

## **Chapter 140**

### **ZONING**

**[HISTORY: Adopted by the Town Board of the Town of Rochester 3-15-1983 by L.L. No. 1-1983. Amendments noted where applicable.]**

#### **ARTICLE I Title and Scope**

##### **§ 140-1. Scope.**

The following chapter provides for the regulating and restricting the location, construction, alteration, occupancy and use of buildings and structures and the use of land in the Town of Rochester and for said purposes dividing the Town into zoning districts.

##### **§ 140-2. Title.**

This chapter shall be known and may be cited as "The Zoning and Land Use Control Law of the Town of Rochester."

##### **§ 140-3. Enactment pursuant to state law; purposes.**

This chapter is enacted pursuant to the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, to protect and promote public health, safety, morals, comfort, convenience, economy, Town aesthetics and the general welfare and for the following additional purposes:

- A. To promote and effectuate the orderly physical development of the Town of Rochester;
- B. To encourage the most appropriate use of land in the community in order to conserve and enhance the value of property;
- C. To provide adequate and suitably located commercial facilities;
- D. To protect and enhance existing wooded areas, scenic areas and waterways and to preserve, where appropriate, the essentially rural character of the Town;
- E. To regulate building densities in order to assure access of light and circulation of air, in order to facilitate the prevention and fighting of fires, in order to prevent undue concentration of population and in order to provide efficient municipal utility services;
- F. To improve transportation facilities and traffic circulation and to provide adequate off-street parking and loading facilities;
- G. To realize a development plan property designed to conserve the use of land and the cost of municipal services;
- H. To assure privacy for residences and freedom from nuisances and things harmful to the

senses;

- I. To protect the community against unsightly, obtrusive, and noisome land uses and operations;
- J. To enhance the aesthetic aspects throughout the entire community and maintain its present natural beauty;
- K. To provide adequate and suitably located areas for resort activities;
- L. To provide and assure, where appropriate, adequate use of solar resources;
- M. To preserve and protect lands and buildings that are historically significant; and
- N. To allow persons to conduct businesses, trades or professions at home so long as such home occupations are clearly accessory uses in relation to the use of the property for residential purposes, do not result in external evidence (visual or otherwise) of such uses from the perimeter of the property and from the roadway(s) adjoining the property (except for parking and loading), do not result in excessive traffic, do not result in fire or other hazards, do not result in excessive energy or resource use and consequently do not change the residential character of the property and neighborhood. [Added 9-3-1992 by L.L. No. 3-1992]

## ARTICLE II Terminology

### § 140-4. Word usage.

- A. The word "shall" is always mandatory. The word "may" is permissive. "Building" or "structure" includes any part thereof. The word "lot" includes the word "plot" or "parcel." The word "person" includes an individual person, firm, corporation, copartnership and any other agency of voluntary action and is more specifically defined hereinafter.
- B. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for" and "occupied for."
- C. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number shall include the plural, and words used in the plural number shall include the singular, unless the context clearly indicates to the contrary.

### § 140-5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY BUILDING** — A building detached from and subordinate to a main building on the same lot and used for purposes customarily incidental to those of the main building.

**ACCESSORY USE** — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

**ADULT BOOK AND/OR VIDEO STORE** — An establishment, whether wholesale or retail, having more than 20% of its stock-in-trade in books, magazines, periodicals, recordings, films,

videotapes/cassettes, DVD's, or other viewing or audio materials for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual anatomical areas, and which establishment excludes minors by reason of age. [Added 12-29-2003 by L.L. No. 2-2003]

**ADULT CABARET** — An establishment which presents topless or bottomless dancers, strippers, male or female impersonators, exotic dancers or other similar entertainers, and which excludes minors by reason of age. [Added 12-29-2003 by L.L. No. 2-2003]

**ADULT HOTEL OR MOTEL** — A hotel or motel which is not open to the public generally, but which excludes minors by reason of age, or which makes available to its patrons, in their rooms, films, slide shows, videotapes/cassettes, DVD's and/or other viewing material with materials distinguished or characterized by their primary emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas which, if presented in a public movie theater, would exclude minors by reason of age. [Added 12-29-2003 by L.L. No. 2-2003]

**ADULT USE** — Any use constituting an adult book and/or video store, adult cabaret, adult hotel or motel, adult theater and/or massage establishment, as those terms are defined herein, or any other use which is distinguished or characterized by its emphasis on sexual activities or sexually anatomical areas, and which excludes minors by reason of age. Any use, such as a hotel, that includes any form of an adult use as a principal or as an accessory use shall be considered an "adult use" for the purposes of this chapter. [Added 12-29-2003 by L.L. No. 2-2003]

**ALTERATION** — As applied to a building or structure, a change or rearrangement in the structural parts or facilities of such building or structure or any enlargement thereof, whether by extension on any side or by any increase in height or the moving of such building or structure from one location to another or by winterizing of buildings not previously suitable for winter occupancy.

**AREA, BUILDING** — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of terraces and uncovered steps.<sup>1</sup>

**ATTIC** — That space of a building which is immediately below and wholly or partly within the roof framing. An attic with a finished floor shall be counted as 1/2 story in determining the permissible number of stories.

**AUTOMOBILE (AUTO)** — Refer to "motor vehicle."

**AUTOMOBILE JUNKYARDS** — Any place of storage or deposit, whether in connection with another business or not, where more than one unregistered, old or secondhand motor vehicle, including stock cars, no longer intended or in condition for legal use on the public highways are held, unless the same are fully enclosed within a building, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk more than one such vehicle.

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<sup>1</sup>. Editor's Note: Former definition for "area of special flood hazard" was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I)

(See "junkyard" definition).<sup>2</sup>

**BASEMENT** — A story partly below finished grade, having at least 1/2 of its height, measured from floor to ceiling, but not less than four feet, above average finished grade. A basement shall be counted as one story in determining the height of a building in stories.

**BED-AND-BREAKFAST ESTABLISHMENT** — An owner-occupied, detached, one-family dwelling unit that also contains guest rooms, where short-term lodging with food and drink is provided for compensation.<sup>3</sup>

**BILLBOARDS** — A sign or structure which directs attention to an idea, product, business activity, service or entertainment which is conducted, sold or offered elsewhere than upon the lot on which such sign is situated.

**BOARDINGHOUSE** — A building, other than a hotel, in which at least three, but not more than six sleeping rooms are offered for rent, with or without meals. A lodging house, tourist house or rooming house shall be deemed a boardinghouse.

**BOUNDARY LINE** — For purposes of this chapter, particularly with respect to Article V, the property line as set forth in the property owner's deed, except for that portion of the line which abuts a public road, private road, easement or right-of-way, in which case the boundary line shall be determined to be measured from the center of said public/private road, easement or right-of-way, regardless of what is called for in the owner's deed.

**BUILDING** — Any structure which is permanently affixed to the land, has one or more floors and a roof and is intended for the shelter, housing or enclosure of persons, animals or chattel, including mobile homes. (Refer to "mobile home" for detailed definition of the same.)<sup>4</sup>

**BUILDING, ACCESSORY** — Refer to "accessory building."

**BUILDING, DETACHED** — A building surrounded by open space on the same lot.

**BUILDING GROUP** — A group of two or more principal buildings and any buildings accessory thereto, occupying a lot in ownership and having any yard in common.

**BUILDING LINE** — The line, established by statute, local law or ordinance beyond which a building shall not extend, as specifically provided by law.

**BUILDING, MAIN** — A building in which is conducted the principal use of the lot on which it is located.

**BUILDING, PRINCIPAL** — A building in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING, SEMIATTACHED** — A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

**BULK** — A term used to describe the size, volume, area and shape of buildings and structures and

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2. Editor's Note: Former definition for "base flood" was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

3. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

the physical relationship of their exterior walls or their location to lot lines, other buildings and structures or other walls of the same building; and all open spaces required in connection with a building, other structure or tract of land.

**BUNGALOW COLONY** — A group of two or more vacation or residence dwelling units on a single premises designed for seasonal occupancy and not more than one of which is used for the purpose of all-year-round residence which premises does not contain a public lobby or dining rooms serving guests. The term "bungalow colony" includes cottage or cabin colonies or development but does not include trailer park, trailer camp, boardinghouse, hotel or motel.

**CAMP** — Any parcel of land on which are located two or more tents, shelters or other accommodations of a design or character suitable for summer season or other more or less temporary living purposes, including a day camp, but not including a travel trailer camp, boardinghouse, hotel or motel or bungalow colony and which is open to the public. "Summer season" shall mean from Memorial Day to September 30th.<sup>5</sup>

**CAMPING RESORT** — A parcel of land which is planned and improved as a commercial enterprise for the placement of two or more travel trailers, recreational vehicles (camping and park models), camping cabins and/or tents which are used as temporary vacation living quarters for occupancy by any respective party in any particular camping resort for no more than 180 consecutive days. This use does not include a camp. [Added 8-5-1993 by L.L. No. 3-1993]

**CELLAR** — Any space in a building, the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. A cellar shall not be counted in determining the permissible number of stories.

**CLUB MEMBERSHIP** — An organization catering exclusively to members and their guests or premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, provided that there are not conducted any vending stands, merchandising or commercial activities, except as required generally for the membership and purposes of such club.

**COMMERCIAL VEHICLE** — A vehicle of more than one ton capacity used for the transportation of persons or goods primarily for gain or a vehicle of any capacity carrying a permanently affixed sign exceeding one square foot in area or lettering of a commercial nature.

**COMMUNITY POLE** — A sign owned and maintained by the Town Board by a group of business people as approved by the Town Board and which sign contains several directional signs for the purpose of directing persons to business and community establishments within the community.

**CONTRACTOR'S YARD** — Any space, whether inside or outside a building, used for the storage or keeping of construction equipment, machinery or vehicles or parts thereof, which are in active use by a construction contractor.

**COVERAGE** — That lot area or percentage of lot area covered by buildings or structures, including accessory buildings and structures.<sup>6</sup>

**DEVELOPMENT** — The utilization of a lot or tract of land for two or more uses.

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<sup>5</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>6</sup>. Editor's Note: Former definition for "dangerous building" was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I)

DISTRICT, MORE RESTRICTED OR LESS RESTRICTED — In the following lists, each district shall be deemed to be more restricted than the districts which follow it: F, HD, R-2, R-1, A, B and I.<sup>7</sup>

DRIVE-IN MOVIE — An open lot or part thereof, with appurtenant facilities devoted primarily to the showing of moving pictures, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

DUMP — A lot or land used primarily for the disposal by abandonment, burial, burning or any other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or part thereof or waste material of any kind.

DWELLING — A building designed or used principally as the living quarters for one or more families. The terms "dwelling," "one-family dwelling," "two-family dwelling," "multifamily dwelling," "multiple-dwelling" or "dwelling group" shall include mobile homes but shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy. (See "residence")<sup>8</sup>

DWELLING, MULTIFAMILY — A dwelling containing three or more dwelling units and occupied or designed for occupancy by three or more families living independently of each other.<sup>9</sup>

DWELLING, ONE-FAMILY — A building containing one dwelling unit only.

DWELLING, TWO-FAMILY — A building containing two dwelling units.

DWELLING UNIT — A building or portion thereof providing complete housekeeping facilities for one family.

FAMILY — One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit.<sup>10</sup>

FINISHED GRADE — The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade (in computing the height of building and other structures or for other purposes) shall be the average elevation of all finished grade elevations around the periphery of the building.<sup>11</sup>

FLOOR AREA — The aggregate sum of the gross horizontal areas of the several floors of the building or buildings measured from the exterior walls or from the center lines of walls separating two buildings.

A. In particular, the floor area of a building or buildings shall include:

(1) Basement space.

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7. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

8. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

9. Editor's Note: Former definition for "dwelling group" was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I)

10. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

11. Editor's Note: Former definition for "flood or flooding" was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I)

- (2) Elevator shafts and stairwells at each floor.
- (3) Floor space for mechanical equipment, with structural headroom of seven feet and six inches, or more.
- (4) Penthouse.
- (5) Attic space (whether or not a floor has actually been laid), providing structural headroom of seven feet and six inches or more.
- (6) Interior balconies and mezzanines.
- (7) Enclosed porches.
- (8) Accessory uses, not including space for accessory off-street parking.

B. However, the floor area of a building shall not include:

- (1) Cellar space, except that cellar space used for retailing shall be included for the purposes of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.
- (2) Elevator and stair bulkheads, accessory water tanks and cooling towers.
- (3) Floor space used for mechanical equipment, with structural headroom of less than seven feet and six inches.
- (4) Attic space, whether or not a floor has actually been laid, providing structural headroom of less than seven feet and six inches.
- (5) Uncovered steps; exterior fire escapes.
- (6) Terraces, breezeways, open porches and outside balconies and open spaces.
- (7) Accessory off-street parking spaces.
- (8) Accessory off-street loading berths.

**GARBAGE** — Includes waste food or parts thereof, vegetable matter of any kind or any other matter which shall be capable of fermentation or decay or which shall give off an odor.

**GASOLINE FILLING STATION** — An area of land, including structures thereon or any building or part thereof, that is used primarily for the sale and direct delivery to the motor vehicles of gasoline or any other motor vehicle fuel or oil and other lubricating substances, including any sale of motor vehicles accessories and which may or may not include facilities for lubricating, washing (which does not require mechanical equipment) or otherwise servicing motor vehicles, but not including auto bodywork, welding or painting.

**HEIGHT OF BUILDING** — The vertical distance measured from the average finished grade along the wall of the building (or adjacent to the side of the structure) to the highest point of such building or structure.

**HIGH TENSION LINE** — Any electric line operating at voltage in excess of 69kv.

**HOME OCCUPATION** — Any business, trade or profession which is conducted in a dwelling

and/or in an accessory building thereto and which is carried on by members of the family residing on the property with or without nonresident employees and which is clearly an accessory use in relation to the residential use of the premises. [Added 9-3-1992 by L.L. No. 3-1992]

**HOSPITAL** — A building containing beds for four or more patients and used for the diagnosis, treatment or other care of ailments and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

**HOTEL** — A building or part thereof which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms and is open to the public.

**HOUSE TRAILER OR MOBILE HOME** — Refer to "mobile home."

**JUNKYARD** — An area of land with or without buildings used or occupied by the storage, keeping or abandonment of junk, including scrap metals or other scrap, used or salvaged building materials, or the dismantling, demolition or abandonment of machinery or parts thereof.

**KENNEL** — Any place at which there are kept any number of dogs for the primary purpose of sale or for the boarding, care or breeding for which a fee is charged or paid.

**LIVABLE FLOOR AREA** — The enclosed floor area of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes, excluding unfinished basements and cellars, rooms for heating equipment, garages, porches, closets, bathrooms, water closet compartments, laundry, bungalows and other unheated areas, and including only such floor area under a sloping ceiling for which the headroom is not less than five feet six inches and then only if at least 75% of such floor area has a ceiling height of seven feet six inches and if any such floor that is situated above another story has access to the floor below by a permanent built-in stairway.

**LOT** — A defined portion or parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use or ownership and the customary accessories and open spaces belonging to the same.

**LOT, CORNER** — A lot situated at the junction and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135°.

**LOT COVERAGE** — Refer to "coverage."

**LOT, DEPTH OF** — The mean distance from the front street line of a lot to its rear line.

**LOT FRONTAGE** — A lot line which is coincident with a street line.

**LOT LINES** — The lines bounding a lot as defined herein.

**LOT THROUGH** — A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

**LOT WIDTH** — The horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines; or the width of a lot measured along the real line of the required front yard.

**MANUFACTURED HOME** — Any residence which is designed to be transported to a home site and which is used, designed to be used or capable of being used as a detached single-family

residence and which is intended to be occupied as permanent living quarters, containing sleeping accommodations, a flush toilet, a tub or shower, kitchen facilities and plumbing and electrical connections for attachment to outside systems. [Amended 4-2-1998 by L.L. No. 1-1998; 11-8-2004 by L.L. No. 6-2004]

**MANUFACTURED HOME PARK** — A tract of land which is used or intended to be used for the siting of two or more manufactured homes which are used as dwellings, subject to the exceptions set forth in § 140-25I of this chapter. [Amended 4-2-1998 by L.L. No. 1-1998; 11-8-2004 by L.L. No. 6-2004]

**MOTEL** — A building or group of buildings containing individual living and sleeping accommodations for hire, each of which is provided with a separate exterior entrance and a parking space and is offered for rental and use principally by motor vehicle travelers. The term "motel" includes, but is not limited to, every type of similar establishment known variously as an auto court, motor hotel, motor court, motor inn, motor lodge, tourist court, tourist cabins, roadside hotel.

**MOTOR VEHICLE** — All vehicles propelled or drawn by power other than muscular power, originally intended for use on public highways, including stock cars.

**NONCONFORMING BULK** — That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this chapter, either following its effective date or as a result of subsequent amendments thereto.

**NONCONFORMING USE** — Any use of a building, other structure or tract of land, which does not conform to the use regulations for the district in which such use is located, either at the effective date of this chapter or as a result of subsequent amendment thereto.

**NURSERY SCHOOL** — Any place, however designated, operated for the purpose of providing daytime care or instruction for two or more children from two to five years of age, inclusive, and operated on a regular basis, including kindergartens, day nurseries and day-care centers.

**NURSING OR CONVALESCENT HOME** — A building with less than 15 sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**PERSON** — Includes an individual, society club, firm, partnership, corporation, association or any other legally recognizable entity that has the capacity to own and/or operate real property. The singular number shall include the plural number.

**POSTER** — A temporary, nonpermanent device, which announces, directs or advertises any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, show, drive, movement or event.

**PREMISES** — A lot, together with all the buildings and uses thereon.

**PRIVATE INSTITUTION** — A building, other than a hotel, in which at least three but not more than six sleeping rooms are offered for occupancy with or without meals, or a building or any part thereof which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms and which is not open to the public.

**REFUSE** — Includes waste metal, metal cans, ashes, cinders glass, pottery, paper, cardboard, rags,

bottles, rubbish, wood, lumber and all other discardable substances other than garbage.

**RESIDENCE, RESIDENTIAL**<sup>12</sup> — A building or any part of a building which contains living and sleeping accommodations for permanent occupancy. Residence, therefore, includes all one-family, multifamily, boarding, fraternity and sorority houses and mobile homes. However, residence shall not include the following:

- A. Transient accommodations, such as hotels, motels and hospitals; or
- B. That part of a building containing both residences and other uses which are used for nonresidential use, except accessory uses for residences.

**RESIDENT** — A person having a domicile or residence of a temporary or permanent nature within the limits of the Town of Rochester, Ulster County, New York.

**RESORT HOTEL, RESORT RANCH, RESORT LODGE** — An area of land on which is located a hotel or group of buildings containing living and sleeping accommodations hired out for compensation, which has a public lobby serving guests and contains one or more dining rooms and recreation facilities.

**RIDING ACADEMY** — Any establishment where horses are kept for riding, driving or stabling for compensation.

**RIGHT-OF-WAY** — Access to property by means of an easement.

**ROAD STAND** — A light structure or building with a roof, either attached to the ground or movable, intended for the sale of local produce to the general public.

**SETBACK** — The distance in feet as prescribed in the Density Control Schedule.<sup>13</sup>

**SIGN** — Any structure or part thereof or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing picture, banner, flag, insignia, device, marking or representation used as or which is in the nature of an announcement, direction or advertisement. Includes a billboard, neon tube, fluorescent tube or other artificial light or string of lights, outlining or hung upon any part of a building or lot for the purposes mentioned above, but does not include a flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive, movement or event which is temporary in nature.

**SIGN, ADVERTISING** — A sign which directs attention to a business commodity, service or entertainment conducted, sold or offered elsewhere than on the premises and only incidental on the premises, if at all.

**SIGN AREA** — The area within the shortest lines that can be drawn around the outside perimeter of a sign, including all decorations and lights, but excluding the supports if they are not used for advertising purposes. All faces of the sign shall be counted in computing the area. Any neon tube, string of lights or similar device shall be deemed to have minimum dimensions of one foot.

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12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

13. Editor's Note: The Density Control Schedule is located at the end of this chapter.

**SIGN, DIRECTLY ILLUMINATED** — A sign which incorporates any artificial lighting as an inherent part or feature or which depends on transparent or translucent material or electricity or radioactivated or gaseous material or substance for its illumination.

**SIGN, FLASHING** — An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

**SIGN, ILLUMINATED** — A sign designed to give forth any artificial light or designated to reflect such light deriving from any source which is intended to cause such light or reflection.

**SIGN, INDIRECTLY ILLUMINATED** — A sign illuminated with an artificial light, which is separated from or is not an intrinsic part of the sign itself.

**SIGN, REPRESENTATIONAL** — Any three-dimensional sign which is built so as to physically represent the object advertised.

**SINGLE OWNERSHIP** — Possession of land under a single or united control, whether by sole, joint, common or other ownership or by a lease having a term of not less than 30 years, regardless of any division of such land into parcels for the purpose of financing.

**SOLAR ACCESS** — The provision for the accommodation of solar energy systems and equipment and access to unobstructed sunlight for both residences and businesses.<sup>14</sup>

**STORY** — That part of a building comprised between a floor and the floor or roof next above it. (Also, see "attic," "basement" and "cellar.")

**STORY, HALF** — That portion of a building situated above a full story and having at least two opposite exterior walls meeting a sloping roof at a level not higher above the floor than a distance equal to 1/2 the floor-to-ceiling height of the story below.

**STREET** — An existing public way or private way which affords principal means of access to abutting properties and is suitably improved; or a proposed way shown on a plat approved by the Planning Board and/or recorded in the office of the County Clerk.

**STREET WIDTH** — The width of the right-of-way or the distance between property lines on opposite sides of a street.

**STRUCTURE** — Anything constructed or erected which requires location on the ground or attachment to something having location on the ground including but not limited to buildings, fences, walls, stadiums, sheds, display stands, storage bins, signs, reviewing stands gasoline pumps and mobile dwellings (whether mobile or stationary at the time). [Amended 4-2-1998 by L.L. No. 1-1998]

**TRAILER, TRAVEL** — A vehicular portable structure which may be either towed or self-propelled, designed as a temporary dwelling for travel, recreational and vacation use. [Amended 4-2-1998 by L.L. No. 1-1998]

**TRAVEL TRAILER CAMP** — A parcel of land which is planned and improved as a commercial enterprise for the placement of two or more travel trailers which are used as temporary vacation living quarters for occupancy by any respective party in any particular travel trailer camp for no

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14. Editor's Note: Former definition for "substantial improvement" was deleted 4-2-1998 by L.L. No. 1-1998.

more than 180 consecutive days. This use includes camping resort. [Amended 8-5-1993 by L.L. No. 3-1993; 4-2-1998 by L.L. No. 1-1998]

**UNIT AREA** — For mobile home parks and travel trailer camps, the designated area or site allotted to each mobile home or travel trailer as delineated on the park or camp plan. [Added 4-2-1998 by L.L. No. 1-1998]

**USE** — This term is employed in referring to:

- A. The purpose for which any buildings, other structures or land may be arranged, designed intended, maintained or occupied.
- B. Any occupation, business activity or operation conducted (or intended to be conducted) in a building or other structures or on land.

**VACATION RESIDENCE** — A home or bungalow not serving as the primary residence for an individual(s) and/or family.

**VARIANCE, AREA** — The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this chapter. [Added 4-2-1998 by L.L. No. 1-1998]

**VARIANCE, USE** — The authorization by the Zoning Board of Appeals for the use of land for a purpose which is not allowed by this chapter. [Added 4-2-1998 by L.L. No. 1-1998]

**WAY** — A thoroughfare, however designated, permanently established for passage of persons or vehicles.

**WINTERIZATION** — The process of renovating a building so that it may be occupied on a year-round basis.

**YARD, FRONT** — A yard extending across the full width of the lot and lying between the front lot line of the lot and the nearest point of the building.

**YARD, REAR** — A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest point of the building.

**YARD, REQUIRED** — That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of a district in which the yard is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

**YARD, SIDE** — A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard), to the rear yard front line (or rear lot line).

**WORKSHOP** — An establishment where the manufacture, assembly and/or repair of gifts, antiques and/or crafts is conducted on the premises by no more than five persons. [Added 4-2-1998 by L.L. No. 1-1998]

**ARTICLE III**  
**Establishment of Districts.**

**§ 140-6. Names of zoning districts.** [Amended 6-3-1993 by L.L. No. 1-1993; 11-8-2004 by L.L. No. 6-2004]

In order to fulfill the purpose of this chapter, the Town of Rochester establishes and hereby is divided into the following eight zoning districts:

HD: Hamlet Development
A: Residence - one family per one acre, average
R-1: Residence - one family per one acre, average
R-2: Residence - one family per one acre, average
B: General Business
I: Light Industrial
F: Floodplain
MHP: Manufactured Housing Park

**§ 140-7. Zoning Map.**

The location and boundaries of said zoning districts are shown on the map entitled "Zoning Map," certified as adopted by the Town Clerk. Said map, together with everything shown thereon and all amendments thereto, is hereby adopted and is declared to be an appurtenant part of this chapter.

**§ 140-8. Interpretation of district boundaries.**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines or right-of-way lines of streets, highways, public utility easements and aqueducts or watercourses, said boundaries shall be construed to be coincident with such lines. Such boundaries shall be deemed to be automatically moved if a center line or right-of-way line of such street, highway, public utility, aqueduct or watercourse is moved a maximum distance of 50 feet.
- B. Where district boundaries are indicated as approximately following the Town boundary line, property lines, lot lines or projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.
- C. Where district boundaries are so indicated that they are approximately parallel to the Town boundary line, property lines, lot lines, right-of-way lines or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.
- D. Where a district boundary line divides a lot in a single or joint ownership of record at the time such line is established, the regulations for the less restricted portion of such lot shall extend not more than 30 feet into a more restricted portion.
- E. In all other cases where not dimensioned, the location of boundaries shown on the map shall

be determined by the use of the scale appearing thereon.

**§ 140-9. Application of district regulations.**

Except as hereinafter provided:

- A. No land or building shall hereafter be used, occupied, erected, moved or altered unless in conformity with the regulations, hereinafter specified for the district in which it is located.
- B. No building shall hereafter be erected or altered which:
  - (1) Exceeds the maximum height;
  - (2) Occupies a greater percentage of lot area;
  - (3) Accommodates or houses a greater number of families; or
  - (4) Has a narrower or small front yard, rear yard, side yard or other open space than is required or permitted for the district in which such building is located.
- C. No part of a yard or other open space required about any building shall be included as part of a yard or other open space similarly required for another building.
- D. No off-street parking or loading space required for one building or use shall be included as meeting, in whole or part, the off-street parking or loading space required for another building or use, except as provided in § 140-21.
- E. No off-street parking or loading space shall be so reduced in area that it does not meet the requirements of this chapter.

ARTICLE IV  
**Use Regulations**

**§ 140-10. Permitted uses; conditional uses.** [Added 4-2-1998 by L.L. No. 1-1998]

No building or premises shall be erected, altered or used except for one or more of uses designated for any district as listed on the Schedule of Zoning Uses.<sup>15</sup>

**§ 140-11. Prohibited industrial uses.** [Added 4-2-1998 by L.L. No. 1-1998]

In any district, no use or purpose that is noxious or offensive by reason of the emission of odor, dust, smoke, toxic or noisome fumes, radiation, gas, noise, vibration or excessive light or any combination of the above, which is dangerous and prejudicial to the public health, safety and general welfare shall be permitted, and this includes more specifically, but is not limited to, the following such uses:

- Acetylene gas manufacture for commercial purposes
- Ammonia, chlorine or bleaching powder manufacture
- Arsenal
- Asphalt manufacture or refining

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<sup>15</sup>. Editor's Note: The Schedule of Zoning Uses is located at the end of this chapter.

Blast furnace, not including cupola or converter furnace used in foundries and in which no wood is used as fuel

Boiler shops, structural steel fabricating shops, metal working shops, which operate reciprocating hammers or chisels or other noise-producing electric or pneumatic tools within 100 feet of any boundary line of the premises and outside of any masonry buildings

Bronze and aluminum powder manufacture

Carbon, lampblack, show blacking, graphite or stove polish manufacture

Celluloid and other cellulose products manufacture

Cement manufacture

Coal tar products manufacture

Creosote treatment or manufacture

Disinfectant and insecticide manufacture

Distillation of coal, wood or bones

Dump, unless operated or controlled by the municipality

Excelsior and fiber manufacture

Explosives, fireworks or match manufacture, assembling or storage in bulk, except the manufacture, assembling and storage in bulk of safety matches in book form

Fat rendering

Fertilizer manufacture or potash refining

Glue, size or gelatine manufacture or processing involving recovering from fish or animal offal

Incinerator, unless operated by the municipality

Industrial chemical waste dumps or dumping

Junkyard (nonautomobile)

Lime, gypsum, cement, plaster or plaster of paris manufacture, except the mixing of plaster

Linoleum or oil cloth manufacture

Nuclear power plant

Ore reduction or the smelting of iron, copper, tin, zinc or lead

Paint, oil, varnish, turpentine, shellac or enamel manufacture, except the mixing of wet paints

Perfume and extract manufacture

Petroleum refining

Poisons manufacture; fumigates, carbon disulfide, hydrocyanic acid, ethyl, stomach poisons, arsenate of lead, arsenate of calcium, hellabore and Paris green, contact insecticides, lime, sulphur, nicotine, kerosene emulsions printing ink manufacture

Radioactive waste dumps or dumping

Radium extraction

Rubber caoutchouc or gutta-percha manufacture from crude or scrap material, except in connection with a rubber products manufacture plant

Salt works

Sandpaper and emery cloth manufacture

Soap, soda ash or washing compound manufacture, except products not containing caustic soda

Starch, glucose or dextrine manufacture

Stockyards

Storage, coloring, curing, dressing or tanning of raw or green salted hides or skins

Sulphurous, sulfuric, nitric, picric or hydrochloric acid or other corrosive or offensive acid manufacture or their use or storage, except on a limited scale as an accessory to a permitted industry

Tallow, grease, lard or candle manufacture or refining

Tar distillation or the manufacture of aniline dyes

Tar roofing or waterproofing manufacture, except where the tar or asphalt is treated at a temperature under 100° F.

Tobacco processing, exclusive of cigar or cigarette manufacture

Vinegar, pickle or sauerkraut manufacture in bulk

Wool pulling or scouring, except in connection with a woolen mill

Yeast manufacture

## ARTICLE V Area and Bulk Regulations

### § 140-12. Purpose.

In order to provide adequate open spaces for access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population and to lessen congestion on streets, no building or premises shall be erected, altered or used except in accordance with the standards set forth in this article.

### § 140-13. Density control schedule.

The attached schedule of density control regulations is hereby adopted and declared to be a part of this chapter and is hereinafter referred to as the "Density Control Schedule."<sup>16</sup>

### § 140-14. Corner lots.

Wherever a side or rear yard is adjacent to a street, the standards for front yards shall apply.

### § 140-15. Projections into required yards.

- A. The following projections into required yards may be permitted:
- (1) Open fire escapes: four feet into required side or rear yards.
  - (2) Awnings or movable canopies: six feet into any required yard.
  - (3) Cornices, eaves and other similar architectural features: three feet into any required yard.
- B. Porch or carport. Any open or enclosed porch or carport shall be considered a part of the building in the determination of the size of the required yard or lot coverage.
- C. Accessory uses. Accessory uses not enclosed in a building shall not be located in a required front or side yard but may be located in a required rear yard, subject to the provisions of § 140-20E.

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<sup>16</sup>. Editor's Note: The Density Control Schedule is located at the end of this chapter.

**§ 140-16. Height exceptions.**

District building height regulations shall not apply to flagpoles, radio or television antennas, transmission towers or cables, spires or cupolas, chimneys, elevators or stair bulkheads, parapets or railings, water tanks or cooling towers or any similar structures, provided that such structure in its aggregate coverage occupy no more than 10% of the roof area of the building. Barns and silos may exceed the height limitations of this chapter.

**§ 140-17. Compliance with minimum lot area per dwelling unit requirement.**

- A. Where two or more principal residential structures are permitted by this chapter to be located on the same lot, the minimum lot area per dwelling unit requirement and the minimum set back requirement must be complied with.
- B. A residential lot of required or larger than required size as set forth in this chapter shall not be reduced in size for transfer of ownership if such lot so subdivided will form two or more lots which shall not be in compliance with the requirements for the minimum lot area per dwelling unit for the district in which such lot or lots are situated, except as provided in § 140-28.

**§ 140-18. Side yards for semidetached and attached dwellings.**

Side yards for semidetached and attached dwellings shall be required at the ends of the total structure only.

**§ 140-19. Distance between principal buildings on the same lot.**

No detached principal building shall be closer to any other principal building on the same lot than the average heights of said buildings, but must also comply with the minimum setback requirements.

ARTICLE VI  
**Supplementary Regulations**

**§ 140-20. General provisions.**

- A. Home occupation. [Amended 9-3-1992 by L.L. No. 3-1992]
  - (1) Where permitted, nothing in this chapter shall prevent an individual from conducting his business, trade or profession in his home and/or in an accessory building thereto, provided that no more than two persons be employed in the home occupation(s) in addition to a maximum of five members of the family residing on the property; that no other person shall be permitted to share, let or sublet space for any business, trade or professional use; that there be no external evidence (visual or otherwise) of such use from the perimeter of the lot and from the roadway(s) adjoining the lot except for parking and loading and except for one sign not to exceed four square feet in an R-2 District and eight square feet in the R-1 and A Districts. Signage in the General Business District shall be as permitted in § 140-24 herein.
  - (2) There may be, out-of-doors on each lot, a maximum of three vehicles which are

actively being repaired, so long as these vehicles cannot be seen or heard from the perimeter of the lot and from the roadway(s) adjoining the lot. Junk vehicles or vehicles which are being used to supply parts to other vehicles shall not be parked out-of-doors on the lot. The conducting of a hospital, clinic, animal hospital, etc., shall not be deemed a home occupation.

- (3) Off-street parking shall be provided for all residents, employees and customers in accordance with § 140-21 herein. Parking areas and access drives shall be located and designed so as to minimize disturbance to adjacent properties and shall be screened if necessary to accomplish this purpose. More than one home occupation may be conducted on a parcel, provided that the home occupations individually and jointly comply with the standards herein.
  - (4) Home occupations which are permitted by right shall be subject to the issuance of a zoning permit by the Code Enforcement Officer in accordance with § 140-53 of this chapter.
- B. Excavations. Any proposed excavation adversely affecting natural drainage or structural safety of adjoining buildings or lands shall be prohibited. Excavations shall not create any noxious or injurious substance or condition or cause public hazard. In any district, excavation relating to the construction on the same lot of a building or structure for which a building permit has been issued shall be permitted. In the event that construction of a building or structure is stopped prior to completion and the building permit is allowed to expire, the premises shall immediately be cleared of any rubbish or building materials, and any excavation with a depth greater than two feet below existing grade shall immediately be filled in and the topsoil replaced, or all such excavations shall be entirely surrounded by a substantial fence of at least six feet high that will effectively block access to the area in which the excavation is located and such fence shall be properly maintained (NOTE: For excavations for soil mining, See § 140-36I).
- C. Activity standards. In any district, the following standards of activities shall apply:
- (1) No offensive or objectionable vibration or glare shall be noticeable at or beyond the property line.
  - (2) No activity shall create a physical hazard by reason of fire, explosion, radiation or other such cause to persons or property in the same or adjacent district.
  - (3) There shall be no discharge of any liquid or solid waste into any stream or body of water or any public or private disposal system or into the ground of any materials that may contaminate any water supply, including groundwater supply.
  - (4) There shall be no storage of any material either indoors or outdoors in such a manner that it facilitates the breeding of vermin or endangers health in any way.
  - (5) The emission of smoke, fly ash or dust which can cause damage to the health of persons, animals or plant life or to other forms of property shall be prohibited.
- D. Planned new streets. After the planned right-of-way line for future streets, for future extensions of existing streets or for future street widening is established on the Official Map, if any, buildings and structures shall be set back from such line as though it were a street line.

- E. Accessory buildings and uses:
- (1) Accessory buildings not attached to the principal buildings shall be located no closer to the principal building than 12 feet or a distance equal to the height of each accessory building, whichever is greater.
  - (2) In a residential district, accessory uses not enclosed in a building, including swimming pools and tennis courts, may not be located in front yards of such lot and shall be distant not less than 20 feet from any lot line. No boat, trailer nor truck over one ton capacity shall be stored on any residential lot in any district, except in the rear yard and not closer than the required side yard setback to any lot line.
- F. Corner clearance. For the purpose of minimizing traffic hazards at street intersections, on any corner lot no obstructions between a height of 2 1/2 feet and 10 feet above the adjacent center line elevation shall be permitted to be planted, placed, erected or maintained within the triangular area formed by the intersecting pavement lines or their projections, where corners are rounded and a straight line joining the pavement lines at points 50 feet distant from their point of intersection.
- G. Fences and walls. The requirements of this chapter shall not apply to necessary retaining walls, fences or walls not exceeding a height of six feet in any side or rear yard in an HD, R-1 or R-2 District and not exceeding a height of four feet in any front yard of an HD, R-1 or R-2 District except where corner sight distances are required for traffic safety. In any A, business or industrial district, there shall be no restriction on fences or walls, except on an HD, R-1 or R-2 District boundary line where such fences or walls shall be limited to eight feet in height and except where corner clearances are required.<sup>17</sup>
- H. Commercial parking lots. Commercial parking lots shall comply with the provisions of § 140-21F, J and K.
- I. Transition requirement.
- (1) Where a lot in a business district or industrial district, or where a parcel of land is used for business or industry, abuts a lot in a residence district, there shall be provided along such side or rear lot line in the business or industrial district a wall, fence, compact evergreen hedge or a landscaped strip of trees or shrubs so designed as to form a visual screen not less than six feet in height at the time of planting, except for landscaped areas and parking areas, a use which is not conducted within a completely enclosed building shall be screened by a six-foot solid masonry wall, chain-link fence covered with an evergreen vine or compact evergreen hedge, unless said requirement is waived by the Zoning Board of Appeals after application and hearing.
  - (2) Where a lot in an industrial district established as part of the floating industrial district abuts a lot in a residential district, such lot in the industrial district shall meet the requirements of sections.

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<sup>17</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

J. Agriculture. [Amended 1-5-1989 by L.L. No. 1-1989; 6-3-1993 by L.L. No. 1-1993<sup>18</sup>]

- (1) Shall include buildings and activities, except farms expressly for the disposal of fill and farms expressly for garbage disposal. The processing and storage of agriculture products, including packing, warehousing, and storing, is permitted, except that rendering and fertilizer plants are prohibited, pursuant to the provision of § 140-11. The unenclosed storage of manure or areas for storage of dead fowl or other odor or dust producing substance or use shall not be permitted within 100 feet of a property line or public street right-of-way. Buildings for the housing of fowl or farm animals shall not be located in the required front yard nor within 50 feet of a property line. Any buildings presently within the aforementioned 50 feet will be considered a prior nonconforming building as set forth under Article VIII of this chapter.
- (2) The keeping of customary household pets is permitted in any district. Household pets shall not include any of the animals set forth under Subsection J(4) and (5) of this section.
- (3) The keeping of farm animals for noncommercial purposes on all parcels of 3.1 acres or more is a permitted use and requires no permit.
- (4) The keeping of farm animals for noncommercial purposes on all parcels containing less than 3.1 acres is permitted in some combination of the list below, provided that a special use permit is obtained.
  - (a) No more than one horse per one acre of land.
  - (b) No more than one cow or other large farm animal per one acre of land.
  - (c) No more than eight sheep, goats, pigs or other medium-sized farm animals per acre of land.
  - (d) No more than 15 rabbits or other small farm animals (excluding fowl) per acre of land.
  - (e) No more than 50 fowl per acre of land.
- (5) In all cases, animals shall be adequately sheltered, fenced and otherwise maintained so as not to create a nuisance to surrounding properties and shall be maintained in a sanitary manner. For the keeping of cooped fowl for noncommercial purposes on residential and hamlet development parcels, the minimum area to be allotted is as follows:
  - (a) Small fowl such as chickens, two square feet per bird.
  - (b) Large fowl such as turkeys, four square feet per bird.
- (6) Densities higher than those listed above may be permitted by obtaining a special use permit from the Planning Board of the Town of Rochester.
- (7) Noncompliance of the above law shall be subject to a fine as set forth in § 140-59 for

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18. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

such violation. Parcels which are not in compliance with this chapter as of its effective date shall not be subject to a fine, provided that they reduce the amount of farm animals on said parcel through attrition to a point where they are in compliance with this chapter.

- (8) Notwithstanding the limitations set forth in this article, there shall be no permit required, nor limitation imposed, upon individuals involved in 4-H project(s), provided that proof of 4-H endorsement thereto or membership thereof is submitted to the Code Enforcement Officer.<sup>19</sup>

**§ 140-21. Off-street parking and loading regulations.**

- A. In all districts, off-street automobile parking spaces and truck loading areas for the various permitted uses shall be required at the time any of the main building or structures of such uses are constructed or altered.
- B. Required minimum off-street automobile parking spaces. The minimum cumulative number of spaces shall be determined by the amount of dwelling units, bedrooms, floor area, members, equipment, employees and/or seats contained in such new buildings or structures or added by alteration of building or structures, and such minimum number of spaces shall be maintained by the owner of such buildings or structures.
- C. Specific minimum parking requirements:
- (1) Office, business and commercial uses:
    - (a) For retail business or service, bank or post office: one space for each 200 square feet of customer floor area.
    - (b) For office, including professional, personal service, public utility: one space for each 200 square feet of gross office floor area.
    - (c) For restaurant, bar or nightclub: one space for each 50 square feet of customer floor area.
    - (d) For funeral home: one space for each five seats of chapel or chapels capacity.
    - (e) For any commercial use: one space for each company vehicle in addition to other required spaces.
    - (f) For hotel, motel and resort, resort lodge, resort ranch: one space for each bedroom plus one space for each four employees.
  - (2) Spaces in municipal parking lots, designed to serve nongovernmental uses where provided, may be credited toward the parking requirements for these nonresidential uses, provided that:
    - (a) These spaces are within 400 feet of the uses to be served;

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<sup>19</sup> Editor's Note: Former Section 5.1-11, Protection of Town highways, as amended, was deleted and added as Ch. 104 at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (b) The parking needs of existing facilities (within 400 feet and computed on the same basis as for new facilities) are satisfied first and only excess capacity is used for this purpose; and
  - (c) A special use permit for such use is obtained from the Planning Board. [Amended 6-7-1984 by L.L. No. 4-1984]
- (3) Industrial uses:
- (a) One space for each 400 square feet of floor area devoted to manufacture, including printing, publishing, wholesale business and laundry or dry-cleaning plants.
  - (b) One space for each 2,000 square feet of floor area devoted to storage.
  - (c) One space for each 3,000 square feet of area devoted to outside storage, including equipment rental or sales yards.
  - (d) For any industrial use, one space for each company vehicle in addition to other required spaces.
- (4) Public and semipublic use:
- (a) For places of public assembly, including churches, theaters or concert halls, one space for each six seats of seating capacity.
  - (b) For elementary school or day nursery, two spaces for each classroom.
  - (c) For high school or college, five spaces for each classroom.
  - (d) For museum, art gallery, institution or philanthropic use, one space for each 800 square feet of gross floor area.
  - (e) For hospital, sanitarium, nursing or convalescent home, one space for each two beds.
  - (f) For club, one space for each 200 square feet of gross floor area or one space for each six seats, whichever is greater.
- (5) Recreational uses:
- (a) For golf course, bowling alley, four spaces for each tee or alley.
  - (b) For skating rinks, one parking space for each 250 square feet of area available for skating.
- (6) Residential uses:
- (a) For one- or two-family dwellings: one space per dwelling unit.
  - (b) For multifamily dwellings: 1 1/2 spaces per dwelling unit.
  - (c) Customary home occupation or professional office in a dwelling unit: one space for each 200 square feet devoted to such customary home occupation or professional office plus the required space per dwelling unit.

- (d) Boardinghouses and bed-and-breakfasts: one space for each bedroom.<sup>20</sup>
- (7) For uses not listed herein: as established by the Planning Board.<sup>21</sup>
- D. Calculation of required spaces. In the case of a combination of uses, the total requirements for off-street automobile parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.
- E. Dimensions for off-street automobile parking spaces. Such space provided shall be at least nine feet wide and 20 feet long, and every space shall have direct and usable driveway access to a street or alley with minimum maneuver area between spaces as follows:
- (1) Parallel curb parking: 25 feet end-to-end with twelve-foot aisle width for one-directional flow and a twenty-four-foot aisle width for two-directional flow.
  - (2) Thirty degree parking: a thirteen-foot aisle width for one-directional flow and a twenty-six-foot aisle width for two-directional flow.
  - (3) Forty-five degree parking: a sixteen-foot aisle width for one-directional flow and a twenty-six-foot aisle width for a two-directional flow.
  - (4) Sixty degree parking: a twenty-one-foot aisle width for two-directional flow.
  - (5) Perpendicular parking: a twenty-six-foot aisle width for one-directional and two-directional flow.
- F. Location of required spaces:
- (1) In any residential district, no open or enclosed parking area shall encroach on any required front yard or required open areas. Open parking areas may encroach on a required side or rear yard to within three feet of a property line.
  - (2) In Hamlet Development Districts, business districts or industrial districts, parking spaces shall be provided on the same lot as the use for which the parking is provided or not more than 400 feet therefrom. [Amended 6-3-1993 by L.L. No. 1-1993]
  - (3) No entrance and exit drives connecting the parking area and the street shall be permitted within 25 feet of the intersection of two public rights-of-way.
- G. Required off-street truck loading areas:
- (1) For funeral homes: one berth for each chapel.
  - (2) For hotels, motels and resort hotels, resort lodge, resort ranch: one berth for floor area in excess of 10,000 square feet.
  - (3) For office, business and commercial uses: one berth for 10,000 square feet to 25,000 square feet of floor area and one additional berth for each additional 25,000 square feet of floor area.

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20. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

21. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (4) For manufacturing and permitted industrial uses: one berth for the first 10,000 square feet of floor area and one additional berth for each additional 40,000 square feet of floor area.
  - (5) For other permitted nonresidential uses: one berth for 10,000 square feet to 25,000 square feet of floor area and one additional berth for each additional 25,000 square feet of floor area, unless it can be proven that truck deliveries shall not exceed one vehicle per day.
- H. Dimensions for off-street loading berths. Each required loading berth (open or enclosed) shall have the following minimum dimensions: 35 feet long, 12 feet wide and 14 feet high, except that berths for funeral homes may be 20 feet long, 10 feet wide and eight feet high.
- I. Location of required berths. All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Open off-street loading areas shall not encroach on any required front or side yard, access way or off-street parking area, except that in business districts off-street parking areas, where they exist, may be used for loading or unloading, provided that such spaces shall not be so used for more than three hours during the daily period that the establishment is open for business.
- J. Construction of parking areas:
- (1) Parking areas shall be suitably drained.
  - (2) Parking areas to be used at night shall be lighted when being used. All lights shall be shaded or so directed so as not to cause glare on adjoining residential properties and shall be so directed so as not to cause a traffic hazard due to glare or color.
- K. Landscaping. At least 8% of the area of the lot usable for off-street parking shall be devoted to landscaping with lawn, trees, shrubs and other plant materials. All loading berths and parking areas of three or more spaces that abut a residential lot line and any parking lot for more than 20 cars shall be screened by a six-foot-high solid masonry wall or compact evergreen hedge or a landscaped strip of trees and shrubs so designed as to form a visual screen from the adjoining property.

**§ 140-22. Light Industrial District regulations.** [Amended 6-3-1993 by L.L. No. 1-1993]

The Town Board may, in accordance with the procedure set forth in Subsection G of this section, approve the development of a parcel of land for light industrial use and establish a special Light Industrial District for such development to be imposed on any A, R-1, HD and B District subject to the following conditions:

- A. Location and minimum required acreage of site:

A, R-1 Districts	10 acres
HD District	2 acres
B District	2 acres

- B. Application of regulations. Individual uses and structures in a Light Industrial District need not comply with the specific building location, height, lot size and open space requirements

of the underlying district. The "I" superimposes the regulations for a Light Industrial District upon the A, R-1, HD and B Districts. The use permit shall be limited to the one industry in accordance with the original application and permit. Any change of or additional industry shall comply with the permit requirements as required by this section.

C. Use regulations:

(1) Permitted uses:

- (a) Any use permitted by right in an I District.
- (b) Any use permitted by site plan or special permit in an I District, subject to the favorable approval thereof by the Planning Board.

(2) Prohibited uses:

- (a) Residential uses, except dwellings of caretakers and any and all residential uses existing and permitted prior to the establishment of such I District in accordance with this section, shall be allowed to continue as so permitted heretobefore.
- (b) All prohibited industrial uses as so listed in § 140-11 of this chapter.
- (c) Any use, although expressly allowed as a permitted use shall be prohibited if the particular application of such use does not comply with the specified performance standards for a use in the I District.

D. Performance standards:

(1) General standards. The following general standards are hereby adopted for the control of uses in any Light Industrial District, and no use shall be permitted, established, maintained or conducted therein which shall cause:

- (a) Excessive smoke, fumes, odor, dust or any other atmospheric pollutant beyond the boundaries of the lot whereon such use is located. Smoke is excessive when the shade or appearance of such smoke is darker than No. 2 on the Ringlemann Smoke Chart, published by the United States Bureau of Mines.
- (b) Noise, perceptible beyond the boundaries of the lot occupied by such use causing the same.
- (c) Any pollution by discharge of any waste material whatsoever into any watercourse, open ditch or land surface.
- (d) Discharge of any waste material whatsoever into any sanitary disposal system or sewerage system, except only in accordance with such rules and regulations of the public health authorities or the public body controlling such sewerage system. Any chemical or industrial waste which places undue loads as determined by the Town Engineer, if any, or the Ulster County Board of Health or the New York State Department of Environmental Conservation shall not be discharged into any municipal system and must be treated by the industrial user.
- (e) Storage or stocking of any waste materials whatsoever, except in a completely enclosed building.

- (f) Glare or vibration perceptible beyond the lot lines whereon such use is conducted.
  - (g) Hazard to person or property by reason of fire, explosion, radiation or other cause.
  - (h) Any other nuisance harmful to persons or property.
- (2) Specific standards. The following specific standards are hereby adopted and must be complied with, for and by any use in any Light Industrial District and before the same be permitted, established, maintained or conducted:
- (a) Storage facilities. Materials, supplies or semifinished products shall be stored on the rear 1/2 of the property and shall be screened from any existing or proposed street.
  - (b) Loading docks. No loading docks shall be on any street frontage. Provisions for handling of all freight shall be on those sides of any building which do not face on any street or proposed streets.
  - (c) Landscaping. It is hereby declared that all areas of the plot not occupied by buildings, parking, driveways or walkways or storage shall be landscaped attractively with lawn, trees, shrubs or other plant material. Such landscaping shall take into consideration the natural growth presently on the premises and the nature and condition of the terrain as well as the situation of the lands and premises themselves and with regard to adjoining lands and premises.
  - (d) Fences and walls. Property that is adjacent to a residential or business district shall be provided along such property lines with a wall, fence, compact evergreen hedge or a landscaped strip of trees and shrubs so designed as to form a visual screen not less than six feet high at the time of planting. Except for landscaped areas and parking areas, a use which is not conducted within a completely enclosed building shall be screened by a six-foot solid masonry wall, chain-link fence covered with evergreen vine or compact evergreen hedge. Where a front yard adjoins a street, the wall, fence or hedge shall be located no closer to the street than the depth of the required yard.
  - (e) Off-street parking and loading. Refer to § 140-21.
  - (f) Signs. Refer to § 140-24.
  - (g) Buffer strip. In addition to the fences and walls, the entire district must be separated along its outside boundary from any adjoining residential zones by a buffer strip, suitably landscaped, at least 100 feet wide.
- (3) Proper and adequate water supply, sewerage and waste disposal, other utility services and accessibility to and from public streets must be provided.
- (4) Special consideration must be given to the traffic generated by each proposed use in a Light Industrial District, and no undue traffic volumes shall be permitted on residential streets. Such data is to be submitted with each petition for amendment.

- E. Area and bulk regulations. Area and bulk requirements shall be in compliance with those for I Districts as set forth in the Density Control Schedule<sup>22</sup> for this chapter and as set forth in Article V.
- F. The Planning Board, upon review of the proposed development, may prescribe such additional conditions as are in its opinion necessary to secure the objectives of this chapter.
- G. Procedure for establishing an I District. Application for rezoning classification of a site shall be filed by the owner(s) or the holder of a written contract or written option to purchase with the Town Clerk, in writing, in a form required by the Town Board, and shall be accompanied by a check or cash in an amount set from time to time by resolution of the Town Board.<sup>23</sup> The applicant shall also submit the following: [Amended 4-2-1998 by L.L. No. 1-1998]
- (1) A plan of the site and surrounding areas drawn to scale and accurately dimensioned, showing the location of existing and proposed land use areas, lots, buildings, structures, parking and loading areas and access roads and streets, community facilities and topography.
  - (2) The use and height of each proposed building or structure, yard lines, lot coverage and the number of parking spaces in each proposed parking area and the expected flow of traffic in and out of the area.
  - (3) A copy of the currently effective Zoning Map, as established and provided for in Article III, showing the location of the proposed district superimposed on such map.
  - (4) Any additional data as may be requested by the Planning Board in order to determine the suitability of the tract for the proposed development.
  - (5) Each application shall be referred to the Planning Board. Said Board shall report its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report.
  - (6) The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:
    - (a) By publishing a notice of the application, time and place of the public hearing in a newspaper of general circulation in the Town as designated by the Town Board not less than 10 days prior to the date of the public hearing.
    - (b) By giving notice of hearing to any required municipal, county, state or federal agency in the manner prescribed by law. Upon approval, such new district shall become a part of the regulations established herein, shall be enforced in the same manner and shall be similarly subject to amendment, except that if construction of the proposed development is not commenced within one year after approval by

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22. Editor's Note: The Density Control Schedule is located at the end of this chapter.

23. Editor's Note: The fee schedule is on file in the Town offices.

the Town Board and if an extension therefor has not been granted by the Town Board, such approval shall be deemed null and void, such area shall be subject to the requirements of the prior district regulations, and the Town Clerk shall change the Zoning Map accordingly. Further, if the approved kind of light industrial use ceases operation for any reason for a period of one year or more, such approval shall also be deemed null and void, such area shall be subject to the requirements of the prior district regulations and the Town Clerk shall change the Zoning Map accordingly. [Amended 6-3-1993 by L.L. No. 1-1993]

- (c) Upon approval, the Town Clerk shall cause the Zoning Map to be changed by inserting thereon the boundaries of the new I District, noting the date of approval thereof by the Town Board.

**§ 140-22.1. Manufactured Housing Park District.** [Added 11-8-2004 by L.L. No. 6-2004]

- A. The MHP District (Manufactured Housing Park District) is established to provide for the location of mobile homes and manufactured homes in manufactured housing parks. This district is to be an overlay district of the entire township. A manufactured housing park may be permitted as a special use in any area of the Town that meets the requirements in § 140-22.1B 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.
  - (5) The total density or maximum number of lots per park cannot exceed the density for the Town Zoning District it lies within. In calculating this maximum number of lots, the net buildable acreage, as defined below, is to be used.

$$\begin{aligned} \text{Net Buildable Acreage} &= \text{Gross acreage less 25\% open space acreage requirement less} \\ & \text{50-foot buffer zone total acreage} \\ * \text{Maximum number of lots} &= \frac{\text{Net buildable acreage}}{43,560} \text{ square feet} \end{aligned}$$

**§ 140-22.2. Permit allowing operation of manufactured housing parks.** [Added 11-8-2004 by L.L. No. 6-2004]

- A. 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 permit has been obtained as herein provided.
- B. Issuance of permit.
  - (1) Before a manufactured housing park may be established, the Code Enforcement Officer shall issue a permit therefor. This permit shall be effective from the date of issuance to and including December 31 of that same year.
  - (2) The original permit shall not be issued until the Code Enforcement Officer has received:
    - (a) A completed, written application from the applicant;
    - (b) The required fee as established by the Town Board;
    - (c) 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;
    - (d) Documentation asserting compliance with the safety requirement of fire extinguishers, smoke detectors, and carbon monoxide detectors for each unit;
    - (e) 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.
  - (3) Before any manufactured housing park commences operation, the Code Enforcement Code Officer or Building Inspector shall make a complete inspection of the premises to determine that all requirements have been complied with and shall issue a certificate of occupancy.
- C. Procedure for permit application or renewal.
  - (1) Initial application.
    - (a) The application for such permit 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 permit 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 the fee is vested in some person other than the applicant, a duly verified statement is required by that person stating that the applicant is authorized to construct or maintain the park and to make said application.)
    - (b) The application shall also state the contact information for a local representative of the owner in the event of an emergency situation.

- (c) The application shall also state the total acreage of the site, the acreage designated as open space, the acreage designated as recreational or community area, the number of approved lots, and the number of actual units in the manufactured housing park.
    - (d) A copy of the regulations and rules for residents of the park as imposed by the park owner must accompany the application for a permit.
    - (e) If said application is for a new manufactured housing park or for the expansion of the same, an application for a special use permit must be made to the Planning Board in accordance with the procedures outlined in §§ 140-22.1, 140-22.2 and 140-36Q of the Town Code.
  - (2) Permit renewal.
    - (a) An application for the renewal of any manufactured housing park which was issued in accordance with the provisions of Chapter 140 of the Town Code must be filed with the Code Enforcement Officer on or before December 1 preceding the expiration of the permit.
    - (b) Upon a satisfactory inspection of the premises and the approval by the Code Enforcement Officer, a renewal permit shall be issued to be effective upon the expiration of the previous permit and to continue in force for a period of one year.
    - (c) At the time the permit is applied for the applicant shall pay a fee in the amount established by the Town Board.
    - (d) Such renewal permit 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 Building Inspector, Code Enforcement, 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 which is in existence or applied for prior to November 10, 2004, may continue in existence, provided that 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 §§ 140-22.1, 140-22.2 and 140-36Q of the Town Code, and all regulations hereof apply thereto.
- E. Revocation of permit.
  - (1) If the Code Enforcement Officer finds and reports to the Town Board that a manufactured housing park for which a permit has been issued is not being maintained in a clean and sanitary condition or is not being operated in accordance with Chapter 140 of the Town Code, the Town Board shall, by resolution, authorize the personal

service, upon the holder of the permit, of a written order which shall require the holder of said permit to correct the conditions specified in such order within 15 days after the service of such order.

- (2) If the holder of such permit 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 that the holder is in violation, the Town Board 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. In order to enforce the provisions of this section, all the provisions of Article X, Chapter 140, shall apply.
- (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.

**§ 140-23. Gasoline filling stations.**

- A. In districts where permitted, filling stations shall be permitted only on lots of one acre or more, with 100 feet minimum road frontage, except that on a preexisting undersized lot, it shall be permitted on lot of 10,000 square feet or more with 100 feet minimum road frontage.
- B. The area for use by motor vehicles, except access drives thereto, as well as any structures, shall not encroach on any required yard area.
- C. No fuel pump shall be located closer than 20 feet from any side lot line nor closer than 35 feet from any street line, measured from the outside edge of the fuel island.
- D. No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theater, church or other public gathering place, park, playground or fire station unless a public street lies between such service station and such building or use.
- E. All repair work, except emergency repairs and all storage shall be within a completely enclosed building which has a maximum height of 30 feet. Such repair work shall not include any body repair work or spray painting.

**§ 140-24. Sign regulations.**

- A. No sign or other device for advertising purpose of any kind may be erected or established in the Town except after issuance of a permit by the Code Enforcement Officer and provided as follows:
  - (1) Signs in A, R-1, R-2 and F Districts. No sign or other device for advertising purposes of any kind may be erected or established in any A, R-1, R-2 and F District except if pursuant to this chapter as follows:

- (a) Permitted nonresidential uses and legal nonconforming, nonresidential uses, but not including home occupation or day nurseries, may display signs pertaining to the use of property, having an aggregate total face area of not more than 32 square feet and not projecting beyond the principal building of such use to which they are attached more than 24 inches, except that where such nonresidential uses are set back more than 50 feet from the property lines, one additional sign may be erected in the ground, provided that such ground sign shall not exceed 15 square feet in total face area, shall not exceed five feet in height and such sign shall be no nearer than 10 feet to any property line or road, whichever requires the greater set back. If such freestanding signs face substantially at right angles to the road and/or display in more than one direction, they shall have a face area of not more than eight square feet per side, with no more than two sides.
  - (b) Dwellings for five or more families, tourist homes, boardinghouse or rooming house and bed-and-breakfasts may display nonilluminated signs identifying the premises having an aggregate total face of not more than 12 square feet and not projecting beyond the principal building on the lot more than 24 inches. [Amended 4-2-1998 by L.L. No. 1-1998]
  - (c) Any dwelling unit in a detached or attached structure may display one nameplate or professional sign not exceeding two square feet in area.
  - (d) Mobile home parks may display signs identifying the premises having an aggregate total face area of not more than 32 square feet.
  - (e) Resort hotels, resort lodges, resort ranches, camps, commercial recreation uses may display signs pertaining to the use of property, having an aggregate total face area of not more than one square foot for each two feet of lot frontage on a public street, but in no case need such sign area be less than 50 square feet, nor shall any individual sign area exceed 100 square feet. Such sign shall be set back at least 25 feet from any public street and property line. In addition, necessary traffic directional signs may be erected, provided that such signs do not exceed four square feet and building identification signs do not exceed 10 square feet.
- B. Signs in Hamlet Development and Business Districts (except on state highways). The total surface display area of business signs shall not exceed in square feet one square foot per lineal foot of principal frontage of the lot, but not to exceed 50 square feet in area and not to exceed two in number. Said signs shall not project more than five feet beyond the principal building on the lot and there shall be no more than one projecting sign per business unit; provided, further, that such signs shall not extend more than 20 feet above the ground level or exceed the highest part of the building housing the business or service advertised, whichever is less restrictive. "Principal frontage" shall mean the frontage of the lot adjacent to the principal street in the case of a corner lot. Where a corner lot faces two principal business streets, only one such frontage shall be considered the principal frontage. In the case of a corner lot, such square foot sign area may be increased by an additional 0.5 square feet per lineal foot of frontage of the lot on the secondary street, but not to exceed 25 square feet, nor to exceed one sign in number, provided that such increased sign area shall be used only for the erection of a flat sign on the length of the building which faces the secondary street. [Amended 6-3-1993 by L.L. No. 1-1993]

- C. Signs on state highways in Business Districts and Light Industrial Districts. Two signs having an aggregate total face area of not more than 100 square feet may be displayed for each establishment, provided that such signs shall be located no nearer than 10 feet to any property line; and provided, further, that such signs shall not extend more than 20 feet above ground level or more than five feet above the height of the roof of a building at the point of location of the sign, whichever is less restrictive.
- D. Representational signs. No representational sign shall be permitted in any district.
- E. Advertising signs. Hereafter, notwithstanding any other provisions of this chapter, signs not pertaining to the use, sale, rent or lease of property on the same lot and signs not representing construction or subdivision activity as allowed are not permitted in any district, except that signs for the purpose of directing persons to a business or establishment may be erected in any district, provided that such signs shall not exceed 12 square feet in area per establishment in an A, R-1 or R-2 District and 32 square feet per establishment in a B or F District, shall conform with applicable regulations of the district in which they are located and shall be approved by the Planning Board.
- F. Projecting signs. Signs projecting into a public right-of-way shall have a clearance of not less than 10 feet above the sidewalk or surrounding ground and not less than 15 feet above any public right-of-way without written approval from the Planning Board.
- G. Subdivision signs. Any person offering lots for sale in a subdivision may erect nonilluminated, directional signs within the limits of the subdivision or adjoining property in the same ownership having an aggregate total face area of not more than 50 square feet. The permit for such signs shall be issued for a period of one year, each following a determination by the Code Enforcement Officer that the signs have been repainted or are in good condition in each case.
- H. Exemption from above regulations:
  - (1) Real estate signs which advertise the sale, rental or lease of the premises upon which said signs are located, having an aggregate total face of not more than six square feet, within any residential district and business district, on one face and 12 feet on two faces or not more than 32 square feet within any Light Industrial District.
  - (2) One professional or business nameplate not exceeding one square foot in area for one professional or business establishment where such signs would not otherwise be permitted use.
  - (3) One sign denoting the architect, engineer and/or contractor when placed where work is under construction and not exceeding 24 square feet in area.
  - (4) Memorial signs or tablets, names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel or similar material.
  - (5) Traffic or other municipal signs, legal notices and such temporary, emergency or nonadvertising signs as may be authorized by the Town Board.
  - (6) Posters. Temporary, nonpermanent posters covering such things as political events, sporting events, shows and elections shall not be displayed until four weeks prior to the

event and must be removed within two weeks after the event.

- I. Illuminated signs. Illumination of signs shall not be of intermittent or varying intensity or produce glare beyond the limits of the side property line. Red, green and amber lights of such shape and hue that they may be confused with official traffic lights and signals shall be prohibited. All bare incandescent light sources and immediately adjacent reflecting surfaces shall be shielded from view.
- J. Banners. Banners and similar devices are prohibited, except nonpermanent ones displaying for the occasion of special events which shall be displayed for not longer than a three-week period.

**§ 140-25. Travel trailers and travel trailer camps.** [Amended 4-2-1998 by L.L. No. 1-1998; 11-8-2004 by L.L. No. 6-2004]

- A. Permit required. No person, partnership, association or corporation, being the owner or occupant of any land within the Town, shall use or allow the use of such land for a travel trailer camp, unless a permit has been obtained as herein provided.
- B. Issuance of permit.
  - (1) Before a travel trailer camp may be established, the Code Enforcement Officer shall issue a permit therefor. This permit shall be effective from the date of issuance to and including December 31 of that same year.
  - (2) This original permit shall not be issued until the Code Enforcement Officer has received:
    - (a) A written application from the applicant;
    - (b) The required fee as herein provided;
    - (c) Approval of the application by the Ulster County Department of Health (or the New York State Department of Health District Office); and
    - (d) A resolution from the Planning Board approving issuance of a special use permit for said travel trailer camp.
  - (3) Such permit shall not be transferable or assignable.
- C. Procedure for application for permit for travel trailer camp:
  - (1) The application for such permit or renewal thereof shall be filed with the Code Enforcement Officer and shall be accompanied by a fee in an amount as established by the Town Board. Said application shall include the name and address of the applicant, the nature and extent of his interest in the business for which a permit is desired and whether said applicant is the owner of the property and such a legal description of the premises upon which the travel trailer camp is or will be located as will readily identify and definitely locate the premises. (If the fee is vested in some person other than the applicant, a duly verified statement is required by that person stating that the applicant is authorized to construct or maintain the camp and to make said application.) The application shall also state the number of units in the existing or proposed travel trailer

camp and such other information as may be required. If said application is for a new travel trailer camp 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 outlined in Article VII of this chapter.

(2) Permit renewal.

- (a) An application for the renewal of any trailer camp permit which was issued in accordance with the provisions of this chapter must be filed with the Code Enforcement Officer on or before December 1 preceding the expiration of the permit.
- (b) Upon the approval of the Code Enforcement Officer, a renewal permit shall be issued to be effective upon the expiration of the previous permit and to continue in force for a period of one year.
- (c) At the time the renewal permit is issued, the applicant shall pay a fee in an amount as established by the Town Board.
- (d) Such renewal permit shall not be transferable or assignable.

D. Revocation of permit.

(1) Revocation of travel trailer camp permits:

- (a) If the Code Enforcement Officer finds and reports to the Town Board that a travel trailer camp for which a permit has been issued is not being maintained in a clean and sanitary condition or is not being operated in accordance with the provisions of this chapter, the Town Board shall, by resolution, authorize the personal service, upon the holder of the permit, of a written order which will require the holder of said permit to correct the conditions specified in such order within 15 days after the service of such order.
- (b) If the holder of such permit shall refuse or fail 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 holder is found to be in violation of this chapter, the Town Board shall, by resolution, revoke said permit, and the holder of the same shall thereupon terminate the operation of such travel trailer camp. In order to enforce the provisions of this section, all the provisions of Article X shall apply.
- (c) If the owner or operator of said travel trailer camp shall thereafter correct such conditions and bring the camp into compliance with this chapter, said owner may then apply for the issuance of a new permit for said camp, 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.

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

- (1) A travel trailer located on the site of a construction project, survey project or other

similar work project and which is used solely as a field office or work or tool house in connection with the project, provided that said travel trailer is removed from the site within 30 days after the completion of said project.

- (2) The business of travel trailer sales, except that where units are used as living quarters, they shall conform with the provisions of this chapter.
- (3) The storage or garaging of one travel trailer not being used for living or sleeping purposes and unoccupied on premises occupied as the principal residence by the owner of such travel trailer; provided, however, that such unoccupied travel trailer shall be parked or stored to the rear of the front building line of the lot.

**§ 140-26. Cemeteries and crematories.**

No burial or memorial plots or buildings shall be located closer than 50 feet to any residential lot line, except that when a dense evergreen hedge or a wall or landscaped strip of at least six feet in height providing complete visual screening from all adjacent residential property is provided, burial or memorial plots less than six feet in height may be located no closer than 20 feet from any residential lot line. Crematories shall be located only in cemeteries.

**§ 140-27. Sanitary disposal.**

No person shall undertake to construct any new building(s) or structure(s), including mobile homes and travel trailers, in the Town without first meeting the requirements for a system or facilities for the separate disposal of waterborne sewage, domestic or trade wastes in accordance with applicable regulations of the Town, the Ulster County Department of Health, the Department of Environmental Conservation (DEC) and other governmental authorities. Any water-borne sewage shall be disposed of in accordance with the Ulster County Department of Health and the New York State Health Department regulations. Depending upon the facts and circumstances in an individual case, the Planning Board or the Zoning Board of Appeals may require the owner or applicant to prepare an appropriate environmental impact statement (EIS), in accordance with the requirements for the same as set forth by the New York State Department of Environmental Conservation.

**§ 140-28. Residential cluster development.** [Amended 6-3-1993 by L.L. No. 1-1993]

- A. In order to promote the health and general welfare of the Town, all lands located in HD, A, R-1 and R-2 Districts are designated lands for residential cluster development in accordance with § 278 of the Town Law. The Planning Board, pursuant to § 278 of the Town Law, may grant a developer the right to vary the residential density within a tract to be developed (but not necessarily maintained) under single ownership, leaving a substantial area free of building lots. The right to vary the density shall be subject to the following conditions:<sup>24</sup>
- (1) Said proposed residential development must create an attractive residential environment;
  - (2) Produce a total average density as specified in Article V for the district in which such

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24. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

development is to be located;

- (3) Provide aggregate open space to be no less than that required in the district in which it is located;
- (4) Guarantee permanent retention of open areas and ensure care and maintenance of open space;
- (5) Each lot must be served by a central water supply system and a public or community sewer system;
- (6) Development must start within one year of the date of approval and be completed within a reasonable time; and
- (7) It must be consistent to the spirit and intent of this chapter.

B. Single-family detached houses.

- (1) In the A, R-1 and R-2 Districts, single-family detached houses may be grouped in clusters on minimum lot areas per dwelling unit, minimum lot widths and minimum front yards as follows:

<b>Yard (feet)</b>	<b>Minimum Lot Size (sq. ft.)</b>	<b>Minimum Lot Width (feet)</b>	<b>Minimum Front</b>
A	30,000	100	60
R-1	20,000	100	40
R-2	20,000	100	40

- (2) All other yard requirements, maximum coverage and maximum height requirements as specified on the Density Control Schedule for the district in which said home is located shall be complied with. The clustering of single-family detached houses shall not be permitted in the HD District.

C. Special design. In cases where a developer has designed special groups of dwellings, the Planning Board, upon application by the developer, containing a sketch of the layout and design, a description of the proposed development and such other data as the Planning Board considers necessary for its review, may approve a residential cluster development without regard to lot area or building type to the full extent permitted by § 281 of the Town Law; provided, however, that the sanitary systems are approved by the Ulster County Department of Health, that the average density does not exceed that permitted within the zoning district in which the land occurs and that the layout is not detrimental to the health and general welfare of the community. In all cases the provisions of Subsections D(2) through (6), inclusive, shall be complied with to the maximum extent practicable.

D. Townhouse developments. In HD, R-1 and R-2 Districts, townhouses (attached one-family dwellings) shall be permitted, provided that there are not more than eight townhouse units in any one contiguous group; and, further, provided that the overall maximum density and maximum lot coverage for the district in which located shall not be exceeded. However, lot dimensions may be reduced as follows:

- (1) The minimum lot size shall not be less than 2,000 square feet and a minimum width of

20 feet; minimum rear yard, front yard and side yards at the end of the total structure shall be 25 feet.

- (2) For each square foot of land gained within a residential subdivision through the reduction of lot size below the required minimum lot area per dwelling unit requirements as set forth in this chapter, equal amounts of land shall be preserved and maintained as open land and the development rights thereto shall be conveyed to the Town for as long as these structures shall exist.
- (3) The balance of the land not contained in the lots or the road right-of-way, if provided, shall be contiguous and of such size and shape as to be usable for recreation or agriculture.
- (4) Such land shall be held in corporate ownership by the owners of lots within the development, and the developer shall incorporate into the deeds of all property within the development a clause giving the owners an interest in such open land which shall be used for recreational or agricultural purposes only. No structure, save those incidental to the recreational or agricultural use, shall be permitted thereon.
- (5) Open land shall be a minimum of three acres and shall be subject to taxation, unless it is deeded to the Town. In the case of such tracts of five or more acres, the developer may petition to the Town to take over the land to be used in perpetuity as open space.
- (6) Any residential development proposed under the provision of this subsection shall follow all applicable procedures, standards and requirements of the local law or regulations governing the subdivision of land in the Town.<sup>25</sup>

**§ 140-29. Accessory apartment within existing residential structures.** [Added 10-18-1990 by L.L. No. 3-1990]

- A. A special use permit may be granted by the Planning Board of the Town of Rochester for the conversion of an existing one-family residence to provide for an accessory apartment, which said accessory apartment shall be defined as a self-contained dwelling unit having its own exterior entrance and which is subordinate to the principal residence but on the same lot.
- B. Conditions for approval.
  - (1) There shall be no more than two dwelling units on a single parcel of land.
  - (2) The owner or owners of the land shall reside in one of the two dwelling units, which shall be their principal residence. Ownership shall be demonstrated by a deed recorded in the office of the County Clerk of the County of Ulster.
  - (3) The accessory apartment shall be self-contained, with separate cooking, sleeping and sanitary facilities for the use of its occupants.
  - (4) No exterior changes may be made to the principal residential structure which would

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<sup>25</sup>. Editor's Note: Former Sections 5.10, Flood damage prevention; 5.11, Use of lands as dumps or dumping grounds, and 5.12, Unsafe building laws were deleted and added as Chs. 81, 118 and 66, respectively, at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Former Section 5.13, Automobile junkyard regulation, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I), and these uses are now regulated by § 140-36O of the Town Code.

alter its existing foundation.

- (5) The occupant of the accessory apartment must be a member of the immediate family of the owner or owners or a person whose residence on the parcel of land is necessary or helpful for the provision of medical or health care services to one or more of the owners. For the purposes of this section, the term "immediate family" is defined as being a brother, brother-in-law, sister, sister-in-law, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of the owner of the principal residence. For the purposes of the section, the need for medical or health care services may be demonstrated by a letter from a medical doctor bearing his or her original signature and address to the Planning Board of the Town of Rochester stating that in his or her opinion such on-site residence is necessary or helpful for the medical or health care of one or more of the owners.
- (6) The accessory apartment shall not contain greater than 33% of the total habitable space of the existing structure prior to the occupancy of the accessory apartment, as that term is defined in Article 3, Part 711.1 of the New York State Uniform Fire Prevention and Building Code.
- (7) There shall be no more than one accessory apartment on each principal residence or parcel of land.
- (8) The accessory apartment may not be used for a home occupation, as defined in § 140-20A of this chapter.
- (9) The accessory unit may not endanger the health, safety or general welfare of the community and must comply with all the requirements of the Uniform Fire Prevention and Building Code.

C. Approval procedures.

- (1) An application for approval of an accessory apartment pursuant to this section shall be made by applying for special use permit with the Planning Board of the Town of Rochester.
- (2) The Planning Board shall grant the application and issue the required special use permit only after determining that the issuance of the special use permit will not adversely effect adjoining property owners and the general surrounding neighborhood where the accessory apartment is proposed to be located.
- (3) The application shall include, in addition to any required fee, an approval of the on-site sanitary septic system, sewer disposal system, and/or water supply by the Ulster County Health Department.

D. Term of special permit use.

- (1) The use granted pursuant to this section of premises as an accessory apartment shall not commence until a certificate of occupancy has been issued by the Building Inspector of the Town of Rochester.
- (2) The special permit use shall be granted for a period of two years and may be renewed for every two years thereafter upon reapplication to the Planning Board. Such

reapplication may be made by a sworn affidavit of the owners stating that the conditions set forth in the original application have not changed or, in the alternative, may be based upon an inspection or reinspection of the premises by a Code Enforcement Officer of the Town of Rochester.

- (3) The special use permit shall terminate upon the death of all of the owners of the subject real property, upon the transfer of title to the subject property or upon the termination of occupancy of the subject real property by all of the owners as their primary residence. A special use permit issued under this section shall not be transferable to any other person. However, any new owner may make application for such a special use permit under this section and, upon demonstration of compliance with the conditions set forth herein, obtain such a special use permit for a two-year period, subject to renewal as provided herein.
- (4) If the owner or occupant fails to comply with the conditions set forth in this section, as determined by the Building Inspector or Code Enforcement Officer, the Building Inspector or Code Enforcement Officer shall issue a notice of termination to the owner, occupant and to the Planning Board, and, upon receipt of such notice, the Planning Board shall immediately revoke the special use permit, and, upon such revocation, the accessory apartment created pursuant to this section shall be discontinued.

E. Enforcement.

- (1) Any occupancy or use of premises in violation of this section, without a special use permit or following the expiration or revocation of the special use permit as provided herein, shall be deemed a violation of the Zoning and Land Use Control Law and shall subject the owner and/or the occupant to the penalties provided for such violations, at the election of the Code Enforcement Officer and/or Building Inspector.
- (2) Nothing contained herein shall prevent the Code Enforcement Officer and/or Building Inspector from assessing any other fine, penalty, notice or violation otherwise provided by the laws and ordinances of the Town of Rochester.

**§ 140-30. Hamlet Development District regulations.** [Added 6-3-1993 by L.L. No. 1-1993]

A. In the Hamlet Development District, water supply and sewage disposal facilities shall be subject to the approval of the Ulster County Department of Health for all:

- (1) New construction;
- (2) Conversions of single-family dwellings to two or more family dwellings;
- (3) Conversions from residential to nonresidential uses; and
- (4) Conversions from nonresidential to residential uses.

B. Where a nonresidential use abuts a residential use in the Hamlet Development District, there shall be provided along the abutting side and rear lot lines of the nonresidential use, a wall, fence, compact evergreen hedge, trees and/or shrubs which form a visual screen not less than six feet in height at the time of construction/planting. Further, any accessory nonresidential use, including parking and outdoor display or storage which abuts a residential use, shall also

be screened in accordance with the above requirements of this section.

ARTICLE VIA  
**Fees and Expenses**  
[Added 1-6-2005 by L.L. No. 7-2004]

**§ 140-30.1. Permit and license fees; professional fees and expenses.**

- A. All application fees for special permits, variances, site plans, subdivisions and other matters of land use, planning and development which are brought before any agent or agency of the Town of Rochester shall be in accordance with a table of fees for licenses and permits, which table shall be created by resolution of the Town Board with assistance of the Planning Board and shall be maintained on a current basis and from time to time modified or updated upon recommendation of the Planning Board or upon initiation by the Town Board.
- B. Professional fees and expenses.
- (1) The Town Board, the Planning Board, the Zoning Board of Appeals and the Building Department are empowered to charge an applicant the reasonable and necessary expenses for professional fees incurred by any of those Boards or the Building Department as a result of professional work required to be performed on behalf of any of said Boards or the Building Department as a result of the filing of an application seeking approval by that Board or the Building Department. For the purpose of this § 140-30.1, professionals shall include, but not be limited to, engineers, attorneys, planning consultants, architects, traffic consultants and noise consultants.
  - (2) Simultaneously with the filing of an application for approval of a development and prior to the commencement of the review of the application, the applicant or developer, as the case may be, shall deposit with the Town Supervisor a sum of money, as determined in Subsection of this § 140-30.1, which sum shall be used to pay the costs incurred by the Town for consulting, engineering and legal services as described in this section.
  - (3) Upon receipt of such sums, the Town Supervisor or his or her designee shall cause such monies to be placed in a separate non-interest bearing account in the name of the Town and shall keep a separate record of all such monies so deposited and the name of the applicant or developer and project for which such sums were deposited.
  - (4) Upon receipt and approval by the Town Board of itemized vouchers from a professional for services rendered on behalf of the Town pertaining to the application, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town.
  - (5) The Town Board shall review and audit all such vouchers and shall approve payment of only such professional fees as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of the application. For purpose of the foregoing, a fee or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by professionals to the Town for services performed in connection with the approval or construction of a similar application, and

in this regard the Town Board may take into consideration the magnitude of the application and any special conditions or considerations as the Town Board may deem relevant.

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

#### ARTICLE VII

#### **Conditional Uses Allowed By Special Use Permit**

**[Amended 6-7-1984 by L.L. No. 4-1984]**

#### **§ 140-31. General provisions.**

Conditional uses are hereby declared to possess characteristics which require that each specific use shall be considered an individual use. Any use for which a special use permit is granted by the Planning Board shall be deemed a use permitted in the district in which located, except that for any addition or enlargement of such use, a separate special use permit shall be required for each addition or enlargement. A conditional use must be in conformity with the provisions of this law

and shall affect only the lot or portion thereof for which it shall have been granted.<sup>26</sup>

**§ 140-32. Special use permits.**

- A. The Planning Board shall have the power, after public notice and hearing, to grant special use permits for the conditional uses specified in this chapter. In addition, the Planning Board may establish such rules and regulations for the granting of a special use permit as it may be authorized to establish accordance with Town Law.
- B. All applications for special use permits shall be filed with the Secretary to the Planning Board, in writing, shall be made in a form required by said Board and shall be accompanied by payment of a filing fee set from time to time by resolution of the Town Board<sup>27</sup> and 10 copies of a site plan drawn to scale and accurately dimensioned, as required in § 140-33. [Amended 4-2-1998 by L.L. No. 1-1998]
- C. Whenever the Planning Board grants a special use permit, appropriate conditions and safeguards and/or time limitations may be attached thereto.
- D. Any special use permit which is not exercised within one year from the date of issuance is hereby declared to be revoked without further hearing by the Planning Board, unless said permit specifically provides otherwise.

**§ 140-33. Procedure.** [Amended 4-2-1998 by L.L. No. 1-1998]

In addition to the provisions of this article, the procedure to be followed by the Planning Board in issuing a special use permit shall be the same procedures as set forth in §§ 140-47, 140-48, 140-49 and 140-50.

**§ 140-34. Required plan.** [Amended 4-2-1998 by L.L. No. 1-1998]

A plan for the proposed development of a site for a permitted conditional use shall be submitted with the application for a special use permit, and such plans shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping and any other pertinent information that may be necessary to determine if the proposed special permit use meets the requirements of this chapter.

**§ 140-35. Basis for deliberation.**

Before issuing a special use permit, the Planning Board shall take into consideration the public health, safety, morals and welfare and shall assure itself of the following:

- A. That there shall not be any detrimental effect by the establishment of such use on other uses within the district.
- B. That such use will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls, fences and parking areas will not discourage the appropriate development and use of adjacent lands.

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<sup>26</sup>. Editor's Note: Former Section 6.1(b) and (c), regarding permits for change of ownership, was repealed 6-3-1993 by L.L. No. 1-1993.

<sup>27</sup>. Editor's Note: The fee schedule is on file in the Town offices.

- C. That all structures, equipment and materials shall be reasonably accessible for fire and police protection.
- D. That the use meets the prescribed requirements for the district in which located, including minimum yard requirements for the district in which located or as further specified in this section and including maximum heights, required off-street parking and sign regulations and the following prescribed provisions.

**§ 140-36. Prescribed standards.**

In addition to the above general provisions, the following shall comply with the hereinafter prescribed standards:

- A. Retail sale of produce grown on the same lot from a road stand:
  - (1) At least five off-street parking spaces shall be provided.
  - (2) Ingress to and egress from such use shall be so arranged to provide minimum interference with through traffic on the street or highway.
  - (3) Any lights in connection with such use shall be so arranged as not to cause glare on adjacent properties.
  - (4) Three signs not exceeding an aggregate of 50 square feet may be displayed for each establishment, provided that such sign shall be located no closer than 10 feet to any property line; and provided, further, that such signs shall not extend more than 10 feet above the ground or if attached to the building shall not extend more than five feet above the height of the roof of the building at the point of location of the sign.
- B. Hospital, nursing home, convalescent home, sanitarium, institution or philanthropic use:
  - (1) The total building area shall not exceed a lot coverage of 30%.
  - (2) Primary access to such use shall not be a minor street or any other street serving primarily as access to abutting residential properties.
  - (3) Off-street parking areas, outdoor storage areas shall be screened from adjacent residential properties. Any lighting shall be so arranged as not to cause glare on adjacent properties.
  - (4) No building shall be located within 100 feet of any lot line, nor within 50 feet of any street right-of-way line.
- C. Hotel, resort hotel, resort lodge, resort ranch, restaurant, bar or night club, skating rink, theater, concert hall, commercial recreation uses:
  - (1) Primary access to such use shall not be a minor street or any other street serving primarily as access to abutting residential properties, but shall be by means of a street in the collector, arterial, state highway or county road system or other street in which, in the opinion of the Planning Board, the traffic generated by said use will not adversely affect existing or potential development in the area.
  - (2) Such use meets the off-street parking requirements of this law. Such off-street parking

and lighting in connection with such use shall be screened and shielded from adjacent residential properties.

- (3) No building shall be located closer than 100 feet to any lot line nor within 50 feet of a street right-of-way line.
- (4) Buildings and structures may exceed the maximum building height as specified on the density control schedule, provided that for each one foot such building or structure exceeds 35 feet in height the required building setback from property lines as specified in Subsection C(3) above shall be increased by one foot.

D. Camps:

- (1) The water supply and sewage disposal systems shall comply with the codes, ordinances and regulations of the appropriate authorities.
- (2) No structure shall be located within 100 feet of a side or rear property line nor within 50 feet of a street right-of-way line.
- (3) One off-street parking space shall be provided for each five persons of capacity, and one additional space shall be provided for each two employees.
- (4) A swimming pool or other recreational activity shall not be located closer than 100 feet to a side or rear property line nor within the required front yard.
- (5) Winterization of any camp building previously unwinterized shall be considered a change of use requiring a special use permit from the Planning Board.

E. Two-family dwelling, multifamily dwelling, boardinghouse.

- (1) A two-family dwelling and multifamily dwelling shall comply with minimum lot area per dwelling unit requirement for the district in which it is located. A boardinghouse shall not contain more than six rentable units in addition to a dwelling unit.
- (2) There shall be off-street parking provided on the same lot with the principal use at least equal to the minimum requirements specified by this chapter. Off-street parking accessory to a multifamily dwelling shall not be located in a front yard or side yard abutting a street and shall be screened from adjacent properties.
- (3) There shall be a finding that the water supply and sewage disposal system shall be adequate to serve the use.
- (4) The primary access to a multifamily dwelling shall not be a minor street serving primarily as access to single-family residential units, but shall be by means of a collector street, arterial street, county road or state highway or other street on which, in the opinion of the Planning Board, the traffic generated by such multifamily dwelling will not adversely affect existing or potential development in the area.
- (5) Two-family dwellings, multifamily dwellings and boardinghouses shall meet the minimum specified front yard, side yard, rear yard, coverage and maximum height requirements specified on the density control schedule for the district in which located.
- (6) Signs accessory to a multifamily dwelling shall comply with the regulations of §

140-24.

- F. Airport and flying fields. In addition to the standards specified in the basis for deliberation section, there shall be a finding that such airport or flying field shall not cause a hazard to or be detrimental to nearby properties and buildings, both in Town and adjacent municipalities considering the location of buildings accessory to the airport or flying field, approach and takeoff patterns and lights.
- G. Electric or gas utility substations, transformer stations, water or sewage pumping stations and other similar structures:
  - (1) Such use is reasonably necessary for the service, convenience or welfare of the public and can not be located in another district;
  - (2) Such use has adequate fences and other safety devices and adequate screening or landscaping; and
  - (3) Such use will not alter or be detrimental to the character of the neighborhood.
- H. Travel trailer camps. [Amended 4-2-1998 by L.L. No. 1-1998; 11-8-2004 by L.L. No. 6-2004]
  - (1) Application requirements. The travel trailer camp 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) Legal data:
      - [1] 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).
      - [2] The location and description of the land that is proposed to be used as a camp or park.
      - [3] The existing zoning the site.
    - (b) Physical features:
      - [1] Topographic contours at two-foot intervals.
      - [2] The location of watercourses, marshes and areas subject to flooding.
      - [3] The located of wooded areas.
    - (c) Existing development:
      - [1] A location map which shows all land within 200 feet of the proposed park or camp and all structures on the land which abuts the proposed camp.
      - [2] The location, names and widths of all adjacent streets.
      - [3] The location of all water lines and utilities within and adjacent to the proposed site.
    - (d) Proposed development:

- [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 camp.
- [3] The method and plan for electric lighting.
- [4] The location and plan of all proposed structures and improvements.
- [5] The proposed grading and plans for landscaping.
- [6] The proposed stormwater management system.
- [7] The proposed utilities.
- [8] Any public improvements proposed by the Town in and adjoining the proposed site.
- [9] Any proposed zoning.

(2) Site.

- (a) The camp shall be located on a well-drained site in an area where grades and soil conditions are suitable for the use of the same.
- (b) The camp shall be free from heavy or dense growth of brush or woods in occupied areas, except where used for screening purposes.
- (c) The camp shall be at least five acres in size, shall have 150 feet of frontage on a public road in a residential area and shall have 60 feet of frontage on a public road in a nonresidential area.

(3) Unit areas.

- (a) Each camp site shall be marked off into unit areas.
- (b) Each travel trailer camp unit area, designated for overnight camping, shall have a total area of not less than 1,500 square feet with no less than 30 feet of frontage on a right-of-way in the camp. Each travel trailer camp unit area, designated for long-term camping, shall have a total area of not less than 2,400 square feet with no less than 40 feet of frontage on a right-of-way in the camp.
- (c) The total number of unit areas in a travel trailer camp shall not exceed eight for each acre in said camp.

(4) Clearances.

- (a) Travel trailers shall be located a distance of:
  - [1] At least 20 feet from an adjacent structure in any direction;
  - [2] At least 50 feet from an adjacent property line;
  - [3] At least 50 feet from the right-of-way of a public road; and
  - [4] At least 20 feet from the nearest edge of any roadway within the camp.

- (5) Accessibility.
  - (a) Where a camp has more than 24 travel trailers, at least two but no more than four points of entry and exit shall be provided as follows:
    - [1] 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.
    - [2] All entrances and exits shall be at right angles to the existing public highway or street.
    - [3] All entrances and exits shall be free of any material which would impede the visibility of the driver on a public highway or street.
    - [4] All entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with travel trailers attached.
  - (b) Interior streets. Each camp 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 the convenient accessibility to all unit areas and other important facilities within the camp, and, further, the street system shall be so designed to permit the safe and convenient vehicular circulation within the camp, shall be adapted to the topography and shall have suitable alignment and gradient for traffic safety.
- (6) Utilities and service facilities for travel trailer camps. Utilities and service facilities shall be provided in each travel trailer camp, which shall be in accordance with the regulations of the Ulster County Department of Health, the New York State Department of Health and the Sanitary Code of New York as they pertain to campgrounds and travel trailer camps.
- (7) Open space.
  - (a) Common open space shall be provided within a travel trailer camp for use by the occupants of the same.
  - (b) Such open space shall be conveniently located in the camp and shall have a total area equal to at least 20% of the gross land area of the camp.
  - (c) Areas required for landscaped strips along public roads and property lines shall not be counted towards this open space requirement.
- (8) Landscaping.
  - (a) Areas of travel trailer camps 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.
  - (b) Landscaping shall be provided to the extent necessary for the purpose of screening nonresidential structures or uses within the camp and to provide shade

and suitable settings for the dwellings and other facilities within the camp.

- (c) A landscaped strip of at least 50 feet in width shall be provided along those areas within the camp which front upon existing public streets and along the property lines of the camp.

(9) Camp records.

- (a) The owner or operator of each travel trailer camp shall keep a written record of all persons occupying or using the facilities of such camp. This record shall be available for a period of at least one year from the date of occupancy and shall include:

- [1] The name and mailing address of the occupant of each travel trailer; and

- [2] The name and address of the owner of each travel trailer which is not occupied by such owner.

- (b) In travel trailer camps, the following additional information shall be maintained in the annual camp records:

- [1] The state in which each travel trailer within the camp is registered and the registration number of the same; or

- [2] The name and address of the owner of the motor vehicle which transported said travel trailer and the state in which said motor vehicle is registered and the registration number of the same.

(10) Automobile parking.

- (a) At least one parking space shall be provided for each travel trailer within the designated unit area for the trailer or within 50 feet of the same.

- (b) Off-street parking spaces shall be provided within the common areas of the camp at places of public congregation in the total amount of one space per five travel trailers within the camp.

- (c) Each off-street parking space and the parking areas shall conform to the standards specified in § 140-21 of this chapter.

- (11) Permit renewal. The permit renewal provisions of § 140-25 of this chapter shall apply to all travel trailer camps established by special use permit pursuant to this section.

- (12) Performance bond. The Planning Board may require a performance bond from the applicant in an amount to be determined by said Board to ensure that the requirements of this chapter are met. If the Planning Board so directs, this performance bond shall become an additional requirement for the issuance of a permit to the travel trailer camp.

- I. Excavation for soil mining. Excavation for the purposes of soil mining, such as gravel pits, quarrying or any subsoil removal, shall be allowed only by special permit in Zones A, R-1, I and F, subject to § 140-20B of this chapter 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. [Amended 8-5-1993 by L.L. No. 2-1993; 4-2-1998 by L.L. No. 1-1998]

- (1) 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:
  - (a) 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.
  - (b) 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.
  - (c) 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.
  - (d) 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.
  - (e) Excavation, quarrying and mining operations may be conducted between the hours of 7:00 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.
  - (f) Rock crushing, cement plant or other crushing, grinding, polishing or cutting machinery or other physical or chemical process for treating the product of such excavation shall be permitted, subject to compliance with the following conditions:
    - [1] The subject activity shall take place only on the same site as and in association with an excavation for soil mining operation. Further, the requirements of § 140-36I shall apply to the subject activity.
    - [2] The subject activity shall function only between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, except that the Planning Board may, at

its discretion, expand these hours of operation based upon a showing by the applicant that the subject activities will not result in adverse noise, lighting and traffic impacts during the expanded hours of operation due to the size of the property, the process and the machinery to be utilized.

- [3] The subject activity shall function only during Monday through Friday and shall not be conducted on Saturday, Sunday or on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.
  - [4] The subject activity shall only be permitted on a lot which is 10 or more acres in size.
  - [5] Materials associated with the proposed activity shall be located as far away from the perimeter property lines of the site as, in the Planning Board's judgment, is practical.
  - [6] The subject activity shall not be located closer than 200 feet to any perimeter property line of the site.
  - [7] Ingress to and egress from the property on which the subject activity is located shall be arranged so as to provide minimum interference with off-site traffic.
  - [8] The subject activity shall comply with the activity standards in § 140-20C herein, which standards apply to all uses in all zoning districts of the Town.
  - [9] The subject activity shall not create any conditions which are injurious or hazardous to the public.
  - [10] The proposed activity shall be such that it will not be detrimental to the character of the surrounding neighborhood.
- (g) The proposed finished grading plan shall show the land to be smooth-graded and topsoil respread to a minimum depth of four inches; slopes shall not exceed the normal angle of repose of the material removed.
  - (h) The applicant shall be required to furnish a performance bond, in an amount determined by the Code Enforcement Officer, 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.
  - (i) 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.
  - (j) These requirements shall be in addition to any of the requirements of the Mined Land Reclamation Act of the State of New York and the rules and regulations applicable thereto. Where any of the provisions of this chapter are in conflict with said Mined Land Reclamation Act, the more restrictive provision shall apply.

- (2) Operations subject to state jurisdiction; issuance of special permits.
  - (a) For soil mining operations that are subject to state jurisdiction by virtue of involving the removal of more than 1,000 tons per year, the Planning Board shall, at its discretion, place conditions on its issuance of special permits relating to:
    - [1] Ingress and egress to Town-owned roads.
    - [2] The routing of transport vehicles on Town-owned roads.
    - [3] Continued compliance with New York State Department of Environmental Conservation (NYSDEC) permit conditions relating to:
      - [a] Setbacks from property lines and road rights-of-way;
      - [b] Barriers to restrict property access;
      - [c] Dust control; and
      - [d] Hours of operation.
    - [4] Enforcement of New York State Department of Environmental Conservation reclamation special conditions.
  - (b) The length of the special permit shall be coterminous with the length of any permit issued by the NYSDEC. Suspension or revocation of any permit issued by the NYSDEC shall also suspend or revoke the Planning Board's special permit as appropriate.
  - (c) In addition, upon receipt of a notice from the NYSDEC of an application for a permit to mine in excess of 1,000 tons per year, such notice shall be referred to the Town Planning Board who shall conduct public hearing(s), concurrent with or separate from its special permit proceedings, to make determinations and recommendations to the NYSDEC for incorporation in such mining permit with regard to:
    - [1] Setbacks from property lines and road rights-of-way;
    - [2] Barriers designed to restrict access;
    - [3] Dust control;
    - [4] Hours of operation; and
    - [5] Whether mining is prohibited by zoning at the location.
  - (d) Except for Subsection I(2)(c)[5] immediately above, the NYSDEC can accept or reject the Planning Board's determinations.
- (3) Upon approval by the Planning Board, one copy of the approved excavation plan shall be returned to the applicant by said Board, and in the case of permits also approved by the NYSDEC, one copy shall also be sent to the appropriate NYSDEC regional office.

J. Gasoline filling stations. In addition to complying with the provisions of § 140-34, gasoline

filling stations shall comply with the provisions of § 140-23.

- K. Commercial parking lots. In addition to complying with the provisions of § 140-34, commercial parking lots shall comply with the provisions of § 140-20H.
- L. Bungalow colony:
- (1) The water supply and sewage disposal systems shall comply with the codes, ordinances and regulations of the appropriate authorities.
  - (2) The land area per rental unit shall be at least 10,000 square feet.
  - (3) The space between detached rental units shall be not less than 20 feet or the average height of adjacent buildings, whichever is greater.
  - (4) No building shall be located within 50 feet of a street right-of-way line, nor within 50 feet of a side or rear property line.
  - (5) Off-street parking shall be provided in an amount not less than one space for each rental unit, plus not less than one space for each two employees. Off-street parking shall not be located in the required front yard, nor within 20 feet of a side or rear property line.
  - (6) A swimming pool or other recreational activity shall not be located closer than 50 feet to any side or rear property line and shall not be located in a required front yard and shall be screened by a stand of trees, fence, hedge or wall from view of adjacent properties to the sides and rear.
  - (7) Winterization of any bungalow previously unwinterized shall be considered a change of use requiring a special use permit from the Planning Board.
- M. Sawmill operations. [Added 9-3-1992 by L.L. No. 4-1992]
- (1) In addition to the conditions and criteria in § 140-35 above, all principal and accessory sawmill uses shall comply with the following:
    - (a) The sawmill operation shall function only during the hours of 7:00 a.m. to 7:00 p.m., except that the Planning Board, at its discretion, may expand these hours of operation based upon a demonstration by the applicant that the sawmill operation will not result in adverse noise, lighting and traffic impacts during the expanded hours of operation due to the size of the property, the machinery to be utilized, whether the machinery will be enclosed in a building, etc.
    - (b) The sawmill operation shall only be permitted on a lot which is four or more acres in size. An enclosed sawmill operation is permitted on a lot which is at least one acre in size.<sup>28</sup>
    - (c) The sawmill operation shall not result in unreasonably objectionable off-site noise impacts.<sup>29</sup>

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28. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

29. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (d) Ingress to and egress from the property on which the sawmill is located shall be so arranged as to provide minimum interference with off-site traffic.
  - (e) Logs, lumber and sawmill waste materials shall be located as far away from the perimeter property lines of the site and at such height as, in the Planning Board's judgment, is practical.<sup>30</sup>
  - (f) All sawmill refuse materials shall be disposed of properly.
  - (g) The sawmill shall not be located closer than 100 feet to any perimeter property line of the site. If the sawmill operation is enclosed, then the minimum setbacks applicable to the district in which said sawmill is located shall apply.<sup>31</sup>
  - (h) The sawmill operation shall not create any conditions which are injurious or hazardous to the public.
  - (i) The sawmill operation shall be such that it will not alter or be detrimental to the character of the surrounding neighborhood.
- (2) In addition to the conditions and criteria in § 140-35 and above, all sawmill operations which have the capacity to process more than 4,000 board feet of lumber per day shall also be subject to the following:
- (a) Such sawmill operation shall function only during Monday through Saturday and not on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.<sup>32</sup>
  - (b) Notwithstanding Subsection M(1)(b) above, such sawmill operation shall only be permitted on a lot which is six or more acres in size.
  - (c) The milling portion of the operation must be conducted in a fully enclosed building.
  - (d) Primary vehicular access to such sawmill operation shall not be by a minor street or any other street serving primarily as access to abutting residential properties; primary access shall be by a street in the collector, arterial, county or state roadway system or other street in which, in the opinion of the Planning Board, the traffic generated by said use will not adversely affect existing or potential development in the area.

N. Bed-and-breakfast establishments. In addition to the conditions and criteria in § 140-35 above, all bed-and-breakfast establishments shall comply with the following:<sup>33</sup>

- (1) The minimum lot size for the establishment of this use shall be 40,000 square feet.
- (2) There shall be a maximum of two nonresident employees at a bed-and-breakfast

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30. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

31. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

32. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

33. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

establishment.

- (3) Off-street parking accessory to this use shall not be located in front yards which abut a street.
  - (4) The outward appearance of the use shall be that of a single-family home and there shall be no indication of the bed-and-breakfast establishment from the exterior of the building, except for the sign. A separate entrance into the building for the bed-and-breakfast use shall not be permitted.
  - (5) Food and beverage service shall only be provided to registered guests of the bed and breakfast establishment.
  - (6) The lodging provided shall be for periods of less than two weeks in duration.
  - (7) The maximum number of guest rooms at a bed-and-breakfast establishment shall be four, except that the Planning Board may, at its discretion, allow additional guest rooms up to a maximum of eight where the Board determines that the size and shape of the lot on which the establishment is proposed can accommodate the additional patrons and parking.
- O. Automobile junkyards.<sup>34</sup> In addition to the conditions and criteria in § 140-35 above, all automobile junkyards shall comply with the following:
- (1) No automobile junkyard shall be located within 1,000 feet of a church, school, public building or place of public assembly.
  - (2) All automobile junkyards shall be completely surrounded with a fence which is at least six feet in height and which substantially screens the subject use from view. This fence shall include a gate or gates which shall be closed and locked, except during the working hours of the automobile junkyard and when the operator is on-site. Said fence shall be erected not nearer than 50 feet from public roadways and shall be well-maintained and neat in appearance. All wrecking and other work pertaining to the automobile junkyard shall take place within the fence. Where the topography, natural growth of vegetation or other considerations accomplish the purposes of this section, in whole or in part, the fencing requirements herein may be reduced or eliminated if, in the Planning Board's opinion, said considerations mitigate the need for all or part of the fencing.
  - (3) Ingress to and egress from the property on which the subject activity is located shall be arranged so as to provide minimum interference with off-site traffic.
  - (4) The automobile junkyard shall comply with the activity standards of § 140-20C herein, which standards apply to all uses in all zoning districts of the Town.
  - (5) The automobile junkyard shall not create any conditions which are injurious or hazardous to the public.
  - (6) The automobile junkyard shall be such that it will not be detrimental to the character of

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34. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

the surrounding neighborhood.

- P. Brewing or distilling of liquors for immediate consumption and/or retail sale on premises; fish smoking or curing for immediate consumption and/or retail sale on premises; and slaughtering of animals as a service to local raisers of livestock, and slaughtering for retail sale on the premises. In addition to the conditions and criteria in § 140-35 above, the subject uses shall comply with the following:<sup>35</sup>
- (1) No such use permitted in the A or R-1 Districts shall be located on a property that is less than three acres in size in said districts. No such use permitted in B, I or HD Districts shall be located on a property that is less than one acre in size in said districts.
  - (2) No such use permitted in the A or R-1 Districts shall be located within 100 feet of a property line in said districts. No such use permitted in the B, I or HD Districts shall be located within 50 feet of a property line in said districts.
  - (3) Each use shall have adequate off-street parking as determined appropriate by the Planning Board.
  - (4) Retail sale in connection with such uses, other than the sale of alcoholic beverages, 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.
  - (5) All waste and refuse materials shall be stored in a location or locations as determined appropriate by the Planning Board and shall be disposed of properly.
  - (6) Each such use shall have fencing and/or buffer screening as determined appropriate by the Planning Board.
  - (7) No such use shall emit toxic, noxious or offensive odors, dust or fumes beyond the property lines of the site.
  - (8) No such use shall alter or be detrimental to the general health, safety, welfare or character of the surrounding neighborhood.
- Q. Manufactured housing parks. [Added 11-8-2004 by L.L. No. 6-2004]
- (1) Map. 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) Legal data:
      - [1] 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).
      - [2] The location and description of the land that is proposed to be used as a camp or park.
      - [3] The existing zoning of the site.

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35. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(b) Physical features:

- [1] Topographic contours at two-foot intervals.
- [2] The location of watercourses, marshes and areas subject to flooding.
- [3] The location of wooded areas.

(c) Existing development:

- [1] A location map which shows all land within 200 feet of the proposed park and all structures on the land which abuts the proposed park.
- [2] The location, names, and widths of all adjacent streets.
- [3] The location of all water lines and utilities within and adjacent to the proposed site.

(d) Proposed development:

- [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.
- [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.

- (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 fifty-foot landscaped buffer zone shall be constructed and maintained around the perimeter of the manufactured housing park.
- (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 fifty-foot buffer zone, it may be utilized instead of the required plantings at the option of the Planning Board; however, this existing vegetation must be maintained and replaced if it fails to continue to meet the above requirements.
- (e) Such buffer zones shall not be required where they would interfere with the vision of motorists at intersections with public or private roadways.

(4) Open space and recreation areas.

- (a) Open space.

- [1] An area of not less than 25% of the gross site area shall be maintained as open space.
  - [2] 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.
  - [3] 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.
- [1] An area of not less than 40% 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.
  - [2] Active recreational areas may include playgrounds, tennis courts, swimming pools, wading pools, saunas, exercise rooms, clubhouse facilities, specifically constructed outdoor sports fields, picnic areas, 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.
  - [3] 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 may 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 in Subsection Q(13)(a) and (b) of this section.
- (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 areas (lots).
- (a) Each park site shall be marked into unit areas, and all lot dimensions and placement of lots shall be permanently recorded on the survey map.
  - (b) No manufactured housing lot shall be constructed on a plot which has a slope of 15% or greater, except by application by the applicant to the Zoning Board of Appeals for a variance.

- (c) No manufactured housing park lot shall extend into a designated floodplain or wetland.
  - (d) Every home lot as described on the site plan shall be clearly defined by field survey and indicated on the ground with permanent and visible markers.
  - (e) Each designated unit area shall:
    - [1] Be not less than 20,000 square feet in area;
    - [2] Have a minimum of 120 feet of frontage on an interior park roadway;
    - [3] Not be closer to a public street or other property line than 60 feet;
    - [4] Meet all front, side, and rear yard requirements as per Town Code § 140-28, Residential cluster development regulations;
    - [5] Not access a public roadway directly. All lots must front an interior park roadway.
  - (f) All manufactured homes are to 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 designated unit area.
- (6) Placement of home on lot (clearances).
- (a) In order to create back yards, all homes shall be placed on each lot with the long side parallel to an interior park roadway.
  - (b) Manufactured homes shall be located a distance of:
    - [1] At least 50 feet from any adjacent structure in any direction;
    - [2] At least 100 feet from an adjacent property line;
    - [3] At least 100 feet from the right-of-way line of a public road; and
    - [4] At least 50 feet from the nearest edge of any interior roadway within the park.
  - (c) 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) Construction standards. All manufactured homes and lots within a manufactured home park shall comply with the requirements of Chapter 99, Manufactured Homes.
- (8) Accessibility.
- (a) A park shall access a public roadway at a minimum of two and a maximum of four points on a county or state highway as follows:

- [1] These shall be at least 125 feet apart and be at right (ninety-degree) angles to the public roadway.
  - [2] Streetlighting shall be provided at these intersections. The lighting shall be sufficient for safety purposes but shall be made to have minimal intrusion on individual lots and neighboring properties.
  - [3] 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.
  - [4] All entrances and exits shall be free of any material which would impede the visibility of the driver on a public highway or street.
  - [5] All entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with manufactured homes attached.
  - [6] The Planning Board shall require a designated and marked walkway, at least 4 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.
- (b) Interior roadways. 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, and, further:
- [1] 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.
  - [2] All interior roadways shall meet Town subdivision requirements for roadways as stated in Chapter 125, Subdivision of Land.
  - [3] The proposed interior roadways shall have appropriate safety signage and speed limit signage as deemed necessary by the Highway Superintendent.
  - [4] The Planning Board may require speed bumps or other safety devices if deemed appropriate.
  - [5] If dead-end streets are part of the plan, they shall serve no more than 12 home lots, shall be limited in length to 1,000 feet, and shall terminate in an appropriate sized and shaped cul-de-sac as required by Town highway standards.
  - [6] All streets are to be named and all intersections marked appropriately with monuments.
- (9) Utilities and service facilities.
- (a) The following utilities and service facilities shall be provided in each

manufactured home park, which shall be 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:

[1] 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.

[2] Waste from each manufactured home shall be wasted into a sewer system and waste disposal plant 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.

[3] 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.

(b) 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.

(c) All community utilities shall be carried underground and shall be installed in accordance with all local, county, state, and federal regulations.

(d) 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.

(e) 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.

(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:
  - [1] The name and mailing address of the occupant of each manufactured home.
  - [2] 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 standards specified in § 140-21 of the Town Code.

(13) Performance and maintenance bond.

- (a) The Planning Board shall require a cash bond or renewable, irrevocable letter of credit for the construction of roads, sewerage system, water system, or any other community needs deemed necessary. The amount of the bond shall be

determined by the Planning Board after consultation with a Planner or Engineer for the Town.

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

(14) Safety.

- (a) Each manufactured home shall be equipped with a minimum of one fire extinguisher of proper type in the kitchen as well as one smoke detector in each room used as either sleeping quarters or cooking area. Carbon monoxide detectors shall also be required. The park owner shall be responsible for the mandating of this provision and shall be required to verify the continued operational capacity of these safety items once per year and submit notarized documentation stating compliance for all park units with the annual 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 whatever the school-age population of the park requires.

(15) Park owner requirements.

- (a) The owner or operator of the park shall be required to maintain all landscaping, roadways, public facilities, common grounds, and community recreational equipment in a safe, clean, sanitary condition.

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

**§ 140-37. Additional conditions.**

In issuing a special use permit the Planning Board may require any walks, fence or landscaping or attach such conditions which it deems necessary to protect the value of adjacent properties or to prevent any hindering of the appropriate use of adjacent land.

**ARTICLE VIII  
Nonconforming Building Uses and Lots**

**§ 140-38. Continuation of nonconforming building and uses.**

- A. Any lawful building, structure or use of premises existing at the time of enactment of this chapter or any subsequent amendment thereof applying to such building, structure or use of premises may be continued although such building, structure or use of premises does not conform to the provisions thereof, except as follows:
- B. Any undeveloped lot in a subdivision which was not properly approved by the Planning Board and/or not filed in the office of the County Clerk and whose area and/or width and/or depth are less than the specified minimum lot requirements of this chapter shall be considered a violation of this chapter.

**§ 140-39. Discontinuance.**

Any building or land used for or occupied by a nonconforming use which is changed to or replaced by a conforming use shall not thereafter be used for or occupied by a nonconforming use, provided that such conforming use exists for a period of five consecutive years or provided that said property, use or building is not used for five consecutive years.

**§ 140-40. Extension, alteration, restoration.**

- A. A nonconforming use shall not be extended, enlarged or structurally altered, but the extension of a lawful use in any portion of a nonconforming building which existed prior to the date of the adoption of this chapter shall not be deemed the extension of such nonconforming use. A nonconforming building may be rebuilt in the event of partial or total destruction thereof to occupy the same space on the lot or rebuilt providing greater yard space and less lot coverage and not exceeding the height of the totally or partially destroyed building.
- B. Notwithstanding any provisions of this chapter, a nonconforming business and/or industrial use in a residential zone may expand or increase the extent of such use, provided that:

- (1) With respect to buildings located upon lands owned by the holder of such nonconforming use on the date of the adoption of this chapter, said owner may enlarge, increase or extend the size and areas of such buildings by no more than 100% of their present size and area as existed at the date of the adoption of this chapter. This extension may be exercised by adding to existing buildings or by the erection of new buildings on the same parcel or contiguous parcels, if title to such contiguous parcel was in the same owner on the date of the adoption of this chapter.
- (2) The right to increase, extend and enlarge the nonconforming use as herein provided shall be subject to a conditional use contingent on securing a special use permit in each case from the Planning Board, pursuant to Article VII et seq of this chapter.

**§ 140-41. Necessary maintenance and repairs.**

A building or structure of a nonconforming use may be repaired or restored to a safe condition.

**§ 140-42. Change to other nonconforming use.**

A nonconforming use of a building, structure or land may be changed to another nonconforming use which is of the same or more restricted in nature. However, no building in which a nonconforming use has been changed to a more restricted use shall again be devoted to a less restricted use. Uses shall be deemed more restricted or less restricted in accordance with § 140-10 and Article II. The change of a nonconforming use of a building, structure or land to another nonconforming use shall include the right to change an accessory nonconforming sign, provided that such sign is not increased in area or does not further violate provisions of this chapter.

**§ 140-43. Construction started prior to this chapter.**

Any lawful building or structure for which construction was begun prior to the effective date of this chapter or any subsequent amendment thereof applying thereto may be completed and used in accordance with the plans and specifications for building or structure.

**§ 140-44. Existing undersized lots.**

- A. Any lot, whether developed or undeveloped, held in single and separate ownership prior to the adoption this chapter and whose area and/or width and/or depth are less than the specific minimum lot requirement of this chapter for the district, may be considered as complying with such minimum lot requirements and no variance shall be required, provided that: [Amended 6-3-1993 by L.L. No. 1-1993]
- (1) Such lot does not adjoin any other lot or lots held by the same owner whose contiguous area is equal to or greater than the minimum lot area required for that district;
  - (2) Such lot has an area of at least 5,000 square feet and a minimum width of at least 50 feet at the required setback line if it is to be used for residential purposes;
  - (3) The following minimum yard dimensions are maintained for residence:
    - (a) Front yard: 25 feet.

- (b) Side yard: 8 feet.
- (c) Rear yard: 25 feet.
- (4) All other bulk requirements for that district are complied with.
- B. Notwithstanding the other subsections of this section, any lot in the HD district, on which a building exists on the date of the adoption of the HD district, shall be considered as complying with all of the dimensional requirements specified in the Density Control Schedule<sup>36</sup> for the HD district.
- C. In any district where residences are permitted, such undersized nonforming lots may be used for not more than one single-family dwelling.
- D. A lot of nonforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said adjoining owners' property.

**§ 140-45. Reduction in lot area.**

No lot shall be reduced in area so that it creates a nonconforming bulk or use in violation of any regulations contained in this chapter.

**§ 140-46. Exemption of lots shown on approved subdivision plats.**

- A. In accordance with Town Law, § 265-a, any lot proposed for residential use in a subdivision whose plat delineates one or more new streets, roads or highways and which said subdivision plat has been properly approved by the Planning Board and filed in the office of the County Clerk, prior to the passage of this chapter, and whose area and/or width and/or depth are less than the specified minimum lot requirements of this chapter for that district shall be considered as complying with such minimum lot requirements for two years after the filing of the subdivision plat.
- B. If, at the time of the filing of the subdivision plat referred to above, there was no Planning Board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a period of one year after the filing of said subdivision plat in the office of the County Clerk.

ARTICLE IX  
**Site Plan Procedure**

**§ 140-47. Referral to the Planning Board.** [Amended 4-2-1998 by L.L. No. 1-1998]

In each case where a proposed building or use requires site plan approval by the Planning Board, the Code Enforcement Officer shall refer said site plan application to the Planning Board for review and approval before issuing a building permit, after applicant shall pay a fee as set from time to time by resolution of the Town Board.<sup>37</sup> Prior to the referral of said site plan application to

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36. Editor's Note: The Density Control Schedule is located at the end of this chapter.

37. Editor's Note: The fee schedule is on file in the Town offices.

the Planning Board, the Code Enforcement Officer shall determine whether or not the proposed use is permitted in the zoning district in which it is proposed.

**§ 140-48. Procedure.** [Amended 4-2-1998 by L.L. No. 1-1998; 6-3-1999 by L.L. No. 1-1999]

- A. Presubmission. Prior to the submission of a formal site plan, the applicant may, at its option, meet in person with the Planning Board to discuss the site plan and to determine specific items and level of detail of the submission requirements necessary for reviewing the required site plan.
- B. The applicant shall submit 10 copies of the proposed site plan and any related information to the Planning Board Secretary, who shall forward two copies of same to the Code Enforcement Officer. The site plan shall be accompanied by the fee as set forth in § 140-47 above.
- C. Within 15 calendar days of submission, the Code Enforcement Officer shall review each original or amended site plan and advise whether or not the application is complete and whether the plan meets the requirements of all the provisions of this chapter other than those of this section regarding site plan review. The Code Enforcement Officer shall return the proposed site plan to the applicant for completion or revision if he finds said application to be incomplete.
- D. Upon advising that an application is complete, the Code Enforcement Officer shall forward it to the Planning Board prior to its next regular meeting, which shall be considered the official submission date.
- E. The Planning Board, after preliminary review, shall hold a public hearing on each request for site plan approval within 62 days of receipt of the application. The Planning Board shall mail notice of such hearing to the applicant at least 10 days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the Town at least five days prior to the date thereof. The Planning Board may also establish such other rules and regulations as it deems appropriate and in accordance with Town Law.

**§ 140-49. Standards for site plan review.**

- A. The Planning Board shall consider the public health, safety and general welfare, the comfort and convenience of the public in general and the residents of the immediate neighborhood in particular and shall consider all applicable requirements of this chapter.
- B. In addition to the above Subsection A, the Planning Board shall also consider:
  - (1) Traffic access. That all proposed access ways to and from a street are adequate, but not excessive in number, adequate in width, grade, alignment and visibility, not located too close to street intersections.
  - (2) Circulation and parking. That the interior circulation system is adequate to provide safe accessibility to all required off-street parking.
  - (3) Landscaping and screening. That parking and service areas are reasonably screened from view of adjacent property owners and that buffer area requirements of this chapter are complied with.

- (4) Harmony of ordinary development. That such use will be in harmony with the ordinary development of the district, and the location nature height of buildings, walls, fences and parking areas will not discourage the appropriate development and use of adjacent lands.
- (5) Reasonable access. That all structures, equipment and materials shall be of reasonable access for fire, police and other emergency protection.

C. Additional requirements for adult uses. [Added 12-29-2003 by L.L. No. 2-2003]

- (1) Not more than one adult use shall be permitted on any lot.
- (2) No adult use shall be permitted on any lot which is within 6,000 feet of any other lot containing an adult use.
- (3) The lot on which the adult use is located shall have frontage on Route 209. Further, said lot shall be located between Boice Mill Road and Queens Highway.
- (4) No adult use shall be permitted within 1,000 feet of any lot containing a church or other place of religious worship, park, playground, playing field, day-care center, community center or children's camp.
- (5) No adult use shall be permitted within 1,500 feet of any municipal boundary.

**§ 140-50. Action by Planning Board.** [Amended 4-2-1998 by L.L. No. 1-1998; 4-2-1998 by L.L. No. 1-1998]

Within 62 days of the public hearing, the Planning Board shall either approve, approve with modifications or disapprove said site plan, stating the reasons therefor, in writing, in its records. The Planning Board shall file a written notice of its decisions with the Code Enforcement Officer. The decision shall also be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy thereof shall be mailed to the applicant. One copy of the approved site plan shall be returned to the applicant.

**§ 140-51. Rules.**

All applications for site plan review shall follow all rules and regulations as established by the Planning Board. All applications for site plan review together with complete instructions for completing the same, may be obtained from the Town Clerk by paying the required fee as set forth in § 140-47 above.

**ARTICLE X  
Administration**

**§ 140-52. Enforcement.**

- A. This chapter shall be enforced by the Code Enforcement Officer, who shall be appointed by the Town Board.
- B. No building permit or certificate of compliance shall be issued by the Code Enforcement Officer, and no permit or license shall be issued by any official of the Town, if same would be in conflict with the provisions of this chapter. [Amended 6-3-1999 by L.L. No. 1-1999]

**§ 140-53. Building permit.** [Amended 6-3-1999 by L.L. No. 1-1999]

- A. No building or structure shall be erected, added to or moved, nor shall any existing building or land be changed in use, until a zoning permit and/or building permit therefor has been issued by the Code Enforcement Officer.
- B. All applications for building permits shall be accompanied by two copies of a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot and such other information as may be required by the Code Enforcement Officer in order to determine compliance with this chapter. One copy of such plans, when approved by the Code Enforcement Officer, shall be returned to the applicant.
- C. The fees for all applications for building permits in the Town of Rochester shall be set from time to time by resolution of the Town Board. The fees as required by this section are to be remitted to the Town Clerk and must accompany the application for building permit.
- D. Upon receipt of an application for a building permit, the Code Enforcement Officer shall examine the same for compliance with this chapter. The Code Enforcement Officer shall then notify the applicant of what procedures must be taken to obtain such permit. Upon the applicant's completion of all necessary action to obtain said building permit, the Code Enforcement Officer shall issue a building permit.
- E. Said building permit shall be of sufficient size and durability to allow the same to be posted conspicuously at the site or building requiring the same, so that it may be seen from a public highway or nearest road during the construction or work and until the issuance of a certificate of compliance and completion.

**§ 140-54. Certificate of compliance and/or completion.**

- A. The Code Enforcement Officer is required to issue a certificate of compliance and/or completion when the conditions and requirements of the previously issued zoning or building permit are met.
- B. No occupancy or use of the lot; parcel or premises which said certificate effects shall take place without said certificate.
- C. No such certificate shall be issued until proof is provided that any sewage or septic system has been approved by the Ulster County Department of Health and that the necessary Town, county or state driveway permit has been obtained and the conditions therein met, after further inspection by the Code Enforcement Officer. In addition, no certificate may be issued where the applicant has failed to comply with the requirements of a final environmental impact statement (EIS), if appropriate, or other requirement of the State Environmental Quality Review Act.

**§ 140-55. Notice of violation.**

Whenever the Code Enforcement Officer observes a violation of this chapter, said Code Enforcement Officer shall issue a written notice of said violation to the violator and the property owner. This notice of violation shall require the violation be corrected in not less than 15 days,

although the Code Enforcement Officer, in his discretion, may extend or shorten the required period to remedy the violation. In no event, shall the Code Enforcement Officer extend the time period beyond 30 days without approval from the Town Board. Copies of the violation should forthwith be sent to the Zoning Board of Appeals, the Planning Board and the Town Board.

**§ 140-56. Entry upon lands.**

In order to effectuate the provisions of this chapter, the Code Enforcement Officer shall have the right to enter upon any parcel of real property within the Town of Rochester for the purpose of inspection of the same, upon the advice and consent of the Town Attorney or legal advisor, as the case may be, who shall deem the procedure to be utilized for the Code Enforcement Officer to gain entry upon such lands.

**§ 140-57. Receipt of written complaint or violation.**

The Code Enforcement Officer shall, not less than 10 days after receiving a written complaint of a violation, make his written report to the Zoning Board of Appeals, the Planning Board and the Town Board. Such report may be in the form of a certificate of completion and/or compliance even if there shall be no violation upon his inspection of the same.

**§ 140-58. Training of Code Enforcement Officer.** [Amended 4-2-1998 by L.L. No. 1-1998]

Any newly appointed Code Enforcement Officer, including the incumbent inspector, shall be given a training course that complies with standards for Code Enforcement Officers as established by New York State.

**§ 140-59. Penalty for offenses.** [Amended 4-2-1998 by L.L. No. 1-1998]

The first violation of this chapter is an offense punishable by a fine not exceeding the sum of \$350 or by imprisonment for not more than six months, or by both such fine and imprisonment. A second offense within five years is punishable by a fine of not less than \$350 nor more than \$700 or imprisonment of not more than six months, or by both such fine and imprisonment; for a third and subsequent offense within five years, by a fine of not less than \$700 nor more than \$1,000 or six months imprisonment, or both. Each week the violation continues shall be deemed to be a separate and distinct violation. In addition, the Code Enforcement Officer may apply to the Town Board for permission to commence an action for an injunction pursuant to § 268, Subdivision 2, of the Town Law.

ARTICLE XI  
**Zoning Board of Appeals (ZBA)**

**§ 140-60. Establishment and duties.** [Amended 7-7-1986 by L.L. No. 3-1986; 4-2-1998 by L.L. No. 1-1998]

Pursuant to Town Law, the Town Board shall appoint a Zoning Board of Appeals consisting of five members, shall designate its Chairman and also provide for compensation to be paid to said members and provide for such other expenses as may be necessary and proper. A member of the Zoning Board of Appeals shall not, at the same time, be a member of the Town Board. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and

after public hearing.

A. Term of appointment.

- (1) Of the members of the Zoning Board of Appeals first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years from and after said member's appointment.
- (2) Successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessor. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term.

B. Staff. The Zoning Board of Appeals may employ such clerical or other staff assistance as may be necessary and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.

C. Rules and procedures, bylaws, forms.

- (1) The Zoning Board of Appeals shall have the power to make, adopt and promulgate such written rules or procedures, bylaws and forms as they may deem necessary for the proper execution of their duties and to secure the intent of this chapter. Such rules, bylaws and forms shall not be in conflict with, nor have the effect of waiving, any provisions of this chapter or any other ordinances of the Town of Rochester. Such rules, bylaws, and forms and any subsequent amendments or supplements thereto shall be submitted to the Town Board by the Zoning Board of Appeals for approval and filing for public view.
- (2) The Town Board shall move to approve, reject or modify such rules, bylaws and forms within 30 days after submission. Failure of the Town Board to so move shall be construed to constitute approval thereof.

D. Meetings. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine. The Chairman or, in the absence of said Chairman, the Acting Chairman may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The concurring vote of a majority of all members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to decide in favor of an applicant in any matter upon which they are required to pass under any ordinance to effect any variation in the local law. The Zoning Board of Appeals shall decide an appeal or any other matter referred to it within 62 days after the final hearing.

E. The Zoning Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every question. If a member is absent or fails to vote, the minutes shall indicate the same. Every rule, regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

F. Referrals to the Planning Board. At least 45 days before the date of hearing held in

connection with any appeal or application submitted to the Zoning Board of Appeals, said Board shall transmit to the Planning Board a copy of said appeal or application and shall request that the Planning Board submit to the Zoning Board of Appeals its advisory opinion on the same. The Planning Board shall submit a report of such advisory opinion prior to the date of said public hearings. The failure of the Planning Board to submit such report shall be interpreted as a favorable opinion for said appeal or application.

**§ 140-61. Public notice and hearing.**

- A. Public notice of any required hearing by the Zoning Board of Appeals shall be given in accordance with Town Law as follows:
- (1) By publishing a notice of any appeal or application and the time and place of the public hearing in the official newspaper of the Town not less than five days prior to the date of such hearing.<sup>38</sup>
  - (2) By giving written notice of hearing to any appellant or applicant and any other such notice to property owners in an affected area as may be required by the Zoning Board of Appeals and to the Planning Board not less than five days prior to such hearing.
  - (3) By giving written notice of hearing to any required municipal, county, metropolitan, regional, state or federal agency in the manner prescribed by law.

**§ 140-62. Appeals.**<sup>39</sup>

- A. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer under this chapter in accordance with the procedure set forth herein:
- (1) Notice of appeal shall be filed with the Code Enforcement Officer and the Secretary of the Zoning Board of Appeals, in writing, in a form required by such board, within 60 days of the date of the action appealed from, specifying the grounds thereof.
  - (2) Upon filing of a notice of appeal and payment of a fee set from time to time by resolution of the Town Board<sup>40</sup> by the appellant or applicant in accordance with a fee schedule as set by resolution of the Town Board, the Code Enforcement Officer shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.<sup>41</sup>
  - (3) The Zoning Board of Appeals shall set a reasonable date for the hearing of each appeal, of which hearing date the appellant shall be given notice and at which hearing the appellant shall appear in person or by agent or by attorney. Public notice of such hearing shall be given by publication in a paper of general circulation in the Town at least five days prior to the date of the hearing. Notice shall also be given to owners of

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38. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

39. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

40. Editor's Note: The fee schedule is on file in the Town offices.

41. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

premises and/or buildings involved.

- (4) An appeal stays all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his 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 Code Enforcement Officer and on due cause shown.
  - (5) Following public notice and hearing, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made with respect to the premises, and to that end shall have all the power of the Code Enforcement Officer. The Zoning Board of Appeals shall decide the appeal within 62 days following the hearing.
- B. A motion for the Zoning Board of Appeals to hold a rehearing to reevaluate any order, decision or determination of said Board not previously reevaluated may be made by any member of said Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as the original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided that the Board finds that the rights vested in persons acting in good faith in reliance upon the reevaluated order, decision or determination will not be prejudiced thereby.

**§ 140-63. Variance.**

- A. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, the Zoning Board of Appeals shall have the power, after public notice and hearing, to vary or modify the application of any of the regulations or provisions of this chapter relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.
- B. All applications for variances shall be filed with the Secretary of the Zoning Board of Appeals, in writing, shall be made in a form required by the Zoning Board of Appeals and shall be accompanied by payment of a filing set from time to time by resolution of the Town Board<sup>42</sup> and a plot plan, drawn to scale and accurately dimensioned, showing the location of existing and proposed buildings and structures on the lot.<sup>43</sup>
- C. Any variance which is not exercised within one year from the date of issuance or within one year of the date of special permit or site plan approval from the Town Planning Board pursuant to § 140-63D(4) herein, whichever occurs later, is hereby declared to be revoked

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42. Editor's Note: The fee schedule is on file in the Town offices.

43. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

without further hearing by the Zoning Board of Appeals.<sup>44</sup>

D. The following shall be the criteria for granting variances:<sup>45</sup>

(1) Use variances.

(a) The Zoning Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this chapter, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

[2] That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;

[3] That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

[4] That the alleged hardship has not been self-created.

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

(2) Area variances.

(a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of this chapter, to grant area variances, as defined herein.

(b) 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 shall also consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the

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44. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

45. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

granting of the area variance;

- [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- [3] Whether the requested area variance is substantial;
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(c) 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.

- (3) 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 the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- (4) Upon the granting of an area variance by the Zoning Board of Appeals in connection with a use for which special use permit or site plan approval is normally required by the terms of this chapter, the applicant shall be required to obtain special use permit or site plan approval, as appropriate, from the Town Planning Board pursuant to Articles VII and IX of this chapter. Upon the granting of a use variance by the Zoning Board of Appeals, the applicant shall be required to obtain special use permit approval from the Town Planning Board pursuant to Article VII of this chapter. Said special use permit or site plan approvals shall be applied for within one year of the granting of a variance.

**§ 140-64. Relief from decisions.**

Refer to § 267-c of the Town Law.<sup>46</sup>

ARTICLE XII  
**Amendments**

**§ 140-65. Procedure.**<sup>47</sup>

The Town Board may, from time to time, on its own motion or on petition or on recommendation from the Planning Board, amend the regulations and district established under this chapter after public notice and hearing in each case. All petitions for any amendments of the regulations or

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<sup>46</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>47</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

districts herein established shall be filed, in writing, in a form required by the Town Board.

**§ 140-66. Referrals to Town Planning Board, County Planning Board and adjacent municipalities.**

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- A. Every proposed amendment, unless initiated by the Planning Board, shall be referred to the Planning Board for an advisory opinion. The Planning Board shall report its recommendations thereon to the Town Board, accompanied by a full statement of reasons for such recommendations, prior to the decision on such amendment. If the Planning Board fails to report to the Town Board within 30 days from the date of the receipt of such request for an advisory opinion or such longer time as may have been agreed upon by it and the Town Board, the Town Board may proceed without such report.
- B. Certain zoning text and map amendments shall also be referred to the Ulster County Planning Board at least 30 days prior to the Town Board's decision, in accordance with the provisions of §§ 239-l and 239-m of the New York State General Municipal Law.
- C. Further, certain zoning text and map amendments shall be referred to adjacent municipalities at least 10 days prior to the public hearing at which such amendments are to be considered by the Town Board in accordance with the provisions of § 264 of the New York State Town Law.

**§ 140-67. Public notice and hearing.**

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

- A. By publishing a notice of the proposed amendment and the time and place of the public hearing in a newspaper of general circulation in the Town not less than 10 days prior to the date of said public hearing.
- B. By giving written notice of hearing to any required municipal, county, regional, metropolitan, state or federal agency in the manner prescribed by law.

**§ 140-68. Protest by owners.**

If a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of land included in such proposed amendment, or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom or by the owners of 20% or more of the area of land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of at least 3/4 of the members of the Town Board.

**§ 140-69. Changes by Planning Board.**

The Planning Board, in accordance with Town Law, § 281, may simultaneously with the approval of any plat, make any reasonable change to the regulations established under this chapter with respect to the land so platted. Before the Planning Board shall make any such change, there shall

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48. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

be a public hearing preceded by the same notice as in the case of the approval of the plat itself. Once the plat is filed in the office of the County Clerk, such changes shall be and become part of the regulations of this chapter, shall take the place of any regulations established herein by the Town Board, shall be enforced in the same manner and shall be similarly subject to amendment. Also, see § 140-28 (Residential cluster development).

**§ 140-70. Publication and posting.**

Every amendment to this zoning and land use chapter, including any map incorporated therein, adopted in accordance with the Town Law, shall be entered in the minutes of the Town Board and a copy, shall be filed with the Secretary of State and posted on a signboard maintained by the Town Clerk, pursuant to § 30, Subdivision 6, of the Town Law. Acknowledgement of the filing with the Secretary of State and affidavit of posting thereof shall be filed with the Town Clerk.<sup>49</sup>

**ARTICLE XIII  
Interpretation and Application**

**§ 140-71. Legislative intent.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety and general welfare.

**§ 140-72. Noninterference and precedence.**

This chapter shall not interfere with, abrogate, annul or repeal any local law or any rule, regulation or permit previously or hereafter enacted, adopted or issued pursuant to law, provided that, unless specifically excepted, where this chapter imposes greater restrictions, its provisions shall control.

**§ 140-73. When effective.**

In accordance with the procedure set forth in the Municipal Home Rule Law, this chapter shall take effect on filing with the Secretary of State.

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<sup>49</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).