect to this law shall comply with the New York State Environmental Quality Review Act ("SEQRA") and applicants shall be responsible for providing such data as may be required to determine the significance of any environmental impacts associated with such actions.

Town of Rochester Zoning Law

§ 140-62 Violations and Penalties.

- A. Whenever a violation of this law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. Nothing herein shall, however, restrict the right of the Building Inspector to act on a violation absent a complaint.
- B. Should any building or structure be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land be used in violation of this law, the Town Board or the Building Inspector, in addition to other remedies, may institute an appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- C. Whenever a violation of this Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. The Town Board shall be responsible for directing further enforcement.
- D. Should any building or structure be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land be used in violation of this Law, the Town Board or the Building Inspector, in addition to other remedies, may institute an appropriate action or 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.
- E. A violation of this Law is hereby declared to be an offense punishable by a fine not exceeding three hundred fifty dollars (\$350); for conviction of a second offense, punishable by a fine of not less than three hundred fifty dollars (\$350) nor more than seven hundred dollars (\$700); and, upon conviction for a third or subsequent offense, punishable by a fine not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000). Each day's continued violation shall constitute a separate additional violation.
- F. The Building Inspector or acting Building Inspector, as the case may be, is hereby authorized to issue appearance tickets pursuant to the Criminal Procedure Law in the enforcement of this or any related laws of the Town of Rochester.

§ 140-63 Fees.

The Town Board shall, by resolution, establish and periodically update a schedule of uniform fees, charges and expenses associated with the administration and enforcement of this law. Such schedule may provide for the assessment to applicants of professional costs incurred in the processing and/or review of the applications made pursuant to this law.

§ 140-64 [RESERVED]

Town of Rochester Zoning Law

Article 9 Zoning Board of Appeals

§ 140-65 Establishment and Membership.

- A. There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law. Said Board shall consist of five (5) members of staggered 5-year terms, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.
- B. The Town Board shall also supersede the New York State Town Law pursuant to the Municipal Home Rule Law and, may during the annual reorganization meeting of Town Board, appoint an alternate member of the Zoning Board of Appeals to serve for a term of one year or until a successor is appointed. Such alternate member shall attend meetings and act in the capacity of a full member whenever regular members cannot attend or must recuse themselves due to conflicts of interest. Alternate members shall not participate in the Board's deliberation of any matter in which they are not called upon to act in replacement of a full member.

§ 140-66 Powers and Duties.

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

Town of Rochester Zoning Law

the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Area variances.

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

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

§ 140-67 Procedures.

- A. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson, or in his or her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses.
- B. Meeting of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- C. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days

Town of Rochester Zoning Law

and shall be a public record. Every decision of the Zoning Board of Appeals shall be made by resolution and include findings establishing the basis of the decision.

- D. The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. It shall also have authority to refer matters to the Town Planning Board for review and recommendation prior to making a decision.
- E. Except as otherwise provided herein, the jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative officials charged with the enforcement of this law. The concurring vote of three members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- F. Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officials charged with the enforcement of this law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all papers constituting the record for the action appealed.
- G. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed with the administrative office, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- H. The Zoning Board of Appeals shall fix a reasonable time, no more than 62 days following application, for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The hearing shall be conducted in accordance with rules of the Zoning Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures and allow for rehearings on the unanimous vote of the members present.
- I. The Zoning Board of Appeals shall decide upon the appeal within 62 days after the close of said hearing. The time within which the Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Board.
- J. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- K. At least five (5) days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal; and to the Ulster County Planning Department, as required by Section 239-m of the General Municipal Law. No Zoning Board of Appeals decision shall be made except in conformance with such 239-m procedures including requirements for an affirmative vote of no less than four (4) members of the

Town of Rochester Zoning Law

Board if it shall determine to approve an application which the County has recommended it disapprove or modify.

§ 140-68 [RESERVED]

Town of Rochester Zoning Law

Town of Rochester Zoning Map