
Town of Rochester

Zoning Bylaw

Prepared By the Rochester Planning Commission

Dan McKinley, Chair
Sandy Haas
David Curtis
Julie Martin
Greg White
Christine Meagher

ADOPTED BY THE ROCHESTER SELECTBOARD
November 27, 2023

Effective December 18, 2023

Town of Rochester

Zoning Bylaw

Prepared By the Rochester Planning Commission

Dan McKinley, Chair
Sandy Haas
David Curtis
Julie Martin
Greg White
Christine Meagher

ADOPTED BY THE ROCHESTER SELECTBOARD
November 27, 2023

Effective December 18, 2023

TABLE OF CONTENTS

Contents

I. OVERVIEW.....5

1.1 Title 5

1.2 Enactment 5

1.3 Intent..... 5

1.4 Status of Prior Regulations..... 5

1.5 General Process 5

1.6 Applicability..... 6

1.7 Other Regulatory Requirements 6

1.8 Limitations..... 7

1.9 Exemptions 7

II. GENERAL STANDARDS FOR ALL LAND DEVELOPMENT11

2.1 Existing Small Lots 11

2.2 Required Frontage on, or Access to Public Roads 11

2.3 Calculation of Required Lot Area 11

2.4 Access and Safety..... 12

2.5 Lots in More Than One Zoning District 12

2.6 Sign Standards..... 12

2.7 Adequate Water Supply and Sewage Treatment Requirement 13

2.8 Glare, Lights, Reflection..... 13

2.9 Riparian Buffers 14

2.10 More Than One Principal Building Per Lot..... 15

2.11 More than One Use in a Principal Building..... 15

2.12 Abandonment..... 15

2.13 Discontinuance..... 15

2.14 Nonconformities..... 16

III. ZONING DISTRICT REGULATIONS.....17

3.1 Establishment of Zoning Districts and Map 17

3.2 **Business – Residential District** 17

3.2.1 Geographic Description:..... 17

3.2.2 Purpose: 17

3.2.3 Permitted Uses 18

3.2.4 Prohibited Uses 18

3.2.5 Conditional Uses 18

3.2.6 Dimensional Requirements: 19

3.3 **Commercial – Agricultural District**..... 19

3.3.1 Geographic Description..... 19

3.3.2 Purpose..... 20

3.3.3 Permitted Uses 20

3.3.4 Prohibited Uses 20

3.3.5 Conditional Uses 21

3.3.6 Dimensional Requirements..... 21

3.4 **Agricultural – Residential District**..... 22

3.4.1 Geographic Description..... 22

3.4.2 Purpose..... 22

3.4.3 Permitted Uses 22

3.4.4 Prohibited Uses 22

Rochester Zoning Bylaw

3.4.5	Conditional Uses	23
3.4.6	Dimensional Requirements:	23
3.5	Aquifer Recharge District	24
3.5.1	Geographic Description.....	24
3.5.2	Purpose.....	24
3.5.3	Conditional Uses	24
3.5.4	Prohibited Uses	24
3.6	Conservation – Residential District	25
3.6.1	Geographic Description.....	25
3.6.2	Purpose.....	25
3.6.3	Permitted Uses	25
3.6.4	Prohibited Uses	25
3.6.5	Conditional Uses	26
3.6.6	Dimensional Requirements:	26
3.7	Flood Hazard Overlay District	27
3.7.1	Description:	27
3.7.2	Authorization	27
3.7.3	Statement of Purpose	27
3.7.4	Lands to which the regulations apply.....	28
3.7.5	Official Flood Hazard Area Map.....	28
3.7.6	Interpretation of District Boundaries	28
3.7.7	Permit Requirements and Application Procedures	28
3.7.8	Records	29
3.7.9	Zoning Board of Adjustment	29
3.7.10	Development Standards	30
3.7.11	Floodway Standards	30
3.7.12	Floodway Fringe Area Standards:	30
3.7.13	Non-Conforming Structure	33
3.7.14	Prohibited Uses	33
3.7.15	Certificate of Occupancy	34
3.7.16	Annual Report to Federal Insurance Administration	34
IV.	GENERAL CONDITIONAL USE APPROVAL STANDARDS	35
V.	SPECIAL STANDARDS.....	38
5.1	Earth Resource Extraction.....	38
5.2	Home Occupation	38
5.3	Home Industry.....	38
5.4	Temporary Shelters	39
5.5	Cabins.....	39
5.6	Mobile Homes.....	39
5.7	Mobile Home Parks.....	39
5.8	Accessory Dwelling Units	40
5.9	Family Child Care Facilities	40
5.10	Group Homes	40
5.11	Primary Retail.....	40
5.12	Light Industrial.....	41
5.13	Campgrounds	41
5.14	Telecommunications Facilities/Towers	41
VI.	ADMINISTRATIVE PROCESSES	42
6.1	Administrative Officer.....	42
6.2	Zoning Board of Adjustment	42
6.3	Pre-application and application.....	43
6.4	Zoning Permit.....	43
6.5	Conditional Use Review	45

Rochester Zoning Bylaw

6.6	<i>Hearings by the Zoning Board of Adjustment</i>	46
6.7	<i>Decisions by the Zoning Board of Adjustment, including appeals</i>	47
6.7	<i>Appeals</i>	47
6.8	<i>Variances</i>	48
6.9	<i>Waivers</i>	50
6.10	<i>Violations</i>	51
6.11	<i>Limitations on Enforcement</i>	52
VII.	<u>AMENDMENTS, INTERPRETATION, AND EFFECTIVE DATES</u>	53
7.1	<i>Amendments</i>	53
7.2	<i>Precedence and Conflicts</i>	53
7.3	<i>Effective Date</i>	53
7.4	<i>Validity and Severability</i>	53
7.5	<i>Warning of Disclaimer of Liability</i>	53
VIII.	<u>DEFINITIONS</u>	54
 <u>APPENDIX A: ZONING MAP FOR THE TOWN OF ROCHESTER</u>		72

Table of Figures

FIGURE 1: BUILDING HEIGHT	57
FIGURE 2: PERMITTED, CONDITIONAL, AND PROHIBITED USES	69
FIGURE 3: DIMENSIONAL REQUIREMENTS BY ZONING DISTRICT	71

ROCHESTER ZONING BYLAW

I. OVERVIEW

1.1 Title

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

1.2 Enactment

In accordance with the Vermont Municipal and Regional Planning and Development Act hereinafter referred to as the “Act”, (24 V.S.A., Chapter 117), there are hereby established a Zoning Bylaw for the Town of Rochester, Vermont, which are set forth in the text and maps that constitutes the bylaw.

1.3 Intent

The intent of this bylaw is to promote the health, safety, and general welfare of the inhabitants, to protect the value of existing property and ensure 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 this bylaw 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).

1.4 Status of Prior Regulations

This bylaw, upon date of adoption, shall replace in its entirety the Town of Rochester Zoning Regulations 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. This bylaw is distinct from and does not alter the applicability of the Rochester Subdivision Bylaw.

1.5 General Process

Several kinds of uses, structures and development are exempt, or partially exempt, from application of this bylaw, either as required by state or federal law, or as a decision by the Town. A list of these exempt uses, structures and development is found in Section 1.9. It is advisable to get confirmation from the Administrative Officer (AO) that a contemplated use, structure or development meets the exemption requirements of Section 1.9 before undertaking the project in question. The AO may request additional information to confirm an exemption, and can issue a

written decision regarding exemption. Uses, structures, and development, even when exempt from this bylaw, may require other local, state or federal permits or approvals, and the AO is the starting point for information regarding those additional permitting processes (see Section 1.7).

For land development that does require a zoning permit, sometimes such a permit can be issued by the AO directly or after a waiver issued by the AO per Section 6.10 of this bylaw. At other times an approval, variance, or waiver from the Zoning Board of Adjustment (ZBA) is required before such a permit can be issued. See Section VI for more details on the general permitting process.

1.6 Applicability

This bylaw governs only the issuance of municipal zoning permits. All zoning permits for development shall be issued in conformance with 24 V.S.A. Section 4449. Except as may have been previously approved under prior zoning regulations or exempted under this bylaw, no building or land development, construction, renovation, conversion, relocation, change in use, or enlargement of any building or structure, sitework incidental to development (including tree cutting or ground disturbance) regulated under this bylaw, or extension of use of land may commence without a zoning permit first being issued by the Administrative Officer.

Note: Issuance of a permit under this bylaw does not indicate compliance with other needed permits from applicable local, state or federal laws or regulations.

A permit or approval shall not be required for any development which has lawfully begun, received a permit, or within which a use has been lawfully established, prior to the adoption of this bylaw provided that the construction is substantially completed for its intended use within the expiration date of any permit, or if none, 3 years from the date of adoption of this bylaw.

1.7 Other Regulatory Requirements

Issuance of a permit under this bylaw does not necessarily satisfy all of the applicant's local, state, and federal regulatory obligations. The applicant is responsible for identifying and complying with all applicable government requirements.

Examples of such requirements include but are not limited to:

- Leasing residential units (including short-term rentals), all residential development except for single unit dwellings that are owner-occupied, and all commercial uses except registered family child care require a State Building Permit from the Vermont Department of Public Safety's Division of Fire Safety.
- Many residential and commercial projects involving new construction, renovation, additions, alterations, and repairs must file certificates confirming compliance with Residential / Commercial Building Energy Standards.
- Impacts to natural resources on a property, especially for projects near water resources, may require permits from the Vermont Agency of Natural Resources. Applicants can learn more from the Permit Navigator at consult the ANR Permit Navigator at

<https://dec.vermont.gov/permitnavigator>

- Construction of a new access onto a public road, or modifications of existing access, requires a permit in accordance with Section 2.4 of this bylaw.
- No zoning permit can be issued under this bylaw unless and until a Wastewater and Potable Water Supply Permit is issued, in accordance with Section 2.7 of this bylaw.

1.8 Limitations

The following uses may be regulated herein only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, screening, and flood hazard area requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

1. State- or community-owned and operated institutions and facilities;
2. public and private schools and other educational institutions certified by the Agency of Education;
3. churches and other places of worship, convents, and parish houses;
4. public and private hospitals;
5. regional solid waste management facilities certified under 10 V.S.A. chapter 159;
6. hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a;
7. emergency shelters (daily or seasonal hours of operation may not be regulated)

1.9 Exemptions

The uses, structures and development listed in this section shall meet all setback and dimensional requirements, but are otherwise exempt from the requirement to obtain a zoning permit under this bylaw. It is advisable to check with the AO to ensure that any contemplated use, structure, or development meets the requirements of this section. This exemption does not apply to any development within the Flood Hazard Overlay District, in the Aquifer Recharge District, or in a wetland. Uses, structures and development that are exempt under this bylaw may not be exempt from the requirements of the Rochester Subdivision Bylaw, and the reader is encouraged to consult that document for more information.

- a) Required agricultural and forestry practices (including the construction of farm structures, operation of riding stables, and processing or sale of agricultural or forestry products primarily (more than 50 percent) produced on the premises) as exempted by 24 V.S.A. §4413(d). The reader is encouraged to consult the Definitions section for further information about qualifying activities.
1. While no town permits are required for construction of a farm structure, a farm operator shall provide notification to the AO, so that the AO can determine whether the proposed structure qualifies as a farm structure and whether it meets the setback requirements of the zoning district in which it will be located, per the Secretary of Agriculture's policy. The Secretary may grant a waiver to the setback requirements upon written request and after notifying the town. No application fees or further action by applicant shall be required if the AO determines that the proposed structure qualifies

- as a compliant farm structure.
2. Temporary accesses for forestry operations require an access permit by the Selectboard and possibly a bond to insure protection of public roads.
- b) Power generation, storage, and transmission facilities, which are regulated under 30 V.S.A. §248 by the Vermont Public Utility Commission. Such facilities, however, shall conform to policies and objectives specified for such development in the Town Plan. (Note : Power generation facilities that are not connected to the grid are subject to zoning.)
 - c) 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 this bylaw are defined as outdoor recreation facilities.
 - d) Networked telecommunications which are regulated under 30 V.S.A. § 248a by the Vermont Public Utility Commission. Such facilities should conform to the policies and objectives specified in the Town Plan.
 - e) Accessory dwelling unit constructed entirely inside an existing owner-occupied single-unit residence, so long as there is no increase in the building footprint (excluding exterior steps/entryway) or the total number of bedrooms in the structure. This exemption does not apply in flood hazard areas.
 - f) Fences, berms, manmade earthen structures, stone or retaining walls, any of which are up to 4.5 feet high and are placed outside of the road right-of-way. Placement inside of the road right-of-way or failure to meet setback requirements from the edge of the road surface requires a waiver and a permit. Authorization from the Vermont Agency of Transportation is required for structures within the state right-of-way.
 - g) Temporary shelters such as campers, tents, travel trailers, teepees, and yurts in campgrounds or, with the consent of the landowner, on other properties, provided that no such shelter is occupied or used for more than 90 days within any calendar year. Other than in campgrounds, no more than one such shelter may be located on a lot.
 - h) Temporary structures such as storage containers, construction trailers, and event structures, provided that such structures shall not be used for dwelling purposes and are on site for a period of time not to exceed one (1) year.
 - i) Fuel or propane storage tanks used for agriculture or single or multi-unit purposes.
 - j) The construction or placement of conforming new unattached accessory structures or other structures incidental to residential uses (such as doghouses, playhouses, tree houses, etc.), not larger than 120 square feet (for example, 10 feet x 12 feet), nor taller than 15 feet.
 - k) Temporary events (such as public auctions, garage/yard sales, immediate family member

weddings, church suppers, fairs, concerts, festivals, cultural events, trade and antique shows, etc.) not exceeding four (4) consecutive days and not more than twelve (12) cumulative days in a calendar year. Temporary events cannot be the principal use of land or structures, and adequate off-street parking, circulation, and sanitary and trash collection facilities must be provided. A public gathering permit from the town and/or state police may be required.

- l) Normal maintenance and repair to the exterior of existing structures or utilities which does not result in alterations in dimension, or an expansion or change of use. (Note: Any replacement of windows, heating systems, ventilation systems, opening of exterior walls to framing from the inside or outside may require compliance with the Vermont Residential or Commercial Building Energy Standard; and any framing, wiring, plumbing may also require a State Building Permit if located in a 'public building,' which includes any private building for rent.)
- m) Interior alterations to a structure that do not result in an increase in the number of bedrooms or a change in use. (Note, any replacement of windows, heating systems, ventilation systems, opening of exterior walls to framing from the inside or outside may require compliance with the Vermont Residential or Commercial Building Energy Standard; and any framing, wiring, plumbing may also require a State Building Permit if located in a 'public building,' which includes any private building for rent.)
- n) Work incidental to the development of non-commercial trails.
- o) Installation, modification, maintenance, or removal of a potable water supply or wastewater system permitted by a state Potable Water Supply and Wastewater Permit, or maintenance exempt from such state permitting
- p) Energy devices based on renewable resources for on-site use, provided that they meet the setbacks specified in this bylaw.
- q) The stabilization of a damaged structure to prevent hazards to public health and safety, or to adjoining properties, structures or uses, or for the prompt repair or reconstruction of a damaged conforming structure to the extent of its prior condition and use, provided that such structure is outside the Flood Hazard Overlay District, the repair begins within one year of the damage, and there is no change in structural dimensions or a change of use. Repair of damaged nonconforming structures requires a permit in accordance with section 2.14.
- r) De minimus structures or uses not specifically mentioned in this bylaw that are incidental and customary to the use on the lot, are consistent with policies of the Town Plan, and so temporary or minimal in their impact on the public that regulation of them is not required to protect health, safety, welfare, or environment. Such uses or structures include but are not limited to play equipment, unpaved trails and paths, and seasonal decorations. The AO is empowered to make such determinations when needed, and appeals of these decisions shall be made to the Zoning Board of Adjustment.

- s) Home occupations that meet the requirements of section 5.2 of this bylaw. Signage for a home occupation may or may not be exempt from a permit; the reader is encouraged to refer to Section 2.6 of this bylaw as well as the regulations pertaining to exempt signage, below. Note that family child care homes and group homes are not considered home occupations and require permits. Refer to standards in sections 5.9 and 5.10.

- t) The following on-premise signs are allowed in all districts without a permit provided that they meet the requirements of section 2.6 of this bylaw, are not illuminated, and are placed outside of the Town or State right of way:
 - 1. One permanent or temporary sign not to exceed 6 square feet in area
 - 2. A lot may have one temporary sign, up to 32 square feet in area, for maximum total of 14 days in each calendar year. It is up to the property owner to keep a record of the days on which the sign is displayed.

- u) The creation of a lot when such creation requires a permit per Rochester's Subdivision Bylaw. (In other words, if a subdivision permit is required, the Town does not also require a zoning permit.)

II. GENERAL STANDARDS FOR ALL LAND DEVELOPMENT

2.1 Existing Small Lots

Any lot that is legally subdivided, is in individual and separate and non-affiliated ownership from surrounding properties, and is in existence on the effective date of this bylaw 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 development cannot be accomplished in compliance with dimensional requirements other than lot size, then a variance or waiver may be required. Notwithstanding the above, development is prohibited on a lot that is not served by and not able to connect to municipal water and sewer service, if such lot is less than 1/8 acre in area or the lot has a width or depth dimension of less than 40 feet.

If an existing lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot(s) for purposes of this section. However, such lot(s) shall not be deemed merged and may be separately conveyed, if:

- 1) The lots are conveyed in their preexisting, nonconforming configuration; and
- 2) each lot has a functioning water supply and wastewater disposal system; and
- 3) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails.

If, subsequent to separate conveyance, as authorized in the paragraph above, a wastewater system fails, the owner shall be required to obtain from the Secretary of the Vermont Department of Natural Resources a wastewater permit or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

2.2 Required Frontage on, or Access to Public Roads

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

No lot may be created that is only accessible by a town trail.

2.3 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 this bylaw,

or other bylaw 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.

2.4 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 (for access to town roads) or the Vermont Agency of Transportation (for access to state highways). The access permit will be required before a zoning permit can be issued.

2.5 Lots in More Than One Zoning District

If a lot is located in two or more zoning districts, the portion of land in each zoning district shall be governed by the rules of that zoning district, provided that there is sufficient acreage in such zoning district to allow for a conforming lot. When lots have sufficient acreage to allow for a conforming lot in only one zoning district, the entire lot shall be treated as being in that zoning district. Lots without sufficient acreage in any zoning district will be treated as being entirely in the zoning district with the majority of the lot acreage. In lots within the Flood Hazard Overlay District, the overlay requirements shall supersede those of the underlying zoning district when more strict.

2.6 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.

The erection, construction, relocation, or enlargement of a sign visible from outdoors, other than those specified as exempt under this bylaw, shall require a permit from the Administrative Officer when the sign is associated with a permitted use or a permit from the Zoning Board of Adjustment (ZBA) when the sign is associated with a conditional use. Signs, including exempt signs, shall conform to the requirements listed below:

1. Indirectly illuminated signs may be lighted with constant lighting provided:
 - i) The lighting shall be shielded and shall not be directed beyond the extent of the sign.
 - ii) The lighting shall not be directed at neighboring properties or public ways.
 - iii) The intensity of sign lighting shall not adversely affect the neighborhood or streets and highways, especially the drivers of vehicles.
 - iv) Light fixtures used for signs on or near buildings, if visible, shall be of a style compatible with the overall building façade.
2. No sign shall contain string lighting, pennants, moving parts or similar attention gathering devices. No sign shall be illuminated by a neon, flashing, moving, or intermittent light. To permit an internally illuminated sign, it must be proven that the sign is a condition of a business franchise.
3. No sign shall be erected, attached, or maintained upon any tree or drawn or painted on any rock or other natural feature or upon any utility pole or town sign post.

4. No sign shall be erected which is not on the lot where the activity served by the sign is located.
5. A commercial use or industrial use may have a maximum of 3 permanent signs, including one double-faced sign (Vermont State Highway directional signs are not included). Each sign shall be no more than 25 square feet in area, and the combined area of all signs per business entity shall not be more than 50 square feet. When two or more commercial entities are located on a lot, the total area of all signs shall not exceed 75 square feet.

In computing the area of a sign, the area shall be the area of the smallest rectangle with a level base line which can contain the entire sign including panel, frame, and border, but excluding the necessary supports or uprights on which a sign is placed. 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.

6. The top of any sign shall not be more than 20 feet above ground level.
7. No sign shall be written on or designed into the roofing material of a structure.
8. No sign may conflict with or detract from the effectiveness of an official traffic signal or sign, prevent a clear and unobstructed view of traffic, or otherwise impair traffic safety.
9. Placement of signs within the State or Town right-of-way may be permitted through the waiver process outlined in this bylaw, provided such signs are authorized by the applicable Vermont state agency or the Selectboard, respectively.
10. Any sign for an activity no longer conducted or product no longer sold on the premises upon which such sign is located shall be removed within 90 days.
11. Signs located on motor vehicles that are used primarily as a support or foundation are prohibited. Any of the following shall be considered evidence that a vehicle is being used primarily as a sign:
 - i) The vehicle is inoperable or unregistered.
 - ii) The sign would interfere with or prevent the vehicle from being legally driven on the road.
 - iii) The vehicle is not regularly driven.

2.7 Adequate Water Supply and Sewage Treatment Requirement

In addition to any other restriction, no zoning permit can be issued 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.

2.8 Glare, Lights, Reflection

No glare, light, or reflection shall be permitted which has an undue adverse impact on 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.

2.9 Riparian Buffers

- 1) United States Geological Survey mapped streams will have a minimum building setback measured 50 feet horizontally from top of bank, and no ground disturbance within 35 feet (measured horizontally) from top of bank. For home gardens, the no ground disturbance zone is reduced to 25 feet (measured horizontally) from top of bank. Recreational motorized vehicles must not be parked within 35 feet (measured horizontally) from top of bank, regardless of lot size. On existing lots of 1 acre or less, the building setback and no ground disturbance zone are reduced to 25 feet (measured horizontally) from top of bank.
- 2) Outside of the Flood Hazard Overlay District, the following uses are not subject to the no ground disturbance zone requirements specified in subsection 1 (above):
 - a. Required agricultural practices as defined by the Secretary of Agriculture, Food and Markets in accordance with Section 4413(d) of the Act. Written notification, including a sketch plan showing structure setback distances from surface waters shall be submitted to the Administrative Officer prior to any construction, as required under the Required Agricultural Practices Rule. Such structures shall meet the setback requirements of this bylaw, unless waived by the Secretary of Agriculture.
 - b. Accepted silvicultural practices as defined by the Commissioner of Forests, Parks, and Recreation, or forestry operations as defined in 10 V.S.A. § 2602.
 - c. Removal of invasive species and buffer re-establishment projects.
 - d. Stream restoration projects in accordance with a plan approved by the Vermont Agency of Natural Resources.
 - e. Unpaved recreation paths located at least 10 feet from the top of bank.
 - f. Roadways or access drives for purposes of crossing a riparian buffer to gain access to land on the opposite side of the buffer, or for purposes of providing safe access to an approved use, in cases where there is no feasible alternative for providing safe access. A roadway crossing or access drive shall occur at a right angle to the stream channel.
 - g. Utility crossings.
 - h. The removal of a structure or building in whole or in part.
 - i. At-grade parking areas that are at least 50 feet from the top of bank.
- 3) Existing trees within the riparian buffer may be pruned and dead, diseased, or hazardous trees may be removed as long as the overall forest canopy is maintained. Stumps shall not be removed.
- 4) The creation of new lawn areas within riparian buffers is not permitted.
- 5) Any areas within a riparian buffer that are not vegetated or that are disturbed during construction shall be seeded with a naturalized mix of grasses rather than standard lawn grass, and shall not be mowed more than 2 times per calendar year after establishment.
- 6) All work below top of bank on all streams requires a State Stream Alteration Permit.
- 7) Any land disturbance taking place within the Flood Hazard Overlay District must also comply with the provisions of the Flood Hazard Area Regulations.

2.10 More Than One Principal Building Per Lot

Only one principal building (not including an accessory dwelling unit or accessory structure) may be placed on a lot, unless the use is a home industry, in which case 2 principal buildings may be placed on a lot. If there is a dwelling unit on a lot, the structure in which the dwelling unit is located shall be considered a principal building. Dimensional requirements can be reduced per section 6.10 of this bylaw.

2.11 More than One Use in a Principal Building

More than 1 use may be accommodated in a principal building (not including an accessory dwelling unit or accessory structure). In such cases, all standards relevant to each of the uses in the building are applied, and a single zoning permit is issued for all uses within the building.

2.12 Abandonment

A permitted structure that, (a) is not substantially complete more than 3 years after the issuance of its zoning permit; (b) is unoccupied and is either deemed uninhabitable by the Health Officer or deemed a fire hazard by the Fire Chief or a State Fire Marshall; (c) due to disrepair, lacks any major structural element customary to the type of building involved, such as a roof, windows, water supply, etc.; or (d) is a conforming structure that lacks any major structural element due to damage and no repair work has been undertaken within one year of the damage, shall be considered abandoned for the purposes of this bylaw. Abandoned structures shall require new zoning permits and approvals, as applicable, under this bylaw before the use of, or construction on, such structures may resume. For such abandoned structures, the owner shall be notified in writing via certified mail by the Administrative Officer that the structure in question has been deemed abandoned and that the owner must:

- 1) apply for new permits and approvals in order to undertake any use of or construction on the structure, thereby confirming the owner's intent not to abandon the structure; and
- 2) immediately fence and sign the property to prevent access and, as soon as possible, take all reasonable steps to secure the site, as the Administrative Officer and other authorities having jurisdiction may require, including but not limited to removing all materials and equipment from the site, restoring the site to a normal grade, if necessary, and establishing ground cover sufficient to prevent erosion. If the owner does not apply for new permits and approvals for construction and/or use of the structure, the structure must be demolished. In the event the owner, following notice, fails to take the foregoing steps, the Town may take such steps on the owner's behalf and at the owner's expense, with such costs constituting a lien upon the property recoverable in the same manner as a tax lien on real property under Title 32. In addition, the Town may take such other actions as authorized by law to ensure the safety and security of the property and protect the public.

An abandoned non-conforming structure shall also be subject to section 2.14 of this bylaw.

2.13 Discontinuance

Any non-residential use that ceases operation for more than two consecutive years shall be deemed discontinued by the Administrative Officer (AO) under this bylaw and the owner notified via

certified mail of this decision in writing. Discontinued uses shall not be resumed until the owner has obtained new zoning permits and approvals, as applicable, under this bylaw. However, upon a request for deferral by the owner and a written finding by the Administrative Officer that the property has been maintained and the owner has been actively pursuing reestablishment of the use, the use may cease for up to two additional consecutive years before the use is deemed discontinued.

A discontinued non-conforming use shall also be subject to section 2.14 of this bylaw.

2.14 Nonconformities

The following provisions shall apply to all non-conforming structures and uses lawfully existing at the time of the adoption of this bylaw, and to all lawfully existing structures and uses that in the future do not conform by reason of any subsequent amendment to this bylaw.

Any non-conforming structure or use may be continued indefinitely, subject to the following regulations:

1. Non-conforming use may be changed to conforming use upon approval of the application by the Administrative Officer (AO). A non-conforming use shall not be reestablished or resumed if such use has been changed to, or replaced by, a conforming use.
2. A non-conforming use may be changed to another non-conforming use only upon conditional use approval by the Zoning Board of Adjustment, and then only to a use which is of the same or of a more restricted nature. In no case shall external evidence of such non-conforming use be increased.
3. Non-conforming structures shall not be moved, enlarged, altered, or extended in any way that increases the degree of non-conformance. Routine maintenance is permitted. 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 structure or use has been abandoned or discontinued as defined in sections 2.12 and 2.13, it shall not thereafter be re-established or resumed.
5. A non-conforming structure may be reconstructed or restored after damage from any cause with the approval of the Administrative Officer, provided that such work is substantially complete within two years of the damage and the degree of non-conformity is not increased. The Administrative Officer may grant a one-year extension for situations beyond the applicant's control.

Non-conforming structures within the Flood Hazard Overlay District are subject to the above regulations as well as the regulations in section 3.7.13.

III. ZONING DISTRICT REGULATIONS

3.1 Establishment of Zoning Districts and Map

For the purposes outlined in sections 3.2.2, 3.3.2, 3.4.2, 3.5.2, 3.6.2, and 3.7.3, the following zoning districts are established within the Town of Rochester:

- Business-Residential District
- Commercial-Agricultural District
- Agricultural-Residential District
- Aquifer Recharge District
- Conservation-Residential District
- Flood Hazard Overlay District

The boundaries of the zoning districts, except the Flood Hazard Overlay District, are established as described in sections 3.2.1, 3.3.1, 3.4.1, 3.5.1, 3.6.1, and as shown on the Zoning Map for the Town of Rochester attached as Appendix A and made a part of this bylaw, together with all future amendments. The Flood Hazard Overlay District covers all lands identified as 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 this bylaw.

The official Zoning Map shall remain on file with the Town Clerk. In the event of uncertainty about the limits or boundaries of any district except the Flood Hazard Overlay District, the Zoning Board of Adjustment (ZBA) shall have the authority and power, upon request of a landowner and after a public hearing, to determine where such lines actually fall on the ground. In making such a determination, the ZBA will use the Zoning Map as the primary authority with secondary reference, as needed, to the geographic descriptions included in this bylaw. Questions about the boundaries of the Flood Hazard Overlay District will be resolved as described in section 3.7.6.

3.2 Business – Residential District

3.2.1 Geographic Description:

The bounds of this zone follow 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.

3.2.2 Purpose:

The purpose of the Business-Residential District is to encourage a broad mix of uses including civic, commercial (including primary retail), higher-density residential, light industrial, and professional services. It supports the highest density development in the Town,

within the limits of existing utility and facility capacities and compatibility with surrounding context and historical development patterns.

3.2.3 Permitted Uses

The following uses shall be permitted in the Business-Residential district upon issuance of a zoning permit by the Administrative Officer (AO):

- 1) Accessory uses customarily incidental to the permitted use and not exempted under this bylaw
- 2) Banks or financial institutions
- 3) Community centers and clubs/lodges
- 4) Educational, cultural, and religious establishments
- 5) Home occupations
- 6) Lodging
- 7) Single unit dwellings
- 8) Two unit dwellings
- 9) Multiple unit dwellings
- 10) Commercial office buildings
- 11) Primary and secondary retail
- 12) Service businesses
- 13) Restaurants
- 14) Accessory dwelling units not exempted under this bylaw
- 15) Accessory on-farm businesses not exempted under this bylaw
- 16) Short-term rentals
- 17) Health care facilities

3.2.4 Prohibited Uses

The following uses are prohibited in the Business-Residential District:

- 1) Helicopter landing pad
- 2) Earth resource extraction
- 3) Campground
- 4) Heavy industrial
- 5) Outdoor shooting range
- 6) Salvage yard
- 7) Contractor Yard
- 8) Landfill
- 9) Uses that create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties, or that constitute a public nuisance, including but not limited to slaughterhouses not exempted under this bylaw, rendering plants, fertilizer plants, and hazardous materials/chemical storage facilities.

3.2.5 Conditional Uses

Any use that is not exempt, permitted, or prohibited is a conditional use.

3.2.6 Dimensional Requirements:

Residential

- Minimum Lot Size: A lot shall be at least 1/5 acre.
- Frontage: Each lot shall have at least 60 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- Front Setback: A building shall be placed on a lot at least 20 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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. An affordable housing development (as defined in section VIII of this bylaw) can obtain a waiver without conditional use approval in accordance with Section 6.10.2 of this bylaw.

Non-Residential:

- Minimum Lot Size: A lot shall be at least 1/5 acre in area.
- Frontage: Each lot shall have at least 60 feet of frontage on a public street, or access by a permanent easement or right-of-way 30 feet in width to a street.
- Front Setback: A building shall be placed on a lot at least 20 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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.
- Reasonable steps shall be taken to locate parking to the side or rear of structures, whenever feasible.

3.3 Commercial – Agricultural District

3.3.1 Geographic 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 ending at the intersection of Route 100 and Route 73. 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.

3.3.2 Purpose

The purpose of this zone is to provide a location for commercial development that would serve to complement existing businesses already well-established in the village area. The location near the intersection of Route 100 and 73 with its proximity to the village center makes this area most favorable for expansion of business interests, provided that these businesses do not negatively impact the health of the Business-Residential District. Businesses in this area may have a retail component, but only if it is clearly secondary to the primary use of the building. Both residential and agricultural uses are also compatible with the purpose of this land use area.

3.3.3 Permitted Uses

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

- 1) Accessory uses customarily incidental to the permitted use and not exempted under this bylaw
- 2) Community centers and clubs/lodges
- 3) Theatres
- 4) Educational, cultural, and religious establishments
- 5) Home occupations
- 6) Lodging
- 7) Single unit dwellings
- 8) Two unit dwellings
- 9) Multiple unit dwellings
- 10) Commercial office buildings
- 11) Service businesses
- 12) Accessory dwelling units not exempted under this bylaw
- 13) Accessory on-farm businesses not exempted under this bylaw
- 14) Short-term rental

3.3.4 Prohibited Uses

The following uses are prohibited in the Commercial-Agricultural District:

- 1) Earth resource extraction
- 2) Primary retail
- 3) Salvage yard
- 4) Landfill
- 5) Uses that create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties, or that constitute a public nuisance, including but not limited to slaughterhouses not exempted under this bylaw, rendering plants, fertilizer plants, and hazardous materials/chemical storage facilities.

3.3.5 Conditional Uses

Any use that is not exempt, permitted, or prohibited is a conditional use.

3.3.6 Dimensional Requirements

Residential

- Minimum Lot Size: A lot shall be at least one acre in area.
- Density: Up to 4 dwelling units will be allowed on a 1 acre lot. For each lot larger than one acre, 1 additional dwelling unit will be allowed for each additional 1/2 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.
- Front Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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 one off-street (outside of the right-of-way) parking space shall be provided for each dwelling unit. This requirement will be eliminated or reduced if there is a shared parking agreement with another lot sufficient to meet the parking needs of both uses, so long as the sharing of space does not create an unsafe situation.

Non-Residential

- Minimum 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.
- Front Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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: For any commercial use or other use that caters to the public, one space is required for every employee who does not live on the premises, and adequate space shall be provided

for all delivery/service vehicles and all vehicles used in the business. For all uses that cater to the public, at least 2 spaces are required for the public. Additional parking will be required if needed to ensure full occupancy and maximum expected use will not create an unsafe situation. These parking requirements will be eliminated or reduced if there is a shared parking agreement with another lot sufficient to meet the parking needs of both uses, so long as the sharing of space does not create an unsafe situation. All parking spaces must be located outside of the right-of-way.

3.4 Agricultural – Residential District

3.4.1 Geographic Description

The boundaries of the two individual areas comprising the Agricultural - 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.

3.4.2 Purpose

The purpose of this zone is to accommodate less intensive land uses such as agriculture, residential homes, small non-retail businesses, and outdoor recreation. The district incorporates open space to contrast with the more densely developed Business-Residential and Commercial-Agricultural districts, thereby helping preserve the historic settlement pattern of a compact village center surrounded by rural countryside.

3.4.3 Permitted Uses

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

- 1) Accessory uses customarily incidental to the permitted use and not exempted under this bylaw
- 2) Home occupations
- 3) Single unit dwelling
- 4) Two unit dwelling
- 5) Multiple unit dwelling with no more than four dwelling units
- 6) Wildlife refuges
- 7) Public outdoor recreation facilities
- 8) Accessory dwelling units not exempted under this bylaw
- 9) Accessory on-farm businesses not exempted under this bylaw

3.4.4 Prohibited Uses

The following uses are prohibited in the Agricultural-Residential District:

- 1) Heavy industrial
- 2) Bowling alley
- 3) Primary retail

- 4) Banks or financial institutions
- 5) Commercial office buildings
- 6) Drive-in restaurants and movie theatres
- 7) Theatres
- 8) Community centers and clubs/lodges
- 9) Gas stations
- 10) Automobile repair garages
- 11) Restaurants
- 12) Group homes serving more than 8 people
- 13) Helicopter landing pad
- 14) Uses that create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties, or that constitute a public nuisance, including but not limited to slaughterhouses not exempted under this bylaw, rendering plants, fertilizer plants, and hazardous materials/chemical storage facilities.

3.4.5 Conditional Uses

Any use that is not exempt, permitted, or prohibited is a conditional use.

3.4.6 Dimensional Requirements:

Residential

- Minimum Lot Size: Two acres.
- Density: Up to 4 dwelling units will be allowed on a 2 acre lot. Lots over 2 acres in area will be allowed 1 dwelling unit for each additional 1 acre.
- 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.
- Front Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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 one off-street (outside of the right-of-way) parking space shall be provided for each dwelling unit. This parking requirement will be eliminated or reduced if there is a shared parking agreement with another lot sufficient to meet the parking needs of both uses, so long as the sharing of space does not create an unsafe situation.

Non-Residential

- Minimum 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.
- Front Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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: For any commercial use or other use that caters to the public, one space is required for every employee who does not live on the premises, and adequate space shall be provided for all delivery/service vehicles and all vehicles used in the business. For all uses that cater to the public, at least 2 spaces are required for the public. Additional parking will be required if needed to ensure full occupancy and maximum expected use will not create an unsafe situation. These parking requirements will be eliminated or reduced if there is a shared parking agreement with another lot sufficient to meet the parking needs of both uses, so long as the sharing of space does not create an unsafe situation. All parking spaces must be located outside of the right-of-way.

3.5 Aquifer Recharge District

3.5.1 Geographic Description

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

3.5.2 Purpose

The purpose of this district is to protect the quality of the public water supply serving Rochester Village. These are the lands whose surface and ground water serve to recharge the well that provides the village with its municipal water supply.

3.5.3 Conditional Uses

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

- 1) Wildlife refuge
- 2) Public outdoor recreation facilities for non-motorized recreation only

3.5.4 Prohibited Uses

All other uses that are not exempt are prohibited in this district. Of the exempt uses, the following are prohibited in this district:

- 1) Accessory dwelling units
- 2) Temporary shelters such as campers, tents, travel-trailers, teepees, and yurts
- 3) Temporary structures such as storage containers, construction trailers, and event structures
- 4) All temporary events except for garage/yard sales, which are exempt

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

3.6 Conservation – Residential District

3.6.1 Geographic Description

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

3.6.2 Purpose

The purpose of this district is to preserve Rochester's rural character and working lands. These lands exhibit the least potential for supporting high density development since most of the land is characterized by prime agricultural soils, steep slopes, shallow and fragile soils, high elevations, large forest blocks, and remote locations. Uses compatible with the purposes of this land use area include: agriculture, forestry, recreation, and properly sited residential development.

3.6.3 Permitted Uses

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

- 1) Accessory uses customarily incidental to the permitted use and not exempted under this bylaw
- 2) Home Occupations
- 3) Single unit dwellings
- 4) Two unit dwellings
- 5) Multiple unit dwellings with no more than four dwelling units
- 6) Wildlife refuges
- 7) Accessory dwelling units not exempted under this bylaw
- 8) Accessory on-farm businesses not exempted under this bylaw

3.6.4 Prohibited Uses

The following uses are prohibited in the Conservation-Residential District:

- 1) Multiple unit dwellings with more than 4 dwelling units
- 2) Mobile home parks
- 3) Helicopter landing pad
- 4) Heavy industrial
- 5) Light industrial

- 6) Contractor yard
- 7) Salvage yard
- 8) Primary and secondary retail
- 9) Service businesses
- 10) Restaurants
- 11) Commercial office buildings
- 12) Community centers and clubs/lodges
- 13) Health care facilities
- 14) Group homes serving more than 8 people
- 15) Landfills
- 16) Bowling alley
- 17) Drive-in restaurants and movie theatres
- 18) Theatres
- 19) Uses that create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties, or that constitute a public nuisance, including but not limited to slaughterhouses not exempted under this bylaw, rendering plants, fertilizer plants, and hazardous materials/chemical storage facilities.

3.6.5 Conditional Uses

Any use that is not exempt, permitted, or prohibited is a conditional use.

3.6.6 Dimensional Requirements:

Residential

- Minimum Lot Size: Three acres.
- Density: Up to 4 dwelling units will be allowed on a lot.
- Frontage: Each lot shall have at least 200 feet of frontage on a public street or access by a permanent easement or right-of-way 30 feet in width.
- Front Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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 one off-street (outside of the right-of-way) parking space shall be provided for each dwelling unit. This parking requirement will be eliminated or reduced if there is a shared parking agreement with another lot sufficient to meet the parking needs of both uses, so long as the sharing of space does not create an unsafe situation.

Non-Residential

- Minimum Lot Size: Three acres.
- Frontage: Each lot shall have at least 200 feet of frontage on a public street or access by a permanent easement or right-of-way 30 feet in width.
- Front Setback: A building shall be placed on a lot at least 30 feet from the edge of the road surface.
- Side and Rear Yard Setback: 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: For any commercial use or other use that caters to the public, one space is required for every employee who does not live on the premises, and adequate space shall be provided for all delivery/service vehicles and all vehicles used in the business. For all uses that cater to the public, at least 2 spaces are required for the public. Additional parking will be required if needed to ensure full occupancy and maximum expected use will not create an unsafe situation. These parking requirements will be eliminated or reduced if there is a shared parking agreement with another lot sufficient to meet the parking needs of both uses, so long as the sharing of space does not create an unsafe situation. All parking spaces must be located outside of the right-of-way.

3.7 Flood Hazard Overlay District

3.7.1 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.

3.7.2 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.

3.7.3 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.

3.7.4 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.

3.7.5 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 Overlay District Map, together with all explanatory matter thereon and attached thereto, and is hereby adopted by reference and declared to be part of these regulations.

3.7.6 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 Overlay District 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.

3.7.7 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 3.7.6 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 Zoning 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.

3.7.8 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.

3.7.9 Zoning Board of Adjustment

The Zoning 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 3.7.12 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.

3.7.10 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.

3.7.11 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.

3.7.12 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 floatation, 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 Zoning 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.

3.7.13 Non-Conforming Structure

The Zoning 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 3.7.10, 3.7.11, and 3.7.12 of these regulations and provided that the following criteria are met:

1. The degree of non-conformity will not be increased.
2. 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;
3. 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.

3.7.14 Prohibited Uses

Salvage yards, as defined in 24 V.S.A., Section 2241, and storage facilities for chemicals, explosives, flammable liquids or other toxic materials shall be prohibited in the overlay district.

3.7.15 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 (AO), 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 confirm that the applicant has filed their Residential or Commercial Building Energy Standards (if required), and 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.

3.7.16 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. GENERAL CONDITIONAL USE APPROVAL STANDARDS

The proposed conditional use shall not result in an undue adverse effect on any of the following:

1. **The capacity of existing or planned community facilities.** The Zoning Board of Adjustment (ZBA) shall consider the demand for community services and facilities resulting from the proposed development in relation to the capacity of such services and facilities including, but not limited to, schools, emergency services, transit services and road maintenance. Conditions may be imposed to ensure that demand does not exceed available or planned capacity.
2. **The character of the area affected,** as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan. Conditions may be imposed to ensure project compatibility with these purposes and policies.
3. **Traffic on roads and highways in the vicinity.** The Zoning Board of Adjustment shall consider the potential impact of traffic projected to result from the proposed development in relation to the condition, capacity, safety, and function of affected roads and associated infrastructure (e.g., bridges, culverts, sidewalks). Conditions may be imposed to ensure that the condition, capacity, safety, and function of roads and associated infrastructure are maintained over the long-term, and that delivery and operations of the proposed use do not create safety hazards.
4. **Bylaws and ordinances then in effect.** The Zoning Board of Adjustment shall consider whether the proposed development complies with all bylaws and ordinances in effect at the time of application. Conditions may be imposed or incorporated to ensure compliance with municipal bylaws and ordinances.
5. **Utilization of renewable energy resources.** Development shall not have an undue adverse effect on the use of renewable energy, principally by blocking solar access to adjacent properties.

In addition:

6. **Off-street Parking and Loading Space Requirements:** During conditional use review and approval, the ZBA may alter the zoning district parking requirements as needed to provide a reasonable amount of parking and loading space. The ZBA may allow parking/loading spaces to be (i) located on lands not part of the lot on which the principal building is situated, (ii) shared between uses if the amount of space to be provided would satisfy the requirements of each use, and (iii) increased or decreased due to the particular circumstances of the project or when the applicant has demonstrated that the parking/loading requirements are not applicable to the project. Such alterations and the reasons supporting them shall be written as findings of fact and contained in any approval decision.

7. **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 Zoning 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.
8. **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.
9. **Vibration:** No sustained or repetitive vibration shall be permitted which causes any noticeable, clearly apparent vibration on the property of another landowner.
10. **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.
11. **Emergency Access:** Development must be designed to allow emergency vehicle access that is satisfactory to town emergency services.
12. **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.
13. **Visual Impacts:**
 - a. Trees shall be planted or preserved to interrupt the facades of buildings, visually reduce the scale and bulk of large buildings, and integrate the site into the surrounding landscape. If required for the purposes of reducing visual impacts, vegetation shall be diversified for sufficient screening that is effective year-round.
 - b. Reasonable efforts shall be made to save existing mature trees, especially those along property lines and roads. The removal of native vegetation shall be minimized, and the replacement of vegetation and landscaping shall be compatible with the vegetation of the designated area.
 - c. Landscaping, screening, or the retention of vegetation is required to minimize visibility of garbage collection and utility areas, outdoor storage, loading areas, and other outdoor utilities and facilities.
 - d. Development shall not have an undue adverse visual effect as viewed from public right-of-ways or adjoining properties, through the use of additional landscaping, screening, or retention of vegetation.
14. **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.

Following are the minimum landscaping requirements:

- a. For any non-residential land use in a residential district (not including the Business 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.
- b. 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, except in cases where the required setback for the zoning district is less than 15 feet (in such cases the entire setback will be maintained as a landscape area).

15 **Additional Information:** The ZBA may also require specialized studies, if needed to adequately review technical issues, at a reasonable cost payable by the applicant.

V. SPECIAL STANDARDS

5.1 Earth Resource Extraction

In order to obtain conditional use approval for commercial quarrying or the removal of topsoil, sand, gravel, or stone, a plan must be submitted to the Zoning Board of Adjustment (ZBA). Extraction operations shall be subject to the conditional use criteria in section IV and the following performance standards:

- 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 Zoning 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.

5.2 Home Occupation

No regulation herein is intended to infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located. Home occupations shall meet the following standards:

- 1) The use is entirely within the dwelling and/or accessory structure and occupies an area less than 50% of the combined floor area of the principal dwelling and accessory structure.
- 2) The occupation is conducted at the site by the occupants of the dwelling, and employs not more than 3 persons not living on the premises.
- 3) There is no outside display of stock or merchandise and no outdoor storage of equipment or supplies.

Family child care homes and group homes are not considered home occupations and require permits. Refer to standards in sections 5.9 and 5.10.

5.3 Home Industry

A home industry must be operated by a homeowner residing on the same lot and must not have an undue adverse impact on the character of the residential area in which the dwelling is located.

Home industries must also meet the following standards:

- 1) No more than 6 individuals who do not reside in the dwelling shall be employed on site by the home industry.
- 2) The owner of the home industry shall provide on-site parking for all employees outside of the Town or State right of way.
- 3) Stock, merchandise, equipment, or supplies may be stored outside only if they are properly screened from view of neighbors and the public roadway.

5.4 Temporary Shelters

Temporary shelters such as campers, tents, travel trailers, teepees, and yurts may be used as a temporary residence without a permit for a period not to exceed 90 days within any calendar year. When such vehicles are used over 90 days in a calendar year, they must meet all requirements applicable to dwellings. No more than one such shelter may be located on a lot. This provision shall not apply to temporary shelters in an established campground.

5.5 Cabins

Cabins, camps, chalets, and similar structures for occasional overnight, or vacation use by the owner shall be permitted in a district where single unit dwellings are permitted, provided such regulations as apply to single unit dwellings are met. A cabin will not require a Wastewater and Potable Water Supply Permit from the state if it meets the definition of a “primitive camp” as outlined in 10 V.S.A. § 1974 and the Vermont Department of Environmental Conservation’s Wastewater System and Potable Water Supply Rules:

- 1 The camp is occupied no more than 3 consecutive weeks per calendar year or a total of 60 days per calendar year.
- 2 The camp has no interior plumbing except for one sink with water.
- 3 The camp is on a lot with no other buildings or structures and with no campground, or the camp is on a lot with a single-family residence but no other buildings or structures and no campground.

5.6 Mobile Homes

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

5.7 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.

A minimum of 8,000 square feet of lot area shall be provided for each manufactured home including at least 5,000 square feet for each manufactured home site with no dimension less than 50 feet, plus at least 3,000 square feet for each manufactured home to be in common open space, exclusive of roads. Such common space shall be accessible to all residents of the

manufactured home park, with all side-dimensions equal to, or greater than, 50 feet. Side setbacks shall be double the district requirements and applied to the edge of the park. Manufactured homes within the park shall be able to be placed on lots such that buildings and parking areas are separated from adjacent sites by at least 10 feet of greenspace on each site.

5.8 Accessory Dwelling Units

One or more accessory dwelling units can be constructed on a lot provided that each unit is compliant with the following standards:

- 1) The unit is attached to, inside, or detached from a single-unit dwelling.
- 2) An accessory dwelling unit constructed as a new structure must be located within 300 feet of the single-unit dwelling.
- 3) The property has sufficient wastewater capacity.
- 4) The unit does not exceed 50 percent of the total habitable floor area of the single-unit dwelling, or 1200 square feet, whichever is greater.
- 5) Applicable setback, coverage, and parking requirements specified in the bylaws are met. A zoning district's parking requirements do not apply to an accessory dwelling unit constructed entirely inside of an existing owner-occupied single unit dwelling in such a way that there is no increase in the building footprint or number of bedrooms.

5.9 Family Child Care Facilities

In accordance with 24 V.S.A. § 4412(5), 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. § 3511(7), shall be considered to constitute a permitted use of property. A family child care facility serving more than six full-time and four part-time children shall be reviewed as a conditional use.

5.10 Group Homes

In accordance with 24 V.S.A. § 4412(1)(G), a “group home” as used in this bylaw means a residential care or group home that must be licensed or registered per state regulations and that serves persons who have a disability as defined in 9 V.S.A. § 4501. A group home serving 8 or fewer people shall be considered by right to constitute a permitted single-unit dwelling use of the property. A group home serving more than 8 people shall be reviewed as a conditional use.

5.11 Primary Retail

Primary retail establishments shall not have more than 4,000 square feet of space that is accessible to the public.

5.12 Light Industrial

Light industrial uses shall meet the following standards:

1. The use is entirely within the principal building and/or accessory structures.
2. Stock, merchandise, equipment, or supplies may be stored outside only if they are properly screened from view of neighbors and the public roadway.
3. The combined footprint of the principal building and accessory buildings shall not exceed 10,000 ft².

5.13 Campgrounds

5.13.1 For campgrounds accommodating 2 or 3 tents, recreational vehicles, or other movable dwellings:

- a) The lot on which the campground is located shall have an area of not less than 3 acres.
- b) No camping space shall be closer to a public street right-of-way than 50 feet, or closer to a property line than 25 feet.
- c) There shall be provision for adequate and safe water supply, which can include requiring campers to bring their own water on site.
- d) There shall be provision for solid waste and sewage disposal either on or off site.

5.13.2 For campgrounds accommodating 4 or more tents, recreational vehicles, or other movable dwellings:

- a) A campground shall have an area of not less than 10 acres.
- b) No zoning permit will be issued until the Wastewater and Potable Water Supply Permit is issued by the Vermont Department of Environmental Conservation (<https://dec.vermont.gov/water/ww-systems>).
- c) No camping space shall be closer to a public street right-of-way than 80 feet, or closer to a property line than 50 feet.
- d) There shall be provision for solid waste disposal either on or off site.

5.14 Telecommunications Facilities/Towers

A non-networked telecommunications facility shall maintain front, side, and rear setbacks that are 150% of the facility's height.

VI. ADMINISTRATIVE PROCESSES

6.1 Administrative Officer (AO)

The provisions of this bylaw shall be enforced and administered by an Administrative Officer (AO). The AO shall be nominated by the Planning Commission and appointed by the Selectboard for a term of 3 years upon expiration of a term or when a vacancy exists. The AO shall administer this bylaw literally and shall not have the power to permit any land development that is not in conformance with this bylaw. An AO may be removed for cause at any time by the Selectboard after consultation with the Planning Commission.

The AO's principal duties shall be to:

- 1) Receive applications for zoning permits and issue same, administering this bylaw and the statutes of Vermont literally, with no power to permit any nonconforming land use or development.
- 2) If an application for a zoning permit seeks approval of a structure, the AO will provide the applicant with a copy of the applicable building energy standards under 30 V.S.A. §§ 51 (residential building energy standards) and 53 (commercial building energy standards). However, the AO need not provide a copy of the standards if the structure is a sign or a fence or the application certifies that the structure will not be heated or cooled. The AO may provide a copy of the Vermont Residential Building Energy Code Book published by the Department of Public Service in lieu of the full text of the residential building energy standards.
- 3) After determining that an application is complete, take action (i.e. issue permit for permitted use, refer to the ZBA, or deny) on the permit application within 30 days of receipt of same. Failure to act within said period shall constitute a decision in favor of the applicant.
- 4) Issue zoning permits only after approval and authorization by the ZBA, as applicable (see Section 6.2).
- 5) Post issued permits (per Section 6.4.2) in at least one public place, and provide one copy to the applicant, the Town Clerk, the Board of Listers, and the Town Office archives.
- 6) Be aware, to the best of their ability, of any violation of this bylaw and the applicable statutes, and in the name of Rochester, take any appropriate action to prevent or correct such violation.
- 7) 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.
- 8) Submit regular reports of proceedings to the Planning Commission.

6.2 Zoning Board of Adjustment (ZBA)

There is hereby established a Zoning Board of Adjustment (ZBA) appointed as provided by law, having the powers and duties as set forth in 24 V.S.A. Chapter 117. The Planning Commission shall serve as the Zoning Board of Adjustment. The Zoning Board of Adjustment shall consist of 3 to 9 persons, appointed by Selectboard. The number and terms of office of its members shall

be fixed by the Selectboard. Vacancies shall be filled by the Selectboard for un-expired terms. The ZBA shall elect its own officers consisting of a chair and clerk, and adopt rules of procedure pursuant to Section 4461 of the Act. In addition to those powers specifically provided for elsewhere in Subchapters 10 and 11 of the Act, the Zoning Board of Adjustment shall have the following powers pursuant to Section 4465 of the Act:

- 1) To hear and decide appeals from rulings by the Zoning Administrator
- 2) Receive, hold hearings, and decide upon applications for variances
- 3) Hear and grant or deny a request for a waiver.
- 4) To hear and grant or deny a request for approval of a conditional use.

6.3 Pre-application and application

Potential applicants are encouraged to discuss their project with the AO prior to application in order to understand the requirements of this bylaw and the process of obtaining a permit. The purpose of such a pre-application meeting is to familiarize the applicant with the requirements of this bylaw, answer basic questions of procedure, and acquaint the applicant with likely submittal requirements based on the applicant's proposal. No written decision will be issued and no comments by either the applicant or the AO at this meeting are binding.

All applications requiring a zoning permit and any other prerequisite approval under this bylaw shall be submitted to the AO on approved forms, and accompanied by the applicable fee as set by the Selectboard. Applications without appropriate fees will be deemed incomplete and will be returned to the applicant with no further action taken. Fees are to be paid to the Town of Rochester, are non-refundable, and do not guarantee issuance of a permit.

It is the applicant's sole obligation to identify, apply for, and obtain all relevant local, state, and/or federal permits. Some examples of potentially relevant permits are listed in section 1.7. The AO shall assist with any local permits/approvals that may be needed. This bylaw governs only the issuance of municipal zoning permits.

6.4 Zoning Permit

6.4.1 General Process

Permitted uses require only issuance of a zoning permit by the AO. Conditional uses require conditional use approval by the ZBA prior to the issuance of a zoning permit by the AO. No permit may be issued by the administrative officer except in conformance with the bylaws.

The AO shall take action on a complete application within 30 days of receipt (or, if incomplete upon submission, within 30 days of the date that the application becomes complete) by denying, approving, or referring to the ZBA. 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 31st day.

Applications that cannot be approved in conformance with applicable regulations shall be denied. If denied, the Administrative officer shall so notify the applicant in writing stating the reasons for denial.

Permits shall contain a statement of the period of time within which an appeal may be taken.

6.4.2 Notice

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 (and, if applicable, conditional use approval, waiver, and/or variance) to the town clerk for recording as provided in subsection 1154(a) of V.S.A. Title 24, Ch. 117. The Town Clerk may charge the applicant for the cost of the recording fees as required by law. Such records shall be open to inspection.
2. File a copy of that permit in the offices of the municipality in a location where all zoning permits shall be kept.

6.4.3 Permits in the Flood Hazard Overlay District

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.

For zoning permits issued in the Flood Hazard Overlay District, the AO must issue a certificate of occupancy before use or occupancy can proceed. See section 3.7.15.

6.4.4 Effective Date

No zoning permit issued shall take effect until the time for taking an appeal has passed (see section 6.8), or in the event that a notice of appeal is properly filed, no such zoning permit shall take effect until final adjudication of that appeal by the ZBA, and the time for taking an appeal to the Environmental Division has passed without an appeal being taken.

6.4.5 Expiration Date

If the zoning permit authorizes only a change or establishment of a use of any building or other structure, or in the use of land, the change in use must occur prior to the two-year expiration date of the permit, or it shall become null and void.

If the zoning permit authorizes construction (construction, reconstruction, conversion, relocation, alteration or enlargement of any building or structure), said construction activity must begin within two years and substantially completed by the end of the third year or the permit shall become null and void.

The expiration of a zoning permit under this subsection shall include the expiration of all associated town approvals under this bylaw, and at its expiration, any land development on the lot related to the permit must cease. If construction authorized by a permit is not substantially completed within the time authorized above, the permit shall expire and the landowner must reapply and comply with this bylaw then in effect.

If a permit has been fully complied with, the terms of the permit shall remain in effect indefinitely and run with the land (meaning that the rights and obligations of the permit remain with the land regardless of ownership), unless the terms of the permit terms specify otherwise.

6.5 Conditional Use Review

In any zoning district, conditional uses may only receive a zoning permit by the AO following approval of the ZBA. Such uses must conform to the general, conditional, district, and relevant specific standards prescribed in this bylaw.

The ZBA shall grant approval if and only if, after public notice and public hearing, a concurring vote of a majority of the members of the ZBA determines that the proposed use will conform to the aforementioned standards. In granting approvals, the ZBA may attach reasonable conditions and safeguards as are necessary to implement this bylaw.

For all relevant criteria applicable to the requested use, the applicant has the burden of proof. This means that the applicant must prove to the ZBA that the use complies with this bylaw. This can be by written or oral testimony provided by the applicant at the hearing. The applicant shall provide

sufficient evidence that all relevant criteria have been met even if no party actually opposes the project. Evidence must be credible and clear enough for the ZBA to make written findings and conclusions that ensure the public health, safety, and welfare, and that all relevant criteria applicable to the requested use have been met.

6.6 Hearings by the Zoning Board of Adjustment

In accordance with the Act [§4464], a warned public hearing shall be held by the ZBA for conditional use review (section 6.5), appeals of decisions of the Administrative Officer (section 6.8.1), waivers (section 6.10), and variances (section 6.9).

Upon a determination by the AO that an application is complete and is of a type requiring a public hearing by the ZBA, the AO shall notice a public hearing on the development. Public hearings, unless recessed to a date certain prior to the close of the hearing, shall have at least 15 days' warning notice describing the date, place and purpose of the hearing. Such a public hearing notice shall be published, posted and otherwise provided according to Section 4464 of the Act:

- a) publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
- b) posting of the same information in three (3) or more public places within the town, including a location in or near the town offices and the posting of a notice within view from the public right-of-way most nearly adjacent to the property for which the application is being made;
- c) 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.
- d) In any situation in which a variance is sought regarding setbacks from a State highway, written notification shall be provided to the Secretary of Transportation.

The applicant may be required to bear the cost of the public warning and the cost and responsibility of notification of adjoining landowners. The applicant may be required to demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

The purpose of the public hearing is for the ZBA to fully understand the proposal and how it addresses all requirements of this bylaw, waive or vary requirements as applicable, review all special studies, identify significant issues or concerns associated with the proposal, establish all potential interested persons, provide abutters and other persons an opportunity to comment on the proposal, and provide the ZBA with sufficient information to base its approval, approval with conditions, or denial. The ZBA shall take such testimony as will enable them to reach a decision supported by findings of fact. If the ZBA reasonably determines that additional information is needed from any person or party, it shall continue the hearing process until it is ready to proceed to a decision. As part of this continuance the ZBA shall set a time by which such additional information is due. Failure to produce needed information by the applicant may result in denial.

When sufficient testimony has been taken for the ZBA to address each general, conditional, district, and specific standard that applies to that use, the ZBA shall close the final hearing and deliberate. Deliberations may be done in private, subject to the requirements of the Vermont Open Meeting Law, 1 V.S.A. § 310 et seq

6.7 Decisions by the Zoning Board of Adjustment, including appeals

Within 45 days of the date of adjournment of the final public hearing, the ZBA shall issue a written decision, with any conditions, approving, or disapproving the application. Decisions shall be issued in writing and shall contain findings of fact and conclusions on each relevant standard, any conditions, and provisions for appeal. Action by the ZBA shall be taken by a concurrence of at least a majority of the members of the board.

Failure to act within this 45-day period shall be deemed approval on the 46th day. Decisions shall be promptly communicated by the AO to applicants and all interested parties.

Where the approval is the final step prior to issuing the zoning permit, the AO shall promptly issue the zoning permit upon receipt of the approval. The zoning permit issued will not take effect until the time for taking an appeal to the Environmental Division has passed without an appeal being taken.

Any decision shall be sent by certified mail within 45 days of the adjournment of the final public hearing of this subsection to the applicant (and the appellant in matters on appeal). Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy of the decision shall be filed with the AO and the Town Clerk of the municipality as a part of the public records of the municipality.

6.8 Appeals

Prior to expiration of the relevant appeal period, the applicant, an interested person (as defined in Section VIII) or the person or body that issued a decision may request that the AO or ZBA, as the case may be, reopen and reconsider a decision. Note that appeals relating to affordable housing have some restrictions; see the definition of “interested person” for more information.

6.8.1 Appeals of Administrative Officer Decisions

Pursuant to Section 4465 of the Act, an interested person may appeal any decision or act taken by the AO, or any failure to act, under this bylaw, by filing a notice of appeal with the clerk of ZBA (or with the Town Clerk if the ZBA has not elected a clerk). Such notice of appeal must be filed within 15 days following the date of such decision or act, and a copy of the notice of an appeal shall be filed with the AO.

A notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the

circumstances.

A publicly warned hearing on the appeal shall take place within 60 days of the filing and conducted per Section 4468 of the Act. Any interested person may appear and be heard in person or be represented by an agent or attorney at the hearing.

The ZBA 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 date of filing of the notice of appeal, if the appropriate municipal panel considers the issues raised by the appellant in the appeal have been decided in an earlier appeal or involve substantially or materially the same facts by or on behalf of that appellant.

6.8.2 Appeals of ZBA Decisions

An interested person who has participated in a regulatory proceeding of the Zoning Board of Adjustment may appeal a decision rendered by the ZBA to the Vermont Environmental Division. "Participation" in a ZBA proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.

Notice of the appeal shall be filed by certified mailing, with fees, to the Environmental Division and by mailing a copy to the Town Clerk or the AO, if so designated, who shall supply a list of interested persons to the appellant within five 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, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the Division to intervene.

Appeals of ZBA decisions, including any appeals granting or denying a waiver, shall be made to the Environmental Division within 30 days of a decision per Section 4471 of the Act and 10 V.S.A. § 8504.

6.9 Variances

6.9.1 General Process

The Zoning Board of Adjustment shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Section 6.9. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of this bylaw and the municipal plan currently in effect. The Zoning Board of Adjustment shall 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:

- a) 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 this bylaw in the neighborhood or district in which the property is located;

- b) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this bylaw and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- c) The unnecessary hardship has not been created by the appellant;
- d) 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
- e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from this bylaw and from the plan.

6.9.2 Variances for Renewable Energy Structures

When a variance is requested for a structure that is primarily a renewable energy resource structure that is not connected to the grid, in accordance with the Act [§4469(b)], the Zoning Board of Adjustment shall grant that variance and render a decision in favor of the appellant only if *all* of the following facts are found and the finding is specified in its written decision:

- a) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with this bylaw;
- b) The hardship was not created by the appellant;
- c) 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
- d) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from this bylaw and from the plan.

Power generation, storage, and transmission facilities that are regulated under 30 VSA § 248 are exempt from municipal zoning and therefore cannot be granted a variance by the Town.

6.9.3 Variances within the Flood Hazard Overlay District

A variance for development within the Flood Hazard Overlay District shall be granted in writing by the Zoning Board of Adjustment only if it meets the requirements of 44 C.F.R. § 60.6. Any variance issued in the Flood Hazard Area shall not increase flood heights and shall 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.

6.10 Waivers

- 1) The Administrative Officer may, without a hearing by the ZBA, grant a waiver reducing dimensional requirements for a permitted use if the following criteria are met:
 - a) Dimensional requirements are reduced only as needed to allow for disability access, fire safety, and other requirements of law.
 - b) The waiver will be the minimum necessary to provide relief and, if related to a setback, will be to the side and rear unless no reasonable alternative exists;
- 2) The Administrative Officer may, without a hearing by the ZBA, grant a waiver to allow an affordable housing development (as defined in section VIII of this bylaw) in the Business-Residential District, including a lot that accommodates affordable housing development and other uses, to exceed the zoning district's height limitations by the minimum height reasonable to accommodate a fourth floor, provided that the structure complies with the Vermont Fire and Building Safety Code. Waivers cannot allow more than 4 floors in the Business-Residential District.
- 3) Waivers for other situations may be considered by the Zoning Board of Adjustment (ZBA) following the same notice and hearing process as for a conditional use described in 6.6. Before granting a waiver the ZBA shall make written findings for each of the review criteria listed below, including the rationale for each finding. The ZBA may grant a waiver to reduce any dimensional requirement up to 50%, with the exception of riparian buffers and Flood Hazard Overlay District requirements which cannot be reduced by waiver. In the Commercial-Agricultural and Agricultural-Residential districts, any development that includes affordable housing may receive up to a 25% density bonus. In order to grant a waiver, the following criteria must be met:
 - a) No development shall encroach on the public right of way unless authorized by the Vermont Agency of Transportation or Selectboard as appropriate.
 - b) Development that is not authorized to be located in the public right of way must be located at least 34 feet from the center of the traveled way.
 - c) The proposed development must not reduce the dimensional requirements more than the minimum amount necessary.
 - d) The proposed development must be consistent with the Town Plan.
 - e) The proposed development must meet at least 1 of the following criteria:
 1. The proposed development is consistent with existing development patterns of the zoning district or of neighboring properties;
 2. The proposed development will cluster development and more effectively preserve open land or scenic vistas, provided the overall density that would otherwise be required is maintained through restrictions on adjacent lands.
 3. The proposed development will provide for energy conservation and renewable energy structures.
 4. The proposed development will result in permanently affordable housing. Housing is considered permanently affordable if it meets the affordability requirements outlined in the Definitions of this bylaw for a minimum period of 99 years from the date of first sale or lease.

For waivers allowing smaller setbacks or a smaller lot, the ZBA will require landscaping and screening as needed to ensure that development shall not have an undue adverse visual effect as viewed from public right-of-ways or adjoining properties.

6.11 Violations

The AO shall institute in the name of the town any appropriate action, injunction, or other enforcement proceeding to prevent, restrain, correct, or abate a violation. If legal action is needed, then the town may pursue enforcement through the Environmental Division or the Judicial Bureau as allowed in Section 4452 of the Act. The imposition of a penalty shall not bar resort to other administrative or legal remedies or methods for preventing or correcting the violation or offense that the AO is authorized to use under Section 4452 of the Act.

Any person who violates any provision of this bylaw shall be subject to the enforcement provisions and penalties of 24 V.S.A. §§ 4451 and 4452. Each day that a violation continues shall constitute a separate offense. The person responsible for a violation will be fined no more than \$200 for each offense. Failure to pay assigned fines will result in the responsible person, members of a partnership, or principal officers of a corporation each paying double the amount of the fine. All fines imposed and collected shall be paid over to the Town of Rochester.

No action may be brought under this bylaw unless the alleged offender has had at least seven (7) days' warning notice, by certified mail, that a violation exists. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the seven-day notice period and within the next succeeding 12 months.

The 7-day warning notice shall state:

- a) that a violation exists
- b) that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days
- c) the bylaw or municipal land use permit condition alleged to have been violated;
- d) the facts giving rise to the alleged violation;
- e) to whom appeal may be taken and the period of time for taking an appeal; and
- f) that failure to file an appeal within that period will render the notice of violation the final decision on the violation addressed in the notice.

Within 30 days of issuing the 7-days notice, the AO shall file a copy of the notice of alleged violation in the municipal land use permit files, and file the original or a copy with the Town Clerk for recording. 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.

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. 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 and 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.

6.12 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 municipal 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]. This 15-year limitation does not apply any action, injunction, or enforcement proceeding instituted for a violation of 24 V.S.A, chapter 61, subchapter 10. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No action, injunction, or 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 6.4.2.

VII. AMENDMENTS, INTERPRETATION, AND EFFECTIVE DATES

7.1 Amendments

This bylaw may be amended according to the requirements and procedures established in Section 4441 and Section 4442 of the Act.

7.2 Precedence and Conflicts

The provisions of this bylaw shall not in any way impair or remove the necessity of compliance with any other applicable local, state, or federal laws or regulations. Where this bylaw imposes a greater restriction, however, the provisions of this bylaw shall take precedence. In the event of any conflict between provisions within this bylaw, or between a provision of this bylaw and a provision of any other applicable local, state or federal laws or regulations, the more restrictive provision shall take precedence.

7.3 Effective Date

This bylaw shall take effect in accordance with the procedures contained in Section 4442 of the Act.

7.4 Validity and Severability

If any section or provision of this bylaw is held to be unenforceable or otherwise invalid, such decision shall not affect the validity of the bylaw as a whole or of any part other than the portion so adjudicated.

7.5 Warning of Disclaimer of Liability

This bylaw does not imply that land outside the Flood Hazard Overlay District or land uses permitted within other zoning districts will be free from flooding or flood damage. This bylaw 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 bylaw or any administrative decision lawfully made hereunder.

VIII. 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 "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 this bylaw shall be clarified by the Zoning Board of Adjustment.

ABUTTING: Lots which have a common boundary or edge, roads notwithstanding (i.e., a lot separated from another lot by only a road or street is considered to be abutting).

ACCESSORY DWELLING UNIT: A distinct unit, attached or detached, that is clearly subordinate to a single-unit dwelling on an owner-occupied lot, and that has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. See corresponding standards in section 5.8.

ACCESSORY ON-FARM BUSINESS: Activity that is accessory to a farm and comprises one or both of the following, per Section 4412 of the Act:

- 1) The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.
- 2) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. "Farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

ACCESSORY STRUCTURE OR USE: A structure or use that is customarily incidental and subordinate to the principal use or structure on the same lot.

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: Affordable housing means either:

- 1) Owner-occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at or below 120 percent of the highest of the following: the county median income, as defined by the U.S. Department of Housing and Urban Development; the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or the statewide median income, as defined by the U.S. Department of Housing and Urban Development.
- 2) Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at or below 80 percent of the highest of the following: the county median income, as defined by the U.S. Department of Housing and Urban Development; the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

AFFORDABLE HOUSING DEVELOPMENT: a housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are affordable housing units. Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 15 years.

AGRICULTURAL PRACTICES, REQUIRED: Activities regulated under the Required Agricultural Practices Rule published by the Vermont Agency of Agriculture, Food, and Markets (available at: <https://agriculture.vermont.gov/rap>).

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

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

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.

APPLICANT: A person who applies for a zoning permit or any other prerequisite approval under this bylaw.

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).

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.

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 1, 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.

BOARDING HOUSE: A building providing 2 or more lodging units that are not equipped to serve as independent dwelling units, and that are rented to residents for periods of 30 or more consecutive days.

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

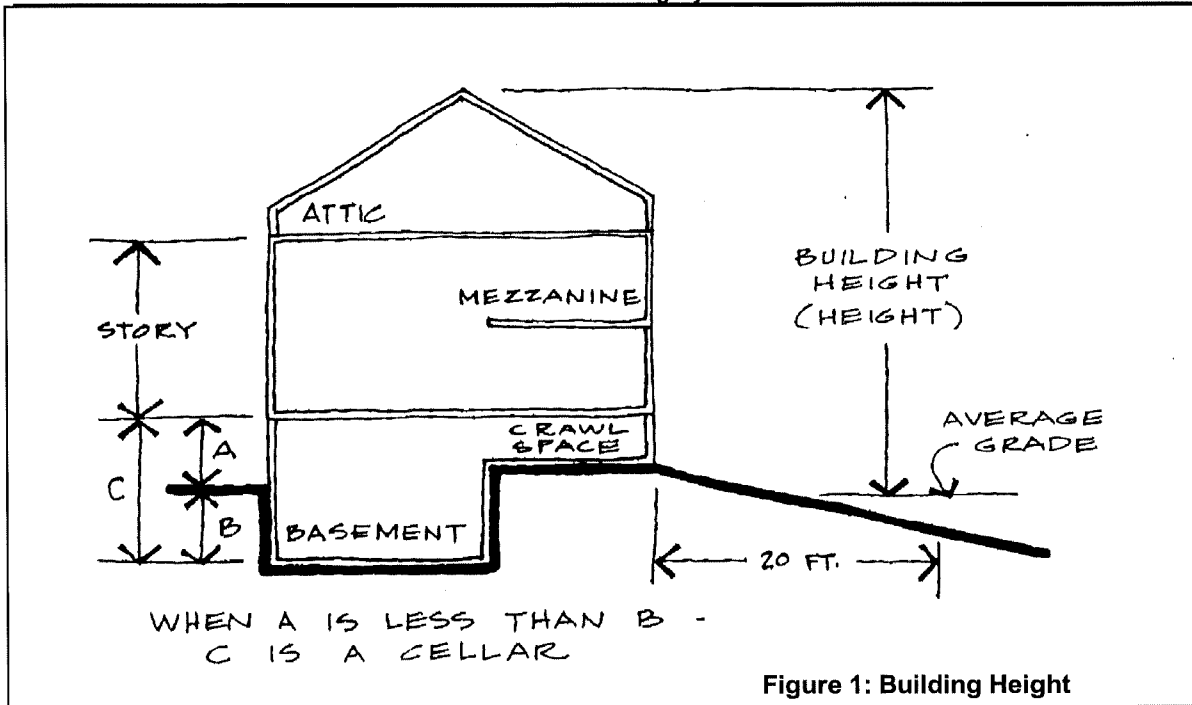


Figure 1: Building Height

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)

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

CABIN: A structure for occasional overnight or vacation use by the owner. This term includes chalets, camps, and similar structures. This term does not include short-term rentals.

CAMPGROUND: Land used or intended to be used for temporary occupancy by two or more tents, recreational vehicles, or other movable dwellings.

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.

COMMERCIAL STRUCTURE: A structure used for commercial purposes.

COMMERCIAL USE: Any building, structure, or land which is used for business or service and is conducted for financial gain, but excluding a home occupation, home industry, or heavy or light industrial uses.

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

CONDITIONAL USE: Uses that may be allowed in a particular zoning district only by approval of the Zoning Board of Adjustment, if general and specific standards to which each allowed use must conform are satisfied and if the Zoning Board of Adjustment, under the procedures set forth in this bylaw, determines that the proposed use will conform to those standards.

CONFORMING LOT: A lot that is in conformance with the requirements specific to the zoning district in which it is located, as well as with all other applicable requirements of this bylaw.

CONTRACTOR YARD: An area owned, controlled or operated by a contractor for the parking, maintenance or storage of large equipment, vehicles, or other materials commonly used in the individual contractor's type of business, components of which may include storage of scrap materials for repair and maintenance of contractor's own equipment and buildings or structures for ancillary uses, such as offices and repair facilities.

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.

DENSITY: The number of dwelling units or structures on a given area of land.

DEVELOPMENT: The carrying out of any material change to improved or unimproved land, including but not limited to the division of a parcel into 2 or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any change in the use of any building or other structure, or land, or extension of use of land. See also, 24 V.S.A. § 4303(10).

DUPLEX: See Dwelling, Two-Unit.

DWELLING UNIT: A building or part thereof used as living quarters, and which includes facilities for residential use, including food preparation, sleeping, and sanitary facilities. The terms 'dwelling', 'one-unit dwelling', 'two-unit dwelling', and 'multiple unit dwelling' shall not include a short-term rental or lodging.

DWELLING, MULTIPLE UNIT: A A building that contains three or more dwelling units in the same building.

DWELLING, SINGLE UNIT: A structure designed for, or occupied solely by, one Dwelling Unit.

DWELLING, TWO UNIT: A residential building that has two dwelling units in the same building and neither unit is an accessory dwelling unit.

EARTH RESOURCE EXTRACTION: The commercial mining, excavation, quarrying or processing of sand, gravel, or stone. This does not include site work customary to the preparation of a single-unit dwelling or other permitted use.

EMERGENCY SHELTER: any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and that does not require occupants to sign leases or occupancy agreements.

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).

FAMILY CHILD CARE: 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.

FARMING: (A) The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or (B) the raising, feeding or management of livestock, poultry, fish, or bees; or (C) the operation of greenhouses; or (D) the production of maple syrup; or (E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or (F) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or (G) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines; or (H) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that the compost is principally used on the farm where it is produced, or that the compost is produced on a small farm that raises or manages poultry. See 10 V.S.A. § 6001(22).

FARM STRUCTURE: For the purposes of this Bylaw, “farm structure” means a building or structure for housing livestock, raising plants, or carrying out other practices associated with agricultural or farming practices, including a silo, as “farming” is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

FENCE: A structure serving as an enclosure, a barrier, or a boundary, usually made of posts or stakes joined together by boards, wire, or rails.

FIA: Federal Insurance Administration.

FILLING: The placement of earth material (namely: soil, sand, gravel, or stone) on a lot.

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.

FORESTRY PRACTICES: Forestry practices include:

- 1) Accepted silvicultural practices as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation. These rules are available at: <https://fpr.vermont.gov/forest/managing-your-woodlands/acceptable-management-practices>.
- 2) Forestry operations, as defined in 10 V.S.A. § 2602: activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. "Forestry operation" includes the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

FRONTAGE: That portion of a lot which is adjacent and parallel to a public road or street.

GROUP HOME: A residential care or group home that must be licensed or registered per state regulations and that serves persons who have a disability as defined in 9 V.S.A. § 4501.

HAZARDOUS MATERIAL - All petroleum and toxic, corrosive or other chemicals and related sludge included in any of the following:

- 1) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;
- 2) petroleum, including crude oil or any fraction thereof; or
- 3) hazardous wastes, as defined in this section;

“Hazardous material” does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, state, and local laws and regulations and according to a manufacturer’s instructions. “Hazardous material” does not include livestock wastes.

HAZARDOUS WASTE – Any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including, but not limited to those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat or other means, which in the judgment of the Secretary of the Vermont Agency of Natural Resources may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the state.

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, operated by a homeowner residing on the same lot, that does not have an undue adverse impact on the character of the residential area in which the dwelling is located and that meets the standards of Section 5.3.

HOME OCCUPATION: The use of a minor portion of a dwelling unit, by a resident thereof, for an occupation that is customary in residential areas and that does not have an undue adverse impact on the character of the residential area in which the dwelling is located and that meets the standards of Section 5.2.

HOUSEHOLD: All the people, whether related or not, who occupy a dwelling unit as their place of residence.

INDUSTRIAL, HEAVY: The processing or assembly of natural or man-made materials or products where such activity generally results in off-site impacts, such as noise, and where such activity and storage of materials or products are typically not fully enclosed inside a building or screened from the abutting properties. Examples include rail and truck terminals, concrete, asphalt or brick plants, bulk fuel storage and distribution facilities, foundries, etc.

INDUSTRIAL, LIGHT: A use involving research and development, assembly, processing, manufacturing, packaging of products, or storage and warehousing of materials or goods, with few off-site impacts other than trucking. Examples include cabinetry or woodworking shop, food processing, electronics high-tech manufacturing or assembly, machine shop, sewing, printing, research and testing laboratory, warehousing, and similar uses.

INTERESTED PERSON: Interested persons are those persons who, under the Act, have the right to appeal an act or decision made by the AO or ZBA. Interested persons must participate in a hearing in order to protect their right to appeal the decision. Interested Persons include:

- 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 this bylaw, 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, residents, or real property owners within Rochester or adjoining towns who, by signed petition to the Zoning Board of Adjustment, allege that any relief requested by a person under this bylaw, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality. These parties may not file an appeal based on the character of the area affected if the project has a residential component that includes affordable housing.
- 5) any department or administrative subdivision of the state owning property or any interest in property within Rochester or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

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.

LODGING: A building or buildings providing temporary public lodging, comprised of 2 or more lodging units. These facilities may serve meals. This term includes hotel, motel, inn, bed and breakfast, tourist home / cabin, and ski lodge. This term does not include boarding houses, campgrounds, group homes, or short-term rentals as defined in this bylaw.

LOT: A designated parcel, tract, or area of land with boundaries established by plat or deeded subdivision. A lot is to be used, developed, or built upon as a unit.

LOT AREA: Total area within the property lines of a lot within the municipal boundaries, including existing and proposed right-of-way.

LOT DEPTH: The average distance measured perpendicularly from the front lot line to the back lot line.

LOT OR PROPERTY LINE: A line of bounding a lot that divides it from abutting property or from a public or private right-of-way.

LOT WIDTH: The average distance measured between the side lot lines parallel to the front lot line.

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.

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. "Mobile home park" does not mean premises used solely for storage or display of mobile homes. Mobile home park does not mean any parcel

of land under the ownership of an agricultural employer who may provide up to four mobile homes 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.

NEW CONSTRUCTION: Structures commenced on or after the effective date of this bylaw. *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.

NONCONFORMING STRUCTURE: A structure or part of a structure that is not in compliance with the present zoning bylaw, but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present zoning bylaw or amendments thereto, including a structure improperly authorized as a result of error by the administrative officer.

NONCONFORMING USE: A use of a structure or land that does not conform to the present zoning bylaw or amendments thereto but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present zoning bylaw, including a use improperly authorized as a result of an error by the administrative officer.

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

PARKING SPACE: A defined space used for the parking of one motor vehicle which is surfaced or paved sufficiently to permit year-round use.

PERMITTED USE: A use allowed by right in a zoning district and requiring a zoning permit.

PERMITTEE: The recipient of a permit from the AO or ZBA.

PERSON: An individual, a corporation, a partnership, a limited liability company, an association, and any other incorporated or unincorporated organization or group.

PRINCIPAL BUILDING: The dominant or primary building on a lot in terms of size and use. An accessory building cannot be a principal building.

PROHIBITED USE: Uses that are not permitted under any circumstances in the applicable zoning district.

PUBLIC UTILITIES AND 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.

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

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

RECREATION, PUBLIC OUTDOOR: Includes a publicly owned and operated playground, play field, park, open space, tennis court, skating rink, or 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 vehicle; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

RETAIL, PRIMARY: a business whose primary use is the supply of merchandise or wares to the end consumer for use off site. Examples include (but are not limited to) supermarkets, hardware stores (without lumberyards), dry-goods stores, pharmacies, big box stores, etc. Primary retail does not include online sales with no product on site, land-intensive and resource-based commercial or industrial uses, service businesses, restaurants, retail as a home occupation, or secondary retail.

RETAIL, SECONDARY: A business whose primary use is not retail sales but contains a retail component that is clearly secondary to the primary use. Examples include (but are not limited to) eye doctor's offices, veterinarian's offices, small engine repair shops, manufacturers with a small showroom, etc. The term also includes retail within a building that accommodates multiple uses, where any total retail floor space is less than the total residential floor space.

RIGHT-OF-WAY: A legal right, established by usage or grant, to pass along a specific route

through grounds or property belonging to another.

RIPARIAN: Relating to or situated on the bank of a river or stream

ROAD: a State highway as defined in 19 V.S.A. § 1 or a class 1, 2, 3, or 4 town highway as defined in 19 V.S.A. § 302(a).

SALVAGE YARD: any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Salvage yard" also means any outdoor area used for operation of an automobile graveyard. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

SCENIC VISTA: 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.

SERVICE BUSINESS: Any establishment whose primary activity is the provision of services and retail associated with that service assistance, as opposed to the sole provision of products to individuals, businesses, industry, government, or other enterprises. Such businesses include (but are not limited to) fuel distributors, auto body shops, storage units, vehicle and tire sales with repair, heavy equipment and small engine sales with repair, landscaping contractors with a yard that has trees and mulch available, etc. This definition does not include restaurants, theatres, bowling alleys, lodging, rental housing, health care facilities, or short-term rentals.

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

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.

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

SHORT-TERM RENTAL: A building providing not more than 1 unit of temporary lodging (under affiliated ownership) for the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for more than 14 days per calendar year.

SIGNS: Any 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. A sign does not include the flag, pennant, or insignia of the any nation, state, or town, or official announcements or similar signs of government.

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/AI-30, AR/AE, AR/AO, AR/AH, or AR/A. For purposes of this bylaw, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

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.

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

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. *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 bylaws. 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 bylaw, 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.

TOWN TRAIL: a public right-of-way that is not a highway and that (A) previously was a designated town highway or (B) is public right-of-way laid out as a trail by the Selectboard for the purpose of providing access to abutting properties or for recreational use.

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.

VIOLATION: Non-compliance with the requirements of this bylaw, as determined by the Administrative Officer in the first instance, or with the terms, conditions or requirements of any applicable permit, order, or provision of law. Within the special flood hazard area, violation 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.

WAIVER: An official act of the AO or ZBA granting a reduction in dimensional requirements, upon application and subject to certain specific standards, set forth in the bylaw.

WALL: An architectural partition with a height and length greater than its thickness that is used to divide or enclose an area or to support another structure. A retaining wall is a wall that is built to resist lateral pressure (especially a wall built to prevent the advance of a mass of earth).

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.

YARD SALE: A casual sale of used goods by a private individual on his or her own property, in which the seller is not required to obtain a business license or collect sales tax. Also known as a tag sale, garage sale, barn sale or moving sale.

ZONING BOARD OF ADJUSTMENT (ZBA): 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.

Figure 2: Permitted, Conditional, and Prohibited Uses

Use Categories	Bus-Res	Comm-Ag	Ag-Res	Cons-Res
Accessory dwelling units not exempted	P	P	P	P
Accessory on-farm businesses not exempted	P	P	P	P
Accessory uses customarily incidental to the permitted use and not exempted	P	P	P	P
Automobile repair garages	P	P	X	X
Banks or financial institutions	P	P	X	X
Bowling alley	C	C	X	X
Campground	X	C	C	C
Clubs / lodges	P	P	X	X
Commercial office buildings	P	P	X	X
Community centers	P	P	X	X
Contractor yard	X	C	C	X
Drive-in restaurants and movie theatres	C	C	X	X
Earth resource extraction	X	X	C	C
Educational, cultural, and religious establishments	P	P	C	C
Gas station	P	X	X	X
Group homes serving more than 8 people	C	C	X	X
Health care facilities	P	C	C	X
Heavy industrial	X	C	X	X
Helicopter landing pad	X	C	X	X
Home occupations	P	P	P	P
Landfill	X	X	C	X
Light industrial	C	C	C	X
Lodging	P	P	C	C
Mobile home park	C	C	C	X
Multiple unit dwellings	P	P	P*	P*
Outdoor shooting range	X	C	C	C
Primary retail	P	X	X	X
Public outdoor recreation facility	C	C	P	C
Restaurants	P	C	X	X
Salvage yard	X	X	C	X
Secondary Retail	P	C	C	X
Service businesses	P	P	C	X
Short-term rentals	P	P	C	C
Single unit dwellings	P	P	P	P

Rochester Regulations Adopted November 27, 2023

Theatres	C	P	X	X
Two unit dwellings	P	P	P	P
Wildlife refuge	C	C	P	P

P: Permitted Use X: Prohibited Use C: Conditional Use

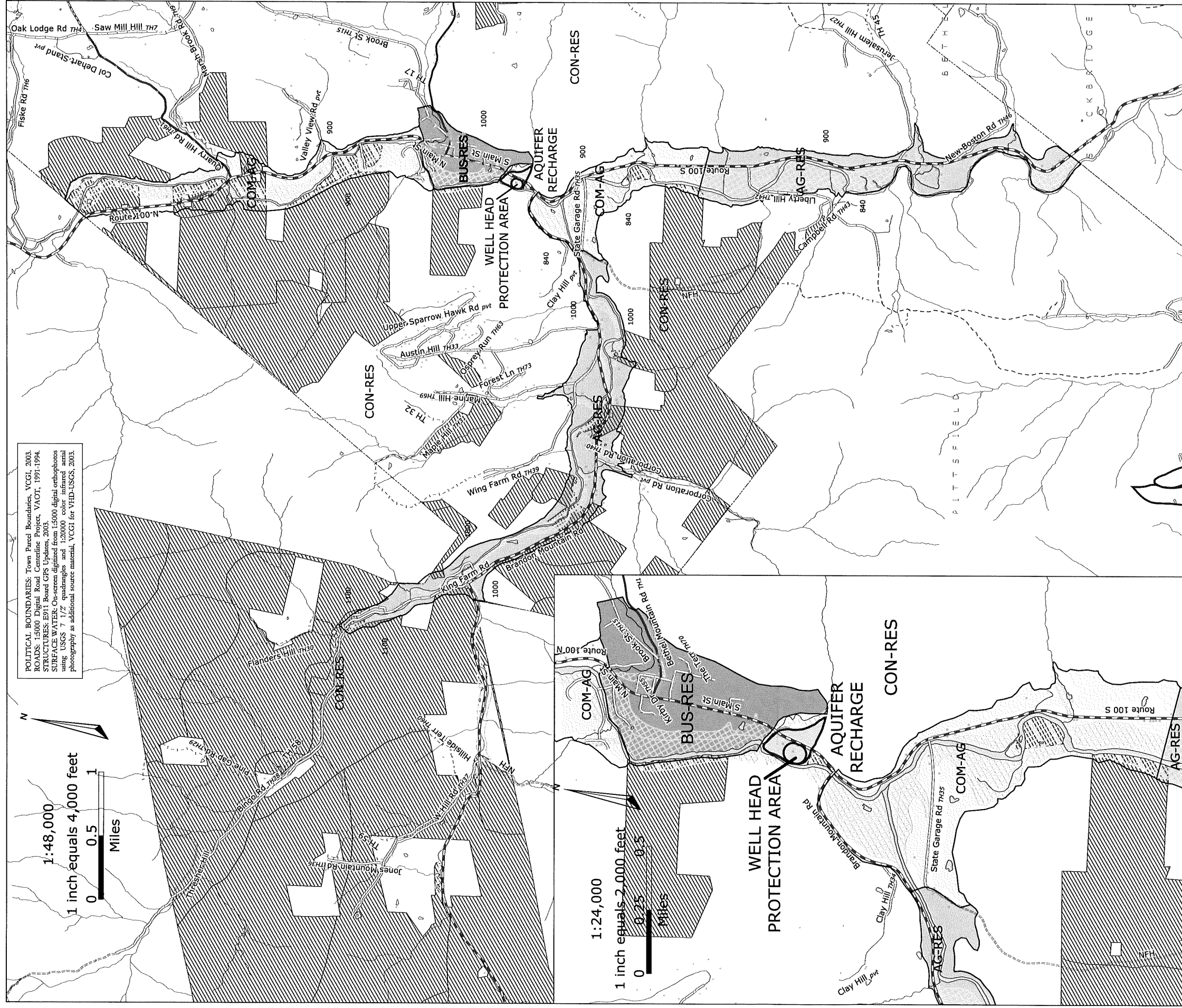
Any use that is not exempt, permitted, or prohibited is a conditional use. This table is a summary; for full details see the Zoning District Regulations in this bylaw.

*In the Agricultural-Residential district, a multiple unit dwelling with more than 4 dwelling units is a conditional use. In the Conservation-Residential district, a multiple unit dwelling with more than 4 dwelling units is prohibited.

Figure 3: Dimensional Requirements by Zoning District

	Bus-Res	Comm-Ag	Ag-Res	Cons-Res
Minimum Lot Size	1/5 acre	1 acre	2 acres	3 acres
Density	Not specified	Up to 4 dwelling units will be allowed on a 1 acre lot. For a lot larger than one acre, 1 additional dwelling unit will be allowed for each additional 1/2 acre.	Up to 4 dwelling units will be allowed on a 2 acre lot. Lots larger than 2 acres will be allowed 1 dwelling unit for each additional 1/2 acre.	Up to 4 dwelling units will be allowed on a lot.
Residential				
Frontage	At least 60 feet, or 30-foot easement / right-of-way	At least 90 feet, or 30-foot easement / right-of-way	At least 150 feet, or 30-foot easement / right-of-way	At least 200 feet, or 30-foot easement / right-of-way
Front Setback	At least 20 feet	At least 30 feet	At least 30 feet	At least 30 feet
Side and Rear Yard Setback	At least 10 feet	At least 25 feet	At least 25 feet	At least 25 feet
Maximum Height	35 feet	35 feet	35 feet	35 feet
Minimum Lot Size	1/5 acre	1 acre	2 acres	3 acres
Density	Not specified	Not specified	Not specified	Not specified
Frontage	At least 60 feet, or 30-foot easement / right-of-way	At least 90 feet, or 30-foot easement / right-of-way	At least 150 feet, or 30-foot easement / right-of-way	At least 200 feet, or 30-foot easement / right-of-way
Front Setback	At least 20 feet	At least 30 feet	At least 30 feet	At least 30 feet
Side and Rear Yard Setback	At least 10 feet	At least 25 feet	At least 25 feet	At least 25 feet
Maximum Height	35 feet	35 feet	35 feet	35 feet
Non-residential				

This table is a summary; additional requirements may apply. For more information, review this bylaw's Zoning District Regulations and General Standards, as well as Special Standards and Conditional Use Standards as applicable.



POLITICAL BOUNDARIES: Town Parcel Boundaries, VCGI, 2003.
 ROADS: 1:5000 Digital Road Centerline Project, VACT, 1991-1994.
 STRUCTURES: E911 Board GPS Updates, 2003.
 SURFACE WATER: On-screen digitized from 1:5000 digital orthophotos using USGS 7 1/2' quadrangles and 1:20000 color infrared aerial photography as additional source material, VCGI for VHD-USGS, 2003.

1:48,000
 1 inch equals 4,000 feet
 0 0.5 1
 Miles

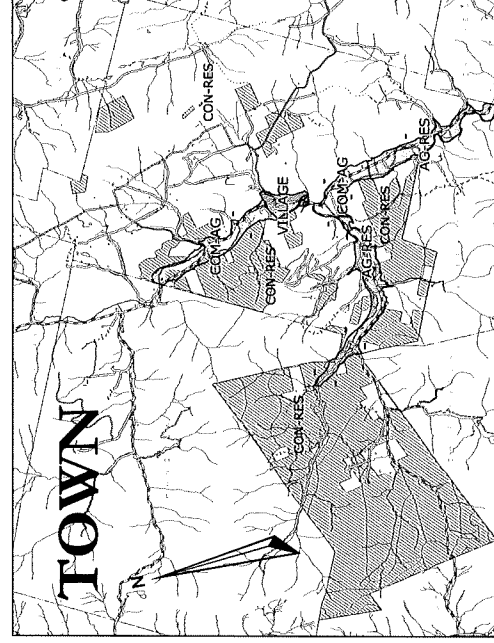
1:24,000
 1 inch equals 2,000 feet
 0 0.25 0.5
 Miles

Zoning Districts Rochester, Vermont

- TH cls 1 (village VT rt)
- TH cls 2
- TH cls 2 gravel
- TH cls 3
- TH cls 3 gravel
- TH cls 4 gravel
- TH cls 4 primitive
- TH cls 4 impassable
- VT forest hwy
- trail
- private
- VT route
- e911 addresses
- surface water

- CON-RES
- COM-AG
- AG-RES
- BUS-RES
- AQUIFER RECHARGE
- FLOOD HAZARD

- 1000
- ZONE CONTOURS
- conserved lands



Adopted and Effective November 27, 2023

VT State Plane, Meters, NAD 83

GIS

for info & data
www.vcgi.org

For planning purposes only.
 Not for regulatory interpretation.

TWO RIVERS-OTTAUQUECHEE REGIONAL COMMISSION
GIS Service Center
 Municipal Planning

3117 Rose Hill
 The King Farm
 Woodstock, VT 05091
 802-457-3188
info@trorc.org

www.trorc.org

