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# Town of Rochester

## Zoning Regulations

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**ADOPTED BY THE ROCHESTER SELECTBOARD**

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# ROCHESTER ZONING REGULATIONS

## I. TITLE ENACTMENT, INTENT

### 1.01 Title

The title of this bylaw shall be the Town of Rochester Zoning Regulations.

### 1.02 Enactment

In accordance with the Vermont Planning and Development Act hereinafter referred to as the "Act", (24 V.S.A., Chapter 117 Sub Chapter 6, Section 4401), there are hereby established Zoning Regulations for the Town of Rochester, Vermont, which are set forth in the text and maps that constitutes the regulations.

### 1.03 Intent

The intent of these regulations is to promote the health, safety, and general welfare of the inhabitants, to protect the value of existing property and insure orderly growth in the town of Rochester, by preventing the over-crowding of land by new development, promoting adequate sewage disposal, water supplies, transportation, schools, and other necessary town services.

It is not the intent of these regulations to supplant or replace any State or Federal regulations. Any proposed development must also satisfy applicable State of Vermont Regulations (e.g. State Subdivision Regulations, Act 250, Wastewater, Access Management, etc).

### 1.04 Status of Prior Regulations

This Ordinance, upon date of adoption, shall replace in its entirety the Rochester Zoning Ordinance in effect prior to that date, however all persons previously appointed to the Zoning Board of Adjustment or Planning Commission shall continue to serve their terms.

## **II. GENERAL REGULATIONS**

### **2.01 Existing Small Lots**

Any lot in individual or non-affiliated ownership, separate from surrounding property, in existence on the effective date of these Regulations may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than 1/8 acre in area with a minimum width or depth dimension of 40 feet.

### **2.02 Required Frontage on, or Access to Public Roads**

No land development may be permitted on lots which do not either have frontage on a public road or, with the approval of the Planning Commission, access to such a road by a permanent easement or right-of-way at least 30 feet in width.

### **2.03 Protection of Home Occupations**

No regulation herein is intended to infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in a residential area and which does not change the character thereof.

### **2.04 Calculation of Required Lot Area**

In calculation of the required lot area, existing private roads, rights-of-way, or proposed rights-of-way shall be considered as part of the lot area. Lot area required under these regulations, or other regulation requirements in relation to one building or use, shall not be counted as part of a required area for another building or use within the same lot boundaries.

### **2.05 Reduction of Lot Size**

No lot shall be so reduced in area that the area, frontage, coverage or any other requirement of these regulations shall be smaller than required for the lot regulations governing the use of the premises at that time.

### **2.06 Travel Trailers**

Travel trailers, pickup campers, motor homes, or any other similar vehicle used for recreational purposes may be parked or stored on a lot. When used as a temporary residence for a period not

to exceed three months, no permit is required. When such vehicles are used over three months consecutively they must meet all requirements applicable to dwellings. This provision shall not apply to a recreational vehicle in an established campground.

### **2.07 Cabins**

Cabins, camps, chalets, and similar structures for occasional overnight, or vacation use shall be permitted in a district where single family homes are permitted, provided such regulations as apply to single family dwellings are met.

### **2.08 Fences**

Closed fences that do not meet the setback requirements for a building from the edge of the road surface require a building permit.

### **2.09 Access and Safety**

Any new or modified access onto a public road or changes to an existing access will require a permit from the Selectboard or the Vermont Agency of Transportation (VTRANS). The Planning Commission may request changes or additions in relation to proposed yards, driveway entrances and exits, and landscaping, and the location and height of signs, buildings and enclosures to insure safety, to minimize traffic difficulties, and to safeguard adjacent properties.

### **2.10 Lots in Two Zoning Districts**

Any question regarding the application of a specific district regulation to any property lying in more than one district shall be resolved by the Board of Adjustment.

### **2.11 Temporary Uses and Structures**

The following temporary permits may be issued by the Administrative Officer for a period not exceeding one year, conditioned upon agreement by the owner to remove the structure or use upon expiration of the permit.

1. For nonconforming uses incidental to a construction project.
2. For temporary roadside stands for the sale of agricultural products.

### **2.12 Off-Street Parking Space Requirement**

For every building hereafter erected, altered, extended or changed in use, there shall be provided adequate parking spaces outside of the right-of-way.

### 2.13 Sign Standards

Statement of Purpose: The purpose of this section is to promote and protect the public health, safety, and welfare by regulating existing and proposed signs in the town. It is further intended hereby to control and reduce the proliferation of the signs in order to protect the economic, and in particular the scenic, value of the town and in order to prevent hazards to users of the roads in the town.

1. The following signs are allowed in all districts without a permit provided that they do not exceed 6 square feet in area and are located on the immediate property:
  - a. One professional or home occupation sign.
  - b. One temporary real estate sign.
  - c. Directional or information sign.
  - d. Signs necessary for public welfare.
2. In all districts, on-premises business signs shall be permitted upon application for a permit and approval by the zoning administrator subject to the following conditions:
  - a. A maximum of three signs, including one double-faced sign, per business entity (Vermont State Highway directional signs are allowed in addition to these 3 signs).
  - b. No individual sign shall be more than 25 square feet in size and all signs per business entity combined shall not be more than 50 square feet in area. In computing the area of a sign, not including the supporting structure, the area shall be the area of the smallest rectangle with a level base line which can contain the sign including panel, frame, or border, if any. A total of 75 square feet is allowed per building or business premises.
  - c. The top of any sign shall not be more than 20 feet above ground level.
  - d. No sign shall be written on or designed into the roofing material.
  - e. No sign or display shall contain any moving parts, nor contain, include or be illuminated internally or by neon, flashing, moving or intermittent light. However, an internally illuminated sign may be allowed if it is proven that the sign is a condition of a business franchise.
  - f. No sign may obstruct the view of traffic or interfere with drivers in any way.
  - g. Any sign within a town right-of-way will also require approval by the Selectboard.



- h. Lighting of signs shall be permitted only if the light source is hooded to prevent glare.
- i. Signs no longer in use shall be removed.
- 3. Temporary signs for which no permit is required:
  - a. Nonprofit organizations shall be permitted to advertise fundraising events with temporary signs.
  - b. In addition to the permitted and regulated signs above, each business entity shall be allowed to have one sign, up to 32 square feet, for maximum total of 14 days in each calendar year. It is up to the business to keep a record of the days on which the sign is displayed.
- 4. A conditional permit for an additional sign may be granted after a duly warned hearing under the following circumstances:
  - a. Unique circumstances, peculiar to the structure or use and the area in which it is located, exist which make the additional sign necessary or desirable for public information.
  - b. The proposed sign is in keeping with and will not have adverse effect on the character of the immediate neighborhood.

#### **2.14 Adequate Sewage Treatment Requirement**

In addition to any other restriction, no construction under a zoning permit can be initiated unless and until a Wastewater and Potable Water Supply Permit is issued, if required under 10 V.S.A. chapter 64, by the Vermont Department of Environmental Conservation.

#### **2.15 Affordable Housing**

No provision of this bylaw may have the effect of excluding from the municipality housing to meet the needs of the population as determined in accordance with 24 V.S.A. § 4382(c).

Permanent affordable housing (remaining affordable for 99 years or more) may receive up to a 25% density bonus. The ZBA may accept modification of setbacks and frontage as appropriate in view of design, location and character of the neighborhood.

#### **2.16 Mobile Homes**

Pursuant to 24 V.S.A § 4412(1)(B), a mobile home, modular housing or prefabricated housing must be considered a single-family dwelling and must meet the same zoning requirements applicable to single-family dwelling units.

### **2.17 Mobile Home Parks**

Per 24 V.S.A § 4412(C), No bylaw shall have the effect of excluding mobile home parks from the municipality. Within this bylaw, Mobile Home Parks shall be treated as a conditional use within the areas where such use is allowed in section III.

### **2.18 Accessory Dwellings**

An accessory dwelling unit that is located within or appurtenant to an owner occupied single family dwelling shall be a permitted use. An accessory dwelling unit shall be defined as efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- The property has sufficient wastewater capacity.
- The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
- Applicable setback, coverage, and parking requirements specified in the bylaws are met.

### **2.19 Childcare Facilities**

A “family child care home or facility” as used in this bylaw means a home or facility where the owner or operator is to be licensed or registered by the state for child care. A family child care home serving six or fewer children shall be considered to constitute a permitted single family residential use of property. A family child care home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but requires site plan approval based on the zoning requirements contained in section III of this document. A family child care facility serving more than six full-time and four part-time children shall be reviewed as a conditional use.

### **III. ZONING DISTRICT REGULATIONS**

#### **3.01 Business – Residential District**

##### **Description:**

The bounds of this zone follow roughly the White River on the western side, and the 940 foot contour line on the eastern side. The southern most boundary is Nason Brook, with the intersection of Route 100 and Robinson Drive defining the boundary north of the village.

**The following uses shall be permitted in the Business-Residential district upon issuance of a zoning permit by the Administrative officer:**

1. Accessory uses customarily incidental to the permitted use
2. Bank or financial institutions
3. Community centers, halls, lodges, clubs, parks, playgrounds, theatres
4. Drive-in Stands
5. Educational, cultural and religious establishments
6. Home occupations
7. Hotels, tourist homes, restaurants, or similar establishments letting rooms, serving meals or both
8. Multi-family dwellings
9. Non-retail studios or workshops
10. Office buildings
11. Professional or personal business offices or studios
12. Retail, wholesale, or service establishments
13. Single family dwellings

**The following uses shall be permitted Business-Residential district upon issuance of conditional use approval by the Board of Adjustment:**

1. Automobile filling stations
2. Buildings/Structures greater than 35 feet in height. Anything over 50 feet is prohibited.
3. Cemeteries
4. Garages for the commercial repair of vehicles and equipment
5. Home industries
6. Hospitals, clinics and nursing homes, assisted living facilities
7. Light manufacturing and processing facilities

**Minimum Requirements:**

**Residential**

- Lot Size: A lot shall be at least 1/2 acre.
- Density: A two family dwelling unit will be allowed per village lot. Lots over 1/2 acre in area will be allowed an additional dwelling unit for each additional 1/4 acre.
- Frontage: Each lot shall have at least 90 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard: A building shall be placed on a lot at least 10 feet from side and rear property lines.
- Height: A building shall not exceed 35 feet in height without conditional use approval.
- Parking: At least two off-street parking spaces shall be provided for each dwelling unit.

**Non-Residential:**

- Lot Size: A lot shall be at least 1/2 acre in area.

- **Frontage:** Each lot shall have at least 90 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- **Setback:** A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- **Side and Rear Yard:** A building shall be placed on a lot at least 10 feet from side and rear property lines.
- **Height:** A building shall not exceed 35 feet in height without conditional use approval.
- **Parking:** See “Off Street Parking” in section 2.12 General Regulations.

### **3.02 Commercial – Agricultural District**

#### **Description**

This district begins at the junction of Route 100 and Route 73. From there it meanders east and south following the 840 foot contour just west of the White River for a distance of 1.4 miles. Crossing Route 100 and starting in a northerly direction, the border generally follows the 900 foot contour line, eventually intersecting the Village's southern boundary. This district also includes the valley floor from the 900 foot contour on the east to the 900 foot contour on the west beginning at the north end of the village and continuing to the Hancock town line.

#### **The following uses shall be permitted upon issuance of a zoning permit by the Administrative Officer:**

1. Accessory uses customarily incidental to the permitted use
2. Agricultural uses
3. Bank or financial institutions
4. Community centers, halls, lodges, clubs, parks, playgrounds, theatres
5. Educational, cultural and religious establishments
6. Home occupations
7. Hotels, tourist homes, restaurants or similar establishments letting rooms, serving meals or both
8. Motel, motor lodges

9. Multi-family dwellings
10. Non-retail studios and workshops
11. Office buildings
12. Professional or personal business offices or studios
13. Retail, wholesale or service establishments
14. Single family dwellings

**The following uses are permitted upon issuance of conditional use approval by the Board of Adjustment:**

1. Amusement parks, golf course
2. Automobile filling stations
3. Buildings/Structures 35 feet or greater in height
4. Camping Areas
5. Cemeteries
6. Commercial Recreational Facilities such as ski area, marina, beach, skating rink, bowling alley.
7. Drive-in stands
8. Garages for the commercial repair of vehicles and equipment
9. Home industries
10. Hospitals, clinics and nursing homes, assisted living centers
11. Light manufacturing and processing facilities
12. Mineral or gravel extraction and quarrying
13. Public Utility Substations
14. Telecommunications Facilities/Towers, Wind Towers

### **3.03 Agricultural – Residential District**

#### **Description**

The boundaries of the two individual areas comprising the Agriculture - Residential Zone also follow contour lines. The southern most area borders the Commercial - Agricultural Zone and the Stockbridge town line and has on its western and eastern borders the 840 foot and 900 foot contour lines respectively. The second area runs parallel to Route 73 and the West Branch following contour lines ranging from 900 feet through 1100 feet ending at Flanders Hill Rd.

**The following uses shall be permitted upon issuance of a zoning permit by the Administrative Officer:**

1. Accessory uses customarily incidental to the permitted use
2. Agricultural uses
3. Home occupations
4. Multi-family dwelling with no more than four dwelling units
5. Single-family dwelling
6. Wildlife refuges, outdoor recreation

**The following uses shall be permitted upon issuance of conditional use approval by the Board of Adjustment:**

1. Buildings/Structures greater than 35 feet in height.
2. Camping areas
3. Cemetery
4. Outdoor commercial recreational facilities
5. Educational, cultural, and religious establishments
6. Home industry
7. Mineral or gravel extraction and quarrying

15. Wildlife Refuge, Outdoor Recreation

16. Mobile Home Parks

**Minimum Requirements:**

**Residential**

- **Lot Size:** A lot shall be at least one acre in area.
- **Density:** A single-family dwelling will be allowed per acre. For each lot larger than one acre, an additional family unit within the same building will be allowed for each additional  $\frac{1}{4}$  acre.
- **Frontage:** Each lot shall have at least 90 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- **Setback:** A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- **Side and Rear Yard:** A building shall be placed on a lot at least 25 feet from the side and rear property lines.
- **Height:** A dwelling shall not exceed 35 feet in height without conditional use approval.
- **Parking:** At least two off-street parking spaces shall be provided for each dwelling unit.
- **Coverage:** The total area of all buildings on a lot shall not exceed 50% of the lot area.

**Non-Residential**

- **Lot Size:** One acre.
- **Frontage:** Each lot shall have at least 90 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- **Setback:** A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- **Side and Rear Yard:** A building shall be placed on a lot at least 25 feet from side and rear property lines.
- **Height:** A building shall not exceed 35 feet in height without conditional use approval.
- **Coverage:** The total area of all buildings on a lot shall not exceed 50% of the lot area.



8. Non-retail studios or workshops
9. Public utility substations
10. Telecommunications Facilities/Towers, Wind Towers
11. Mobile Home Parks

**Minimum Requirements:**

**Residential**

- Lot Size: Two acres.
- Frontage: Each lot shall have at least 150 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width.
- Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard: A building shall be placed on a lot at least 25 feet from all side and rear property lines.
- Height: A building shall not exceed 35 feet in height without conditional use approval.
- Parking: At least two off-street parking spaces shall be provided for each dwelling.
- Coverage: The total area of all buildings on a lot shall not exceed 20% of the lot area.

**Non-Residential**

- Lot Size: Two acres.
- Frontage: Each lot shall have at least 150 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard: A building shall be placed on a lot at least 25 feet from side and rear property lines.
- Height: A building shall not exceed 35 feet in height without conditional use approval.
- Coverage: The total area of all buildings on a lot shall not exceed 20% of the lot area.

### **3.04 Aquifer Recharge District**

#### **Description:**

The 13 acres surrounding the Town well south of the village have been designated as the Aquifer Recharge Zone.

**The following uses are permitted upon issuance of conditional use approval by the Board of Adjustment provided that the uses do not require sub-surface sewage systems or pose any threat of ground water contamination:**

1. Agricultural Uses
2. Wildlife refuge, outdoor recreation

For further information, see the Rochester Well-Head Protection Plan, copies of which are available in the Town Offices.

### **3.05 Conservation – Residential District**

#### **Description:**

Any land not covered by one of the other four zones falls within this category.

**The following uses shall be permitted upon issuance of a zoning permit by the Administrative officer:**

1. Accessory uses customarily incidental to the permitted use.
2. Agricultural uses
3. Home Occupations
4. Multi-family dwellings with no more than four dwelling units
5. Single-family dwellings
6. Wildlife refuges

**The following uses are permitted upon issuance of conditional use approval by the Board of Adjustment:**

1. Buildings greater than 35 feet in height. Structures over 50 feet are prohibited.
2. Camping areas
3. Cemeteries
4. Outdoor commercial recreational facilities
5. Educational, cultural, and religious establishments
6. Home Industries
7. Mineral/gravel extraction and quarrying
8. Non-retail studios or workshops
9. Telecommunications Facilities/Towers, Wind Towers
10. Utility substations
11. Mobile Home Parks

**Minimum Requirements:**

**Residential**

- Lot Size: Three acres.
- Frontage: Each lot shall have at least 150 feet of frontage on a public street or access by a permanent easement or right-of-way 30 feet in width.
- Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard: A building shall be placed on a lot at least 25 feet from side and rear property lines.
- Height: A building shall not exceed 35 feet in height without conditional use approval.
-

- Parking: At least two off-street parking spaces shall be provided for each dwelling unit. .
- Coverage - The total area of all buildings on a lot shall not exceed 20% of the lot area.

### **Non-Residential**

- Lot Size: Three acres.
- Frontage: Each lot shall have at least 150 feet of frontage on a public street or access by a permanent easement or right-of-way 30 feet in width.
- Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard: A building shall be placed on a lot at least 25 feet from side and rear property lines.
- Height: A building shall not exceed 35 feet in height without conditional use approval.
- Coverage - The total area of all buildings on a lot shall not exceed 20% of the lot area.

### **3.06 Flood Hazard Overlay District**

#### **Description:**

This area is an overlay district covering areas subject to flood hazard. Where the provisions of this section apply in addition to those of any underlying district, the more restrictive regulations take precedence.

#### **3.07 Authorization**

To effect the purposes of 10 V.S.A., Chapter 32, and in accord with the Vermont Planning and Development Act, 24 V.S.A., Chapter 117, Section 4424, there are hereby established zoning regulations for areas of special flood hazard in the Town of Rochester, Vermont.

#### **3.08 Statement of Purpose**

It is the purpose of these regulations to promote the public health, safety and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in areas of special flood hazard, and to minimize losses due to floods by:

1. Restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including public facilities that serve such uses, shall be protected against flood damage at the time of initial construction; and
3. Protecting individuals from buying lands that are unsuited for their intended purposes because of flood hazard.

### **3.09 Lands to which the regulations apply**

These regulations shall apply to all lands in the Town of Rochester, Vermont, within identified areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

### **3.10 Official Flood Hazard Area Map**

The map entitled Flood Insurance Rate Map (FIRM), Town of Rochester, Vermont and any revisions thereto, shall be considered the Official Flood Hazard Area Map, together with all explanatory matter thereon and attached thereto, and is hereby adopted by reference and declared to be part of these regulations.

### **3.11 Interpretation of District Boundaries**

The Administrative Officer shall determine the boundaries of any designated area of special flood hazard by scaling distances on the Official Flood Hazard Area Map. For areas in doubt, and where such determination could place the structure outside the SFHA, the burden of proof shall be on the applicant, who shall seek a Letter of Map Amendment/Letter of Map Revision from FEMA, which shall constitute proof.

### **3.12 Permit Requirements and Application Procedures**

All zoning permit applications shall be submitted to the Administrative Officer, on forms furnished by him/her, who shall determine, on application, whether or not the proposed development is located within the area of special flood hazard by the procedures established in Section 3.11 of these regulations.

If the proposed use will be located in the areas of special flood hazard, the Administrative

Officer shall refer all applicants to the secretary of the Board of Adjustment. All applications for proposed development in the overlay district shall also be sent by the Administrative Officer to the National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section for comment in accordance with 24 V.S.A. § 4424. For any permit application involving the alteration or relocation of a watercourse, the Administrative Officer shall notify adjacent communities, the Administrator of the National Flood Insurance Program, and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section. A permit application will only be considered ready for conditional use hearing following the receipt of comments or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

Conditional use approval is required prior to issuing any zoning permits for all proposed new construction, substantial improvements, and other developments, including the placement of manufactured houses, fill, or excavation within all lands to which these regulations apply.

### **3.13 Records**

The Administrative Officer shall maintain a record of:

1. All permits issued and denied for development in areas of special flood hazard;
2. The as-built elevation certificate (consistent with the datum of the elevation on the NFIP maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings;
3. The elevation (consistent with the datum of the elevation on the NFIP maps for the community) to which buildings have been floodproofed;
4. All floodproofing certifications required under this regulation; and
5. All variance actions, including justification for their issuance.

### **3.14 Board of Adjustment**

The Board of Adjustment must receive a complete application prior to holding a hearing and rendering a decision on an application for a permit in the Flood Hazard Overlay District. A complete application must include all of the following:

1. Base flood elevation data for all subdivisions and other proposed new developments;
2. The elevation, in relation to mean sea level, of the lowest floor, including basement, of all new construction or substantial improvement of structures;

3. Where floodproofing is used in lieu of elevation, the elevation, in relation to mean sea level, to which any structure or substantial improvement has been floodproofed;
4. Certification from a registered professional engineer or architect that the floodproofed structure meets the floodproofing criteria of subsection 3.17 (3) b)c) of these regulations; and
5. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
6. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review sheet shall identify all State and Federal agencies from which permit approval is required for the proposal and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the AO and attached to the permit before work can begin.

Where available; i.e., Zones A, A1-A30, AE, and AH; the base flood elevations and floodway limits provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations. In areas where base flood elevations and floodway limits have not been provided, base flood elevations and floodway data provided by FEMA or available from State or Federal agencies or other sources, shall be obtained and utilized to administer and enforce these regulations.

### **3.15 Development Standards**

All permits for development in the FH Overlay shall be conditioned on the receipt of all necessary permits from those government agencies from which approval is required by Federal, State or Municipal law.

In any unnumbered A zones where no regulatory floodway has been designated, no new construction, substantial improvements, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

### **3.16 Floodway Standards**

Encroachments or development above grade and below the elevation of the floodway are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:

- a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base

- flood;
- b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

Development within the floodway is prohibited, except for minor improvements to existing structures or relating to bridges, culverts, roads, stabilization projects, public utilities, or health and safety measures.

**3.17 Floodway Fringe Area Standards (i.e., special flood hazard areas outside of the floodway, commonly called the One Hundred Year Flood Plain):**

1. All Development - All development shall be reasonably safe from flooding and:
  - a) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,
  - b) constructed with materials resistant to flood damage,
  - c) constructed by methods and practices that minimize flood damage including the provision of adequate drainage to reduce exposure to flood hazards,
  - d) constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
2. Residential Development:
  - a) New construction and existing buildings to be substantially improved that are located in Zones A, A1-30 and AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.
  - b) Manufactured homes to be placed and existing manufactured homes to be substantially improved that:
    - i. located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement during the occurrence of the base flood.
    - ii. located in an existing manufactured home park, where elevating a replacement home to or above base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation



elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.

3. Non-residential Development:

- a) New construction located in Zones A, A1-30, and AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation.
- b) Existing buildings to be substantially improved located in Zones A, A1-30, AE shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation or together with attendant utility and sanitary facilities be designed so that the structure is watertight at least one foot above flood elevation with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c) A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

4. Subdivisions:

- a) New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.
- b) Subdivisions (including manufactured home parks) shall be designed to assure:
  - i. such proposals minimize flood damage within the flood-prone area,
  - ii. public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage,
  - iii. adequate drainage is provided to reduce exposure to flood hazards, and
  - iv. any access roads to habitable structures or critical facilities shall be at least one foot above base flood elevations and able to withstand a 100-year event without failure or overtopping.

5. Enclosed Areas Below the Lowest Floor:

- a) Enclosed areas below the lowest floor which are subject to flooding shall be used solely for parking of vehicles, building access, or storage and such a condition shall clearly be stated in any permits.
- b) New construction and existing buildings to be substantially improved with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- c) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than

one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

6. Recreational Vehicles: Recreational Vehicles placed on sites with special flood hazard areas shall either:
  - a) be on the site for fewer than 180 consecutive days,
  - b) be fully licensed and ready for highway use, or
  - c) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in section 2.(b).
7. Accessory Structures: A small accessory structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure:
  - a) shall be used only for parking or storage of non-hazardous material,
  - b) shall be designed to have low flood damage potential,
  - c) shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters,
  - d) shall provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters,
  - e) shall be firmly anchored to prevent flotation; and,
  - f) shall have service facilities such as electrical and heating equipment, elevated or flood proofed to at least one foot above base flood elevation.
8. Water Supply Systems: New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
9. Sanitary Sewage Systems: New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
10. On-Site Waste Disposal Systems: On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
11. Watercourse Carrying Capacity: The flood and sediment carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
12. No structure shall be placed closer than fifty (50) horizontal feet from the top of any river or perennial stream bank within the overlay.

The Board of Adjustment may attach such additional conditions to the granting of a permit as are necessary to meet the purposes and flood hazard area management requirements of these zoning regulations.

### **3.18 Non-Conforming Structure**

The Board of Adjustment may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood hazard area, subject to compliance with the applicable considerations and requirements of Section 3.15, 3.16 and 3.17 of these regulations and provided that the following criteria are met:

1. The Board finds that the repair, relocation, or enlargement of such nonconforming structure is required for the continued economically feasible operation of a non-residential enterprise;
2. The Board finds that the repair, relocation, or enlargement of a nonconforming residential or non-residential structure will not increase flood levels in the regulatory flood way, threaten the health, safety, and welfare of the public or other property owners.

### **3.19 Prohibited Uses**

Junkyards, as defined in 24 V.S.A., Section 2068, and storage facilities for chemicals, explosives, flammable liquids or other toxic materials shall be prohibited in the overlay district.

### **3.20 Certificate of Occupancy**

In accordance with Chapter 117 §4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within the Flood Hazard Overlay District until a certificate of occupancy is issued therefore by the Administrative Officer, stating that the proposed use of the structure or land conforms to the requirements of these bylaws. A certificate of occupancy is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw. Within 14 days of the receipt of a completed application for a certificate of occupancy, the AO shall inspect the premises to ensure that all permits identified on the Project Review Sheet have been acquired and that all work has been completed in conformance with the zoning permit and associated approvals. If the AO fails to grant or deny the certificate of occupancy within 14 days of the submission of a completed application, the certificate shall be deemed issued on the 15th day.

### **3.21 Warning of Disclaimer of Liability**

These regulations do not imply that land outside the areas of special flood hazard or land use permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town of Rochester or any town official or employee

thereof for any flood damages that result from reliance on this regulation or any administrative decision lawfully made hereunder.

### **3.22 Annual Report to Federal Insurance Administration**

The Administrative Officer shall submit to the Administrator an Annual Report with respect to the administration and enforcement of these regulations.

A copy of the Annual Report shall be submitted to the Vermont Department of Environmental Conservation.

## **IV. ADMINISTRATION AND ENFORCEMENT, RULES AND REGULATIONS**

### **4.01 Administrative Officer**

The provisions of these regulations shall be enforced and administered by an Administrative Officer appointed by the Selectboard upon the recommendation of the Planning Commission as provided by law. Said officer shall administer and enforce the provisions of these regulations and in so doing perform all other necessary tasks to carry out the provisions of these regulations.

### **4.02 Board of Adjustment**

There is hereby established a Board of Adjustment appointed as provided by law, having the powers and duties as set forth in 24 V.S.A. Chapter 117, as amended. The Board of Adjustment shall have the following powers and duties:

1. To hear and decide appeals including, without limitation, where it is alleged that an error has been committed in any order, requirements, decision or determination made by an Administrative Officer
2. To hear and grant or deny a request for a variance or waiver.
3. To hear and grant or deny a request for approval of a conditional use.

Rules of procedure, nature of appeals, public notice, conditions for variance relief, and all other matters shall be established as provided in sub-chapter 8 of the Act.

### **4.03 Nonconformities**

Any non-conforming use of land or buildings legally existing at the time of the adoption of these regulations or at the time of the adoption of any amendment thereto, may be continued, subject to the following regulations:

1. Non-conforming use may be changed to conforming use upon approval of the application by the Administrative officer.
2. A non-conforming use may be changed to another non-conforming use only upon application and approval by the Board of Adjustment. Such use must be no more objectionable in character than the old use.

3. Non-conforming structures shall not be moved, enlarged, altered, extended, or reconstructed in any way that increases the degree of non-conformity. Reasonable additions to such nonconforming structures which result in coverage of additional ground area but do not extend the structure any closer to a roadway or property line will not be considered as an increase in the degree of non-conformity.
4. When a non-conforming use has been discontinued for a period of two (2) years or more, it shall not thereafter be re-established.
5. A non-conforming structure which has been damaged or destroyed by fire, flood or other "Act of God", may be reconstructed to its prior condition with the approval of the Administrative Officer if such reconstruction is sought within two years of the damage or construction.

#### **4.04 Interpretation of Zoning District Boundaries**

If uncertainty exists with respect to the boundary of any zoning district on the Zoning Map, the Board of Adjustment shall determine the location of such boundary.

#### **4.05 Applicability**

No development as defined herein, which is subject to these regulations, shall be commenced in the Town of Rochester until a zoning permit has been issued by the Administrative Officer, as provided for in the Act [§§4448, 4449].

#### **4.06 Construction Approved Prior to Adoption or Amendment to Regulations**

Nothing contained in these regulations shall require any change in plans or construction of a non-complying structure for which a zoning permit has been issued, and which has been completed within one year from the effective date of these regulations.

#### **4.07 Exemptions**

No zoning permit shall be required for the following activities, however written notification to the Administrative Officer of intent to build is required:

- a) Except within the Flood Hazard Overlay District, accepted agricultural practices (AAPs), including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets, in accordance with the Act [§4413(d)]. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the

Administrative Officer prior to any construction, as required for AAPs. Such structures shall meet all setback requirements under these regulations, unless specifically waived by the Secretary.

- b) Accepted management practices (AMPs) for silviculture (forestry) as those practices are defined by the Commissioner of Forests, Parks and Recreation, in accordance with the Act [§4413(d)].
- c) Power generation and transmission facilities, which are regulated under 30 V.S.A. §248 by the Vermont Public Service Board. Such facilities, however, shall conform to policies and objectives specified for such development in the Town Plan.
- d) Hunting, fishing, and trapping as specified under 24 V.S.A §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs, which for the purposes of these regulations are defined as outdoor recreation facilities.

#### **4.08 Records**

The Administrative Officer shall keep on file and available to the public, a full and accurate record of all applications, decisions, permits and violations received or issued during the course of his/her appointment.

#### **4.09 Fees**

The Selectboard shall establish such fees as may be necessary for the filing of applications, notices and the processing of hearings and action thereon. All such fees shall be paid to the Town of Rochester upon application for a conditional use permit under these regulations.

#### **4.10 Application Process**

An outline of the application process is available at the Rochester Town Office.

#### **4.11 Issuance of Permit**

Before any land or building is devoted to a new or changed use or before the erection, structural alteration or extension of any building, a zoning permit shall be obtained from the Administrative Officer. The fee for such permit shall be established by the Board of Selectmen. The Administrative officer shall within 30 days of receipt of an application which is deemed complete, either issue or deny a zoning permit. If denied, the Administrative officer shall so notify the applicant in writing stating his reasons therefore. If the zoning permit is approved, all activities authorized by its issuance shall be completed within two years of its date of issue, or

the zoning permit shall become null and void and reapplication to complete any activities shall be needed.

If the Administrative Officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the Appropriate Municipal Panel, a permit shall be deemed issued on the 31<sup>st</sup> day.

Within three (3) days following the issuance of a zoning permit, the Administrative Officer shall:

1. Deliver a copy of the permit to the Listers of the municipality; and
2. Post a copy of the permit in at least one public place in the municipality until the expiration of fifteen (15) days from the date of issuance of the permit. No permit is final until the 15-day appeal period has expired.

Additionally, the applicant must also post a permit notice, in a form prescribed by the Town of Rochester, within view of the public right-of-way most nearly adjacent to the subject property until the time for appeals has passed.

Within 30 days after a permit has been issued, the Administrative Officer shall:

1. Deliver the original or a legible copy of the permit to the town clerk for recording as provided in subsection 1154(a) of V.S.A. Title 24, Ch. 117.
2. File a copy of that permit in the offices of the municipality in a location where all land use permits shall be kept.

Prior to being acted upon for approval or permit, all applications for proposed development in the Flood Hazard Overlay District shall be sent by the Administrative Officer to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section for comment in accordance with 24 V.S.A. § 4424. For any permit application involving the alteration or relocation of a watercourse, the Administrative Officer shall notify adjacent communities, the Administrator of the National Flood Insurance Program, and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section. A permit application may not be considered complete and ready for action until following the receipt of comments from the Agencies above or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

All permits for development in the Flood Hazard Overlay District shall be conditioned on the receipt of all necessary permits from those government agencies from which approval is required by Federal, State or Municipal law.



#### **4.12 Conditional Uses**

No zoning permit shall be issued by the Administrative Officer for any use or structure which requires conditional use approval in this regulation until the Board of Adjustment grants such approval. In considering its action the Board of Adjustment shall hold a public hearing and make findings based on general and specific standards, as provided for in Section 4414 (3) of the Act, and within these zoning regulations.

#### **4.13 Transmission of Permits**

Upon granting a permit, the Board of Adjustment shall send to the applicant a copy of the decision. Copies of the decision also shall be mailed to every "interested person" as defined in 4.17, with the Administrative Officer, who shall forthwith issue a permit, and with the Town Clerk as a part of the public records.

#### **4.14 Time for Acting On Application**

1. The Board of Adjustment shall hold a properly warned hearing within 45 days of receiving a complete application.
2. A copy of the public notice shall be mailed to the applicant at least 15 days prior to the hearing date.
3. Upon adjournment of the hearing the Board of Adjustment shall issue a decision within 45 days after the adjournment. If the Board of Adjustment fails to issue a decision within this time period it shall be deemed an approval and shall be effective on the 46<sup>th</sup> day.

#### **4.15 Effective Date**

Permit shall take effect 15 days from the date of issuance.

#### **4.16 Appeals of the Administrative Officers**

Any interested person as defined under the Act [§4465] may appeal a decision or act of the Administrative Officer within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the Board of Adjustment, or the Town Clerk if no Secretary has been elected, and by filing a copy of the notice with the Administrative Officer.

1. The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The Board shall give public notice of the hearing

under Section 4.24, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

2. The Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].
3. In accordance with the Act [§4468], all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.
4. A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under the Act [§4464(b)]. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Town Clerk as part of the public records of the Town, in accordance with Section 4.08. Failure of the Board to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.

#### **4.17 Interested Persons**

The definition of an interested person under the Act [§4465(b)] includes the following:

1. a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;
2. the Town of Rochester or any adjoining town;
3. a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;

4. any ten (10) voters or property owners within the municipality who, by signed petition to the board of adjustment, allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and
5. any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

#### **4.18 Notice of Appeal**

A notice of appeal filed under this section shall be in writing and include the following information, in accordance with the Act [§4466]:

1. the name and address of the appellant,
2. a brief description of the property with respect to which the appeal is taken,
3. a reference to applicable provisions of these regulations,
4. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
5. the alleged grounds why such relief is believed proper under the circumstances.

#### **4.19 Appeals to Environmental Court**

In accordance with the Act [§4471], an interested person who has participated in a regulatory proceeding of the Zoning Board of Adjustment may appeal a decision rendered by the ZBA under Section 4.16, within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

1. "Participation" in a ZBA proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
2. The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Town Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

#### **4.20 Variance Criteria**

The Board of Adjustment shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Section 4.16. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. The Board may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

**A. Renewable Energy Structures.** Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act [§4469(b)], the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

1. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
2. The hardship was not created by the appellant;
3. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the

appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and

4. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

**B. Variances within the Flood Hazard Overlay District.** In addition to requirements under Subsection 3.06, variances for development within the Flood Hazard Overlay District shall be granted by the Board only:

1. in accordance with the Act and the criteria for granting variances found in CFR Section 60.6 of the National Flood Insurance Program;
2. upon determination that during the base flood discharge the variance will not result in increased flood heights. The Board will inform the applicant in writing, over the signature of a community official, that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.
3. a copy of such variance shall be filed with the Rochester Town Clerk in the Rochester land records.
4. upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

#### **4.21 Waivers**

Waivers may be granted as a permitted use by the Administrative Officer to reduce dimensional requirements as needed to allow for disability access, fire safety and other requirements of law. Waivers for other situations may be considered by the Zoning Board of Adjustment (ZBA) following the same review and notice process as for a conditional use described in 4.12. The ZBA may grant waivers to reduce any dimensional requirements up to 50 %, if the Board finds that the proposed development does not reduce the dimensional requirements more than the minimum amount necessary, *and* that the proposed development meets any of the following criteria:

1. The proposed development conforms to the existing development patterns of the immediate neighborhood.
2. The proposed development will more effectively preserve open land or scenic vistas.

3. The proposed development will provide for energy conservation and renewable energy structures.
4. The proposed development will result in permanently affordable housing.

#### **4.22 Violations**

The commencement or continuation of any land development that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [§§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute, in the name of the Town of Rochester, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

In the case of violations in the FH Overlay District, notices of violation shall also state that failure to cure may result in loss of flood insurance.

If the violation is not remedied within 7 days of notice, or appealed, the Administrative Officer shall file a copy of the notice of alleged violation in the municipal land use permit files, with the Town Clerk for filing in the land records, and shall also mail a copy to the alleged violator. In cases of violations within the FH Overlay District, notice shall also be sent to the state NFIP Coordinator and the Administrator of the National Flood Insurance Program. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The notice shall consist of:

- (a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location,
- (b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance,
- (c) a clear statement that the public body making the declaration has authority to do so and a citation to that authority,
- (d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and
- (e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **4.23 Notice of Violation**

No action may be brought under this section unless the alleged offender has had at least seven (7) days' warning notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation shall also be recorded in the land records of the municipality as prescribed under Section 4.22. The notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven-day notice period, and that the

alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

#### **4.24 Limitations on Enforcement**

An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality as prescribed in Section 4.22.

#### **4.25 Public Notice Requirements**

In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Section 4.12), appeals of decisions of the Administrative Officer and variances (Sections 4.16, 4.20) and final subdivision review. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:

1. publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
2. posting of the same information in three (3) or more public places within the town, including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
3. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

#### **The Specific Standards to be Applied for Conditional Uses Are as Follows:**

##### **4.26 Off-street Parking Space Requirements**

For every building hereafter erected, altered, extended or changed in use, there shall be provided improved surface off-street parking spaces at least as set forth below. The Board of Adjustment may require such parking spaces to be paved.

1. Adequate parking must be provided outside the right-of-way. For any commercial use, one space is required for every employee who does not live on the premises, adequate space for all delivery/service vehicles and all vehicles used in the business and at least two spaces for the public. For any use that caters to the public, reasonable parking will be required so that full occupancy or maximum expected use will not create an unsafe situation.
2. Light manufacturing and home industry: One parking space for every motor vehicle used in the business; one parking space for every two employees.

#### **4.27 Additional Parking and Loading Space Requirements**

The Planning Commission may require additional off-street parking and loading spaces for any use if they find that minimum spaces are not sufficient.

#### **4.28 Performance Standards for Conditional Uses**

1. Noise: Persistent discernable noise, except that customary and incidental to residences, is not permitted beyond the property line from dusk until dawn. During daylight hours, noise shall be limited to an average of 65 dB at the property line during any hour of operation. The Board of Adjustment may set a maximum instantaneous decibel level. In the case of uncertainty by the Zoning Board of Adjustment of future or existing noise, the users shall hire a qualified engineer at their expense who must certify that the sound levels are being met.
2. Dust/smoke and odor: No visible dust/smoke or discernable objectionable odor beyond the property line is permitted, excepting as is incidental and customary to residences, farms or permitted burning.
3. Vibration: No sustained or repetitive vibration shall be permitted which causes any noticeable, clearly apparent vibration on the property of another landowner under normal conditions.
4. Glare, Lights, Reflection: No glare, light or reflection shall be permitted which is a nuisance to other property owners or tenants or which could impair the vision of a driver of any motor vehicle or which is detrimental to public health, safety, and welfare.
5. Fire, Explosive, or Safety Hazard: No fire, explosive, or safety hazard shall be permitted which results in a significantly increased burden on municipal services or



presents an undue danger to the Public.

6. **Emergency Access:** Development must be designed to allow access by Emergency Services.
7. **Storage of Flammable Liquids:** The storage of any highly flammable liquid in tanks above ground with unit capacity greater than 550 gallons shall be prohibited, unless such tanks up to and including 10,000 gallon capacity are placed not less than 80 feet from all property lines, and unless all such tanks of more than 10,000 gallon capacity are placed not less than 200 feet from all property lines.
8. **Landscaping Requirements:** a vegetative buffer appropriate to the proposed use shall be installed and maintained in front, side and rear yards and shall take the form of non-invasive species of shade trees, shrubs, evergreens, well-kept grass and/or ground cover.
9. All such landscaping shall be maintained in a healthy growing condition.
10. Following are the minimum landscaping requirements:
  - a. Where any land use in a non-residential district abuts land in any residential district, a strip of land at least 25 feet in width shall be maintained as a landscape area in the front yard, side yards, and rear yard which adjoin these districts.
  - b. For any non-residential land use in a residential district a strip of land at least 25 feet in width shall be maintained as a landscape area in the front, side and rear yards.
  - c. In any commercial district a strip of land at least 15 feet in width shall be maintained as a landscape area in the front, side, and rear yards.
  - d. In any planned unit development as required by the Planning Commission.

#### **4.29 Extraction of Earth Resources**

In order to obtain conditional use approval for quarrying or the removal of topsoil, sand or gravel, a plan must be submitted to the Board of Adjustment. Extraction operations shall be permitted in all zones except the business/residential zone, subject to conditional use criteria and the performance standards contained in paragraph 4.28

1. The Plan must show existing grades in the area from which the materials are to be removed and finished grades at the conclusion of the operation.
2. Within twelve (12) months of stoppage of active operations a quarry site shall be reclaimed so that the land will be left in a safe, attractive and usable condition for the

land used allowable in the district. When the removal of materials is completed, the finished grades, as specified in the plan and approved, shall be covered with not less than two inches of topsoil and seeded with a suitable perennial cover.

3. A bond will be posted with the Treasurer of the Town of Rochester by the applicant in an amount approved by the Board of Adjustment as sufficient to guarantee conformity with the provisions specified in item #2 of this section.

4. No part of any extraction area shall be permitted within 100 feet of a property line or 100 feet of any natural stream or existing pond.

5. This paragraph shall not apply to site work customary to the preparation of a single-family residence or other permitted use.

#### **4.30 Planned Unit Development**

With the approval of a subdivision plan, the Planning Commission is empowered to vary certain zoning regulations under the criteria and procedures established in Section 4417 of the Act.

1. All of the previously mentioned procedures apply to planned unit development.
2. Proposed streets shall be in harmony with existing or approved thoroughfares, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width as to provide an adequate and convenient system for present and prospective traffic needs.
3. Open spaces for proposed schools, parks and/or playgrounds, in places deemed proper by the Planning Commission shall be indicated on the preliminary subdivision plan in order that it may be determined when and in what manner such areas may be dedicated or otherwise conveyed to the Town.
4. Developers shall file with the Commission three copies of the layout at a scale of not more than 100 feet to the inch, profiles of proposed streets and utilities to scale and on a grid indicating gradients as percents.
5. A hearing on the Planned Unit Development shall be held by the Planning Commission. Within forty-five days of the public hearing the Planning Commission shall approve, modify, or disapprove the proposal.

### **4.31 Telecommunications Facilities/Towers**

Pursuant to 24 V.S.A. § 4401 et seq. the Planning Commission/Board of Adjustment of the Town of Rochester is authorized to review, approve, conditionally approve, and deny applications for wireless telecommunications facilities, including sketch, preliminary and final plans, and installation. The Board is authorized to hire qualified persons to conduct an independent technical review of applications and to require the applicant to pay for all reasonable costs thereof.

#### **A. Exemptions**

The following wireless telecommunications facilities are exempt from this section provided the height of such facility does not exceed twenty (20) feet. If the facility exceeds a net increase of twenty (20) feet, a Conditional Use Permit is required.

1. Amateur radio tower
2. Citizens band radio
3. Receiving antennae
4. Police, fire, ambulance, and other emergency dispatch
5. Single use local business radio dispatch

No other wireless telecommunications facility shall be considered exempt from this Ordinance for any reason whether or not said facility is proposed to share a facility or other structure with such exempt uses.

#### **B. Prohibited Locations**

Wireless telecommunications towers or facilities of any kind may be permitted as conditional uses in all but the following districts or locations:

1. Flood Hazard Area
2. Aquifer Recharge Area
3. Business – Residential Zone
4. Property listed on the Federal Historic Register unless predominately located within an existing building or structure.

5. Additionally, freestanding telecommunications towers or antennas may not be located:
  - a. Closer than twice the height of the tower to a river, perennial stream, designated wetland, any known archeological site or the habitat of any State listed Rare or Endangered Species
  - b. Within 1000 feet of an officially designated scenic State or Town highway.
  - c. Within 500 feet from any National Historic Register District or Site listed on the National Historic Register or State Historic Register.
6. On primary agricultural land or soils.

### **C. Permitted Locations**

Wireless telecommunications towers or facilities may be permitted as conditional uses upon compliance with the provisions of this bylaw in the following zoning districts:

1. Commercial – Agricultural
2. Agricultural – Residential
3. Conservation – Residential

Freestanding telecommunications towers or antennas shall not be closer in feet horizontally to any property line than twice the height of the tower.

### **D. Small Scale Facilities**

The placement of wireless telecommunications antennas, repeaters, or microcells on existing buildings, structures, roofs, or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the Administrative Officer, provided the antennas meet the applicable requirements of this bylaw, upon submission of:

1. A final site and building plan.
2. A report prepared by a qualified engineer indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.

3. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.

**E. Application Requirements for Wireless Telecommunications Facilities not listed under subsection 4.31A**

An applicant for a permit must be a personal wireless service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Administrative Officer at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

No construction, alteration, modification (including the installation of antennas for new uses), or installation of any wireless telecommunications tower or facility shall commence without a conditional use permit first being obtained from the Board of Adjustment.

In addition to information otherwise required in the Town of Rochester's Zoning Bylaws, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

1. The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
2. The name, address, and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
3. The names and addresses of the record owners of all abutting property.
4. A report from qualified engineers wherein:
  - a. A licensed Vermont structural engineer shall describe the facility height, design and elevation.
  - b. A radio frequency (RF) engineer documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas
  - c. A structural engineer describes the tower's proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the tower to accommodate
  - d. In the case of new tower proposals, demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within 5 miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the Town of Rochester.

- e. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
  - f. Demonstrates that the applicant has analyzed the feasibility of using "repeaters" or micro-cells in conjunction with all facility sites listed to provide coverage to the intended service area.
  - g. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
  - h. Describes the output frequency, number of channels, sector orientation, and power output per channel, as appropriate for each proposed antenna.
  - i. Includes a written explanation for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town.
  - j. Demonstrates the tower's compliance with the municipality's structural standards and setbacks for towers and support structures.
  - k. Provides assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio frequency exposure. The Planning Commission may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards and requirements on an annual basis at unannounced times.
  - l. Includes other information required by the Board that is necessary to evaluate the request.
  - m. Includes an engineer's stamp and registration number, where appropriate. A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.
- 5. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure (to be provided to the Administrative Officer at the time an application is submitted).
  - 6. To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or formal report describing the probable impacts of the proposed facility.
  - 7. A copy of the application or draft application for an Act 250 permit, if applicable.

The permit application shall be signed under the pains and penalties of perjury.

**F. Site Plan Requirements for Wireless Telecommunications Facilities not covered under subsection 4.31A**

In addition to site plan requirements found elsewhere in the Town of Rochester's Zoning Bylaws, site plans for wireless telecommunications facilities shall include the following supplemental information:

1. Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two-mile radius of the proposed facility site.
2. Vicinity Map showing the entire vicinity within a 2,500-foot radius of the facility site, including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites, and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights of way needed for access from a public way to the facility.
3. Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
4. Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
5. Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
6. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
7. Construction sequence and time schedule for completion of each phase of the entire project.
8. Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet.

#### **G. Co-location Requirements**

An application for a new wireless telecommunications facility shall not be approved unless the Board of Adjustment finds that the facilities planned for the proposed structure cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

1. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved

tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.

2. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
3. The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radio frequency exposure.
4. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
5. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
6. There is no existing or approved tower in the area in which coverage is sought.
7. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate both the applicant's antennas and additional antennas when overall permitted height allows.

#### **H. Access Roads and Above Ground Facilities**

Where the construction of new wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within forest or forest fringe areas, and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the area. The Town may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same and where maintenance personnel can reasonably access the facility site on foot.

#### **I. Tower and Antenna Design Requirements**



Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.

1. Towers, antennas, and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth design, including those which imitate natural features, may be required in visually sensitive locations.
2. In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall be not more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Board of Adjustment that the additional height is necessary in order to provide adequate coverage in the Town of Rochester or to accomplish co-location of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
3. Towers, antennas, and any necessary support structures shall be designed to avoid having an undue adverse aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:
  - a. The period of time during which the proposed tower would be viewed by the traveling public on a public highway;
  - b. The frequency of the view experienced by the traveling public;
  - c. The degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
  - d. Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
  - e. The distance of the proposed tower from the view point and the proportion of the facility that is visible above the skyline;
  - f. The sensitivity or unique value of a particular view affected by the proposed tower;
  - g. Significant disruption of a view shed that provides context to a historic or scenic resource.
4. The Board shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Board may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the

applicant's communication objectives.

5. All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than the height of the height of the tower, including antennas and other vertical appurtenances.
6. Ground mounted equipment or antennas as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing onsite vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

#### **J. Amendments to Existing Wireless Telecommunications Facility Permit**

An alteration or addition to a previously approved wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

1. Change in the number of buildings or facilities permitted on the site;
2. Addition or change of any equipment resulting in greater visibility or structural windloading, or additional height of the tower, including profile of additional antennas, not specified in the original application.

#### **K. Tower Lighting and Signage; Noise Generated by Facility**

Unless required by the Federal Aviation Administration (FAA), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting or another location selected.

No commercial signs or lettering shall be placed on a tower or facility. Signage shall be limited to that required by federal or state regulation. The Board may impose conditions to minimize the affect of noise from the operation of machinery or equipment upon adjacent properties.

### **L. Temporary Wireless Communication Facilities**

Any wireless telecommunications facility designed for temporary use is subject to the following:

1. Use of a temporary facility is permitted for a special event only if the owner has received a temporary use permit from the Town of Rochester, Planning Commission
2. The maximum height of a temporary facility is 50 feet from grade.
3. Temporary facilities must comply with all applicable portions of these regulations.

### **M. Continuing Obligations**

Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding radio frequency exposure, and provide the basis for his or her representations.

### **N. Facility Removal**

Abandoned, unused, obsolete, or noncompliant towers or facilities governed under this bylaw shall be removed as follows:

1. The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Rochester's Administrative Officer certifying the continuing safe operation of every facility/tower installed subject to these regulations. Said report shall include proof of insurance. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
2. Abandoned or unused towers or facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Planning Commission. In the event the tower or facility is not removed within 180 days of the cessation of operations at a site, the municipality shall notify the owner and may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
3. Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of notification of such a violation unless a time extension or negotiated solution is approved by the Planning Commission. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality may remove the tower or facilities.

Costs of removal shall be assessed against the property or tower owner.

4. An owner who has failed to file an annual declaration with the Administrative Officer by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
5. The Applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of Rochester and acceptable to the Board to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.

#### **O. Maintenance Requirements**

The Applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity, and access road maintenance and landscaping. In the event the applicant fails to maintain the facility, the Town of Rochester may undertake such maintenance at the expense of the applicant or landowner.

#### **P. Insurance Requirements**

The facility owner shall maintain adequate insurance on all facilities.

#### **Q. Fees**

Fees for filing an application to build or alter a wireless telecommunications facility shall be \$50 for small-scale facilities and \$250 for all other facilities.

Additional fees may include the reasonable costs of an independent technical assessment of the application that may be incurred during the review and permitting process.

## **V. AMENDMENTS INTERPRETATION AND EFFECTIVE DATES**

### **5.01 Amendments**

These regulations may be amended according to the requirements and procedures established in Section 4403 and Section 4404 of the Act.

### **5.02 Interpretation**

In their interpretation and application, the provisions of these regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

Wherever these regulations impose a greater restriction upon the use of a structure or land then are required by any other statute, ordinance, rule, permit, easement or agreement, the provisions of these regulations shall control.

### **5.03 Effective Date**

These regulations shall take effect 21 days after adoption by the legislative body.

### **5.04 Validity**

If any section or provision of these regulations is judged to be unconstitutional or otherwise invalid, such decision shall not effect the validity of the regulations as a whole or any part thereof other than the part so judged.

## VI. DEFINITIONS

Except where specifically defined herein, all words used shall carry their customary meanings: words used in the present tense include the future, and singular includes the plural; the word "lot" includes "plot"; the word "building" includes "structure"; the word "shall" is mandatory; "occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be used or occupied"; "person" includes individual, partnership, association, corporation, company or organization. Doubt as to the precise meaning of any words used in these regulations shall be clarified by the Board of Adjustment.

**ACCESSORY USE:** A use customarily incidental and subordinate to the principal use and located on the same lot. When applied to agriculture, this shall be deemed to include the sale of products raised on the property.

**ADEQUATE CAPACITY:** Capacity for wireless telephony is considered to be "adequate" if the grade of service ("GOS") is p.05 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erlang B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, Adequate Capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the personal wireless services facility in question, Adequate Capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the coverage area.

**ADEQUATE COVERAGE:** Coverage for wireless telephony is "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that most of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error - rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

**AFFILIATE:** When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest. When used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

**AFFORDABLE HOUSING:** Housing that costs no more than 30% of median county income for the relevant household size.

**AGRICULTURAL USE:** Land which is used for "Agricultural purpose". The term "Agricultural purpose" shall mean agriculture, farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, silviculture, and animal and poultry husbandry; the term shall not include the slaughtering of animals or poultry for commercial purposes except such as are grown or raised on the premises.

**ALTERATION:** Structural change, rearrangement, change of location, or addition to a building, other than repairs and modification in building equipment.

**ALTERNATIVE DESIGN TOWER STRUCTURE:** Artificial trees, clock towers, bell steeples, light poles, silos and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also **STEALTH FACILITY**).

**ANTENNA HEIGHT:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

**ANTENNA SUPPORT STRUCTURE:** Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

**ANTENNA:** A device for transmitting and/or receiving electromagnetic waves, which is attached to a tower or other structure.

**APPLICANT:** A person who applies for a telecommunications facility siting. An applicant can be the telecommunications service provider with the owner's written permission (or other legally designated representative) or the owner of the property.

**AREA OF SHALLOW FLOODING:** Means a designated AO or AH zone on a Town's Flood Insurance Rate Map (FIRM) with a one percent or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD:** The land in the floodplain within a Town subject to a one percent or greater chance of flooding in a given year. Synonymous with Special Flood Hazard Area (SFHA).

**AVAILABLE SPACE:** The space on a tower or structure to which antennas of a telecommunications provider are both structurally able and electromagnetically able to be attached.

**BASE FLOOD:** The flood having a one percent chance of being equaled or exceeded in any given year.

**BASE FLOOD ELEVATION (BFE):** the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

**BASE STATION:** The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

**BASEMENT:** A space having one-half or more of its floor-to-ceiling height above the average level of the adjoining ground and with a floor-to-ceiling height of not less than 6.5 feet. (figure 2, below). If a basement is used only for heating, mechanical and similar equipment, it is not counted either as a story or in computing the intensity of development such as floor ratio, etc. If it is used dwelling unit purposes, or for office space or a similar function, it is considered finished, and therefore counted both as a story and included in whatever standards are used to control the intensity of development. In the area of special flood hazard, basement means any area of the building, including a cellar, having its floor elevation (below ground level) on all sides.

**BED AND BREAKFAST (TOURIST HOME):** A building used as a dwelling unit and operated for public lodging, providing rooms and meals for lodging guests only.

**BOARD OF ADJUSTMENT:** The Body, consisting of not less than three nor more than nine members, appointed by the Selectboard, authorized by law to hear conditional use applications, and decide on appeals from the decision of the Administrative Officer.

**BUILDING:** Structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or chattel.



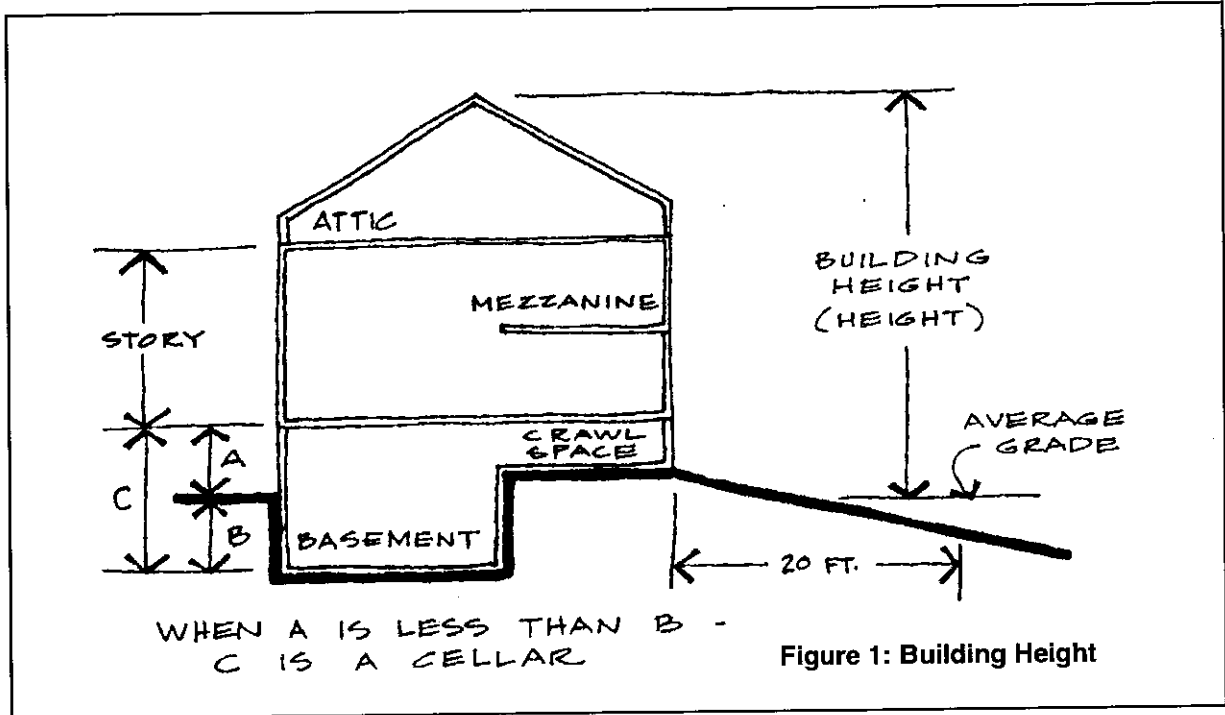


Figure 1: Building Height

**BUILDING HEIGHT:** The vertical distance of a building measured from the average elevation to the finished grade within twenty feet of the structure to the highest point in the roof. (see Figure 1)

**BULLETIN 65:** Published by the Federal Communications Commission (FCC) Office of Engineering and Technology specifying radio frequency radiation levels and methods to determine compliance.

**BUSINESS ENTITY:** Any separate and distinct division of a business that would normally be considered a separate profit center.

**BUSINESS PREMISES:** A building or group of buildings immediately adjacent to structure in which a business is housed.

**CELL SITE:** A tract or parcel of land that contains a cellular communication antenna, its support structure, accessory building(s), and parking, and may include others uses associated with and ancillary to cellular communications transmission.

**CELLAR:** A space with less than one-half of its floor-to-ceiling height above the average finished grade of the adjoining ground or with a floor-to-ceiling height of less than 6.5 feet. (See diagram: Building Height). Cellars are not counted as a story or in the computation of the intensity of land use development.

**CELLULAR SERVICE:** A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular phones.

**CELLULAR TELECOMMUNICATIONS FACILITY:** Consists of the equipment and structures at a particular site involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

**CELLULAR TELECOMMUNICATIONS:** A commercial Low Power Mobile Radio Service bandwidth licensed by the FCC to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.

**CHANNEL:** The segment of the radiation spectrum to or from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

**CHILDCARE FACILITY:** A “family childcare home or facility” means a home or a facility where the owner or operator is to be licensed or registered by the state for child care.

**CO-LOCATION:** Locating wireless communications equipment from more than one provider on a single site.

**COMMERCIAL STRUCTURE:** A structure used for commercial purposes.

**COMMERCIAL USE:** A use of land and buildings with direct access to a Public highway for the provision of facilities, goods or services by a person to others in exchange for payment of a purchase price, fee contribution, donation or other object or service having value.

**COMMON CARRIER:** An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated rates.

**COMMUNICATION EQUIPMENT SHELTER:** A structure located at a base station designed principally to enclose equipment used in connection with telecommunications transmissions.

**COMMUNICATION TOWER:** A guyed, monopole, or self-supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

**COMMUNICATIONS FACILITY:** A land facility supporting antennas and/or microwave dishes that sends and/or receives radio frequency signals. Communications facilities may include structures, towers or accessory buildings.

**COMMUNITY CENTER:** Includes public or private meeting hall, place of assembly, museum, art gallery, places of further education, church, not operated primarily for profit.

**CONDITIONAL USE:** Use permitted in zoning district only after review and approval by the Board of Adjustment and designated as such in these regulations.

**COVERAGE:** That percentage of the lot area covered by the building.

**DBM:** Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

**DEVELOPMENT:** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**DIRECTIONAL ANTENNA:** An antenna or array of antennas designed to concentrate a radio signal in a particular area.

**DISH ANTENNA:** A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

**DUPLEX:** See Dwelling, Two-Family.

**DWELLING UNIT:** A building or part thereof used as living quarters for one family. The terms 'dwelling', 'one-family dwelling', 'two-family dwelling', 'dwelling group' shall not include a motel, hotel, bed and breakfast, tourist home or similar structure.

**DWELLING, MULTIPLE FAMILY:** A building, including accessory buildings, used as living quarters by three or more families living independently of each other.

**DWELLING, ONE-FAMILY:** A building, including accessory buildings, used as living quarters by one family.

**DWELLING, SINGLE FAMILY:** A building containing one Dwelling Unit.

**DWELLING, TWO FAMILY:** A structure on a single lot containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION:** within the special flood hazard area means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or

the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION:** within the special flood hazard area means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FACILITY SITE:** A property, or any part thereof, which is owned or leased by one or more telecommunications facility(s) and where required landscaping is located.

**FAMILY:** One or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit.

**FCC:** Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

**FENCE:** An Artificially constructed barrier of any material (including planted vegetation) or combination of materials erected to enclose or screen areas of land.

**FENCE, CLOSED:** A Fence that is constructed of a material or vegetation that cannot be seen through, therefore posing a potential traffic safety hazard if placed near a road. Example: A brick fence or stone wall is a closed fence.

**FIA:** Federal Insurance Administration.

**FILLING:** means the placement of 10 or more cubic yards of fill on a lot. This definition does not pertain to the flood hazard overlay district.

**FLOOD:** means (a) A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**FLOOD INSURANCE RATE MAP (FIRM):** an official map of a community, on which the Federal Insurance Administrator has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY:** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and /or flood related erosion hazards.

**FLOODPROOFING:** Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY, REGULATORY:** Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

**FREQUENCY:** The number of cycles completed each second by an electromagnetic wave measured in hertz (Hz).

**FRONTAGE:** That portion of a lot which is adjacent and parallel to a street, road or right-of-way.

**GASOLINE OR SERVICE STATION** - Building or land that is used for the sale of motor vehicle accessories, and which may include facilities for lubrication, washing, or servicing motor vehicles, but not including painting and major repairs.

**GHz:** Gigahertz. One billion hertz.

**HAZARDOUS WASTE** – Those substances defined as hazardous waste by the Agency of Natural Resources under Chapter 7 of the Vermont Environmental Protection Rules.

**HERTZ:** (Hz) One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

**HISTORIC STRUCTURE:** means any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) By an approved state program as determined by the Secretary of the Interior or (ii) Directly by the Secretary of the Interior in states without approved programs.

**HOME INDUSTRY:** A commercial or light industrial use of a scale greater than home occupation but which is still secondary to the residential use, *but not including agricultural or*

*horticultural activities*, operated by the resident homeowner, employing no more than 6 persons not living on the premises, including but not limited to such activities as woodworking shops, welding shops, small equipment repair, commercial kennels, carried out in the home or accessory buildings on the same lot under conditions established by these regulations. This use shall be permitted only where it does not change the character of the neighborhood.

**HOME OCCUPATION:** An occupation carried on by a resident of the premises, entirely within, and secondary to, the residence, employing not more than 3 persons not living on the premises, provided such use does not create a nuisance, odor, or noise off the premises, and provided that no material is stored outside a building. (Such as beauty shop, barber shop, professional services, arts and crafts, Bed & Breakfast.)

**HOSPITAL:** Includes sanitarium, clinic, rest home, nursing home, convalescent home, home for the aged, and any other place of diagnosis, treatment of human ailments.

**HOTEL:** Building usually several stories, containing rooms which are rented as series of sleeping units for transients.

**JUNK MOTOR VEHICLE:** Any discarded, dismantled, wrecked, scrapped or ruined motor vehicle, or parts thereof; an unregistered motor home not connected to water or sewer; or a vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered for 30 days from the date of discovery.

**JUNK YARD:** Any place of outdoor storage or deposit which is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling junk or scrap. In addition, the term means any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for storing or keeping four or more junk motor vehicles. This does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

**LIGHT MANUFACTURING:** The fabricating or processing of material carried on exclusively within a structure which does not produce levels of noise, emissions, vibration, traffic, or electromagnetic radiation which are inconsistent with the character of the neighborhood.

**LOCATION:** References to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be referenced to true North.

**LOT:** Land occupied by a building and its accessory buildings, together with the required open spaces, having not less than the minimum area, width and depth required for a lot in the district in which such land is situated, and having frontage on a street, or other means or access as may be determined by the Planning Commission to be adequate as a condition of the issuance of a zoning permit for building on such land.

**LOT AREA:** Total area within the property lines excluding any part thereof lying within the boundaries of a public street, or proposed public street.

**LOWEST FLOOR:** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

**MEAN SEA LEVEL:** Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a Town's Flood Insurance Rate Map are referenced.

**MHZ:** Megahertz, or one million hertz.

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

**MICROWAVE ANTENNA:** A dish-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.

**MOBILE OR MANUFACTURED HOME:** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles, travel trailers or a sectional prefabricated house.

**MOBILE HOME PARK:** (synonymous with Manufactured Home Park) Any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, more than two mobile homes. Outside the SFHA, Mobile home park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile home used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes.

**MONITORING:** The measurement, by the use of instruments in the field, of radio frequency exposure from telecommunications facilities, towers, antennas or repeaters.

**MONOPOLE:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below' grade foundations.

**MOTEL:** Building containing rooms which are rented as a series of sleeping units for automobile transients, each sleeping unit consisting of at least a bedroom and bathroom.

**NEW CONSTRUCTION:** Structures commenced on or after the effective date of this ordinance. *New construction* means, for the purposes of determining flood insurance rates, structures for which the "start of construction" commenced on or after the effective date of an

initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION:** within the special flood hazard area means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

**NONCONFORMITIES:** A nonconforming use, structure, lot, or parcel.

**NONCONFORMING LOT OR PARCEL:** Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

**NONCONFORMING STRUCTURE:** A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

**NON-RESIDENTIAL USE:** All uses of buildings, structures or land except one-family dwellings, two-family dwellings, multiple family dwellings, home occupational uses and accessory structures to these uses.

**OMNIDIRECTIONAL ANTENNA:** An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it is designed.

**PERMIT:** Embodies the rights and obligations extended by the municipality to an operator to own, construct, maintain, and operate its facility within the boundaries of the municipality.

**PERSONAL COMMUNICATIONS SERVICES OR PCS:** Digital wireless telephone technology using higher frequency spectrum than cellular.

**PERSONAL WIRELESS SERVICES:** Commercial mobile services, unlicensed wireless exchange access services. These services include: cellular services, personal communications services, specialized mobile radio services, and paging services.

**PREEXISTING TOWERS AND ANTENNAS:** Any tower or antenna for which a permit has been issued prior to the effective date of these regulations.



**PUBLIC UTILITY FACILITIES:** Telephone, electric and cable television lines, poles equipment and structures; water or gas pipes, mains, valves or structures; sewer pipes, valves or structures; pumping stations; telephone exchanges and repeater stations; and all other facilities, equipment and structures necessary for conducting a service by a government or a public utility.

**PUBLIC UTILITY:** A closely regulated private enterprise with an exclusive franchise for providing a public service.

**PLANNED UNIT DEVELOPMENT:** One or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land uses...

**QUARRYING:** Excavating stone by cutting, blasting or the like.

**RADIATED-SIGNAL PROPAGATION STUDIES OR COVERAGE PLOTS:** Computer generated estimates of the signal emanating, and prediction of coverage, from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tools for determining a need and whether the telecommunications equipment will provide adequate coverage for that site.

**RECREATION, PRIVATE OUTDOOR:** Includes a golf course, trap, skeet and archery range, swimming pool, skating rink, riding stable, park, beach, tennis court, recreation stadium, or skiing facilities operated either as a private club or for profit.

**RECREATION, PUBLIC OUTDOOR:** Includes a publicly owned and operated playground, play field, park, open space and swimming pool.

**RECREATIONAL VEHICLE:** means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

**RELIGIOUS INSTITUTION:** Includes church, temple, parish house, convent, seminary, and retreat house.

**REPEATER:** A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

**RETAIL STORE:** Includes enclosed restaurant, café, shop and store for the sale of retail goods and services and shall exclude any drive-up service, free standing retail stand, gasoline service

and motor vehicle service, new and used car sales and service, trailer and mobile home sales and service.

**ROAD:** Public way for vehicular traffic, which affords the principal means of access to properties. The word "road" shall mean the entire right of way.

**ROOF AND/OR BUILDING MOUNT FACILITY:** A facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or a building face.

**SCENIC VIEW:** A scenic view is a wide angle or panoramic field of sight and may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a far away object, such as a mountain, or a nearby object.

**SCHOOL:** Includes parochial, private, public, and nursery school, day care, college, university, and accessory uses.

**SELF-SUPPORTING TOWER:** A communications tower that is constructed without guy wires.

**SETBACK, REAR:** The distance between the rear lot line and the nearest portion of a building or structure.

**SETBACK, FRONT:** The distance from the edge of the traveled road surface of any highway or road right-of-way to the nearest part of a building or structure.

**SETBACK, SIDE:** The distance from the side lot line to the nearest part of a building or structure.

**SPECIAL FLOOD HAZARD AREA:** the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, or AR/A. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

**SPECTRUM:** Relating to any transmissions or reception of electromagnetic waves.

**SIGN APPENDAGE:** An appendage to a sign which is of a temporary nature or changes on a regular basis and which is incorporated into or under a permanent sign, and of compatible character and/or texture of material.

**SIGN, AREA CALCULATION:** The entire area within a circle, triangle, rectangle or parallelogram, enclosing the extreme limits of writing, representation, emblem or any figure of similar character, together with any frame, panel or other material or color forming a part of the

display to differentiate such a sign from the background against which it is placed; excluding the necessary supports or uprights on which a sign is placed. Where a sign does not include a physical frame or panel, an imaginary frame or panel will be used. Where a sign has two or more faces or panels, the area of all faces or panels shall be included in determining the total area of the sign, except where the two faces or panels are placed back to back.

**SIGN, BUILDING:** A sign fastened to or applied on the outdoor wall or window of a building or structure in such a fashion that the wall becomes the supporting structure for, or forms the background surface of the sign and which does not project more than twelve (12) inches from such building or structure. This term does not include roof signs.

**SIGN, FREESTANDING:** A sign having its own supporting structure, independent of any building.

**SIGN, PROJECTING:** A sign that is wholly or partially dependent upon a building for support and which projects more than twelve (12) inches from such a building.

**SIGN, TEMPORARY:** A sign, not exceeding six (6) square feet in area, which is being used to advertise any of the following: the sale of property, vacancy, auction, candidate, public or civic event; or activities of a similar nature. Such a sign shall be removed within five (5) days of fulfilling its function.

**SIGNS:** Any outdoor structure, display, device or representation which is designed or used to advertise or call attention to any business, activity, place, person or thing. Display does not include the inventory of a business or storage of materials such as lumber, bricks, fencing and similar type materials. Representation shall include color, pictures, shapes and similar things associated with the building or business.

**START OF CONSTRUCTION:** "Start of construction" for purposes of floodplain management, determines the effective map or bylaw that regulated development in the Special Flood Hazard Area. The "start of construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include the excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether the alteration affects the external dimensions of the building.

**STEALTH FACILITY:** Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings. (See also Alternative Design Tower Structure.)

**STREET:** Public way for vehicular traffic which affords the principal means of access to abutting properties.

**STRUCTURALLY ABLE:** The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

**STRUCTURE:** An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, billboard, sign, wall or fence, except a wall or fence on an operating farm. *Structure means, for floodplain management purposes*, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure, for flood insurance purposes*, means: (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (b) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.

**SUBSTANTIAL IMPROVEMENT:** as applied in the special flood hazard area means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which, from the date of adoption of this definition in the ordinance, equals or exceeds 50 percent of the market value of the structure. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

**SUBSTANTIAL DAMAGE:** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SYSTEM:** The communications transmission system operated by a telecommunications service provider in the municipality or region.

**TELECOMMUNICATIONS FACILITY:** All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves which carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or another owner or entity.

**TELECOMMUNICATIONS PROVIDER:** An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

**TEMPORARY WIRELESS COMMUNICATION FACILITY:** Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction, or for a special event or conference.

**TOWER:** A vertical structure for antenna(s) that provide telecommunications services.

**TRAVEL TRAILER** - Includes any vehicle used as temporary sleeping or camping, or living quarters mounted on wheels or a camper body usually mounted on a truck, and any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, boats or as an office.

**USE, PERMITTED** - Use allowed by right in a particular zoning district and able to be established upon issuance of a zoning permit by the Administrative officer.

**VANTAGE POINT** – A point located on a public highway in the Town of Rochester from which a proposed wireless communication facility will be visible.

**VIEW CORRIDOR:** A three-dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect waves.

**VIOLATION** – within the special flood hazard area means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

**WHIP ANTENNA:** vertical antenna that normally transmits signals in 360 degrees. Whip antennas are typically cylindrical in shape, narrow (less than 6 inches in diameter) and long (often measure 18 inches in height or more).

**WIRELESS TELECOMMUNICATIONS FACILITY:** A support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet or more, in order to transmit or receive communications signals for commercial industrial, municipal, county or state purposes. The construction or improvement of a road, trail, building, or structure incidental to a telecommunications facility. This definition does not include satellite receivers less than 2 feet diameter or amateur ham operator towers or antennae less than 40 feet in height.

**YARD:** Space on a lot not occupied with a building. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into the required yard.

**Figure 2: Permitted and Conditional Uses**

	Bus-Res	Comm-Ag	Ag-Res	Aquifer	Cons-Res
Accessory uses customarily incidental to the permitted use	p	p	p	c	p
Agricultural uses		p	p		p
Amusement parks, golf course		c			
Automobile filling stations	c	c			
Bank or financial institution	p	p			
Buildings greater than 35 feet in height*	c	c	c		c
Camping areas		c	c		c
Cemeteries	c	c	c		c
Commercial recreational facilities		c	c		c
Community Centers, halls, lodges, clubs, parks, playgrounds, theatres	p	p			
Drive in stands		c			
Educational, cultural and religious establishments	p	p	c		c
Garages: commercial vehicle repair and equipment	c	c			
Home industry	c	c	c		c
Home occupation	p	p	p		p
Hospitals, clinics, nursing homes and assisted living facility	c	c			
Hotels, tourist homes, restaurants	p	p			
Light manufacturing and processing	c	c			
Manufacturing or processing establishments		c			
Mineral and Gravel Extraction		c	c		c
Mobile Home Parks		c	c		
Motel, motor lodges		p			
Multi-Family Dwelling	p	p	p		p
Non-retail studios or workshops	p	p	c		c
Office buildings	p	p			
Professional or personal business office or studio	p	p			
Public utility substations		c	c		c
Quarries		c	c		c
Retail, wholesale or service establishments	p	p			
Single Family Dwelling	p	p	p		p
Ski Area, marina, beach, skating rink, bowling alley		c			
Wildlife refuge, outdoor recreation		c	p	c	p

c= Conditional Use, p= Permitted Use, \* Structures over 50ft are prohibited

Figure 3: Minimum Requirements for Zoning Districts

Zone	Bus-Res	Comm-Ag	Ag-Res	Cons-Res
<b>Residential</b>				
Minimum Lot Size	1/2 Acre	1 Acre	2 Acres	3 Acres
Density	1 duplex per village Lot >1/2 unit allowed additional per 1/4 acre	1 single family dwelling per acre. 1 additional unit for each 1/4 acre	N/A	N/A
Frontage	90ft or 30ft R.O.W.	90ft or 30ft R.O.W.	150ft or 30ft R.O.W.	150ft or 30ft R.O.W.
Setback	30ft	30ft	30ft	30ft
Side & Rear Yard	10ft	25ft	25ft	25ft
Height	35ft or less*	35ft or less*	35ft or less*	35ft or less*
Parking	2 off-street spaces	2 off-street spaces	2 off-street spaces	2 off-street spaces
Coverage	N/A	Not more than 50%	Not more than 20%	Not more than 20%
<b>Non-Residential</b>				
Minimum Lot Size	1/2 Acre	1 Acre	2 Acres	3 Acres
Density	N/A	N/A	N/A	N/A
Frontage	90ft or 30ft R.O.W.	90ft or 30ft R.O.W.	150ft or 30ft R.O.W.	150ft or 30ft R.O.W.
Setback	30ft	30ft	30ft	30ft
Side & Rear Yard	10ft	25ft	25ft	25ft
Height	35ft or less*	35ft or less*	35ft or less*	35ft or less*
Parking	See Gen. Regs.	See Gen. Regs.	See Gen. Regs.	See Gen. Regs.
Coverage	N/A	Not more than 50%	Not more than 20%	Not more than 20%

\* Height may exceed 35ft w/ conditional use permit.

This table is a summary. For detailed requirements of each zone please refer to chapters 2 (General Regulations in this document) and 3 (Zoning District Regulations).