

Chapter 275

ZONING

[HISTORY: Adopted by the City of Rochester 4-22-2014 (Ch. 42 of the 1995 Code); certified by the Codes and Ordinances Committee 8-7-2014. Amendments noted where applicable.]

ARTICLE 1
General Provisions

§ 275-1.1. Title.

This chapter, Chapter 275 of the City of Rochester General Ordinances, shall be known and may be cited as the "Zoning Ordinance of the City of Rochester, New Hampshire," hereinafter referred to as "this chapter."

§ 275-1.2. Authority.

This chapter is adopted pursuant to Section 674:16 and in accordance with Chapters 672, 673, 674, 675, 676, and 677, et al., of the New Hampshire Revised Statutes Annotated and subsequent amendments thereto.

§ 275-1.3. Purpose.

This chapter is enacted for the following purposes:

- A. To implement the goals and provisions of the City's Master Plan;
- B. To promote an orderly pattern of development and encourage the most appropriate use of land throughout the City;
- C. To preserve and enhance the value of land and buildings;
- D. To encourage the provision of high-quality housing for people of all income levels;
- E. To revitalize the downtown and other village and neighborhood commercial areas;
- F. To foster economic development and provide opportunities for business growth;
- G. To enhance the walkability, diversity, interest, beauty, and vibrancy of the City's neighborhoods;
- H. To conserve natural, historic, and cultural resources;
- I. To preserve the City's rural character and scenic beauty and promote agriculture;
- J. To foster the creation of parks, recreation facilities, and open spaces;
- K. To provide a range of transportation choices and mitigate traffic congestion;
- L. To promote excellence in architecture, landscaping, site layout, signage, and civic design;
- M. To encourage innovation, flexibility, and a collaborative review process in the development of land;
- N. To recognize and respect the rights of property and business owners;
- O. To promote public health and secure safety from fire, flood, and other hazards;
- P. To prevent overcrowding of land while at the same time promoting compact development patterns;
- Q. To facilitate the adequate provision of infrastructure and utilities;
- R. To preserve the best of the City's traditional character;
- S. To enhance the sense of community; and
- T. To make Rochester a more attractive, vibrant, and healthy community for its residents, businesses, property owners, and visitors.

§ 275-1.4. Application of regulations.

No building or land shall be used, reused, occupied, constructed, altered, removed, relocated, demolished, developed, redeveloped, or subdivided except in conformity with the requirements of this chapter. See Article 30, Nonconforming Property, for any exceptions.

§ 275-1.5. Other applicable law.

Wherever a provision of this chapter may differ from that prescribed by any other pertinent statute, ordinance, regulation, rule, standard, or policy, the provision which imposes the greatest restriction or the highest standard shall govern.

§ 275-1.6. Severability. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

The provisions of this chapter are severable. If a court or any other body with appropriate jurisdiction finds that any article, section, subsection, or provision of this chapter is invalid, that finding shall not invalidate any other provision of this chapter. Those other provisions shall remain in full force without any other action required.

§ 275-1.7. Minimum requirements.

The provisions of this chapter shall be construed to be the minimum requirements for the granting of any pertinent City approvals. Compliance with these requirements, however, is not necessarily deemed sufficient for the granting of these approvals. All applicants must comply with all other applicable statutes, ordinances, regulations, rules, standards, and policies of the City of Rochester and of other governmental authorities. In particular, all applicants must comply with the City of Rochester Site Plan Regulations and the City of Rochester Subdivision Regulations which include myriad specific requirements and provide for the reasonable judgment of the Planning Board and other City authorities in reviewing applications. An application might meet all of the minimum requirements of this chapter but be legitimately denied by the Planning Board in accordance with general or specific provisions of those regulations or other applicable regulations.

§ 275-1.8. Establishment of districts. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

- A. The City of Rochester, New Hampshire, is hereby divided into zoning districts as shown in Table 1-A - Zoning Districts, below. The uses, dimensions, and other standards of development of land, buildings, and structures shall conform to the provisions of the zone in which they are located.
- B. The residential, commercial, industrial, and special districts are known as "base districts" or "underlying districts."

Table 1-A - Zoning Districts		
Full Name	Abbreviation	Class
Residential-1 District	R1	Residential District
Residential-2 District	R2	Residential District
Agricultural District	AG	Residential District
Neighborhood Mixed-Use District	NMU	Residential District
Downtown Commercial District	DC	Commercial District
Office Commercial District	OC	Commercial District
Highway Commercial District	HC	Commercial District
General Industrial District	GI	Industrial District

Table 1-A - Zoning Districts		
Full Name	Abbreviation	Class
Recycling Industrial District	RI	Industrial District
Granite Ridge District	GR	Granite Ridge District
Airport Special District	AS	Special District
Hospital Special District	HS	Special District
Aquifer Protection Overlay District	APOD	Overlay District
Aviation Overlay District	AOD	Overlay District
Conservation Overlay District	COD	Overlay District
Flood Hazard Overlay District	FHOD	Overlay District
Historic Overlay District	HOD	Overlay District
Special Downtown Overlay District	SDOD	Overlay District

§ 275-1.9. Overlay zoning districts.

The overlay districts listed above are established in recognition of special conditions which exist in these areas. Each overlay district establishes additional requirements above and beyond those of the base zoning district. In case of any conflict between the requirements of the base and overlay districts the more restrictive provision shall apply. Where practical, the overlay districts are also shown on the Zoning Map. (See Article 5 through Article 15 for specific provisions.)

§ 275-1.10. Zoning Map.

The location and boundaries of the zoning districts are hereby established as shown on a map titled "City of Rochester Zoning Map." The map, along with all notations, references, and other explanatory material thereon, is hereby declared to be a part of this chapter. Any change in the location of boundaries of a zoning district hereafter made through any amendment to this chapter shall be noted on the Zoning Map. The Official Zoning Map of the City of Rochester shall be located in the Department of Planning and Development. The Official Zoning Map shall be kept current and shall be determining except in case of any obvious errors or omissions.

§ 275-1.11. District boundaries.

Where there may be any uncertainty or ambiguity with respect to the boundary of any district as shown on the Zoning Map the following rules shall apply, unless a different approach is reasonably deemed appropriate by the Zoning Administrator:

- A. Center line. Where a boundary is indicated as a road, right-of-way, driveway, railroad, utility line, watercourse or other body of water, it shall be construed to be the center line thereof, unless otherwise indicated or implied.
- B. Parallel to feature. Where a boundary is indicated or implied to be situated parallel to a road, right-of-way, driveway, railroad, utility line, watercourse, or other body of water, it shall be construed to be parallel thereto and at such distance therefrom as shown on the Zoning Map.
- C. Shoreline. Where a boundary is indicated as following the edge of a shoreline it shall be construed to follow the normal high-water line. In the event of a natural change in the shoreline, it shall be construed as moving with the actual shoreline.
- D. Right angle. Where a boundary is indicated as intersecting the center line of a road, right-of-way, driveway,

railroad, utility line, watercourse or other water body, unless otherwise indicated, it shall be construed to intersect at right angles to that center line or, in the case of a curved center line, at right angles to the tangent to the curve at the point of intersection.

- E. City boundary. Where a boundary is indicated as approximately following a City boundary it shall be construed as following the City boundary.
- F. Feature on the ground. Where the location of a physical feature existing on the ground such as a wetland, water body, road, or utility deviates from that shown on the Zoning Map, and the physical feature is clearly indicated or implied as marking the boundary, the actual location of the feature on the ground shall be used to determine the location of the boundary.
- G. Lot lines. Where a boundary is clearly indicated as following a lot line, including corners and vertices at the intersection of lot lines, it shall be construed as following that lot line, even if the location of that line is inaccurately represented on the Zoning Map, provided the discrepancy is not greater than 20 feet. However, if the lot line is changed after adoption of this chapter, then the zoning boundary shall not change (unless subsequently amended as prescribed in Article 3, Administration).
- H. Metes and bounds. Where a boundary is clearly indicated as following a lot line, any conflict between the Zoning Map and a description by metes and bounds in a deed shall generally be resolved in favor of the description by metes and bounds.
- I. Scale/GIS. Where a boundary may not be clearly indicated by human-made features, natural features, lot lines, or other markers, distances may be determined by the use of the scale shown on the Zoning Map. Where a question remains, the most precise distances and locations shall ultimately be determined based upon information and measurements shown in the City of Rochester Geographic Information Systems (GIS) database.
- J. Most restrictive. Where ambiguity remains and a boundary cannot be definitively established, any area in question shall be deemed to be in the more restrictive of the adjoining districts.

§ 275-1.12. When effective.

This chapter is immediately effective, in entirety, upon formal adoption by the City Council of the City of Rochester, New Hampshire. The Zoning Ordinance which had been in effect prior to adoption of this chapter is hereby rescinded in entirety.

§ 275-1.13. Suggestions.

There are various suggestions/recommendations made throughout this chapter. These are labeled. These suggestions are merely recommended; they are not required.

§ 275-1.14. Examples.

There are numerous examples made throughout this chapter for illustrative purposes only. These are labeled.

§ 275-1.15. Headings.

Under this chapter, many sections, and subsections, are preceded by a heading. These are provided to facilitate use of this chapter only. Only the language in the sections and subsections which follow the headings should be construed as the actual language of this chapter.

§ 275-1.16. Conditional uses and special exceptions.

Many departures from stated standards are allowed by conditional use or by special exception. These departures

are articulated throughout the chapter. See Article 21, Conditional Uses, and Article 22, Special Exceptions, for criteria in evaluating these departures from standards.

ARTICLE 2

Definitions and Terminology
[Amended 2-3-2015; 7-7-2015]

§ 275-2.1. General provisions.

- A. When used in this chapter, the words, terms, and phrases listed in § 275-2.2 and the acronyms and abbreviations listed in § 275-2.3 of Article 2, Definitions and Terminology, shall have the meanings ascribed to them therein, unless a contrary meaning is clearly indicated or implied.
- B. Ordinary meanings. Words, terms, and phrases that are not defined in Article 2, Definitions and Terminology, shall have their ordinary accepted meanings or those that the context may clearly imply.
- C. Regulations. In cases where there is a conflict in the definition of a word, term, phrase, or acronym given herein and that given in the City of Rochester Site Plan Regulations or City of Rochester Subdivision Regulations, the definition given herein shall be determining.
- D. Interpretations; dictionary. The Director of Building, Zoning, and Licensing Services, or his/her designee, shall have the authority to interpret or define words, terms, and phrases used in this chapter that are not defined in Article 2, Definitions and Terminology. In case of conflicting definitions from various general dictionaries the definitions given in the Random House Webster's Unabridged Dictionary shall be determining.
- E. Designations in this chapter. For the purposes of this chapter, the words "this chapter" refer to this entire Zoning Ordinance, Chapter 275 of the City of Rochester General Ordinances. The words "this article" refer to a specific portion of this chapter, as designated by an article number (such as "Article 1" or "Article 2"). The words "this section" refer to a specific portion of an article designated by a section number (such as "§ 275-1.1" or "§ 275-3.2"). The words "this subsection" refer to a specific portion of a section as designated by a letter or number [such as "A" or "(1)" or "(a)"]. **[Amended 3-5-2019]**
- F. Specific words. The words "shall" and "must" are mandatory, the word "may" is permissive, and the word "should" indicates a preferred or encouraged but not necessarily a required course of action. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. "Occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be occupied or used." "Includes" (or "including") means "includes, but is not limited to." The word "person" includes an individual, firm, association, condominium association, organization, partnership, trust, entity, company or corporation as well as an individual.
- G. Other sections. Specialized sets of definitions are given in other sections in this chapter. In case of conflict between a definition given in a section and that given in another section, the definition given in the other section shall apply only within that specific section. Additional definitions are provided in the following sections: Aquifer Protection Overlay District (§ 275-10.3), Aviation Overlay District (§ 275-11.1), Conservation Overlay District (§ 275-12.6), Flood Hazard Overlay District (§ 275-13.3), Historic Overlay District (§ 275-14.6), and signs (§ 275-29.11).

§ 275-2.2. Definitions.

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

ABUTTER — Pursuant to RSA 672:3 "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his/her land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers

of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

ACCESSORY APARTMENT — An independent dwelling unit subordinate to a single-family house. (See Article 23, Accessory Uses.)

ACCESSORY STRUCTURE —

- A. A building or structure that:
 - (1) Is not attached to the principal building or structure on a lot or tract;
 - (2) Accommodates a use customarily or reasonably associated with the use of the principal building or structure;
 - (3) Is incidental and subordinate to the primary building, structure, or use; and
 - (4) Is located on the same lot or tract as the principal building, structure, or use.
- B. Examples include garages, driveways, parking lots, sheds, signs, fences, and light poles.

ACCESSORY USE — A use that:

- A. Is customarily or reasonably associated with the principal use;
- B. Has hours of operation the same as or less than the principal use;
- C. Is incidental and subordinate to the principal use; and
- D. Is located on the same lot or tract as the principal use. (For determinations whether a proposed use is an accessory use see Article 23, Accessory Uses.) (See also "secondary use.")

ADAPTIVE REUSE — The development of a new use for an older building or for a building originally designed for a different purpose.

ADULT DAY-CARE CENTER — A facility providing day or evening time care for five or more persons over 16 years of age who are in need of supervision or assistance or a facility that is not located in the home of the provider.

ADULT DAY-CARE HOME — Daytime care in the home of the provider for up to four persons (at any one time) over 16 years of age who are in need of supervision or assistance and who are not related to the provider.

ADULT-ORIENTED ESTABLISHMENTS — Includes, without limitation, adult bookstores, adult motion-picture theaters, adult mini-motion-picture theaters, adult cabarets, and/or massage parlors. When used in connection with the phrase "adult-oriented establishments," the following words and phrases shall have the following meanings ascribed to them:

- A. **ADULT BOOKSTORE** — An establishment having a substantial or significant portion of its stock and trade in books, films, video cassettes, DVDs, any digital or electronic media or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below, for sale, rental, or display to patrons thereof, including but not limited to establishments having facilities for the presentation of adult entertainment, as defined below, including adult-oriented films, movies or live entertainment, for observation by or display to patrons therein.
- B. **ADULT CABARET** — A nightclub, bar, restaurant or similar establishment which, during a substantial portion of the total presentation time, features live performances involving adult entertainment.

- C. **ADULT MOTION-PICTURE THEATER** — An enclosed building with a capacity of 50 or more persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.
- D. **ADULT MINI-MOTION-PICTURE THEATER** — An enclosed building with a capacity of fewer than 50 persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.
- E. **ADULT ENTERTAINMENT** — Any exhibition of any adult-oriented motion pictures, live performance, display or dance or any type performance which has as a significant or substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers.
- F. **MASSAGE PARLOR** — An establishment or place primarily in the business of providing non-therapeutic massage services which involve performance of specified sexual activities and/or the touching or manipulation of specified anatomical areas (in contrast to a legitimate massage studio employing licensed massage therapists).
- G. **SPECIFIED SEXUAL ACTIVITIES** —
- (1) Human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of human masturbation, sexual intercourse or sodomy.
 - (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
- H. **SPECIFIED ANATOMICAL AREAS** —
- (1) Less than completely and opaquely covered:
 - (a) Human genitals, pubic region;
 - (b) Buttocks;
 - (c) Female breasts below a point immediately above the top of the areola; and
 - (2) Human male genitals in a discernibly tumescent state, even if completely opaquely covered.

AGENT (OF OWNER) — Any person who can show written evidence that he/she is acting on behalf of the property owner.

AGRICULTURE — See "farm."

AIRPORT — A facility used for landings and takeoffs by commercial and private fixed wing or rotary wing aircraft. It typically includes aircraft storage and service facilities.

ALLOWED USE — A use permitted by right, by conditional use, by special exception, or by another approval process.

ALTERNATE TOWER STRUCTURE (or STEALTH FACILITY) — Innovative siting techniques that shall include man-made trees, inclusion in or on bell steeples, clock towers, hose towers, existing light poles, and similar alternative-design mounting methods that camouflage or conceal the presence of antennas.

ANTENNA — See "tower."

ANTENNA SUPPORT STRUCTURE — A building, pole, telescoping mast, tower, or other such structure which supports an antenna or radio frequency spectrum repeaters.

ANTIQUÉ SHOP — See "retail establishments."

APARTMENTS or APARTMENT BUILDINGS — See "dwelling, apartment building," "dwelling, mixed-use," "dwelling, multifamily," and "security apartment."**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

APPLICANT — Any person, agent, firm, association, condominium association, organization, partnership, trust, entity, company or corporation that submits an application for approval to the City of Rochester under this chapter.

AQUACULTURE — The organized propagation of harvestable estuarine or marine plant or animal species.

ARCADE — A continuous passageway parallel to and open to a street, open space, or building, usually covered by a canopy or permanent roofing.

ARTERIAL ROAD — The highest order public road, one which carries a high volume of traffic (exceeding 5,000 vehicles per day) at relatively high speeds, and is largely used for travel between areas within the City and areas beyond the City. Its primary function is to provide mobility (through travel) rather than access to adjoining property.

ARTIST STUDIO — A place where an artist produces individual handmade crafts and works of art. Those works produced on site may or may not be displayed and sold on the premises.

ASSISTED LIVING FACILITY — A residential development for older persons that offers a moderate level of support for residents, possibly including recreation, counseling, and medical services and assistance with daily living. Common dining facilities are featured with limited or no cooking facilities in the individual units. (See also "nursing home" and "senior housing.")

AUTOMOBILE — See "vehicle."

AVERAGE FINISHED GRADE — The average of finished ground level along the perimeter of a building's exterior walls.

AWNING or CANOPY — A structure attached to a building that shelters the building's windows or doors and/or pedestrians from weather.

BANK — A business where money is kept for savings or commercial purposes, invested, supplied for loans, or exchanged. Banks customarily include credit unions, counter service by tellers, drive-through service, and automated money machines.

BED-AND-BREAKFAST — See "lodging facility, bed-and-breakfast."

BEDROOM — A room in a dwelling used, or intended, primarily for sleeping.

BOARDINGHOUSE (or ROOMING HOUSE) — A dwelling operated as a business or on a not-for-profit basis providing rooms for rent on a daily, weekly, or other basis. The rooms do not include cooking facilities and thus are not individual dwelling units. Meals may or may not be provided by the owner/operator. Such rooms generally serve as the primary residence (of whatever duration) for the occupants though they may be available also as lodging for visitors. [This use is distinguished from a group home (see definition below under community residence-1) or bed-and-breakfast.]

BOAT — See "vehicle."

BUFFER — An area within a subject property, generally situated adjacent and parallel to the property line, which serves to screen, soften or minimize a development's visual, auditory, or other impacts upon adjoining properties. A buffer may be composed of open space, existing vegetation (trees and/or shrubs), newly planted vegetation, fences, walls, berms, or a combination of these.

BUILDABLE LOT — A lot intended for development which meets the requirements of RSA 674:41.

BUILD-TO LINE (or MAXIMUM SETBACK LINE) — The opposite of a conventional setback, i.e., an imaginary line located parallel to, and a specific distance from, the front or side lot line up to which the building facade must touch or extend beyond.

BUILD-TO ZONE — A zone at the front of a lot, parallel to the front lot line, within which the front building facade must be located.

BUILDING — A structure that provides or can provide housing, shelter, or enclosure for people, animals, vehicles, equipment, or other personal property and which is fully enclosed and protected from the weather with one or more floors (whether finished or not), walls on all sides, and a roof. (See also "structure.")

BUILDING COVERAGE — The percentage of the total lot area which is covered by building footprints.

BUILDING FOOTPRINT — The ground area enclosed by the exterior surfaces of the foundation walls of a building, together with the area of all covered porches and other roofed portions.

BUILDING FRONTAGE — The primary facade of a building which faces and is parallel to or nearly parallel to a public or private street.

BUILDING HEIGHT — The vertical distance from the finished grade to the top of the highest roof beams on a flat or shed roof, to the deck level on a mansard roof, and the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs.

BUILDING INSPECTOR — The Building Inspector or Director of Building, Zoning, and Licensing Services of the City of Rochester or agent thereof.

BUILDING SEPARATION — The horizontal distance between buildings on the same lot.

CAFE — See "eating and drinking establishments."

CAMPGROUND —

- A. A tract of land where sites are rented or used as a temporary use for recreational purposes or organized retreats (not for permanent or year-round residential use). Visitors sleep in tents, tent-like structures, primitive cabins, recreational vehicles, motor homes, camping trailers, or under other primitive conditions.
- B. An outdoor facility organized for campers (generally children) to spend all or part of the summer away from home, living in tents, tent-like structures, primitive cabins, or under other primitive conditions, participating in organized activities such as sports and arts and crafts, and eating together in a central dining facility (also called "camp").

CAR — See "vehicle."

CARETAKER APARTMENT — A dwelling unit that is incorporated into, and is accessory to, a residential or nonresidential use and is occupied by an owner or an employee of the business occupying the principal use and having a gross floor area not exceeding 750 square feet. (See Article 23, Accessory Uses.)

CARPORT — A structure designed to provide storage space for a vehicle, consisting of no more than two walls and a roof. A carport is accessory to, and may be attached to or detached from, the principal building.

CATERER — An establishment which prepares ready-to-consume food on premises to be delivered and served off premises.

CERTIFICATE OF OCCUPANCY — A permit certifying that a structure complies with the requirements of the City of Rochester and may be lawfully occupied for appropriate uses.

CHILD-CARE CENTER — See day care-3.

CITY — The government of the City of Rochester, New Hampshire.

CITY COUNCIL — The City Council of the City of Rochester, New Hampshire.

CLASS VI ROAD — All existing public ways other than Class I through V roads, all roads discontinued as open highways and made subject to gates and bars, and all roads which the City has not maintained and repaired in suitable condition for travel for at least five successive years. (See RSA 229:5, VII.)

CLUB — A facility exclusive to club members and their guests, which may or may not include a dining area,

lounge, meeting spaces, a function hall, and limited, small-scale recreational facilities. "Club" includes fraternal organizations, veterans' groups, service groups, and other not-for-profit organizations with common interests, but does not include country clubs, health clubs, and houses of worship.

CO-LOCATION — Placement, on a single supporting component, of communications and other utility distribution equipment, devices and hardware that serve more than one provider.

CODE OF ORDINANCES (GENERAL ORDINANCES) — The entire body of ordinances adopted by the City Council, of which this chapter is only one part.

COLLECTOR ROAD — A mid-level public road, one which generally carries fewer than 5,000 vehicles per day. Its function is to provide both mobility (through travel) and access to adjoining property.

COMMERCIAL USE — A use, activity, or enterprise which is carried on as a business or for profit by the operator (as opposed to governmental, nonprofit, volunteer, or household activities).

COMMERCIAL VEHICLE — A vehicle registered for commercial use.

COMMUNITY CENTER — A building that accommodates recreational, education, entertainment, and cultural activities for use by residents of the individual community (subdivision, manufactured home park, multifamily development, or neighborhood) or the general public.

COMMUNITY RESIDENCE-1 (or GROUP HOME) — A dwelling, licensed by or operated by a governmental agency, for the purpose of providing ongoing care and oversight to a special population of persons who are physically, mentally, or emotionally handicapped (as defined in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988) or for orphans and neglected children. Authorized supervisory personnel are present on the premises at all times. A community residence-1 has no more than six individual residents. (See also "community residence-2" and "residential facility.")

COMMUNITY RESIDENCE-2 (or HALFWAY HOUSE) — A dwelling, licensed by or operated by a governmental agency, for the purpose of providing interim care and oversight for participants of a program of rehabilitation for persons convicted of a crime or recovering from substance abuse prior to their complete re-entry into society. Authorized supervisory personnel are present on the premises at all times. A community residence-2 has no more than six individual residents. (See also "community residence-1" and "residential facility.")

COMPOSTING FACILITY — A site where decomposition processes are used on solid waste to produce compost. Solid waste includes leaves, grass, manures, and non-meat and non-dairy food production wastes received from residential, commercial, industrial nonhazardous and community sources, but does not include biosolids or medical waste.

CONDITIONAL USE — A use permitted in a particular zoning district when it is shown that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in this chapter and authorized by the approving authority. (See Article 21, Conditional Uses.)

CONDITIONS OF APPROVAL — The terms that a development must comply with whether specified in this chapter, the Site Plan Regulations or Subdivision Regulations, or the specific approval of a project.

CONFERENCE CENTER — A facility used for business and professional meetings, often with accommodations for sleeping, eating, entertainment, exhibits and recreation.

CONSERVATION COMMISSION — The Conservation Commission of the City of Rochester, New Hampshire.

CONSERVATION SUBDIVISION (or OPEN SPACE SUBDIVISION or CLUSTER SUBDIVISION) — A subdivision in which a substantial portion of land which would otherwise be buildable is permanently preserved as open space. (See Article 33, Conservation Subdivisions.)

CONTRACTOR'S STORAGE YARD — A site upon which vehicles or equipment (such as bulldozers, front-end loaders, and backhoes) or materials used by professional contractors in construction, land clearing, landscaping or other similar activities are stored. This includes the office used by the contractor as an accessory use. Land upon which any of the above items are temporarily stored on site during the course of an active construction project is

not considered a contractor's storage yard.

CONVENIENCE STORE — See "retail establishments."

CONVENTIONAL SUBDIVISION — A subdivision in which most or all of the buildable land is allocated to building lots, roads, and infrastructure with relatively little buildable land dedicated to open space.

CORNER LOT — See "lot, corner."

COUNTRY CLUB — A facility catering predominately to club members and their guests, which may or may not include a dining area, a lounge, meeting spaces, a function hall, and significant recreational facilities such as a swimming pool, tennis courts, and a golf course.

COURT or COURTYARD — An open space wholly or partially surrounded by the wings of one building or multiple buildings.

COVERAGE — Unless otherwise specified, "coverage" refers to "lot coverage." (See "building coverage" and "lot coverage.")

DAY-CARE CENTER (also called "day care-3") — A state-licensed facility providing day or evening time care for seven or more preschool age children (at any one time) with more than one provider or a facility that is not located in the home of the provider (also known as "child-care center," "preschool," or "nursery school"). (This use includes the "family group child-care home" and the "group child-care center" as defined by the State of New Hampshire.)

DAY CARE - FAMILY (also called "day care-2") — Daytime care for up to six preschool age children (at any one time) in the home of the provider plus, on an after-school basis, up to three school age children who attend a full-day program outside of the day-care home. The numbers of children set forth here include the provider's own biological, adopted, step, or foster children if those children are less than 10 years of age. (This use is the same as the "family child-care home" as defined by the State of New Hampshire.)

DAY-CARE RESIDENCE (also called "day care-1") — Daytime care for up to three children (at any one time), not including the provider's own children, in the home of the provider.

DECK — An unroofed platform, either freestanding or attached to a building. May be supported by pillars or posts.

DENSITY — The number of families, dwelling units, households, or housing structures per unit of land.

DEVELOPER — The person(s), firm, organization, or other entity carrying out development of property.

DEVELOPMENT —

- A. Human activity that causes change to real estate that requires a permit or approval from any department of the City of Rochester, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, parking, excavation, or drilling operations, storage of materials, division of land into parcels, demolition, and installation of signs and fences.
- B. "Development" does not include the following:
 - (1) Work by a highway or public works department or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the right-of-way.
 - (2) Work by a public utility maintaining, installing, or building mains, pipes, cables, tunnels, power lines, towers, poles, tracks, etc.
 - (3) Work conducted entirely on the interior of a structure that does not increase the intensity of impact on the City.
 - (4) A change in the ownership or form of ownership of any property (notwithstanding the definition of a condominium conveyance as a subdivision as set forth in RSA 672:14, I, stating that "subdivision" means the division of the lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions

of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance).

- (5) The creation or termination of rights of access, easements, or covenants unless in violation of any condition of approval issued by the Planning Board.
- (6) Planting of landscaping materials.

DEVELOPMENT, MULTIFAMILY — A development containing two or more buildings containing three or more residential units in total on the same lot. Multifamily development can take many forms.

DIAMETER AT BREAST HEIGHT (or DBH) — The elevation at which the size of an established tree is customarily measured, 4 1/2 feet above grade.

DISTRIBUTION CENTER — A facility where a set of products is stored for distribution to retailers and/or wholesalers or directly to consumers. A warehouse, in contrast, often contains the goods from a single entity, whereas a distribution center often contains the goods from multiple entities.

DRIVE-THROUGH USE — A use offering window service to drivers in vehicles, typically including fast-food restaurants, pharmacies, and banks.

DWELLING — A building containing one or more residential units. Lodging facilities, recreational vehicles, motor homes, travel trailers, and structures intended for transient or short-term occupancy are not considered dwellings.

DWELLING UNIT — One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

DWELLING, APARTMENT BUILDING — Any building or portion thereof which contains five or more dwelling units.

DWELLING, MIXED-USE — A building with one or more dwelling units contained within a mixed-use (MU) building, such as apartments over commercial uses.

DWELLING, MULTIFAMILY — A building or portion thereof containing three or more residential units with separate cooking and toilet facilities for each dwelling on one individual lot.

DWELLING, SINGLE-FAMILY (or SINGLE-FAMILY HOUSE) — A detached dwelling which:

- A. Contains exactly one residential unit (except for accessory apartments, where permitted);
- B. Is not attached to any other dwelling or residential unit; and
- C. Occupies its own individual lot on which there is no other dwelling or principal use.

DWELLING, TWO-FAMILY — A building which:

- A. Contains exactly two residential units;
- B. Is not attached to any other dwelling or dwelling unit; and
- C. Occupies its own individual lot on which there is no other dwelling or principal use.

EARTH EXCAVATION (or MINING or RESOURCE EXTRACTION) — The commercial removal of materials on or below the surface of the earth, including soil, sand, gravel, rock, stones, clay, peat, or other mineral deposits or organic substances in accordance with RSA 155-E. This does not include the removal of vegetation or materials incidental to agriculture, development site work, or building construction. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

EASEMENT — The right to use another person's land for a stated purpose. It can involve a general or specific portion of the property.

EATING AND DRINKING ESTABLISHMENTS —

- A. CAFE (or COFFEE SHOP) — A restaurant not exceeding 1,000 square feet which:
 - (1) Has a character as an informal gathering place or place for customers to linger and read, socialize, use computers, and/or the like; and
 - (2) Is oriented toward serving coffee, tea, and other nonalcoholic beverages, excluding drive-through use.
- B. FOOD STAND — An eating establishment in which prepared food and beverages are sold in a ready to consume state from a food cart, truck, or stand situated out of doors.
- C. LOUNGE — A section of a restaurant that sells alcoholic beverages for consumption on the premises (as an accessory use). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- D. NIGHTCLUB — An establishment that stays open late at night, serving alcohol and food, and generally providing music, dancing, and/or entertainment.
- E. RESTAURANT — A commercial establishment situated in a building in which prepared food and beverages are sold to customers in a ready to consume state. Food is generally eaten on the premises at tables, booths, or a counter but may be prepared for take-out. Alcohol may be served to customers along with food as an accessory use. (See "restaurant, drive-through" and "food stand.")
- F. RESTAURANT, DRIVE-THROUGH — A restaurant which includes a drive-up window that allows customers to receive their food directly in their vehicles.
- G. TAVERN (also known as "bar" or "pub" or "nano brewery" or "winery" or "distillery") — A commercial establishment that sells alcoholic beverages for consumption on the premises. This may include the actual production of those alcoholic beverages on the premises, the carry-out sales of those beverages produced on the premises, and the production and sale of food products on the premises. **[Amended 6-6-2017]**

ELDERLY HOUSING — See "senior housing."

ELECTRIC VEHICLE CHARGING STATION — A public or private parking space located together with a battery charging station, aka "electric vehicle supply equipment (EVSE)," which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. **[Added 8-2-2022]**

EMERGENCY SERVICES FACILITIES — A facility which may operate 24 hours each day, seven days each week, including fire, law enforcement, and emergency medical and veterinary services.

EXOTIC ANIMALS — Include any nonindigenous feline, nonhuman primate, nonindigenous bear, wolves, and nonindigenous dogs except domestic dogs, any unusual pets such as mammals, birds, or reptiles, and any nontraditional livestock such as reindeer, ostrich and emu, water buffalo, and American bison among others.

FACTORY RETAIL STORE — A retail sales operation (as an accessory use) at a factory or warehouse limited to goods produced by or for the company in the usual course of its business.

FAIR — A large-scale entertainment event, such as an annual summer/fall fair, situated on land on which significant permanent structures have been erected largely to serve the fair. A special, small-scale, temporary entertainment event lasting no more than 10 days such as a carnival, bazaar, or circus situated on land on which no significant permanent structures have been erected largely to serve the fair is considered an accessory use.

FARM — All uses and activities as articulated in RSA 21:34-a. (Also see "farmer's market," "forestry," "livestock," "plant nursery," and "roadside farm stand.")

FARM, GROWING OF CROPS — All uses and activities as articulated in RSA 21:34-a but excluding the commercial raising, keeping or handling of livestock, poultry, horses, dogs, fur-bearing animals, fish, bees, and any other animals.

FARMERS' MARKET — A market held in an open area or in a structure, on private or on public property, where individual sellers offer for sale to the public primarily agricultural produce dispensed from booths or off the back of trucks located on site.

FLAG LOT — See "lot, flag."

FLOOR AREA, GROSS — The sum of the areas of all floors of a building as measured from the exterior faces of the walls, excluding unfinished cellars and attics, porches, garages and utility areas.

FLORIST — See "retail establishments."

FOOD STAND — See "eating and drinking establishments."

FORESTRY — The cultivation and harvesting of trees for commercial purposes. This does not include clearing of trees in conjunction with building development.

FRONTAGE (or STREET FRONTAGE) — The width of a lot bordering on and providing access to a public street but excluding limited access highways, as defined by RSA 230:44, such as the Spaulding Turnpike, Route 16 and associated accessways to the Milton town line.

FUEL STORAGE — Bulk storage of fuel, natural gas, propane, gasoline, or any petroleum-based products to be used for off-site distribution. "Fuel storage" includes aboveground tanks, below-ground tanks, and storage within fuel trucks when those trucks are parked on site overnight while holding fuel. (See "tank storage facility.")

FUNCTION HALL (or PLACE OF ASSEMBLY) — A public, private, or commercial facility, located in a building, established for the purpose of hosting public and private events of a social, recreational, or civic nature.

FUNERAL HOME — A building used for the preparation of the deceased for burial or cremation, related rituals, and storage and sale of caskets, urns, and other related materials.

GARAGE — An attached or detached structure used primarily for the storage of vehicles.

GAS STATION (or FILLING STATION) — A site where gasoline or other petroleum products or fuels are sold/dispensed on a retail basis. Minor vehicle maintenance is considered an accessory use.

GENERAL ORDINANCES — The entire body of ordinances adopted by the City Council, of which this chapter is only one part.

GOLF COURSE — A property laid out with at least nine holes for playing the game of golf. It may include a clubhouse with services to golfers. "Golf course" does not include:

- A. A driving range except as an accessory use to a regular nine- or eighteen-hole golf course; or
- B. Miniature golf facilities.

GREEN SPACE — A portion of a buildable lot that has been permanently set aside as undeveloped land. (Also see "buildable lot" and "open space.")

GROCERY STORE — See "retail establishments."

HARDSCAPE (or HARDSCAPING) — Consists of the inanimate elements of landscaping, especially any masonry work or woodwork. For example, stone walls, concrete or brick patios, tile paths, wooden decks and wooden arbors would all be considered part of the hardscape.

HAZARDOUS SUBSTANCE/WASTE — Hazardous waste materials are classified as such by the New Hampshire Department of Environmental Services under RSA 147-A:2. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

HEALTH CLUB — Also called a fitness studio, gym or exercise center, having members who pay a fee to use its health and fitness facilities and equipment, often including courses for aerobics, a wellness area, and rooms for weight lifting, massage, etc., courts for handball, racquetball, etc., and, often, a swimming pool, sauna, etc.

HELIPAD — A facility used for landings and takeoffs by helicopters as a nonresidential accessory use.

HISTORIC DISTRICT COMMISSION — The Historic District Commission of the City of Rochester, New Hampshire.

HOME OCCUPATION — An occupation or business activity which is conducted by a resident within his/her own dwelling or in a garage or barn-type outbuilding and which is clearly subordinate to the principal residential use. Home occupations are designated as home occupation-1, -2, and -3. (See Article 24, Home Occupations.)

HOSPITAL — A large-scale and multi-departmental institution providing medical and surgical care for the sick and injured, largely on an in-patient basis. Related facilities may include outpatient departments, offices, laboratories, training and teaching facilities, conference facilities, food service, and dormitories. (See also "office, medical.")

HOUSE OF WORSHIP — Refer to RSA 72:23, III.

HOUSEHOLD — A family living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and serving of food within the dwelling unit.

HOUSEHOLD PET — An animal that is customarily kept for personal use or enjoyment within the home.

HOUSING UNIT SALES — A business engaged in the display and sale of manufactured housing or presite built housing units.

IN-LAW APARTMENT — A semi-independent living area (not to exceed 400 square feet) that is part of a larger dwelling unit. An in-law apartment may have its own bedroom, bathroom, and cooking facilities but it has no separate walkable entrance to the outside. Access to the in-law apartment is exclusively from within the larger dwelling unit such that the resident of the in-law apartment is inextricably a member of the household occupying the larger dwelling unit.

INDUSTRIAL PARK — A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses.

INDUSTRY (or MANUFACTURING) — The manufacture, fabrication, assembly, treatment, processing, packaging, research, and development of products.

INDUSTRY, HEAVY — The processing or manufacturing of products predominantly using basic raw materials or the significant use of flammable, explosive, or hazardous materials, solvents or reactive chemicals or which includes operations which result in significant noise, glare, odor, dust, smoke, or vibration which can be detectable beyond the building. Includes industries or processes which require large water volumes or wastewater treatment needs and those which will generate truck traffic trips that increase the background volumes by 10% or more or which have truck traffic patterns likely to have a measurable impact on noise levels between 5:00 p.m. and 8:00 a.m. in adjacent residential areas.

INDUSTRY, LIGHT — Industry that works predominantly with previously prepared, manufactured, or processed materials or parts. Light industry generally includes assembly, fabrication, research and development, office-type uses, most high technology production, and packaging.

INDUSTRY, RECYCLING — The Recycling Industrial District is established to accommodate large-scale, land-intensive landfill, recycling, and junkyard type uses on parcels 11 acres or larger.

JUNKYARD — A place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this definition, the term includes, but is not limited to, the following types of junkyards:

- A. Automotive recycling yards, meaning a motor vehicle junkyard, as identified in Subsection C, the primary purpose of which is to salvage multiple motor vehicle parts and materials for recycling or reuse;
- B. Machinery junkyards, as defined in RSA 236:112, III; and **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

C. Motor vehicle junkyards, meaning any place, not including the principal place of business of any motor vehicle dealer registered with the Director of Motor Vehicles under RSA 261:104 and controlled under RSA 236:126, where the following are stored or deposited in a quantity equal in bulk to two or more motor vehicles:

- (1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose, including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or
- (2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle.

KENNEL (COMMERCIAL) — A commercial establishment for the boarding, day care, breeding, training, and/or selling of dogs, cats, or other household pets. Kennels are subject to the provisions found in RSA 466:6, Group Licenses.

LANDSCAPING MATERIALS — Living trees, shrubs, ground cover, soils, grass, fences, and other similar natural and decorative features.

LAUNDRY ESTABLISHMENT-1 — A business providing clothing and linen washing and drying services for walk-in retail customers, offered either as self-service or as fee for service. A laundry establishment-1 does not exceed 1,000 square feet and no dry cleaning is performed on site.

LAUNDRY ESTABLISHMENT-2 — A business providing clothing and linen washing, drying, and/or dry-cleaning services for retail and wholesale customers, offered either as self-service or as fee for service. A laundry establishment-2 does not exceed 3,000 square feet.

LAUNDRY ESTABLISHMENT-3 — A business providing large-scale commercial/industrial clothing and linen washing, drying, and/or dry-cleaning services.

LIVESTOCK — Animals raised as beasts of burden or as sources of meat, milk, honey, leather, wool, or other products.

LOCAL ROAD — The lowest order road with the lowest traffic volumes and design speeds. The primary functions of a local road are to provide access to the property bordering it and to distribute that traffic to collector and arterial roadways.

LODGING FACILITY — A facility offering short-term overnight accommodations for paying transient guests. Visitors to a lodging facility have their primary residence elsewhere.

- A. BED-AND-BREAKFAST — A building which contains one owner-occupied dwelling unit and a short-term commercial lodging facility operated by the owner-occupant. The facility contains up to six private guest rooms with individual or shared bathrooms and no cooking facilities. Meals may be offered to overnight guests only.
- B. HOTEL — A commercial lodging facility with private rooms or suites, each having its own bathroom. Access to every guest room is through a central lobby and interior corridors. Hotels may include other accessory services oriented primarily to their overnight guests, including function rooms, conference space, limited restaurants, and limited shops.
- C. MOTEL (or MOTOR LODGE) — A commercial lodging facility with private rooms, each having its own bathroom. One enters the guest rooms directly from out of doors, either at ground level or via an upper level open corridor.

LOT — A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon and as defined in RSA 674:24, II.

LOT AREA — The computed area contained within the lot lines.

LOT COVERAGE — The percentage of area of a lot which is covered by building footprints, decks, patios,

other structures with impervious or largely impervious surfaces, pavement, concrete, driveways, and parking areas (whether paved, dirt, or gravel).

LOT DEPTH — The mean distance from the front lot line to the rear lot line (in most cases measured from the mid points of each).

LOT LINE, FRONT — The common boundary with the road right-of-way. (For corner and double frontage lots see Article 19, Dimensional Regulations.)

LOT LINE, REAR — That lot line opposite (and generally parallel or roughly parallel to) the front property line.

LOT LINE, SIDE — Those lot lines connecting the front and rear lot lines.

LOT OF RECORD — A lot which is described in a deed which was lawfully recorded in the Strafford County Registry of Deeds prior to the enactment of planning and zoning regulations in Rochester or which, if not so deeded, is a lot which is part of a subdivision, the plan of which was lawfully recorded in the Registry.

LOT WIDTH — The width of a lot measured in a straight line between the side lot lines at the front lot setback line.

LOT, CORNER — A lot at the junction of and fronting upon two or more intersecting roads.

LOT, DOUBLE FRONTAGE — A lot with frontage on parallel streets (its front and rear lot lines). (See also "lot, corner" and "lot, triple frontage" in this section and double frontage lots under Article 19, Dimensional Regulations.)

LOT, FLAG — A lot with less than the required frontage on a public road but with sufficient buildable area at the rear. The access area is construed as the "flagpole" with the rear area as the "flag."

LOT, INTERIOR — Any lot other than a corner lot or a double frontage lot.

LOT, TRIPLE FRONTAGE — A lot with frontage on three sides. (See also "lot, corner" and "lot, double frontage" in this section and triple frontage lots under Article 19, Dimensional Regulations.)

LOUNGE — See "eating and drinking establishments."

MANUFACTURED HOUSING — Any structure, meeting the federal Manufactured Home Construction and Safety Standards Act, commonly known as the HUD Code, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length, or when erected on site has at least 320 square feet of habitable space, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained therein. Manufactured housing as defined here does not include presite built housing as defined in RSA 674:31-a. **[Amended 9-6-2016]**

MANUFACTURED HOUSING PARK — A single parcel of land on which are placed at least two or more manufactured housing units. Manufactured housing units are placed on individual sites rather than individual platted lots. Roads, utilities, and other infrastructure throughout the park are privately owned. A manufactured housing park is specifically approved as such by the Planning Board.

MANUFACTURED HOUSING SUBDIVISION — A major subdivision (i.e., involving construction of a new City road) of a parcel into individual surveyed and platted lots for the placement of manufactured homes. A manufactured housing subdivision is specifically approved as such by the Planning Board.

MARINA — A facility for storing, servicing, fueling, berthing, and securing of boats. This includes land facilities for storage.

MEDICAL OFFICE — See "office, medical."

MINI-WAREHOUSE (or SELF-STORAGE) — One or more buildings containing separate, self-contained, private storage spaces leased or rented to individuals.

MINIMUM LOT AREA — The computed area contained within a lot that meets the dimensional standards of this

chapter, excluding very poorly drained soils and steep slopes greater than 25%.

MINIMUM LOT AREA PER DWELLING UNIT — The computed area contained within a lot for each additional dwelling unit that meets the dimensional standards of this chapter, excluding very poorly drained soils and steep slopes greater than 25%.

MOBILE HOME — See "manufactured housing."

MODULAR HOUSING OR STRUCTURE (or PRESITE BUILT HOUSING) — Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building lot. A modular home is separate and distinct from a manufactured housing unit.

MONUMENT PRODUCTION — The production and/or sales of markers for gravestones generally made of stone, including the outside display and storage of monuments.

MOTEL — See "lodging facility, motel."

MOTOR VEHICLE JUNKYARD — See "junkyard"

MULTIFAMILY — See "dwelling, multifamily."

MUSEUM (or EXHIBIT HALL) — A nonprofit, public, or commercial institution operated principally for the purpose of acquiring, preserving, and exhibiting to the public objects of historical, cultural, scientific, or artistic interest. It may also sell related items of interest as an accessory use.

NIGHTCLUB — See "eating and drinking establishments."

NON-BUILDABLE LAND — Land that cannot be built upon due to legal restrictions such as covenants or easements.

NONCONFORMING LOT — A lot which was lawfully established but which does not conform to the current requirements of this chapter, as amended, related to area, frontage, or other elements.

NONCONFORMING PROPERTY — A lot, site, structure, or use which does not conform to one or more requirements of this chapter, as amended, but which was lawfully established prior to the adoption of the chapter provision(s) with which it does not comply.

NONCONFORMING SITE — A development which was lawfully established but which does not conform to one or more of the current requirements of this chapter, as amended, related to any elements of site layout or design.

NONCONFORMING STRUCTURE — A building or other structure which was lawfully established but which does not conform to one or more of the current requirements of this chapter, as amended, related to setback, height, size, or other elements.

NONCONFORMING USE — A use which was lawfully established but which is no longer permitted in the zoning district, as amended, in which it is located.

NURSING HOME (also called "convalescent home," "rehab center," "home for the aged," "retirement home" or "rest home") — An extended or intermediate care facility licensed or approved to provide intensive convalescent or chronic care to residents 24 hours per day. No formal cooking facilities are included in the individual rooms/units. (See also "assisted living facility" and "senior housing.")

OFFICE — A building, portion of a building, or leasable space in which work of a predominantly administrative, professional, or clerical nature is performed. It may contain multiple separate offices. An office is generally furnished with desks, tables, files, computers, and office and communications equipment. There are no walk-in retail consumer sales nor services nor production/manufacture of any physical products for sale, with any exceptions detailed in this chapter. An office may also be an accessory use to a principal use such as a retail store or factory. "Office" excludes "office, medical," "office, professional" and "retail services" (see those definitions).

OFFICE, MEDICAL (or HEALTH CLINIC or MEDICAL FACILITY) — A building, portion of a building, or

leasable space in which on-site mental and physical health care on an outpatient basis is provided. Practitioners may include physicians, surgeons, nurses, dentists, chiropractors, psychologists, mental health counselors, and other such similar health care professionals. (Also see "hospital.")

OFFICE, PROFESSIONAL — A building, portion of a building, or leasable space housing professionals such as lawyers, architects, engineers, surveyors, designers, teachers, accountants or others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise (other than limited incidental merchandise) exists. "Office, professional" excludes "office," "office, medical" and "retail services" (see those definitions).

OPEN SPACE — A separate lot ("open space lot") or portion of a buildable lot (also called "green space") designated as protected, undeveloped land. (Also see "buildable lot" and "green space" in this section and open space requirements in Article 19, Dimensional Regulations.)

PARCEL (or TRACT or LAND UNIT) — A lot, a portion of a lot, or multiple lots (or portions thereof) on which development may occur.

PARKING FACILITY, COMMERCIAL — A parking lot or parking garage used as an independent business venture for the short-term parking of automobiles on an hourly, daily, weekly, or monthly basis for a fee.**[Added 5-7-2019]**

PARKING FACILITY, PUBLIC — A parking lot or parking garage, owned by a municipal or public entity, used for the short-term parking of automobiles on an hourly, daily, weekly, or monthly basis, and which may require permitting or usage fees.**[Added 5-7-2019]**

PARKING GARAGE — A multilevel structure used for the storage of automobiles.

PARKING LOT — An off-street, ground-level open area that provides storage for motor vehicles.

PERMANENT FOUNDATION — A continuous perimeter foundation of masonry constructed underneath a building in accordance with the City of Rochester Building Codes.

PERMITTED USE — Any use allowed in a zoning district "by right" in contrast to a conditional use, a use permitted by special exception, or an accessory use. Nonetheless, there are numerous requirements which may apply and there is a significant review process involved for most permitted uses in accordance with the requirements of this chapter and the Site Plan Regulations and Subdivision Regulations. (Also see "accessory use," "conditional use," and "special exception" in this section and Article 20, Standards for Specific Permitted Uses.)

PERSONAL SERVICES ESTABLISHMENTS — Establishments serving individual necessities, including but not limited to barbershops, beauty salons and spas, massage services by masseurs/masseuses, personal laundry/dry-cleaning services, tattoo parlors, and travel agencies.

PHARMACY — See "retail establishments."

PLANNED UNIT DEVELOPMENT (or PUD) — A special zoning designation that allows the owner of a large parcel of land to propose his/her own development project largely independent of current land use requirements.

PLANNING BOARD — The Planning Board of the City of Rochester.

PLANT NURSERY — Land and associated structures, including greenhouses, used to raise trees, shrubs, flowers, and other plants for sale on site or at another location. Limited related landscaping and decorative items are frequently sold on site as well.

PLAT — A map of a subdivision showing surveyed lot lines with bearings and dimensions.

PORCH — A roofed projecting structure connected to a building that may be enclosed by screen, latticework, broad windows, or other light frame walls extending from the main structure. A front porch is elevated above the surface of the ground, has front steps, a railing, and porch posts or columns. It provides direct access to the building but is not habitable year round.

PORKCHOP SUBDIVISION — A special subdivision that allows a limited number of flag lots in order to help

preserve scenic roads and discourage development of new culs-de-sac on back lots. (See "porkchop subdivisions" in Article 21, Conditional Uses.)

PRESITE BUILT HOUSING — See "modular housing."

PRINCIPAL BUILDING — A building in which the principal use is conducted (in contrast to an accessory structure). (Also see "accessory structure.")

PRINCIPAL USE — The primary activity that occurs on a lot, i.e., that activity which is the most prominent and visible, engages the most people, and has the most significant impacts. (Also see "accessory use" and "secondary use.")

PRINTING FACILITY — A large-scale establishment (over 3,000 square feet) for printing services. It is oriented toward commercial customers rather than walk-in retail customers. (See also "retail services" which encompasses photocopying.)

PRIVATE ROAD — A private travel way, providing access to two or more lots, which has its own platted right-of-way, separate from any of those lots. (Does not include "shared driveway.")

PROFESSIONAL OFFICE — See "office, professional."

PROHIBITED USE — A use which is not specifically permitted by right, by conditional use, or by special exception and which is not an accessory use.

RECREATION, INDOOR — A commercial facility within a building devoted to active sports and recreation. "Indoor recreation" may include billiard parlors, pinball/video arcades, health clubs, fitness centers, paintball, bowling alleys, indoor sports arenas, swimming pools, and gymnasiums.

RECREATION, OUTDOOR — An open air commercial facility, including open air roofed structures, devoted to active sports and recreation. "Outdoor recreation" may include ball fields, miniature golf, driving ranges, archery ranges, outdoor paintball, sports arenas, amusement parks, skating rinks, swimming pools, tennis courts, cross-country ski centers, and water slides. "Outdoor recreation" does not include shooting ranges or facilities with individual motorized vehicles such as go-carts, race cars, or motorcycles.

RECREATION, PARK — A noncommercial outdoor passive or active recreational facility serving the general public or residents of a particular neighborhood. It is owned or managed by the government, a land developer, a homeowners' association, or similar entity.

RECREATIONAL VEHICLE (or RV) — A vehicular-type portable structure without permanent foundation that can be towed, hauled, or driven and is primarily designed as a temporary living accommodation for recreational and camping purposes. An RV is not considered a dwelling unit.

RECYCLING FACILITY — A type of solid waste facility that consists of a building used for the collection, temporary storage, and/or processing of recyclable material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting or cleaning. When any of these activities occur outside of a fully enclosed building, the use may be considered a junkyard. (See also "composting facility," "junkyard," "industry, recycling," and "solid waste facility.")

RESEARCH AND DEVELOPMENT FACILITY — A facility primarily used for scientific or product research, investigation, testing, or experimentation. Depending on the exact nature of the activities this use is also encompassed by office, software development, light industry, or heavy industry classifications.

RESIDENTIAL DEVELOPMENT — A subdivision, established neighborhood, apartment or townhouse complex, manufactured housing community, or other multifamily development.

RESIDENTIAL FACILITY — A facility serving the same function (and following the same requirements) as either a Community Residence-1 or -2 but with more than six individual residents. (Also see "Community Residence-1" and "Community Residence-2.")

RESIDENTIAL PROPERTY — Vacant land zoned residential or land currently in residential use.

RESTAURANT — See "eating and drinking establishments."

RESTAURANT, DRIVE-THROUGH — See "eating and drinking establishments."

RETAIL ESTABLISHMENTS —

- A. ANTIQUE SHOP — A store that sells exclusively (or nearly exclusively) antiques and collectibles. Under this chapter an antique or collectible is a work of art, piece of furniture, decorative object, unusual functional object, or the like, that is at least 30 years old. An antique does not include any vehicles.
- B. CONVENIENCE STORE (or CORNER STORE) — A retail store containing less than 2,000 square feet of gross floor area which sells everyday goods including freshly prepared food products, groceries, household items, newspapers, magazines, over-the-counter drugs and sundries. A convenience store does not include a gas station as an accessory use.
- C. FLORIST — A retail sales operation involving the sales, arrangement, and potting of flowers and small plants. This may include limited cultivation of plants, limited sales of unpotted and larger plants, and limited sales of decorative items as accessory uses.
- D. GROCERY STORE — A retail store containing 2,000 square feet or more of gross floor area which primarily sells prepackaged food products, fresh produce, and meat but also may sell freshly prepared food and other convenience and household goods. (Also see "convenience store.")
- E. PHARMACY — A retail sales operation, not exceeding 3,000 square feet, involving the filling of prescriptions and sale of over-the-counter drugs, health and beauty products, and medical appliances and equipment.
- F. RETAIL SERVICES — A facility for providing direct personal or business services to walk-in customers. "Retail services" does not include retail sales except for incidental items related to the service, as an accessory use, or the leasing/rental of equipment or goods if stored on the premises. (Also see "office," "retail sales," and "service establishment.") **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- G. SECONDHAND SHOP — A retail establishment with a primary stock of used or secondhand items with a maximum floor area up to 4,000 square feet.
- H. SERVICE ESTABLISHMENT — Retail, wholesale, and business services of a more intensive nature than "retail services" including repair of heavy equipment, machines with engines, and furniture involving the significant use of chemicals; rental of large or heavy equipment; and other miscellaneous activities with greater potential performance impacts, as reasonably determined by the Director of Building, Zoning, and Licensing Services. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- I. TRADE SHOP — A workshop with under 5,000 square feet used for the building trades or for custom production, service, or repair work, including but not limited to carpentry, plumbing, HVAC work, electrical work, welding, furniture making and restoring, cabinetmaking, sign making, upholstering, painting, fabrication and finish of stone work such as grave markers, other monuments, counter tops and curbing, and similar activities but excluding work related to vehicles or engines.

RETAIL SALES — A commercial operation that involves the display, sale, and/or lease/rental of physical goods to the general public or businesses. "Retail sales" does not involve the provision of personal or business services, except where incidental to the sale of physical goods. (Also see "retail services," "vehicle sales, new" and "vehicle sales, used.")

RETAIL SERVICES — See "retail establishments."**[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

RIGHT-OF-WAY — A strip of land used for the location of a street, walkway, or utility line that is separate and distinct from the lots adjoining it. (Also see "easement.")

ROADSIDE FARM STAND — A small-scale, informal roadside structure for the seasonal sale of agricultural produce, flowers, Christmas trees, and related goods, produced on site or at another location.

SAWMILL — A commercial operation providing sawing, milling, planing, or similar services and products from timber.

SAWMILL, TEMPORARY — A portable facility for the sawing, milling, planing, or similar processing of timber harvested from the site upon which the temporary sawmill is located. (See "sawmill, temporary" under Article 23, Accessory Uses.)

SCHOOL, K-12 — A public, private, or parochial educational facility, licensed by the State of New Hampshire, that provides a curriculum of elementary and secondary academic instruction, including kindergartens, elementary schools, junior high schools, and high schools.

SCHOOL, OTHER — A public, private, or commercial establishment that provides a curriculum of academic, technical, or vocational instruction beyond the high school level or one which offers instruction in other areas such as music, arts, dance, martial arts, business, or driving.

SECONDARY USE — A use located on the same lot as a principal use but which is clearly of lesser scale, impact, or visibility than the principal use. A secondary use is not an accessory use as it is largely independent from the principal use. (See also "accessory use" and "principal use.")

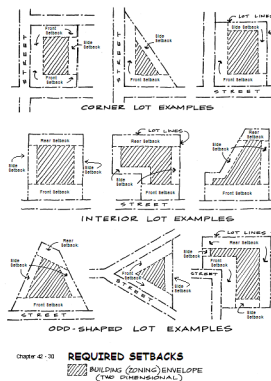
SECONDHAND SHOP — See "retail establishments."

SECURITY APARTMENT — A dwelling unit which is attached to or located with an allowed primary business use and occupied by the business owner, family member or employee whose accessory purpose is to provide security and/or protection of the business premises. (See Article 23, Accessory Uses.)

SENIOR HOUSING — A residential development for older persons who own or rent their own independent dwelling units. Generally, little or no support is provided on site for activities of daily living. Pursuant to RSA 354-A:15, to qualify as senior housing a development is occupied solely by persons 62 years of age and older; at least 80% of the units within a development are occupied by at least one person 55 years of age or older; or the development is defined as senior housing according to a formula acceptable to state or federal housing authorities. (See also "assisted living facility" and "nursing home.")

SERVICE ESTABLISHMENT — See "retail establishment."

SETBACK — The minimum distance from a lot boundary line that certain types of structures or other objects, elements, or activities must be placed. Setbacks are measured perpendicular to lot lines and extend for the full width or depth of the lot, accordingly. (See "setback, general" and "setback, special"; note that in common usage the term "setback" usually refers to general setbacks.) (See the Tables of Dimensional Standards in Article 19.)



SETBACK AREA — An area on a lot within which a setback applies, i.e., within which certain types of structures may not be placed.

SETBACK, FRONT — The minimum setback established from the front property line.

SETBACK, GENERAL — The minimum distance from a lot boundary line from which buildings, roofed structures, open air decks, and porches must be placed as specified in the Tables of Dimensional Standards in Article 19. (In common usage, general setbacks are usually simply referred to as "setbacks.")

SETBACK, REAR — The minimum setback established from the rear property line.

SETBACK, SIDE — The minimum setback established from the side property lines.

SETBACK, SPECIAL — In addition to the setbacks listed in the Tables of Dimensional Standards there are several use-specific and situational-specific setbacks noted throughout this chapter. The more restrictive setback will apply. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

SHARED DRIVEWAY — A private travel way providing access to two or more lots by way of an easement across one or more of those lots. (Also see "private road.")

SHELTER — A facility providing temporary daytime, evening, and/or overnight shelter to homeless or indigent people or people in need of a protective environment due to threatening circumstances. A shelter may also provide food, personal care, and counseling services.

SIGHT TRIANGLE — A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

SIGN — (For definitions of numerous sign types see Article 29, Signage.)

SINGLE-FAMILY DWELLING — See "dwelling, single-family."¹

SITE PLAN — The plan for the development of one or more lots.

SITE PLAN REGULATIONS — The City of Rochester Site Plan Regulations.

SMALL WIND ENERGY — A wind energy conversion system consisting of a wind generator, tower and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and which is used primarily for on-site consumption.

SNACK BAR/CONCESSION STAND — An accessory facility which sells food and beverages for consumption on the premises.

SOLAR PANEL — A panel that converts the sun's radiation into energy for use.

SOLID WASTE FACILITY — A location or system for resource recovery, recycling, collection, source separation, storage, transportation, processing, treatment or disposal of solid waste. Devices, equipment, and other structures required or ordered to be installed at a solid waste facility by the Department of Environmental Services, State of New Hampshire, shall be deemed to be an accessory use of a solid waste facility. The term "solid waste facility" includes devices, equipment, buildings, uses and structures for the treatment, processing or beneficial use of by-products resulting from the treatment, processing or disposal of solid waste (such as landfill gas and landfill leachate).

- A. For the purposes of this chapter, the term "solid waste facility" shall specifically exclude hazardous waste facilities including those regulated under the NHDES Hazardous Waste Rules (New Hampshire Code of Administrative Rules Chapters Env-Hw 100 to 1100) and so-called waste-to-energy facilities involving the incineration of solid waste. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- B. For the purpose of the interpretation of the provisions of this chapter relative to the authorization and operation of a solid waste facility, all definitions contained in Chapter 149-M of the New Hampshire Revised Statutes Annotated and applicable regulations promulgated thereunder (e.g., New Hampshire Code of

1. Editor's Note: The definition of "single-unit dwelling" which immediately followed this definition was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

Administrative Rules Chapters Env-Hw 100 to 1100) as presently enacted or the corresponding provision(s) of any recodification or amendment thereof shall apply, unless a specific and more restrictive definition of any applicable term shall be adopted as part of this chapter. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

C. "Solid waste facility" includes, but is not limited to, composting facility, junkyard, and recycling facility. (See also "composting facility," "junkyard" and "recycling facility.")

SPECIAL EXCEPTION — The use of a building or lot, or a departure from standards otherwise applicable, which may be permitted under this chapter only by approval of the Zoning Board of Adjustment, subject to meeting certain criteria. (See Article 22, Special Exceptions.)

STABLE — A noncommercial facility used for the boarding and exercising of horses or other farm or work animals as an accessory use. (See also "stable, commercial.")

STABLE, COMMERCIAL — A commercial facility used for the boarding and exercising of horses or other farm or work animals for financial consideration and/or bartering of goods and services.

STRUCTURE — A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

SUBDIVISION — The platting of a lot or the division of a lot, tract or parcel of land into two or more lots, plots or sites (or as may be defined under the Subdivision Regulations or RSA 672:14).

SUBDIVISION, MAJOR — A subdivision that is not classified as a minor subdivision.

SUBDIVISION, MINOR — A subdivision that involves three lots or less.

SUBORDINATE — Secondary in importance.

TANK STORAGE FACILITY — An open air facility containing large, aboveground containers for the bulk storage of material (other than fuel) in liquid, powder or pellet form. (See also "fuel storage.")

TAVERN — See "eating and drinking establishments."

TEMPORARY STRUCTURE — A freestanding structure (such as a tent or canopy) with a flexible sheathing material such as fabric, canvas, rubber, or plastic used as a workplace or for the enclosure or storage of property, vehicles, or animals. (See "temporary structures" under Article 23, Accessory Structures.)

TEMPORARY USE — A use established for a fixed period of time with the intent to discontinue the use upon the expiration of the time period.

TEMPORARY USE SHELTER — A structure whose primary use is for something other than sheltering services which, however, from time to time may provide the same services as a shelter for no more than fifteen (15) total days between November 1 and March 31. Any such use exceeding fifteen (15) days shall result in the facility being reclassified as a shelter. **[Added 4-7-2020]**

TEMPORARY WIRELESS COMMUNICATIONS FACILITY — Any wireless communications facility designed for short-term use only for a special event or while a permanent wireless communications facility is under construction. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

THEATER — A building or space devoted to motion pictures, dramatic and musical performances and other entertainment before a live audience.

TIMBER HARVESTING — The cutting and removal of trees from their growing site and/or the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery, including the creation and use of skid trails, skid roads, and haul roads.

TOWER — A support structure consisting of a monopole, guyed structure, or freestanding multi-legged structure.²

2. Editor's Note: The definition of "townhouse" which immediately followed this definition was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

TRADE SHOP — See "retail establishments."

TRANSPORTATION SERVICE — An operation providing passenger transportation services with taxicabs, limousines, vans, buses, and other such vehicles, where the vehicles are stored on site.

TRUCK TERMINAL — A site where cargo or containers are stored and where trucks load and unload or transfer freight on a regular basis. It may also include temporary storage areas for trucks and facilities servicing trucks.

TWO FAMILY — See "dwelling, two-family."

UPLAND — All lands not defined as wetlands.

URBAN AGRICULTURE — The noncommercial growing of food and limited animal husbandry in residential neighborhoods to support the individual grower and/or his/her family. This would include the replacement of ornamental plantings with food-producing plants and the raising of egg-producing fowl specifically excluding roosters.

USE — The specific purpose or activity for which a building, structure, or lot is arranged, intended, designed, occupied, utilized or maintained.

UTILITY, OTHER —

- A. A facility providing any form of broadband services.
- B. A facility producing or treating gas, water or wastewater, or sewage.
- C. These facilities are commercial and industrial by nature but may be privately owned.

UTILITY, POWER GENERATION — A facility producing energy from gas, oil, coal, wood, nuclear, waste, hydro, and other materials for commercial purposes.

VARIANCE — A departure from the terms of this chapter, not otherwise permitted within the subject zoning district, which may be granted by the Zoning Board of Adjustment (see Article 4, Zoning Board of Adjustment).

VEGETATIVE BUFFER, DENSE — A natural and/or planted vegetative buffer which shall provide year-round screening, e.g., evergreen plantings.

VEHICLE (or MOTOR VEHICLE) — Any self-propelled device that uses an internal combustion, battery-powered, or electric engine and which requires a valid registration legally issued by a governmental authority in order to be operated on a public way. "Vehicle" includes automobiles, trucks, buses, recreational vehicles, motor homes, motorized campers, motorcycles, motor scooters, off-road vehicles, all-terrain vehicles, snowmobiles, tractors, other farm vehicles, construction vehicles, and boats.

VEHICLE SALES, NEW — A business engaged in the sale of primarily new vehicles or other large equipment items which are customarily stored and displayed out of doors or in the rental or leasing of such vehicles and equipment. For a dealer of new vehicles, servicing and repair of vehicles is considered an accessory use.

VEHICLE SALES, USED — A business engaged in the sale of three or more new or used vehicles. Light repairs on, and preparation of, those specific vehicles offered for sale on site is considered an accessory use.

VEHICLE SERVICE — A business engaged in the servicing, cleaning, repair, and/or body restoration of vehicles.

VETERINARY CLINIC — A facility used by one or more licensed veterinarians to provide health care for animals. Overnight care is not provided except as part of the necessary medical treatment of an animal. "Veterinary clinic" may also include animal grooming.

WAREHOUSE — A building used primarily for the storage of goods and materials, whether for the building owner or for other parties. A warehouse may be an accessory use to a retail or industrial operation, generally carried out in another building or other section of the same building. An office may be an accessory use to a warehouse.³

3. Editor's Note: The definition of "wireless communications facility" which immediately followed this definition was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

WIRELESS COMMUNICATIONS FACILITIES (or WCF) — Any towers, poles, or other support structures, attached antennas, and accessory structures and elements used for the transmission or reception of signals for radio, television, paging systems, personal communications services, cellular telephone systems, or for any other spectrum-based systems. Mobile vehicle mounted or transported systems, such as used for mobile news organizations, are not considered wireless communications facilities under this chapter. See "alternate tower structure," "antenna" and "tower."**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

YARD SALE, COMMERCIAL — The outdoor sale of used items in a manner that does not meet the standards established for residential yard sales specified under Article 23, Accessory Uses.

YARD SALE, RESIDENTIAL — An outdoor sale of used personal or household items held on the seller's premises. Also known as "garage sale," "yard sale," "rummage sale," "tag sale," "attic sale," "moving sale," or "junk sale." Allowed as an accessory use in residential districts. (See Article 23, Accessory Uses.)

ZERO LOT LINE DEVELOPMENT — A development plan where single-family dwellings are placed right up to or very close to one of the side lot lines. The same side setback is reduced to near zero for all of the houses on a block in order to create a larger usable side yard on the opposite side.

§ 275-2.3. Abbreviations. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

When the following abbreviations are used in this chapter, they shall have the meaning attached:

DBH	Diameter at Breast Height
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
HDC	Historic District Commission
NHDES	The New Hampshire Department of Environmental Services
PUD	Planned Unit Development
RSA	The New Hampshire Revised Statutes Annotated
ZBA	The Zoning Board of Adjustment of the City of Rochester

Where no definition is listed in the above article refer to the City's Chief Planner.

ARTICLE 3
Administration

§ 275-3.1. General provisions.

- A. **Zoning Administrator.** This chapter shall be administered and interpreted by the Zoning Administrator, who shall be appointed by the Rochester City Manager. The City Manager may, at his/her option, designate a different individual to serve as Zoning Enforcement Officer, with responsibility for enforcing this chapter. If the City Manager does not make such a separate appointment, enforcement responsibilities shall be vested in the Zoning Administrator. Furthermore, the Zoning Administrator and Zoning Enforcement Officer may assign or designate all or some of their duties to others subject to approval of the City Manager.
- B. **Appeals.** Any person who believes that the Zoning Administrator has made an error in any interpretation or application under this chapter may appeal that decision to the Zoning Board of Adjustment as an administrative appeal. (See Article 4, Zoning Board of Adjustment.)
- C. **Recourse for prohibited uses.** Where an applicant is informed that his/her proposed project does not comply with the requirements of this chapter, if the applicant nonetheless believes that there is justification for the project then he/she has four options:
- (1) **Appeal.** Appeal the decision to the Zoning Board of Adjustment if the administrative decision is believed to be incorrect (see Article 4, Zoning Board of Adjustment);
 - (2) **Variance.** Apply to the Zoning Board of Adjustment for a variance if it is believed that special circumstances surrounding the property justify a departure from the requirements of this chapter (see Article 4, Zoning Board of Adjustment);
 - (3) **Map amendment.** Apply for a map amendment to rezone the subject property to a zoning district which permits the desired use or activity (see § 275-3.5, Amendments, below); or
 - (4) **Text amendment.** Apply for a text amendment to accommodate the desired use or activity within the existing zoning district (see § 275-3.5, Amendments, below).
- D. **Fees.** Application fees and other pertinent fees may be established under this chapter. Fees shall be established specifically as part of this chapter or separately by the Rochester City Council.
- E. **Outside review.** As outlined in RSA 676:4, I(g), any applicant may be assessed reasonable fees to cover the cost of special investigative studies, review and inspections by outside consultants, and review of documents by the City Attorney.
- F. **Entering property.**
- (1) The Zoning Administrator and the Zoning Enforcement Officer (if different from the Zoning Administrator), and their staff, shall have the authority to make any on-site inspections which might be necessary to carry out their duties in the administration and enforcement of this chapter.
 - (2) Furthermore, every applicant for a permit or approval under this chapter or under the Site Plan Regulations or the Subdivision Regulations, by virtue of submitting the application, shall be deemed to have consented to any inspection(s) of the subject property that may be reasonably necessary for the City's officials, employees, board members, or other agents to make informed decisions relative to the application and to determine compliance after approval with the subject permit or approval.
 - (3) Refusal by an applicant to consent to such inspection may be grounds for denial of any permit or approval where such inspection is reasonably necessary to make any determinations relevant to the application.

(4) It is understood that any City officials must use all due care and consideration when entering property under this chapter.

G. Vesting. See RSA 674:39 in relation to vesting of projects.

H. Government land uses and development. See RSA 674:54 in relation to use and development by government agencies.

I. Public uses. For all public uses, in addition to the provisions of RSA 674:54, it is requested of local, state, and federal governments that a public hearing before the Planning Board be held, with certified notices to abutters and posting of a public notice at least 10 days in advance of the public hearing, and that the following be submitted to the Planning Board:

(1) A statement indicating the need for the facility or use, the criteria used in selecting a site, the location of alternative sites that were considered, and the reasons for selecting the specific site;

(2) A statement discussing conformity with this chapter, the intent of this chapter, the Site Plan Regulations and/or Subdivision Regulations, the Master Plan, and other governmental policies and plans;

(3) A report about potential impacts and plans to mitigate impacts (including traffic and other impacts listed in Article 28, Performance Standards); and

(4) All documentation, materials, and engineering detail ordinarily required under the Site Plan Regulations.

J. Pending ordinance changes. In accordance with RSA 676:12, concurrent with the adoption of this chapter, the Rochester City Council also votes to be subject to the provisions of RSA 676:12, I, wherein once the first legal notice for a proposed change in this chapter is published pursuant to RSA 675:7, unless exempted by RSA 676:12, VI, no building permit may be issued for any use or activity which would not be permitted under the proposed zoning change. Once final action is taken on the proposed zoning change, the Director of Building, Zoning, and Licensing Services may issue or deny the building permit based upon whether the zoning in place at that time (after final action) allows the use or activity or not.

K. Designee. Any City official or board or commission may designate any particular task or responsibility under this chapter to another official or board or commission, unless otherwise prevented from doing so by law.

§ 275-3.2. Effect of other laws. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

A. Most restrictive provision. Where a provision of this chapter differs from any provision contained in any other applicable statute, regulation, ordinance, code, standard, or policy, that provision which imposes the greatest restriction or the highest standard shall govern.

B. Overriding state or federal law. Where any state or federal law overrides any provision(s) of this chapter, the state or federal law shall be determining and any affected portions of this chapter may be disregarded or interpreted as necessary to comport with the overriding law.

§ 275-3.3. Permitting.

No application shall be approved nor shall any permit or approval be issued except in compliance with all pertinent provisions of this chapter and all requirements imposed under site plan and subdivision review. Where a proposal is subject to site plan or subdivision review, no permit or approval shall be issued until that review is conducted unless otherwise appropriately waived or adjusted. The following permits are required under this chapter (and under other sections of this chapter):

A. Building permit. No building or other structure as required by the City of Rochester Building Code, as amended, shall be constructed, altered, enlarged, or moved unless a building permit for such action has been

issued by the Director of Building, Zoning, and Licensing Services. In accordance with RSA 676:13, I, no building permit or certificate of occupancy shall be issued for any building or activity unless it is in compliance with the provisions of this chapter. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)**]

- B. Sign permit. No sign regulated by Article 29 shall be installed, erected, placed, displayed, altered, or enlarged unless a sign permit for such action has been issued by the Director of Building, Zoning, and Licensing Services.
- C. Fence permit. No fence or wall regulated by Article 23, Accessory Uses, shall be installed, erected, or expanded unless a fence permit has been issued by the Director of Building, Zoning, and Licensing Services.
- D. Driveway permit. No driveway, access point, or curb cut connecting a lot to a public road shall be constructed or installed unless a driveway permit has been issued in accordance with all requirements of this chapter and all other City, state, and federal regulations and policies. The Director of Building, Zoning, and Licensing Services or Commissioner of Public Works may waive the requirement for issuance of a specific driveway permit accessing a City road where a site plan application indicating details of the proposed driveway or access point has been duly approved by the Planning Board.
- E. Certificate of occupancy. No building or structure hereafter erected or altered (wholly or partly) or moved shall be used or occupied until the Director of Building, Zoning, and Licensing Services has issued a certificate of occupancy for the building or structure specifying the use to which it may be put. The Director may withhold issuance of a certificate of occupancy pending completion of required site improvements; compliance with this chapter and the Site Plan Regulations/Subdivision Regulations; compliance with any conditions of approval; compliance with pertinent City, state, and federal requirements; and submission of required information and documentation; and for other appropriate reasons. (See RSA 676:13.)
- F. Foundation certification. Footings/foundations for all new building construction shall be certified by a State of New Hampshire licensed land surveyor prior to any further construction.

§ 275-3.4. Enforcement.

- A. This chapter shall be enforced in accordance with the provisions set forth in RSA 676:15, 676:17, 676:17-a, 676:17-b and other applicable law.
- B. It is the responsibility of the Zoning Administrator to enforce this chapter.
- C. Any and all appropriate measures may be taken to enforce this chapter and to prevent, restrain, correct, abate, or mitigate any alleged violations, including, but not limited to, issuing notices of violation, cease-and-desist orders, fines and penalties, local land use citations, injunctions, or warnings; withholding of permits or approvals, where applicable; seeking to negotiate a reasonable solution with the alleged violator; or referring the alleged violations to the City Solicitor or the City of Rochester Police Department, or to other local, state, and federal agencies. See RSA 676:15 to 676:17-b.
- D. The owner of record of a property is responsible for ensuring that his/her/its property complies in full with all provisions of this chapter.
- E. Any person, partnership, association, company, corporation or individual who or which violates, disobeys, omits, neglects, or refuses to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor if a natural person or guilty of a felony if any other person and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a civil fine as set forth in RSA 676:17.
- F. Every violation of these regulations shall be a separate and distinct offense.
- G. Safe site conditions. Any person, company, or other entity who or which has been served with a notice and ceases any work or other activity shall not leave any structure or lot in such a condition as to be a hazard to

public health or safety or a detriment to the general welfare.

- H. Where any successful legal action is brought by the City to enforce this chapter, the City may recover its out-of-pocket costs and reasonable attorneys' fees actually expended in pursuing the legal action (in accordance with RSA 676:17, II).

§ 275-3.5. Amendments.

- A. Procedure. The procedure for amending this chapter is specified in RSA 675:2 and 675:7. Amendments to this chapter may be initiated by any citizen, the Planning Board, the City Council, the Mayor, the City Manager, or any department or other City board or commission in accordance with this chapter. The chronological steps for enacting zoning amendments are as follows:
- (1) Petition form. A blank petition form is obtained from the Planning and Development Department.
 - (2) Submission.
 - (a) The petition is completed and returned to the City Clerk's office along with a fee of one hundred dollars (\$100.) and any other pertinent materials. In the case of text amendments (see Subsection B below) the petition shall include specific proposed language.
 - (b) The fee is not charged, and the formal petition form need not be used, for amendments initiated by any board, commission, department, or other City official acting in an official capacity.
 - (3) The City Clerk's office forwards a copy of the petition to the Planning and Development Department.
 - (4) Deadline. See RSA 675:2 and 675:7.
 - (5) Council consideration.
 - (a) The petition is placed on the City Council agenda for consideration. At its discretion, the Council may deny the petition at this stage. If acceptable, it is sent to the City Attorney to place it into legal form.
 - (b) At the discretion of the City Manager, this step may be skipped and the petition may be sent directly to the City Attorney to place into legal form.
 - (6) Legal form. The City Attorney places the petition into legal form.
 - (7) First reading. City Council holds first reading on the petition. At its discretion the Council may deny the petition at this stage. When a petition is denied at any stage, the Council may elect to initiate an alternative amendment or to request that the Planning Board formulate an alternative amendment.
 - (8) Planning Board recommendation.
 - (a) The Planning Board makes a formal recommendation on the petition. The Board must make its recommendation within 45 days of first reading. At its discretion, the City Council may extend this time frame up to an additional 30 days.
 - (b) If the Planning Board recommends against a zoning amendment, a two-thirds vote of the City Council shall be required to adopt the amendment. If the Planning Board does not submit a recommendation within 45 days of first reading (or as may be extended by the City Council) or if it does not make a recommendation, then it shall be deemed a favorable recommendation for the purpose of this subsection herein.
 - (c) Where the Planning Board initiates an amendment, the proposal shall not be sent to the Board for a recommendation.

- (9) Public hearing. A public hearing is held, either by the full City Council or by a subcommittee of the City Council. The public notice must be placed in a newspaper of general circulation at least 10 days prior to the public hearing and it must be posted in at least two public locations. The full text of the proposed amendment need not be included in the notice if an adequate statement describing the proposal is stated in the notice.
 - (10) Second reading.
 - (a) Second reading is held and the amendment is either adopted or denied. Any proposed amendment shall require a majority affirmative vote of Council members present in order to pass except where the Planning Board has recommended denial (as discussed above). The City Council shall take final action on any petition within 120 days of first reading (except in the case of protest petitions; see Subsection C below).
 - (b) The Council may make minor changes to the proposed amendment at second reading/adoption, provided the amendment remains substantially the same as that which was advertised for the public hearing.
 - (11) Filing. A copy of any approved zoning amendments is placed on file with the City Clerk for public inspection. A copy is also sent to the New Hampshire Office of Energy and Planning.
- B. Types of amendments. There are two types of zoning amendments as follows. The procedure for amendments is the same except where noted.
- (1) Map amendment (also called a "rezoning"), where the zoning district for a lot, parcel, multiple lots, or a part of a lot is changed.
 - (2) Text amendment, where written language in this chapter is changed.
- C. Protest petition.
- (1) In accordance with RSA 675:5, adoption of an amendment that is the subject of a protest petition shall require a favorable vote of 2/3 of all the members of the City Council present and voting. In order to qualify as a protest petition, a protest against a proposed map amendment must be signed by either:
 - (a) The owners of 20% of the gross land area included in the proposed change; or
 - (b) The owners of 20% of the land area situated within 100 feet immediately adjacent to the land contained in the proposed change or land across a road from the land contained in the proposed change.
 - (2) The address of the subject property must be included on the petition and the property owners signing the petition must identify themselves on the petition by name and address so that the City Clerk may identify them as interested and affected parties.
 - (3) The protest petition must be submitted to the City Clerk at least seven days prior to the date at which second reading is scheduled. Copies of the protest petition will be distributed to City Council members.
 - (4) Any individual protest petition may apply to only one proposed zoning amendment. Separate protest petitions must be submitted for multiple amendments.
 - (5) In the case of a protest petition, the City Council shall act within 120 days of the date of first reading.

ARTICLE 4

Zoning Board of Adjustment and Building Code Board of Appeals**§ 275-4.1. Powers of Board.**

The powers of the Zoning Board of Adjustment and Building Code Board of Appeals shall include those prescribed in RSA 674:33, 674:33-a, and 674:34, as amended.

- A. Administrative appeals. In accordance with RSA 676:5, the Board shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by any officer, department, board, or bureau of the City of Rochester in the administration, interpretation, or enforcement of this chapter.
- B. Variances.
- (1) The Board may authorize, upon appeal in specific cases, a variance from the terms of this chapter if it determines that all of the following conditions are met:
 - (a) The variance will not be contrary to the public interest;
 - (b) The spirit of this chapter is observed;
 - (c) Substantial justice is done;
 - (d) The values of surrounding properties are not diminished; and
 - (e) Literal enforcement of the provisions of this chapter would result in an unnecessary hardship, as follows:
 - [1] For purposes of this condition, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - [a] No fair and substantial relationship exists between the general public purposes of the chapter provision and the specific application of that provision to the property; and
 - [b] The proposed use is a reasonable one.
 - [2] If the criteria in Subsection B(1)(e)[1] above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with this chapter, and a variance is therefore necessary to enable a reasonable use of it.
 - (2) The Board shall determine whether to grant a variance by voting on each of the criteria in Subsection B(1) separately. The Board shall grant a variance only if each of the five criteria receives at least three votes in the affirmative. **[Added 12-5-2017]**
 - (3) Each criteria receiving at least three votes in the affirmative or negative must include findings of fact to support such vote; said findings of fact must each receive at least three votes in the affirmative. **[Added 12-5-2017]**
 - (4) Notwithstanding Subsection B(1) and (2), the Board may grant a variance from the terms of this chapter without a finding of a hardship arising from conditions of a premises subject to this chapter when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that: **[Amended 12-5-2017]**
 - (a) Any variance granted under this subsection shall be in harmony with the general purpose and intent

of this chapter; and

- (b) In granting any variance pursuant to this subsection, the Zoning Board of Adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

C. Special exceptions.

- (1) The Board grants special exceptions for particular uses and activities as listed in the Tables of Uses in Article 18, Use Regulations, and as articulated in Article 22, Special Exceptions.
- (2) The Board shall grant a special exception only if it reasonably determines that all of the following base criteria are met (in addition to those criteria and conditions included for specific uses in Article 22):
 - (a) Location. The specific site is an appropriate location for the proposed use or structure;
 - (b) Neighborhood. The proposed use would not be detrimental, injurious, obnoxious, or offensive to the neighborhood;
 - (c) Traffic. The proposed use would not create an undue hazard or nuisance to vehicular or pedestrian traffic;
 - (d) Public facilities. Adequate and appropriate facilities and utilities would be provided to ensure the proper operation of the proposed use or structure; and
 - (e) Master Plan. The proposed use or structure is consistent with the spirit of this chapter and the intent of the Master Plan.

D. Equitable waivers.

- (1) When a lot, other division of land, or structure is discovered to be in violation of a physical layout or dimensional requirement of this chapter, the ZBA shall, upon application by the property owner, with the burden of proof being on the property owner, grant an equitable waiver from that specific requirement only if the Board makes all of the following findings:
 - (a) Late discovery. The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
 - (b) Good faith error. The violation was not an outcome of ignorance of the law, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
 - (c) No adverse impact. The violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
 - (d) Cost of correction. Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.
- (2) Ten years passage. In lieu of the findings required under Subsection D(1)(a) and (b) immediately above, the owner may demonstrate to the satisfaction of the Board that the violation has existed for at least 10 years and that no enforcement action, including written notice of violation, has been commenced against

the violation during that time by the City or any person directly affected.

- E. Administrative appeals under the Building Code. The Zoning Board of Adjustment functions as the Building Code Board of Appeals. Upon an appeal filed by any person aggrieved by a decision of the Building Inspector dealing with the Building Code, the ZBA may vary the application of any provision of the Building Code in any particular case when, in its opinion, the enforcement of the Building Code would do manifest injustice and would be contrary to the spirit and purpose of the Building Code and the public interest.

§ 275-4.2. Additional provisions.

- A. Minimum vote to approve. The concurring vote of at least three members of the Board is required to approve any application or to overturn any decision of an administrative official (RSA 674:33, III).
- B. Assuming powers of administrative official. In exercising its powers under § 275-4.1A and B above, the Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.
- C. Setting conditions. In granting any approval under § 275-4.1 above, the Board may stipulate any reasonable conditions it deems necessary as part of that approval.
- D. Deadline for administrative appeal. Any administrative appeal to the Board under § 275-4.1A and E above must be filed within the time frame specified in the Board's bylaws.
- E. Stay of proceedings. The effect of an appeal, including suspension of permits and stay of proceedings, shall be as stated in RSA 676:6.
- F. Submitted materials. Any documentation, drawings, renderings, or other physical materials submitted to the Board by the applicant or his/her agent concerning features of proposed buildings, structures, sites, parking, uses, signage and other elements shall be deemed conditions of the approval (subject to appropriate adjustment and modification) where:
 - (1) It was clearly indicated or implied that the applicant intended to develop/use the property in accordance with the materials submitted; and
 - (2) The Board clearly relied upon the nature of the design or proposal contained in the materials in its approval.
- G. Submission requirements. The ZBA may stipulate what particular information is required in order to properly review an application. The Board may continue or postpone any review where insufficient information or documentation is submitted.

§ 275-4.3. Procedures.

- A. Public hearings.
 - (1) The Zoning Board of Adjustment shall hold a public hearing on every application that comes before the Board. A public notice of the public hearing shall be posted and notification of abutters shall be mailed for each application according to the process described in RSA 676:7.
 - (2) The Board shall hear all abutters; holders of conservation, preservation, or agricultural preservation restrictions; and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear non-abutters as it reasonably deems appropriate.
 - (3) Any party may appear in person or be represented by his/her agent or attorney at the public hearing.
 - (4) Any interested party may also submit comments to the Board, either in advance of the hearing or at the

hearing.

- B. Rehearing procedures. Procedures for rehearings before the ZBA are prescribed in RSA 677:2 and 677:3.
- C. Appeal process. The process for appealing ZBA decisions is prescribed in RSA 677:4 through 677:14 and 677:16.

§ 275-4.4. Administration.

- A. Membership.
 - (1) Pursuant to RSA 673:3 and 673:6, the Zoning Board of Adjustment shall consist of five members plus up to five alternates. In accordance with Section 74 of the Rochester City Charter, the Mayor shall appoint members annually for staggered three-year terms. Vacancies shall be filled for any unexpired terms.
 - (2) A member may be removed from the Board for cause in accordance with RSA 673:13.
- B. Rules of procedure. The ZBA shall adopt rules of procedure/bylaws to govern its business in accordance with the provisions of this chapter and RSA 676:1.
- C. Conflict of interest. Members shall be disqualified from participating in the hearing of any issue where there is a conflict of interest in accordance with RSA 673:14 and the Board's rules of procedure.
- D. Fees. The City Council shall set fees for applications submitted to the ZBA.

ARTICLE 5
Residential Zoning Districts

§ 275-5.1. General terms.

The uses permitted by right, conditionally, or by special exception are displayed in Table 18-A, Residential Uses. Dimensional regulations are displayed in Table 19-A, Dimensional Standards - Residential Districts.⁴ Other applicable requirements for development within any residential zoning district are presented throughout this chapter.

§ 275-5.2. General development standards.

The following standards apply to all property in the "R" Districts:

A. Driveways.

- (1) Driveway location. Where site plan or subdivision review is required, the location of the driveway will be determined by the Planning Board during its review and after input from the Department of Public Works. If the location of any driveway needs to be modified during the permitting process for the driveway, the applicant shall notify the Planning and Development Department. If the modification is determined to be minor by the Chief Planner, it shall be approved administratively without the need to go back to the Planning Board.

B. Parking areas.

- (1) Side and rear setbacks. Parking areas/parking lots shall not be located in front setback areas (see definition in Article 2), nor forward of the front facade except for parking situated within clearly defined driveways. Parking areas/parking lots shall be located in the side or rear.
- (2) Screening from the street. All parking areas/parking lots, except for parking situated within clearly defined driveways, for all uses other than single- or two-family dwellings shall be fully screened from the street unless it is located in rear setbacks.
- (3) Screening from abutters. All parking areas/parking lots, except for parking situated within clearly defined driveways, for all uses other than single- or two-family dwellings shall be fully screened from abutting properties.
- (4) Off street or designated spaces. All parking must be situated off street, outside of the public right-of-way, except for parking in marked and designated on-street parking lanes/spaces.

C. Garages and outbuildings.

- (1) No part of any freestanding or attached garage or other outbuilding shall be located in the front setback (see definition for "setback, front" in Article 2).
- (2) No freestanding garage or other outbuilding/structure which exceeds 200 square feet may be made of prefabricated metal or undressed poured concrete (except for foundations).

§ 275-5.3. Residential-1 and Residential-2 Districts (R1 and R2).

A. Character of districts. The primary goals of the R Districts are: **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

- (1) To enhance these older residential areas through sensitive, small-scale infill construction, building

⁴ Editor's Note: The tables are included as attachments to this chapter.

renovation, and redevelopment; and

(2) To foster new development in remaining open areas.

B. The R1 District is intended to allow single-family neighborhoods and thus allows single-family use with few other allowed uses. The R2 District allows for a mix of residential types and limited nonresidential uses.

§ 275-5.4. Agricultural District (AG). [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

The AG District includes mostly outlying areas of the City; such areas may or may not be serviced by City water or sewer services.

A. Objectives. The objectives of the district are to:

- (1) Preserve the rural character of outlying areas of the City. The district includes many sensitive ecological, agricultural, historic, cultural, and archaeological resources.
- (2) Maintain the area's natural and scenic qualities embodied in its forests and fields, wetlands, streams, ponds, and historic farmsteads.
- (3) Promote the preservation of open space.
- (4) Preserve existing farms and promote expansion of agricultural activity.
- (5) Permit the establishment of recreational, resort, and tourism facilities based upon natural and cultural resources.

B. Specific development standards.

- (1) The development of conservation and village plan alternative subdivisions is encouraged for the protection of open space and to protect the ecological, agricultural, historic, cultural, and archaeological resources of any site.
- (2) All nonresidential uses, except agricultural uses, shall require additional setbacks and/or dense buffering to eliminate impacts to other allowed uses in the zone.

§ 275-5.5. Neighborhood Mixed-Use District (NMU).

A. District location. This district is located in various areas throughout the City.

B. Objectives. The objectives of the district include:

- (1) Function. The Neighborhood Mixed-Use District is established largely to serve adjacent residential neighborhoods. The NMU District allows, for example, a small convenience store, laundry facility, real estate office, personal services establishment, and day-care center.
- (2) Character of district.
 - (a) Smaller in scale, in area of coverage, size of buildings, and scope of operations.
 - (b) Located at the edge of neighborhoods, on or in very close proximity to collector and arterial roads.
 - (c) Well connected to those neighborhoods.
- (3) Design. The NMU District calls for thoughtful design of parking, lighting, signage, architecture, location of entrances, location of dumpsters, and other matters. Parking should be located on street (parallel or diagonal) or through well located and screened small lots in side or rear yards.

- (4) Appropriate locations. The NMU District might also be located close to public institutions like schools, churches, day-care centers, senior citizen centers, and recreation centers, as well as at transit stops.

C. Development standards.

(1) Uses.

- (a) Drive-through facilities. Drive-through facilities are permitted in the district by conditional use.
- (b) Outdoor uses. Outdoor uses, such as dining, cafes, and seating (all of which shall be accessory to an allowed primary approved use), may be established within the public right-of-way or on other City property by approval of the City Council.
- (c) Nonresidential uses are permitted by right in existing buildings only; nonresidential uses are permitted as new construction only by conditional use.

(2) Setbacks.

- (a) Build-to zone. There is a build-to zone between zero and 20 feet. This zone may be altered by conditional use where appropriate for civic uses, where not practical, or for other design considerations.
- (b) Side/rear setbacks. There are no minimum side setbacks except for spacing between buildings as specified in the Building/Fire Code. The Planning Board may alter the rear setbacks by conditional use, where appropriate, such as to accommodate rear decks for dining, to accommodate pedestrian-oriented facilities, or to allow for optimal uses of lots consistent with the intent of this section, provided that any reduction does not interfere with or negatively impact abutting properties, particularly residential properties.

(3) Parking areas.

- (a) Rear setbacks. Within the NMU District parking is allowed in rear yards but may be permitted in side yards by conditional use. Parking is not allowed in front yards.

(4) Architectural standards.

- (a) The building footprint for any individual nonresidential building shall not exceed 4,000 square feet. The maximum length of building frontage is 75 feet. The Planning Board may waive either of these requirements by conditional use where it determines that the intent of providing for smaller-scale buildings in the NMU Zone is met through special design approaches.
- (b) The architectural regulations under the Site Plan Regulations should be strictly applied to ensure that new buildings and renovations are harmonious with the character of nearby residential neighborhoods.

ARTICLE 6
Commercial Zoning Districts
[Amended 1-12-2016]

§ 275-6.1. Introduction.

The Downtown Master Plan provides guidance in revitalizing the downtown. It is hoped that downtown Rochester remains the heart of the City, as an active place that is densely populated and used by all citizens, in different ways and at different times. It is emphasized that carefully crafted laws, pertaining to driveway access, parking, signage, lighting, and building layout and design, are necessary to ensure that the Downtown Commercial District remains vibrant.

- A. Pedestrian orientation. The DC, NMU and OC Zoning Districts have a strong pedestrian orientation. The districts are structured to accommodate the automobile as well, but not at the expense of pedestrian character.
- B. Automobile orientation. The HC, and some areas of the OC, Districts have a strong automobile orientation. Nonetheless, quality of design and attention to pedestrian character is still important in these zones as people will still be walking to and within the sites.

§ 275-6.2. General terms.

Uses which are permitted by right, conditionally, or by special exception are listed in Article 18, Use Regulations. Dimensional regulations are presented in Article 19, Dimensional Regulations. Other applicable requirements for development within commercial zoning districts are presented throughout this chapter.

§ 275-6.3. Downtown Commercial District (DC).

- A. District location. The most intensive pedestrian-oriented commercial area in the City is the DC District where there is the strongest sense of enclosure. Buildings are predominantly multistory, of masonry construction, and built right to the sidewalk, with a clear, consistent, relatively uninterrupted street wall (with the side walls of buildings butting up to each other).
- B. Objectives.
 - (1) Provide for a mix of uses within the zone.
 - (2) Preserve existing historic architectural structures and designs.
 - (3) Provide for the adaptive reuse of existing historic and non-historic structures.
 - (4) Encourage commercial and City-wide redevelopment.
 - (5) Provide for safe pedestrian and non-automotive travel within the district.
 - (6) Provide for minimum to no restrictions on hours of operations.
 - (7) Encourage both rental and ownership opportunities for residential housing in the district.
- C. Development standards.
 - (1) Uses.
 - (a) (Reserved)⁵
 - (b) Drive-through facilities. Drive-through facilities are permitted in the DC District by conditional

5. Editor's Note: Former Subsection C(1)(a), First floor, was repealed 5-7-2019.

use only. Where permitted, they must be situated in the rear of the building or in the side of the building only if location at the rear is not practical.

- (c) Outdoor uses. Outdoor uses, such as dining, cafes, seating (all of which shall be accessory to an allowed primary approved use) and sidewalk vendors, may be established within the public right-of-way or on other City property by approval of the City Council.

(2) Setbacks.

(a) Front build-to line/zone.

- [1] In the DC District a build-to line of five feet is established for all commercial buildings and for additions to such buildings fronting on the street (it is preferred that the building be built right up to the sidewalk with no setback).
- [2] In the DC District a build-to zone between five feet and 10 feet is established for all noncommercial buildings and for additions to such buildings fronting on the street.
- [3] The build-to line and build-to zone may be altered by conditional use where appropriate, such as for churches and civic-type buildings, which may warrant a larger front setback and landscaped or hardscaped yard, or to create pedestrian-oriented amenities such as pocket parks or plazas or upon a finding that the build-to line or zone is not practical or to conform to prevailing existing setbacks.

(b) Side/rear setbacks.

- [1] There are no minimum side setbacks except for spacing between buildings as specified in the Building and Fire Codes. Also see special setbacks in Note 1 on Table 19-B.⁶ **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- [2] The Planning Board may alter the rear setbacks by conditional use, where appropriate, such as to accommodate rear decks for dining, to accommodate pedestrian-oriented facilities, or to allow for optimal uses of lots consistent with the intent of this section. The Planning Board must determine that any reduction does not measurably interfere with or negatively impact abutting properties, particularly residential properties.

(3) Parking requirements. **[Amended 5-7-2019]**

(a) See site plan regulations.

- (4) Parking areas. Within the DC District parking is not allowed in front yards and is allowed in rear and side yards by conditional use.

§ 275-6.4. Office Commercial District (OC).

- A. District location. This district is located in transitional areas as well as along the major nodes and corridors. The OC District includes some older structures that have been converted to commercial uses and also includes some larger, undeveloped sites.
- B. Objectives.
 - (1) The purpose of the district is to preserve the wood-frame architecture, as much as feasible, with a mix of residential and low-impact nonresidential uses (office, institutional, bed-and-breakfasts, and limited retail up to 2,500 square feet).

6. Editor's Note: Table 19-B is included as an attachment to this chapter.

- (2) Allows for large-scale office, institutional, hospitality, and civic uses and is ideally oriented toward campus-type settings.
- (3) Oriented toward open, suburban-type corridors. The district is distinctly automobile oriented.
- (4) Orientation. See Figure 4-D - Recommended Site Design in OC District, below.

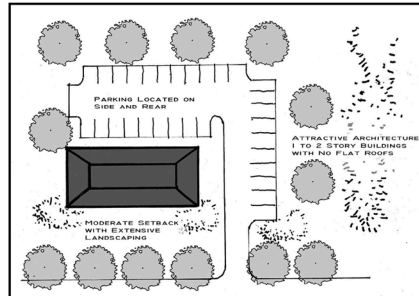


Figure 4-D - Recommended Site Design in OC District

- (5) Mixed use within the district and within individual buildings is encouraged.

C. Development standards.

(1) Uses.

- (a) Nonresidential uses are permitted by right in existing buildings and new construction.
- (b) Drive-through facilities are not permitted in this district.

- (2) Build-to zone. There is a build-to zone between 10 and 20 feet. This zone may be altered by conditional use where appropriate for civic uses, where not practical, or for other design considerations.

(3) Parking areas.

- (a) Screening. Any on-site parking must be fully screened from the street (except for driveway and pedestrian passageways).
- (b) Location. Within the OC District parking is allowed in rear yards only but may be permitted in side yards upon a finding that off-street parking is appropriate in this situation, rear yard parking is not practical, the side yard parking will be completely screened, and there will be no significant adverse impact on the streetscape.
- (c) Fronting on the street. New off-street parking areas on lots fronting on the street, situated in front yards, or visible in any prominent manner from the street are not permitted. In the course of site plan review for new applications any existing parking areas or lots that do not meet this requirement shall be mitigated to the extent fair and practical (see Article 30, Nonconforming Property).
- (d) Driveways. Where driveways are approved, parking is permitted within the driveway portion located in front and side yards.

- (4) Driveways. No part of any driveway or curb cut may be located in front of the front facade of any primary building; rather, they must be situated along or in close proximity to side lot lines, unless otherwise approved by the Planning Board, Building, Zoning, and Licensing Services Department, or Department of Public Works. **[Amended 3-5-2019]**

- (5) New buildings. The architectural regulations under the Site Plan Regulations should be strictly applied.

§ 275-6.5. Highway Commercial District (HC).

A. District location.

- (1) The HC District tends to be located further from the City center and is oriented toward larger parcels, larger buildings, high-value development, and retail sales (i.e., "big box development," large shopping centers, and franchise development). The HC District may include parcels of land located on both the easterly and westerly sides of the main traffic artery. These parcels will benefit from any improvements to be made to the main traffic artery.
- (2) Parcels located on the side of the main traffic artery may have direct contact with, and benefit from, the service road planned to be built alongside the main traffic artery and intersections connecting to this service road, if and when opportunities for construction of this service road and these intersections develop.

B. Objectives.

- (1) The HC Districts are geared toward high-volume automobile traffic and, accordingly, less stringent design standards are appropriate.
- (2) Provide landowners and developers with flexible yet clearly defined requirements.
- (3) Minimize infrastructure cost to the City through good planning for the district as a whole rather than based upon individual lots.
- (4) Maximize the developable areas on the parcels within the district through creation of flexible dimensional requirements.
- (5) Minimize traffic impacts to the main traffic artery through implementation of a service road and shared intersections with the main traffic artery.

C. Development standards.

- (1) Architectural renderings, landscaping, signage, and lighting shall be required in the HC commercial corridors.
- (2) The HC District includes older, tighter and more built-out commercial strips with smaller lots, smaller buildings, and less room for new development. The full range of conventional automobile-oriented uses is permitted in the HC District, fast food, drive-through restaurants, car washes, and retail stores, along with warehouses and light industry. The HC District is the only district in which the sale of exclusively used automobiles (without also requiring sales of new automobiles) is permitted.
- (3) The HC District permits larger signs and taller light poles.
- (4) Parking. Parking in front of buildings and large lots fronting the road is acceptable within the HC Districts.

D. HC District pavement dimensional regulations. For new construction, the setbacks shown in the table below shall apply to pavement used for parking and interior accessways. Driveways into the site from the service road are exempt from these setbacks. These setbacks guarantee a minimum ten-foot wide area for landscaping around the perimeter of the site (five feet plus five feet for adjoining lots along the side lot lines). This subsection shall supersede perimeter landscaping buffer requirements (15 feet along the front and 10 feet along the side lot lines) established in the Site Plan Regulations.

	Minimum Property Line Setbacks (in feet)		
	Front	Side	Rear
Pavement	10	5	10

- E. HC District service road regulations. The following requirements apply to those lots situated alongside the main traffic artery, on which the planned service road and access roads leading to or from the service road are to be situated.
- (1) Rights-of-way. To the extent practical and appropriate, as determined by the Planning Board, as part of any proposed site plan or subdivision plan, each landowner/developer shall incorporate into his/her plan, on the subject land, a sixty-foot wide right-of-way for the construction of the service road and/or access road(s). The right-of-way shall traverse the subject lot from the southerly lot line to the northerly lot line, as appropriate, and in the case of any access road, from the easterly to the westerly lot line, as appropriate, in accordance with the layout of the planned service road and access road(s).
 - (2) Temporary termination. Where the service road has not been built on the lot adjacent to the subject property, a temporary cul-de-sac shall be built on the subject property to provide for an appropriate turnaround and future connection to the service road on that adjacent lot. Appropriate provisions may be established by the Planning Board to facilitate seamless connection of that cul-de-sac in the future to a service road on the adjacent lot, when that road may be constructed. The temporary cul-de-sac shall conform to the City of Rochester Subdivision Regulations.
 - (3) Intersections with the main traffic artery. As part of any site plan or subdivision plan, the landowner/developer shall incorporate predetermined access points onto the main traffic artery into his/her plan.
 - (4) NHDOT. Developers shall coordinate with the New Hampshire Department of Transportation (NHDOT) regarding the design of the access roads and any intersections with the main traffic artery, where it is a state highway.
- F. HC District road design standards. **[Amended 3-5-2019]**
- (1) Service and access roads for new construction shall comply with the following standards:
 - (a) Right-of-way: 60 feet.
 - (b) Lane width (each): 12 feet.
 - (c) Paved shoulder (each): four feet.
 - (d) Sidewalk (bituminous): five feet.
 - (e) Grass strip: five feet (between road and sidewalk).
 - (f) Curb: determined by site plan review.
 - [1] Sloped: side without sidewalk.
 - [2] Vertical: side with sidewalk.
 - (g) Cross-sectional requirements:
 - [1] Wearing course: one inch (NHDOT Item 403.11).
 - [2] Bearing course: two inches (NHDOT Item 403.11).
 - [3] Crushed gravel: six inches (NHDOT Item 304.3).

[4] Bank-run gravel: 12 inches (NHDOT Item 304.2).

- (2) All materials shall be installed in compliance with NHDOT specifications and the City of Rochester Subdivision Regulations.

G. HC District stormwater management requirements.

- (1) Stormwater controls for each individual site plan shall be designed in compliance with the New Hampshire Stormwater Manual Volume 2, or the most recent version. To ensure adequate stormwater control given the more flexible dimensional regulations, these design guidelines shall be followed regardless of any requirement imposed as part of the New Hampshire Department of Environmental Services alteration of terrain permitting (for 100,000 square feet +/- of disturbed surface).
- (2) The Planning Board shall consider proposals for use of innovative stormwater control structures, such as porous pavement, bioretention areas, gravel wetlands, etc. If the Board concludes that use of these structures is in order, then:
 - (a) It may be appropriate to allow for interior landscaped islands within parking lots to be constructed without perimeter curbing if the curbing would interfere with the routing of the stormwater.
 - (b) The Planning Board is hereby empowered to adjust parking requirements specified in Article 26, Roads and Parking, herein.

H. HC District utility standards for new construction.

- (1) All utilities shall be underground.

I. HC District parking lot interconnections.

- (1) Where practical, and not impeded by wetlands or other physical constraints, parking lots shall be interconnected between sites.
- (2) Appropriate cross easements shall be developed between properties to accommodate parking lot interconnections.

J. HC District design standards.

- (1) Trash and delivery areas. The lots situated between the service road and the main traffic artery call for special treatment because they have double frontages.
 - (a) Whenever practical, and not impeded by wetlands or other physical constraints, trash and delivery areas shall be located off of a shared access driveway between sites.
 - (b) The access driveway may be located at/along the side lot line(s), with each lot having its own trash and delivery area located off this access driveway.
 - (c) Trash, delivery, and loading areas shall be well screened from the main traffic artery.
- (2) Facade treatment. Building facades fronting on the service road and the main traffic artery shall both be treated as front facades, both thereby meriting attractive treatment, under the architectural standards included in the City of Rochester Site Plan Regulations.
- (3) Outdoor seating. Restaurant proprietors are encouraged to include seasonal outdoor seating.
- (4) Signage. All provisions of Article 29, Signage, herein shall apply.

K. Adjustments in requirements. Since a number of the requirements specified in this section are design oriented, the Planning Board may adjust any requirements of HC District pavement dimensional regulations, HC

District service road regulations, HC District road design standards, HC District stormwater management requirements, HC District utility standards, and HC District design standards, on a case-by-case basis, where it reasonably determines that strict application of any requirement is impracticable due to particular conditions on a given site.

ARTICLE 7
Industrial Zoning Districts

§ 275-7.1. General terms.

Uses which are permitted by right, conditionally, or by special exception are listed in Article 18, Use Regulations. Dimensional regulations are presented in Article 19, Dimensional Regulations. Other applicable requirements for development within any industrial zoning district are presented throughout this chapter.

§ 275-7.2. General Industrial District (GI).

A. Objectives.

- (1) The district is flexible in allowing nearly the full range of industrial operations, as well as high-impact uses which might not conventionally be considered industrial: sawmills, power-generating plants, and warehouse and distribution facilities. It also may accommodate those uses generally classified as assembly, high technology, precision manufacturing, research and development, light industrial, and similar office-type functions (see Article 2 definitions for "industry, light" and "industry, heavy").
- (2) Maintain flexibility in siting the General Industrial District because of design standards which manage potential environmental impacts.
- (3) Exercise a minimal to moderate level of aesthetic review based upon the level of segregation from retail-type businesses, residential areas, and ecological resources.

B. Development standards.

- (1) All manufacturing, processing, assembly, fabrication, servicing and repair operations must be carried out within an entirely enclosed building unless waived by conditional use.
- (2) No industrial building or operation shall be situated closer than 100 feet to the boundary line of any adjacent residential property. The Planning Board may reduce this setback to 50 feet by conditional use or where the use is accessory to a primary commercial use.
- (3) The use, processing, and generation of hazardous substances is strictly regulated in accordance with all applicable local, state, and federal law.

§ 275-7.3. Recycling Industrial District (RI).

A. Objectives. The Recycling Industrial District is established to accommodate large-scale, land-intensive landfill, recycling, and junkyard type uses such as those situated off Rochester Neck Road. The facilities should be designed for maximum efficiency, compatible with their natural surroundings, and incorporate sufficient buffers to insulate surrounding residential areas from adverse impacts.

B. Development standards.

- (1) Any outside processing activities and storage facilities shall be fully screened from the road and from any abutting residential property. This requirement shall not apply to active landfills whose elevation practically precludes such screening.
- (2) No landfill, recycling, or junkyard operation shall be situated closer than 200 feet to the boundary line of any adjacent residential property.

ARTICLE 8
Granite Ridge Development (GRD)

§ 275-8.1. Purpose; conditional use permits. [Amended 7-5-2022]

- A. Well-planned commercial zones provide many benefits. For the community, tax revenue is maximized, infrastructure burden is reduced, and traffic impacts are minimized. For landowners and developers, good planning allows for a process that is coherent, flexible and easy to navigate.
- B. The Granite Ridge Development Zone (GRD) is intended to:
- (1) Provide landowners and developers with flexible yet clearly defined requirements.
 - (2) Minimize infrastructure cost to the City through good planning for the zone as a whole rather than based on individual lots.
 - (3) Maximize the developable areas on the parcels within the zone through the development of both commercial and residential projects.
 - (4) Minimize traffic impacts to Route 11 through implementation of a service road and shared intersections with Route 11.
- C. Purpose and intent.
- (1) Nonresidential commercial development remains the primary goal of the GRD, but the addition of multifamily and mixed-use is designed to allow a mixture of residential and commercial uses on one parcel. Developers will be required to receive conditional use approval from the Planning Board prior to project construction. The zone includes options that enable and encourage greater flexibility in the design of mixed-use projects. Developers will provide a development plan outlining the project and how it conforms to the regulations and design standards outlined in this document.
 - (2) Developments are intended to be complementary of one another and to create a sense of community between the mixed uses. Housing and commercial uses can be developed to provide the appropriate use of land, facilitate the economical and efficient provision of public services, promote open space conservation, protect the natural and scenic attributes of the land, and expand opportunities for the development of, outside the traditional residential developments.
- D. Conditional use permit. Conditional use approval may be granted by the Planning Board after proper public notice and public hearing, provided that the proposed project complies with the following standards:
- (1) The applicant demonstrates that the development complies with the design guidelines outlined in the design standards portion of this document, as well as applicable site review regulations and requirements of § 275-21.4. These guidelines encourage components that act as one project and not as two adjacent projects.
 - (2) The applicant demonstrates that the development poses no detrimental effects to surrounding properties. Potential areas of impact that need to be analyzed include, but are not limited to, vehicular traffic, noise, visual blight, light pollution, offensive emissions such as dust, odor, or smoke.

§ 275-8.2. Delineation of Granite Ridge Development Zone. [Amended 7-5-2022]

The Granite Ridge Development Zone includes those parcels of land so identified on the Zoning Map of the City of Rochester, New Hampshire, which accompanies this chapter and is on file in the offices of the Director of Planning, Zoning, and Development and the Director of Building and Licensing Services. The GRD includes parcels of land located on both the easterly and westerly sides of New Hampshire State Route 11/Farmington Road.

§ 275-8.3. Permitted uses. [Added 7-5-2022⁷]

A. Principal uses.

(1) Nonresidential uses are allowed as follows:

(a) Any use as allowed within Tables 18B through 18E of Chapter 275, Attachments 2 through 5.

(2) Housing (conditional use):

(a) Dwelling, mixed-use.

(b) Dwelling, development multifamily.

(c) Dwelling, multifamily.

B. Accessory uses:

(1) Recreational facilities.

(2) Community center.

(3) Maintenance buildings.

(4) Rental and sales offices.

(5) Laundry facilities.

(6) Co-working space: a space where multiple tenants rent working space and have the use of communal facilities.

§ 275-8.4. Site plan process. [Added 7-5-2022]

The developer shall prepare a site plan, which locates the proposed types of nonresidential and residential development, accessory uses, utilities, access roads, open space, and public ways. The parcels comprising the development may be under separate ownership, but shall be treated as one development and shall be bound by the approval granted for the entire site plan. If approval is granted, individual lots must be developed as part of the larger development plan and phasing outlined below, and not separately. A long-term maintenance plan may also be required.

A. Commercial is the primary use within the GRD, with residential being considered a secondary use. As such, a minimum of 55% of the total footprint of the project will be reserved for commercial/nonresidential use. The remaining 45% of the total project footprint may be utilized for residential development. By a majority vote, the Planning Board may adjust the final commercial/residential percent allocations, subject to conditional use details in § 275-21.4.

B. Dwelling, mixed-use (MU) provided that 100% of the square footage of the first floor is reserved for a commercial use. Accessory and support uses (e.g., mechanical, storage, etc.) are permitted on the first floor of a mixed-use building, and will be recognized as commercial use. Buildings classified as MU will be exempt from requirements outlined in Subsections A and F.

C. A minimum of 15% of the square footage of the original parcel shall be reserved as open space and identified as such on the development plan. Fifty percent of the required open space must be usable uplands and reasonably accessible to all property owners/tenants in the project. Any open space provided above 15% may be mixed wetlands and upland. Amenities constructed for use by the tenants (clubhouse, gym, ball courts, etc.) may be considered part of the "open space" calculation as determined by the Planning Board. The

7. Editor's Note: This ordinance also renumbered former §§ 275-8.3 through 275-8.11 as §§ 275-8.6 through 275-8.14, respectively.
275:56

Planning Board shall have the flexibility to negotiate with the developer when determining the final open space requirement.

- D. Residential uses require the submission of a plan outlining the number of proposed units achievable under current zoning allowances. This plan should be based upon maps that include plans for open space, parking, roadways, and all nonresidential and accessory buildings associated with the project. The final number of approved units will be subject to Planning Board review, and in some cases may require an analysis of the project's impact on existing City infrastructure prior to approval.
- E. The minimum size of a residential unit shall be 500 square feet.
- F. No more than 50% of the residential development may be occupied prior to the completion of between 25% and 50% of the nonresidential structures. By a majority vote, the Planning Board may adjust these percent allocations subject to conditional use details in § 275-21.4.
- G. The development plan may be phased for a term of up to five years. For purposes of this section, development shall include:
 - (1) Construction of structures, to include proposed timeline, phasing, and ratio of commercial/residential construction;
 - (2) Schedule for proposed occupancy and leasing of commercial and residential uses;
 - (3) Environmental remediation;
 - (4) Site preparation or demolition;
 - (5) Roadway utility or recreation and common area design and construction; and
 - (6) Bonding or other security for site development.
- H. Provided the developer is making reasonable efforts to develop the site, the Planning Board may extend the initial five-year phasing period, provided a request for extension is submitted before the expiration of the initial five-year phasing term.
- I. Residential development plan guidelines.
 - (1) Dwelling layouts shall be so designed that parking is screened from external roadways by landscaping, building locations, grading, or screening. Major topographical changes or removal of existing trees shall be avoided wherever possible, and water, wetlands, and other scenic views from the external streets shall be preserved as much as possible.
 - (2) Where possible, it is desirable and encouraged to mix residential and nonresidential uses. This may be achieved through situating the buildings close to each other, or through allowing structures to house residential preferably on the second or above floor, and nonresidential on the first floor. Creativity and flexibility are encouraged and the development plan may offer another option for mixed-use.
 - (3) All residential development must adhere to the architectural design guidelines outlined in section § 275-8.5 of this article.
- J. Nonresidential development plan guidelines.
 - (1) The general character of the nonresidential structures within the development lot is intended to be a pedestrian-friendly setting, with emphasis on the natural characteristics of the site. The site design should create a sense of character and cohesiveness through landscaping, facade treatment, and signage.

§ 275-8.5. Architectural and design standards. [Added 7-5-2022]

- A. Architecture. The purpose of these standards is to promote flexibility in large-scale mixed-use developments by considering project proposals based upon a comprehensive, integrated, and detailed plan rather than the specific constraints applicable to piecemeal, lot-by-lot development under conventional zoning requirements. A mixed-use development should improve the quality of new development by encouraging attractive features and promoting quality site design.
- B. Nonresidential site layout. Planning for mixed-use development on a site encompasses items such as its relationship to surrounding uses, building orientation on the site, pedestrian and vehicular circulation, and efficiency of parking areas, screening of loading and utility areas, and the design of landscaping, signage, and lighting.
- (1) Trash and loading:
- (a) Trash and loading areas should be integrated into building design, and possibly inset and/or screened with architectural features. Orient support uses such as trash enclosures, compactors, truck loading areas, and outdoor storage away from residential uses to the extent practical.
 - (b) Whenever practical, and not impeded by wetlands or other physical constraints, trash and delivery areas shall be located off a shared access driveway between sites. The access driveway may be located at/along the side lot line(s), with each lot having its own trash and delivery area located off this access driveway.
 - (c) Trash, delivery, and loading areas shall be well screened from Route 11. The lots situated between Market Place Boulevard and Route 11 call for special treatment because they have double frontages.
- (2) Building design:
- (a) Facade treatment. Building facades fronting on a service road and Route 11 shall both be treated as front facades, both thereby meriting attractive treatment, under the architectural standards included in the City of Rochester Site Plan Regulations.
 - (b) Outdoor seating. If applicable, restaurant proprietors are encouraged to include seasonal outdoor seating in their initial site plan. Seating should be screened from parking and roadways.
 - (c) Signage. All provisions of Article 29, Signage, herein shall apply.
 - (d) When practical, locate some parking and service functions behind the building. For multi-building projects, organize the site layout to provide functional pedestrian spaces and landscaping amenities.
 - (e) All facades, including back and side elevations of a building generally visible from public view or adjacent to residential areas, should be architecturally treated.
 - (f) Design multi-building projects to include architecturally sensitive design elements throughout the project.
 - (g) Building elevations should incorporate architectural features and patterns that consider a pedestrian scale.
 - (h) Building roofs shall be uncluttered, and when flat roofs are visible from public roads, pitched roofs or parapets are required.
 - (i) Rooftop and ground- mounted mechanical units and ventilating fans are to either be integrated into the design of the building or screened from view.
 - (j) At least two of these elements should repeat horizontally. Buildings with facades greater than 150

feet in length should include several of the elements listed below, repeated at appropriate intervals, either horizontally or vertically:

- [1] Color change. Recognizable, but not strongly contrasting.
 - [2] Texture change.
 - [3] Material change.
 - [4] Architectural variety and interest through a change in plane, such as offsets, reveals, archways or projecting ribs.
 - [5] Wall plane projections or recesses.
- (k) Service and exit doors should be integrated into the architecture of publicly visible elevations.
 - (l) Where practical, variations in rooflines or parapets should be used to reduce the scale of nonresidential buildings. Roof size, shape, material, color and slope should be coordinated with the scale and theme of the building.
 - (m) All exterior building walls and structures shall be constructed with attractive, durable materials such as textured concrete, masonry, stone, brick, clapboard, finishing wood, stucco or glass.
 - (n) The exterior walls of buildings should not predominantly utilize the following materials, except as accents:
 - [1] Pre-fabricated steel panels.
 - [2] Corrugated metal.
 - [3] Asphalt shingle roofs, except for period architecture.
 - [4] Highly reflective glass.
 - (o) Buildings should have clearly defined customer entrance(s) incorporating appropriate architectural elements
- (3) Pedestrian amenities:
- (a) Wherever practical, design attractive, safe, and convenient pedestrian and bicycle connectivity to streets, to include access to residential, commercial, and open space areas.
 - (b) Design sites to minimize pedestrian and vehicular conflicts. Where pedestrian circulation paths cross vehicular routes, provide a change in paving materials, textures or colors to emphasize the conflict point. Where applicable, and to encourage outdoor seating, dining, and other amenities, sidewalks should be constructed of concrete and at least 10 feet wide.
- (4) Vehicular circulation and parking:
- (a) To promote safe pedestrian access, create wide and well-lit sidewalks (concrete) and pathways.
 - (b) Strive to minimize driveway cuts on arterial streets by providing vehicular cross-access easements and shared access driveways between adjacent commercial projects.
 - (c) Traffic calming devices are encouraged in the interior of a site to enhance safety.
 - (d) Landscaped parking areas shall be consistent with Section 5 of the Site Plan Regulations in order to break up the mass of large parking lots.

- (5) Outdoor display areas:
 - (a) On final site plans, identify the location of all proposed outdoor display and sales areas, including what type of items would be sold. Their location should not displace required parking, pedestrian, or landscaped areas.
- (6) Signage:
 - (a) Signage should refer to Article 29 of the City's Zoning Ordinance.
- (7) Landscaping and grading:
 - (a) All landscaping and grading shall be consistent with Section 5 of the City's Site Plan Regulations, while complementing and enhancing project architecture.
- (8) Lighting:
 - (a) Design lighting to follow all site plan regulations and requirements and, where applicable, include pedestrian-scale lighting.
- (9) Building design/architectural:
 - (a) Where practical, building mass should be broken into smaller elements, consistent with the proportions of the architectural style selected and surrounding uses.
 - (b) Reduction of building mass may be achieved by using a combination of the following techniques:
 - [1] Variation in the rooflines and form.
 - [2] Use of ground-level arcades and covered areas.
 - [3] Use of protected and recessed entries.
 - [4] Use of vertical elements on or in front of expansive blank walls.
 - [5] Use of pronounced wall plane offsets and projections.
 - [6] Use of focal points and vertical accents.
 - [7] Inclusion of windows on elevations facing streets and pedestrian areas.
 - [8] Retaining a clear distinction between roof, body and base of a building.
 - [9] The City supports the construction of "solar ready" structures designed for rooftop solar arrays.
- (10) Dimensional requirements:
 - (a) Nonresidential/mixed-use buildings:
 - [1] Minimum structure setback from external lot line:
 - [a] Side: 50 feet.
 - [b] Rear: 100 feet.
 - [2] Minimum structure setback from external ROW: 300 feet.
 - [3] Maximum nonresidential building height: 75 feet.

- [4] Structures over 55 feet shall be placed as close to the center of the lot as practical.
- (b) Residential structures:
 - [1] Minimum structure and parking setback from external lot line.
 - [a] Side: 50 feet.
 - [b] Rear: 100 feet.
 - [2] Maximum residential building height: 100 feet.
 - [3] Structures over 55 feet will be placed as close to the center of the lot as practical.
 - [4] Minimum setback from Route 11: 200 feet.

(11) Parking:

- (a) All dwelling units shall require two independently accessible parking spaces per unit, or as determined by Planning Board, and be consistent with Section 10.C of the Site Plan Regulations.
- (b) Nonresidential uses shall comply with parking requirements defined by the Site Plan Regulations.

(12) Utility standards:

- (a) All utilities shall be underground.
- (b) Utilities into individual sites shall be run from the common utility lines to be placed in the service road right-of-way.
- (c) Service connections for utilities for pad sites, if any are created, shall be provided within the service road right-of-way.
- (d) Transformer boxes shall be screened and utilize proper landscaping features.

§ 275-8.6. Pavement dimensional regulations.

The setbacks shown in the table below shall apply to pavement used for parking and interior accessways. Driveways into the site from the service road are exempt from these setbacks. These setbacks guarantee a minimum ten-foot-wide area for landscaping around the perimeter of the site (five feet plus five feet for adjoining lots along the side lot lines). This section shall supersede perimeter landscaping buffer requirements (15 feet along the front and 10 feet along the side lot lines) established in the Site Plan Regulations.

	Minimum Property Line Setbacks (in feet)		
	Front	Side	Rear
Pavement	10	5	10

§ 275-8.7. Granite Ridge Development Study.

This article was created pursuant to the March 2009 "Granite Ridge Development Study, Farmington Road, Rochester, New Hampshire," prepared by CLD Consulting Engineers. This study should be referred to for reference in designing, reviewing, and approving proposed site plans and subdivision plans.

§ 275-8.8. Service road regulations.

The following requirements apply to those lots situated on the westerly side of Route 11/Farmington Road, on which the planned service road and access roads leading to or from the service road are to be situated.

- A. Rights-of-way. To the extent practical and appropriate, as determined by the Planning Board, as part of any proposed site plan or subdivision plan, each landowner/developer shall incorporate into his/her plan, on the subject land, a sixty-foot-wide right-of-way for the construction of the service road and/or access road(s). The right-of-way shall traverse the subject lot from the southerly lot line to the northerly lot line, as appropriate, and in the case of any access road, from the easterly to the westerly lot line, as appropriate, in accordance with the layout of the planned service road and access road(s).
- B. Temporary termination. Where the service road has not been built on the lot adjacent to the subject property, a temporary cul-de-sac shall be built on the subject property to provide for an appropriate turnaround and future connection to the service road on that adjacent lot. Appropriate provisions may be established by the Planning Board to facilitate seamless connection of that cul-de-sac in the future to a service road on the adjacent lot, when that road may be constructed. The temporary cul-de-sac shall conform to the City of Rochester Subdivision Regulations.
- C. Route 11 intersections. As part of any site plan or subdivision plan, the landowner/developer shall incorporate predetermined Route 11 access points into his/her plan.
- D. NHDOT. Developers shall coordinate with the New Hampshire Department of Transportation (NHDOT) regarding the design of the access roads and any intersections with Route 11.

§ 275-8.9. Road design standards. [Amended 3-5-2019]

- A. Service and access roads shall comply with the following standards:
 - (1) Right-of-way: 60 feet.
 - (2) Lane width (each): 12 feet.
 - (3) Paved shoulder (each): four feet.
 - (4) Sidewalk (bituminous): five feet.
 - (5) Grass strip: five feet (between road and sidewalk).
 - (6) Curb: granite.
 - (a) Sloped: side without sidewalk.
 - (b) Vertical: side with sidewalk.
 - (7) Cross-sectional requirements:
 - (a) Wearing course (minimum): one inch (NHDOT Item 403.11).
 - (b) Bearing course: two inches (NHDOT Item 403.11).
 - (c) Crushed gravel: six inches (NHDOT Item 304.3).
 - (d) Bank-run gravel: 12 inches (NHDOT Item 304.2).
- B. All materials shall be installed in compliance with NHDOT specifications and the City of Rochester Subdivision Regulations.

§ 275-8.10. Stormwater management requirements.

- A. Stormwater controls for each individual site plan shall be designed in compliance with the New Hampshire Stormwater Manual Volume 2. To ensure adequate stormwater control given the more flexible dimensional regulations, these design guidelines shall be followed regardless of any requirement imposed as part of the

New Hampshire Department of Environmental Services alteration of terrain permitting (for 100,000 square feet +/- of disturbed surface).

- B. The Planning Board shall consider proposals for use of innovative stormwater control structures, such as porous pavement, bioretention areas, gravel wetlands, etc. If the Board concludes that use of these structures is in order, then:
 - (1) It may be appropriate to allow for interior landscaped islands within parking lots to be constructed without perimeter curbing if the curbing would interfere with the routing of the stormwater.
 - (2) The Planning Board is hereby empowered to adjust parking requirements specified in Article 26, Roads and Parking, herein.

§ 275-8.11. Utility standards.

- A. All utilities shall be underground.
- B. Utilities into individual sites shall be run from the common utility lines to be placed in the service road right-of-way.
- C. Service connections for utilities for pad sites, if any are created, shall be provided within the service road right-of-way.

§ 275-8.12. Parking lot interconnections.

- A. Where practical, and not impeded by wetlands or other physical constraints, parking lots shall be interconnected between sites.
- B. Appropriate cross easements shall be developed between properties to accommodate parking lot interconnections.

§ 275-8.13. Design standards.

- A. Trash and delivery areas. The lots situated between the service road and Route 11 call for special treatment because they have double frontages.
 - (1) Whenever practical, and not impeded by wetlands or other physical constraints, trash and delivery areas shall be located off of a shared access driveway between sites.
 - (2) The access driveway may be located at/along the side lot line(s), with each lot having its own trash and delivery area located off this access driveway.
 - (3) Trash, delivery, and loading areas shall be well screened from Route 11.
- B. Facade treatment. Building facades fronting on the service road and Route 11 shall both be treated as front facades, both thereby meriting attractive treatment, under the architectural standards included in the City of Rochester Site Plan Regulations.
- C. Outdoor seating. Restaurant proprietors are encouraged to include seasonal outdoor seating.
- D. Signage. All provisions of Article 29, Signage, herein shall apply.

§ 275-8.14. Adjustments in requirements.

Since a number of the requirements specified in this Article 8, herein, are design oriented, the Planning Board may adjust any requirements of § 275-8.6, Pavement dimensional regulations, § 275-8.8, Service road regulations, § 275-8.9, Road design standards, § 275-8.10, Stormwater management requirements, § 275-8.11, Utility

standards, and § 275-8.12, Design standards, on a case-by-case basis, where it reasonably determines that strict application of any requirement is impracticable due to particular conditions on a given site.

Primary Area of Granite Ridge Development			
PID	Address	Acres	Owner
0208-0001-0000	126 Farmington Road	82.50	Adamian Construction & Dev.
0208-0001-0001	116 Farmington Road	34.18	Infinity Properties Rochester
0208-0002-0000	0 Farmington Road	32.00	The Kane Co. Inc.
0208-0004-0000	148 Farmington Road	1.30	John & Carolyn Meader
0208-0005-0000	150 Farmington Road	0.63	Roslyn Stone & Carolyn Meader
0208-0006-0000	154 Farmington Road	1.05	Alkurabli LLC
0208-0006-0001	152 Farmington Road	0.94	Richard Ottino
0208-0007-0000	160 Farmington Road	1.33	160 Farmington Road Realty Trust
0216-0001-0000	20 Farmington Road	15.00	Robert Beranger
0216-0002-0000	22 Farmington Road	2.60	Robert Beranger
0216-0003-0000	0 Farmington Road	2.90	Robert Beranger
0216-0004-0000	36 Farmington Road	17.10	Northgate Investment Properties
0216-0005-0000	46 Farmington Road	1.24	Gene V. Roe
0216-0006-0000	48 Farmington Road	5.62	Casaccio Real Estate Holdings
0216-0007-0000	58 Farmington Road	7.60	Casaccio Real Estate Holdings
0216-0008-0000	60 Farmington Road	6.30	Packy's Investment Properties
0216-0009-0000	68 Farmington Road	20.00	Stratham Industrial Properties
0216-0010-0000	76 Farmington Road	21.00	PSNH
0216-0011-0000	92 Farmington Road	85.00	Stratham Industrial Properties
0216-0017-0000	5 Lydall Way	12.00	State of New Hampshire DOT
0216-0019-0000	0 Farmington Road	4.50	PSNH
0216-0020-0000	8 Crane Drive	6.09	Newport Partners LLC
0216-0021-0000	33 Crane Drive	4.80	Spinelli Realty Trust
0216-0022-0000	27 Crane Drive	6.35	Black Marble Realty Trust
0216-0023-0000	21 Crane Drive	3.16	Black Marble Realty Trust
0216-0024-0000	7 Crane Drive	4.01	Four Hidden Road Trust
0216-0025-0000	47 Farmington Road	2.80	Poulin Realty Acquisition
		382.00	
Secondary Area of Granite Ridge Development			
PID	Address	Acres	Owner
0208-0008-0000	174 Farmington Road	60.00	Diane Smith
0208-0008-0001	176 Farmington Road	11.61	Robidas Properties LLC
0208-0009-0000	178 Farmington Road	4.30	Rochester/Rural District

Secondary Area of Granite Ridge Development

PID	Address	Acres	Owner
0208-0010-0000	180 Farmington Road	1.02	WAH Realty Corporation
0208-0011-0000	184 Farmington Road	4.00	Bonnie J. O'Shea
0208-0015-0000	0 Farmington Road	0.29	City of Rochester
0208-0016-0000	0 Farmington Road	1.66	Robert Rowe
0208-0017-0000	127 Farmington Road	8.90	Robert Rowe
0208-0018-0000	17 Sterling Drive	2.02	Raven Realty
0208-0018-0001	18 Sterling Drive	2.85	Raven Realty
0208-0018-0002	27 Sterling Drive	5.04	Axis Property Holdings LLC
0208-0018-0003	23 Sterling Drive	1.55	Raven Realty
0208-0018-0004	0 Sterling Drive	0.64	Raven Realty
0208-0019-0000	123 Farmington Road	1.16	Black Dog Car Wash LLC
0208-0019-0001	115 Farmington Road	1.25	Hermitage Place LP
0208-0019-0002	131 Farmington Road	0.57	JMB Automotive Group LLC
0209-0001-0000	105 Farmington Road	1.70	Rudolph Tetreault
0216-0012-0000	4 Little Falls Bridge Road	1.89	Ralph Torr Rev. Trust
0216-0013-0000	0 Little Falls Bridge Road	11.80	State of New Hampshire DOT
0216-0018-0000	95 Farmington Road	3.50	Motiva Enterprises LLC
0216-0018-0001	83 Farmington Road	2.25	Joseph Blanchette
0216-0018-0002	77 Farmington Road	3.60	Rochester Hospitality LLC
0216-0019-0000	0 Farmington Road	4.50	PSNH
0216-0020-0000	8 Crane Drive	6.09	Newport Partners LLC
0216-0021-0000	33 Crane Drive	4.80	Rose Realty LLC
0216-0022-0000	27 Crane Drive	5.30	Black Marble Realty Trust LLC
0216-0023-0000	21 Crane Drive	3.16	Black Marble Realty Trust LLC
0216-0024-0000	7 Crane Drive	4.01	Four Hidden Rod Road Realty Trust
0216-0025-0000	47 Farmington Road	2.60	Poulin Realty Acquisitions LLC
0216-0026-0000	0 Farmington Road	68.00	Donald & Bonnie Toy
0216-0028-0000	23 Farmington Road	1.70	Miles Cook III
0216-0028-0001	25 Farmington Road	0.10	City of Rochester
0216-0029-0000	21 Farmington Road	2.41	Cardinals Seafarer Restaurant
0221-0154-0000	2 Farmington Road	20.80	Jean Edgerly Trust
0221-0156-0000	14 Farmington Road	1.20	Renee & Louanne Cardinal
0221-0157-0000	0 Farmington Road	1.20	Wayne Cardinal
0221-0158-0000	14 Farmington Road	1.30	Rene & Luanne Cardinal
0221-0159-0000	10 Farmington Road	2.45	Lawrence Shapiro Trust

Secondary Area of Granite Ridge Development

PID	Address	Acres	Owner
0221-0160-0000	18 Farmington Road	1.32	Michael & Jean Garzillo
0221-0162-0000	18A Farmington Road	6.40	Richard & Phyllis Glidden
0221-0163-0000	20 Farmington Road	3.20	Robert & Karen Beranger
0221-0164-0000	17 Farmington Road	0.91	Rene G Cardinal & Cardinal Way
0221-0165-0000	11 Farmington Road	1.70	Seckendorf Real Estate
0221-0166-0000	9 Farmington Road	1.10	MIB LLC Greenwood Inn
0221-0167-0000	7 Farmington Road	0.30	Basel Alkurabi
0221-0168-0000	3 Farmington Road	14.00	Charles Karacas
		290.15	

ARTICLE 9
Special Zoning Districts

§ 275-9.1. General terms.

Uses which are permitted by right, conditionally, or by special exception are listed in Article 18, Use Regulations. Dimensional regulations are presented in Article 19, Dimensional Regulations. Other applicable requirements for development within any special zoning district are presented throughout this chapter.

§ 275-9.2. Airport Special (AS) District.

The purpose of the Airport Special District is to accommodate the needs of Skyhaven Airport subject to appropriate limitations. This zone shall allow such additional uses that support airport operations, including but not limited to aircraft storage, repair and maintenance, flight instruction, and aircraft chartering. An airport is a unique facility which merits a special zoning designation. The primary permitted uses are aviation related but numerous activities which support the vitality of the airport or which are logical compatible activities are also allowed by right or as accessory uses. For the purposes of this section, an "accessory use" is broadly defined as one that the owner of the airport has determined is compatible with and enhances the vitality of the airport.

§ 275-9.3. Hospital Special (HS) District.

The purpose of the Hospital Special District is to accommodate the needs of primary health care services and medical or surgical care to persons, including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences, subject to appropriate limitations.

ARTICLE 10
Aquifer Protection Overlay District (APOD)
[Amended 6-16-2015]

§ 275-10.1. Authority.

The City of Rochester hereby adopts this article pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II, relative to innovative land use controls.

§ 275-10.2. Purpose.

The purpose of this article is to preserve, maintain, and protect from contamination existing and potential groundwater supply areas that may be available for use as a current or future source of supply for Rochester's municipal water system. This article serves as a public education tool to provide residents and small businesses awareness on typically unrecognized hazards.

§ 275-10.3. Definitions.

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

AQUIFER — A geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water. (NHDES Model Groundwater Protection Ordinance, Chapter 2.5, Protection of Groundwater and Surface Water Resources, Innovative Land Use Planning Techniques)

FUEL STORAGE — See Article 2 of this chapter.

GASOLINE STATION — See Article 2 of this chapter.

GROUNDWATER — Subsurface water that occurs beneath the water table in soils and geologic formations. (RSA 485-C:2, VIII, the Groundwater Protection Act)

HOUSEHOLD HAZARDOUS WASTE COLLECTION PROJECT — Any location that accumulates, collects, transfers, or otherwise manages household hazardous waste. (Section Env-Hw 103.66, New Hampshire Code of Administrative Rules).

IMPERVIOUS SURFACE — A surface through which regulated substances cannot pass when spilled. The term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces that could react with or dissolve when in contact with the substances stored on them. [Section Env-Wq 401.03(c), New Hampshire Code of Administrative Rules]

JUNKYARD — See Article 2 of this chapter.

REGULATED CONTAINER — Any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled with a capacity of greater than or equal to five gallons. [Section Env-Wq 401.03(g), New Hampshire Code of Administrative Rules]

REGULATED SUBSTANCE — Any of the following, with the exclusion of all substances used for the treatment of drinking water or wastewater at facilities approved by the Department of Environmental Services⁸ [Section Env-Wq 401.03(h), New Hampshire Code of Administrative Rules]: **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

- A. Petroleum products and their by-products of any kind, and in any form, including but not limited to petroleum, fuel, sludge, crude oil refuse or oil mixed with wastes and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for heating or processing. Shall not

⁸ Note: These chemicals are excluded from the definition of regulated substances within State Administrative Rules Chapter Env-Wq 401 because they are used in the treatment of wastewater and drinking water supplies and are not considered to pose a significant risk to groundwater.

include natural gas, liquefied petroleum gas or synthetic natural gas regardless of derivation or source. (RSA 146-A:2, III, Oil Discharge or Spillage in Surface Water or Groundwater); or

- B. Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; or
- C. Any hazardous substance listed in 40 CFR Part 302, Table 302.4. Reportable quantities of hazardous substances as listed in 40 CFR Part 302, Table 302.4, under column heading final RQ pounds (Kg).

ROCHESTER MUNICIPAL WATER SYSTEM — The public treatment and distribution system, which consists of water treatment plants, water main pipes, storage tanks, booster stations, and service connections that convey potable water for domestic, fire protection, and other community uses.

SANITARY PROTECTIVE RADIUS — Area around a public water supply well which must be maintained in its natural state as required by Section Env-Dw 301.06 (small community wells) and Section Env-Dw 302.06 (large community wells), New Hampshire Code of Administrative Rules.

SEASONAL HIGH WATER TABLE — The depth from the mineral soil surface to the uppermost soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed hydrogeologist, soils scientist, wetlands scientist, engineer or other qualified professional approved by the Planning Board or the shallowest depth measured from ground surface to free water that stands in an unlined or screened borehole for a period of one week or more.⁹ (Section Env-Wq 1502.49, New Hampshire Code of Administrative Rules, NHDES Alteration of Terrain)

SNOW DUMP — A location where snow is placed for disposal from any off-site location (i.e., cleared from roadways and/or motor vehicle parking areas). (NHDES Model Groundwater Protection Ordinance, Chapter 2.5, Protection of Groundwater and Surface Water Resources, Innovative Land Use Planning Techniques)

STRATIFIED DRIFT AQUIFER — A geologic formation of predominately well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells. (RSA 485-C:2, XIV, the Groundwater Protection Act)

WELLHEAD PROTECTION AREA — The surface and subsurface area surrounding a water well or well field supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. (RSA 485-C:2, XVIII, the Groundwater Protection Act)

§ 275-10.4. District boundaries.

The Aquifer Protection Overlay District (APOD) is an overlay district that is superimposed over the existing zoning. The APOD shall impose additional requirements and restrictions beyond the base zoning. Boundaries of the APOD shall be referenced by the latest edition of the map titled "City of Rochester Aquifer Protection Overlay District." The district shall include:

- A. All delineated wellhead protection areas around existing and potential municipal production water wells, including a protective radial distance of 1,000 feet¹⁰ around those wells (see definition for "wellhead protection area" in § 275-10.3).

§ 275-10.5. Applicability.

This article applies to all uses in the Aquifer Protection Overlay District, except for those uses exempt under this article (see § 275-10.11).

9. Note: This definition includes a focus on both soil morphology and groundwater hydrology.

10. Note: The protective radius around the municipal production wells pertains to rock blasting activities.

§ 275-10.6. Performance standards.

The following performance standards apply to all uses in the Aquifer Protection Overlay District unless exempt under this article (see § 275-10.11):

- A. For any use that will render impervious more than 20%¹¹ of any lot or 5,000 square feet of land disturbance of any lot, whichever is greater, a stormwater management and erosion control plan, approved by the Planning Board and prepared in accordance with Chapter 218, Stormwater Management and Erosion Control, of the City Code shall be provided.
- B. Animal manures, fertilizers, and compost must be stored in accordance with the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, New Hampshire Department of Agriculture, Markets, and Food, revised June 2011, and any subsequent revisions.¹²
- C. All regulated substances within regulated containers or hazardous substances listed under 40 CFR 302.4 with a capacity equal to or greater than the reportable quantity must be used and stored in accordance with Part Env-Wq 401, Required Best Management Practices for Groundwater Protection, New Hampshire Code of Administrative Rules.
- D. All activities related to rock blasting must adhere to NHDES WD-10-12, Best Management Practices for Blasting, Rock Blasting and Water Quality Measures That Can Be Taken To Protect Water Quality and Mitigate Impacts, prepared 2010, and any subsequent revisions.

§ 275-10.7. Permitted uses.

All uses permitted by right or allowed by special exception in the underlying district are permitted unless they are prohibited uses or conditional uses in the Aquifer Protection Overlay District. All uses must comply with the performance standards unless specifically exempt under this article (see § 275-10.11).

§ 275-10.8. Prohibited uses.

The following uses are prohibited in the Aquifer Protection Overlay District:

- A. Development or operation of a solid waste facility.
- B. Outdoor storage of road salt or other deicing chemicals in bulk.
- C. Development or operation of a junkyard.
- D. Development or operation of a snow dump.
- E. Development or operation of a wastewater or septage lagoon.
- F. Development or operation of a petroleum bulk plant or terminal.
- G. Development or operation of gasoline stations.
- H. Use of powdered ammonium nitrate fuel oil and explosives that contain perchlorate during blasting activities.

§ 275-10.9. Conditional uses.

The Planning Board may vary the provisions herein by granting a conditional use permit in accordance with RSA 674:21, II, to allow for a use which is otherwise permitted in the underlying district. The following conditions shall apply to all uses in the Aquifer Protection Overlay District:

11. Note: Two times the percentage of impervious surface area at which stream quality decreases (USGS, 2005).

12. Note: See <http://www.agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>.

- A. Storage, handling, and use of regulated substances in quantities exceeding 55 gallons per container or 660 pounds per container¹³ at any one time provided that an adequate regulated materials response plan has been submitted. This plan must address:
- (1) Description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
 - (2) Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies which must be contacted in case of a release to the environment.
 - (3) List of all regulated substances in use and locations of use and storage.
 - (4) Description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.
 - (5) List of positions within the facility that require training to respond to spills of regulated substances.
 - (6) Prevention protocols that are to be followed after an event that causes large releases of any regulated substance.
- B. Any use that will render impervious more than 20% of any lot or 5,000 square feet of land disturbance, whichever is greater, provided that an adequate stormwater management plan has been submitted. This plan shall be prepared in accordance with Chapter 218, Stormwater Management and Erosion Control, of the City Code.
- C. Projects that will excavate more than a total of 5,000 cubic yards of bedrock through rock blasting activities within a two-year period or are within a radial distance of 1,000 feet from a municipal production well, provided that an adequate groundwater monitoring plan has been submitted.
- (1) This plan must address:
 - (a) Identification of potential sensitive receptors and evaluation hydrogeological background information.
 - (b) Identification of monitoring well locations and install monitoring wells, where appropriate.
 - (c) Collection of background water quality samples to identify, or rule out, preexisting groundwater contamination issues and to establish background chemistry levels and performance criteria for groundwater quality.
 - (d) Collection of periodic groundwater samples, including but not limited to nitrite/nitrates, as well as standard analysis for inorganic chemical, volatile organic chemical, and synthetic organic chemical contaminants as designated in Parts Env-Dw 703 through Env-Dw 705, and ambient groundwater quality standards as designated in Part Env-Or 603, New Hampshire Code of Administrative Rules, from the groundwater monitoring points during blasting, as well as collect water level data, when pertinent.
 - (e) Collection of post-blast groundwater samples (conducting multiple rounds of sampling may be prudent, and/or sampling could be ongoing for extended periods if contamination is detected as a result of the blasting).
 - (2) The Planning Board may, at its discretion, require a performance guarantee or bond in an amount and

13. Note: According to the Pipeline and Hazardous Materials Safety Administration's Emergency Response Guidebook, large spills are defined as containers that are greater than 55 US gallons (208 liters) for liquids and greater than 660 pounds (300 kilograms) for solids with regard to initial isolation and protection action distances. This is a standard that is used by the bulk of the voluntary first responder organizations.

with conditions satisfactory to the Board to be posted to ensure completion of construction of any facilities required for compliance with the performance standards. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

§ 275-10.10. Existing nonconforming uses.

Existing nonconforming structures and uses are exempt from this article under RSA 674:19. Any existing nonconforming structures and uses must be in compliance with Article 30 of this chapter.

§ 275-10.11. Exemptions.

The following uses are exempt from the specified provisions of this article as long as they are in compliance with all applicable local, state, and federal requirements:

- A. Any private residence, excluding home occupations, is exempt from all performance standards. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- B. Any business or facility where regulated substances are stored in regulated containers with a capacity of five or less gallons or where hazardous substances are stored in containers with a capacity of less than the reportable quantity is exempt from § 275-10.6C.
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from § 275-10.6C.
- D. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from § 275-10.6C.
- E. Storage and use of office supplies is exempt from § 275-10.6C.
- F. Temporary storage of construction materials on a site where they are to be used is exempt from § 275-10.6C if incorporated within the site development project within six months of their deposit on the site.
- G. The sale, transportation, and use of pesticides as defined in RSA 430:29, XXVI, are exempt from all provisions of this article.
- H. Any non-reoccurring household hazardous waste collection projects regulated under New Hampshire Code of Administrative Rules Sections Env-Hw 401.03(b)(1) and 501.01(b) are exempt from § 275-10.6C. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- I. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under this article (see § 275-10.13).

§ 275-10.12. Relationship between state and local requirements.

Where both the state and the municipality have existing requirements, the more stringent shall govern.

§ 275-10.13. Maintenance and inspection.

- A. For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with performance standards shall be recorded so as to run with the land on which such structures are located at the Registry of Deeds for Strafford County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. Inspections shall be required to verify compliance with performance standards. Such inspections shall be performed by City staff at reasonable times with prior notice to the landowner.

- C. All properties in the Aquifer Protection Overlay District known to City staff as using or storing regulated substances in regulated containers with a capacity greater than five gallons or hazardous substances with a capacity greater than the reportable quantity, except for facilities where all regulated substances storage is exempt from this article (see § 275-10.11), shall be subject to inspections.
- D. If applicable, a fee schedule shall be established by the City Council as provided for in RSA 41:9-a. The Rochester City Council shall require the fee be billed at an hourly rate as determined by the City of Rochester Public Works Department for compliance inspections. The fee shall be paid by the property owner.
- E. City staff shall develop reporting and tracking criteria for properties in the Aquifer Protection Overlay District that are subject to compliance inspections. Property owners shall submit reports to the City on a biennial (every other year) basis.

§ 275-10.14. Enforcement procedures and penalties.

Any violation of the requirements of this article shall be subject to the enforcement procedures and penalties detailed in RSA 676 or 485-C.

§ 275-10.15. Severability.

If any provision of this article is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the article.

§ 275-10.16. Repeal.

All ordinances or parts of ordinances in conflict with this article are, to the extent of the conflict, hereby repealed.

§ 275-10.17. When effective.

This article shall be effective upon adoption by the Rochester City Council.

ARTICLE 11
Aviation Overlay District (AOD)

§ 275-11.1. Definitions.

As used in this article, unless the context otherwise requires, the following terms shall have the meanings indicated:

AIRPORT — Any area of land or water, whether constructed or not, which has been approved as a site for landing and taking off of aircraft or utilized by the public as a point of arrival or departure by air, hereinafter referred to as "Skyhaven Airport."

AIRPORT APPROACH ZONE —

- A. For Runway 33, an area which is 1,000 feet wide at a point 200 feet from the end of the pavement and 4,000 feet wide at a point 10,200 feet from the end of the pavement, or future pavement extended.
- B. For Runway 15, an area which is 1,000 feet wide at a point 200 feet from the end of the pavement and 1,500 feet wide at a point 5,200 feet from the end of the pavement, or future pavement extended.
- C. The center line of these areas shall coincide with the center line of the landing strips extended.

AIRPORT HAZARD — Any structure, tree, smoke, steam, dust, or other substance which obstructs the aerial approaches of Skyhaven Airport or impairs the reasonable visibility in the vicinity thereof; electrical impulses and disturbances which interfere with radio aids or communications; and lights which might result in glare in the vision of pilots or aircraft or be confused with airport lights.

BUILDING RESTRICTION LINE — A line parallel to the center line of the runway which limits the location of any permanent structure. The location of the building restriction line is shown and described on the Airport Layout Plan.

NONCONFORMING USE — Any structure, tree, or use of land which does not conform to a regulation prescribed in this article or an amendment thereto as of the effective date of such regulations.

PERSON — Any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or similar representative thereof.

STRUCTURE — Any object constructed or installed by man, including such objects although regulated or licensed by other provisions of law.

TREE — Any object of natural growth.

§ 275-11.2. Land subject to restrictions.

In order to carry out the purposes of this article, all of the land within the boundaries of the approach zones and all of the land within a distance of 12,000 feet from the airport reference point shown on the Rochester Airport Approach Plan dated December 16, 1983 (attached hereto and made a part hereof),¹⁴ is hereby declared subject to the restrictions of this article.

§ 275-11.3. Height limits.

No structure or tree shall be erected, altered, or allowed to grow within the areas described in § 275-11.2 hereof above a slope ratio of 34 feet to one foot measured from the end of Runway 33 or a ratio of 20 feet to one foot measured from the end of Runway 15 or above a slope ratio of seven feet to one foot measured from the side of the landing strips and the approaches, or within an ellipse formed by connecting the ends of two semicircles having radii of 10,000 feet from points located 200 feet beyond the ends of pavement on center line extended at each end of Runways 15/33 above a height of 150 feet above the airport elevation, except that the Zoning Board of

14. Editor's Note: The Airport Approach Plan is included at the end of this article.

Adjustment shall have the power to grant a variance of this regulation where literal application or enforcement of the same would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this article.

§ 275-11.4. Use restrictions.

Notwithstanding any other provisions of this chapter, no use may be made of the land described in § 275-11.2 hereof in such manner as to create electrical interference with radio aids or communications between airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport by the creation and discharge of smoke, steam, dust, or other obstructions to visibility, or otherwise endanger the landing, taking off, or maneuvering of aircraft.

§ 275-11.5. Nonconforming uses.

The regulations prescribed in §§ 275-11.3 and 275-11.4 hereof shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this article and is diligently prosecuted and completed within two years thereof.

§ 275-11.6. Variances.

Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree, or use his/her property not in accordance with the regulations prescribed in this article, may apply for a variance therefrom. Such variance shall be allowed where a literal application of enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this article.

§ 275-11.7. Permits.

- A. Future uses. No material change in violation of §§ 275-11.3 and 275-11.4 hereof shall be made in the use of land, and no structure or tree shall be erected, altered, planted, or otherwise established in violation of §§ 275-11.3 and 275-11.4 hereof, unless a permit therefor shall have been applied for and granted. Each such application shall indicate the purpose for which the permit is desired.
- B. Existing uses. Before any existing use, structure, or tree may be replaced, substantially altered, repaired or rebuilt, allowed to grow higher, or replanted, within any of the areas of land described in § 275-11.2 hereof, a permit must be secured authorizing such replacement, change, or repair if it is in violation of §§ 275-11.3 and 275-11.4 hereof. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to be made or become a greater hazard to air navigation than it was on the effective date of this article, or than it is when the application for a permit is made. Except as indicated, all applications for a permit for replacement, change, or repair of existing use, structure, or tree shall be granted.

§ 275-11.8. Hazard marking and lighting.

Any permit or variance granted under §§ 275-11.6 and 275-7 may, if such action is deemed advisable to effectuate the purposes of this article and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the airport owner, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

§ 275-11.9. Approach zone map.

A copy of said approach zone map shall become a part of the Zoning Map of the City of Rochester, New Hampshire.

Rochester, Skyhaven Airport Approach Plan

Adopted by New Hampshire Aeronautics Commission

April 1, 1968

Revised December 16, 1983

1. This Airport Approach Plan, prepared under the authority of Chapter 424:3 of the New Hampshire Revised Statutes Annotated, is based upon the ultimate development of a General Aviation Type Airport with runway and landing strip as follows:
Runway 5,400 feet by 100 feet;
Landing Strip 5,800 feet by 300 feet.
2. Part 77, Federal Aviation Regulations establishes the standards used to determine the limit of height of obstructions in the vicinity of the airport.
3. The limit of height of obstructions shall be:
 - A. In the approach area to the landing strip for Runway 33, which is 1,000 feet wide at a point 200 feet from the end of the pavement and 4,000 feet wide at a point 10,200 feet from the end of the pavement, an inclined plane of 34:1 slope.
 - B. In the approach area to the landing strip for Runway 15, which is 1,000 feet wide at a point 200 feet from the end of the pavement and 1,500 feet wide at a point 5,200 feet from the end of the pavement, an inclined plane of 20:1 slope.
 - C. On the sides of the landing strip and approach areas, an inclined plane of 7:1 slope.
 - D. 472 feet above sea level within the horizontal surface, which is a plane 150 feet above the established airport elevation. This plane is an ellipse formed by connecting the ends of two semicircles having radii of 10,000 feet from points located 200 feet beyond ends of pavement on center line extended at each end of Runway 15/33.
 - E. Within the conical surface, which is an inclined plane sloping upward at a 20:1 ratio extending 4,000 feet outward from the horizontal surface.
4. No provision of Section (3) shall limit the height of a structure or tree to less than 30 feet above the ground upon which it is located.
5. The Airport Reference Point is located on the center line of Runway 15/33, 2,650 feet from the southeast end of the runway and its elevation is 322 feet above sea level.

Note: The following is for information only and is not a part of the Airport Approach Plan:

- A. The building restriction line is 300 feet from the center line of the landing strip.
- B. Acquisition of property rights will be necessary: (1) to remove existing obstructions; (2) to control the height of objects in those areas where the controlling inclined plane is less than 30 feet above the ground.

ARTICLE 12
Conservation Overlay District (COD)

§ 275-12.1. Objectives and characteristics.

Wetlands, ponds, and streams are significant natural resources of the City because of their size or functional values, such as flood storage, wildlife habitat, and the enhancement of water quality and/or quantity. The preservation of these water resources promotes the general public health, safety, welfare and convenience in our community. In particular the regulations of the Conservation Overlay District (CO District) are intended to:

- A. Maintain and enhance the quality and quantity of surface waters and groundwater by preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen.
- B. Minimize expense to the City and the public in providing and maintaining essential services and utilities, such as wastewater collection and treatment, drainage facilities, and public water supply, which may arise because of the inappropriate use of land within the CO District.
- C. Minimize impacts to existing land uses and lots (see § 275-12.5, Exemptions; preexisting residential structures, uses and lots).
- D. Prevent the destruction of, or significant changes to, those wetland areas, related water bodies and adjoining land which provide flood protection; protect persons and property against the hazards of flood inundation by assuring the continuation of the natural flow patterns of streams and other watercourses; and provide for nutrient attenuation and augmentation of stream flow during dry periods.
- E. Encourage those uses that can be appropriately and safely located within the CO District.
- F. Protect native wildlife habitat and natural vegetation upon which a variety of upland and aquatic species are dependent for purposes of breeding or sustenance.

§ 275-12.2. Overlay district defined.

The overlay district shall include rivers, lakes, ponds, perennial streams, vernal pools, all jurisdictional wetlands and the surrounding upland areas of each of these resources.

§ 275-12.3. Buffer defined.

In all cases the more restrictive buffer shall be used.

Buffer	Location
75 feet	Coheco River, Salmon Falls River and Isinglass River from the ordinary high-water mark of the river
50 feet	Named streams and surface water from the ordinary high-water mark listed in Table I below ¹⁵
50 feet	Edge of jurisdictional wetland consisting of very poorly drained soils ¹
50 feet	Edge of jurisdictional wetland consisting of poorly drained soils ¹
50 feet	Vernal pools ²

15. Editor's Note: Table I is included at the end of this article.

Notes:

1. The precise location of a wetland boundary in any particular case must be determined by on-site inspection by a New Hampshire certified wetland scientist.
2. Vernal pools that shall be identified by a New Hampshire certified wetland scientist and may be subject to review by the Conservation Commission.

§ 275-12.4. Delineation process. [Amended 3-5-2019]

The edge of wet of these wetlands shall be determined by the delineation process set forth in the Corps of Engineers Wetlands Delineation Manual, 1987, and the most recent version of the Regional Supplement to the Corp of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. When there is a dispute in the boundary, the landowner may appeal the decision to the Planning Board with written recommendations by the Conservation Commission.

§ 275-12.5. Exemptions; preexisting residential structures, uses and lots.

The following are exempt:

- A. All wetlands less than 1/2 acre in size, except vernal pools.
- B. Wetland conditions resulting from the following: constructed drainage structures, including but not limited to swales, ditches, and basins; actively maintained agricultural/irrigation ponds; and septage lagoons.
- C. Notwithstanding other provisions of this article, the construction of additions and extensions to one- and two-family dwellings and accessory residential uses shall be permitted within the CO District provided that:
 - (1) The dwelling or residential use lawfully existed prior to the original adoption of the Conservation Overlay District on October 7, 2003;
 - (2) The proposed construction conforms to all other applicable ordinances and regulations of the City of Rochester; and
 - (3) The dwelling or use continues in its present use.
- D. Lots of record, except that any lot requiring subdivision (i.e., that creates two or more lots) or minor site/site plan review must meet the requirements of this article.
- E. Preexisting subdivisions and site plans. Exemptions:
 - (1) Subdivisions, site plans and planned unit developments approved by the Planning Board and existing at the time of passage of this article shall be exempt from this article, as governed by the provisions of RSA 674:39.
 - (2) Completed applications approved by the Planning Board are exempt from this article herein.
 - (3) Condominium conversions where there are no improvements proposed to the site are exempt from this article.
- F. This article becomes applicable in the following situations:
 - (1) Nonresidential site plans for additions, expansions, or changes in use.
 - (2) Site plans for new commercial, industrial, or multifamily development.
 - (3) New subdivisions.

§ 275-12.6. Definitions.

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

BUFFER — The protected upland areas adjacent to wetlands and surface waters in the Conservation Overlay District other than the wetlands themselves.

ORDINARY HIGH-WATER MARK — The line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high-water mark is not easily discernible, the ordinary high-water mark may be determined by the Department of Environment Services. Source: Comprehensive Shoreland Protection Act, page 7 from the State of New Hampshire web page, 1998.

OVERLAY DISTRICT — A zoning district superimposed on one or more established underlying zoning districts to impose supplemental restrictions on uses in these districts.

POORLY DRAINED SOIL — As defined by high-intensity soil maps for New Hampshire sponsored by the Society of Soil Scientists of Northern New England Special Publication No. 1, September 2002. **[Amended 3-5-2019]**

VERNAL POOLS —

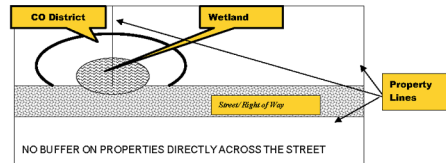
- A. Temporary bodies of water that flood each year for a few months during the spring and summer. Vernal or "spring" pools fill up with melting snow and early rains, then usually dry up by mid to late summer. Some relatively deep pools may remain flooded for a few years but become completely dry in seasons with very low rainfall. Autumnal pools fill during the fall with rising groundwater.
- B. Because vernal pools are not permanently flooded, they do not support fish populations and thus provide safe breeding sites for several amphibian and invertebrate species, including wood frogs, spotted salamanders, and fairy shrimp. These species have evolved life cycles that depend on temporary pools.
- C. Vernal pools vary in size, ranging from several square feet to several acres. They can be found in a variety of sites, such as isolated depressions in the woods, kettle holes, and gravel pits. Many are within larger wetlands, such as oxbows in river floodplains and pools in forested swamps or scrub-shrub wetlands. Their common characteristics are the absence of fish, temporary flooding regime, and the presence of vernal pool species. Suitable pools must have enough leaf litter and other debris to provide food sources and cover for the species that breed in them. Source: ASNH Conservation Fact Sheet: Vernal Pools.

VERY POORLY DRAINED SOIL — As defined by high-intensity soil maps for New Hampshire sponsored by the Society of Soil Scientists of Northern New England Special Publication No. 1, September 2002. **[Amended 3-5-2019]**

WETLAND — As defined by the National Food Security Act Manual (Soil Conservation Service, 1994) and the Corps of Engineers Wetlands Delineation Manual (1987) and the most recent version of the Regional Supplement to the Corp of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for a life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas. **[Amended 3-5-2019]**

§ 275-12.7. Buffer application.

Buffers are applied irrespective of lot lines and municipal boundaries, except (as shown in the below diagram) that when a wetland is bounded by City Class V or a state or federal highway, existing at the time of passage of this article, buffers are not applied to properties directly across the right-of-way.



§ 275-12.8. Uses allowed.

- A. The CO District is an overlay district. Where the provisions of this article conflict with those of the underlying zoning district, the more restrictive standards shall apply.
- B. The following uses are allowed in this district:
- (1) Wildlife habitat development and management.
 - (2) Conservation areas and nature trails, provided that the Planning Board, in consultation with the Conservation Commission, reviews and approves plans of such areas and trails prior to their development.
 - (3) Recreation, including open-air recreational uses consistent with the purpose and intent of this article, such as cross-country skiing, ice skating, hiking, and photography.
 - (4) Education, including natural and environmental science walks, wildlife and botanical studies and similar activities.
 - (5) Seasonally permitted hunting and fishing, as regulated by New Hampshire Fish and Game Department.
 - (6) Forestry, including both logging operations and tree farming subject to RSA 227-J:9. Logging and any associated road building and/or skid trail construction shall be conducted in accordance with the then-current Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire published by the UNH Cooperative Extension and New Hampshire Department of Resources and Economic Development and the New Hampshire Division of Forests and Lands, on file with this article with the City Clerk.
 - (7) Production, cultivation, growing, and harvesting of any fruit, vegetable, floricultural or horticultural crops, conducted in accordance with Best Management Wetlands Practices for Agriculture, July 1993, amended September 1998 (on file with this article with the City Clerk), but not within 25 feet of the edge of the adjacent wetland. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (8) The land surface within 25 feet of the edge of the wetland shall not be altered. Herbicides and heavy equipment are prohibited within 25 feet of the edge of the wetland. New lawns may be established beyond 25 feet from the edge of the wetland provided the wetland has been delineated/flagged by a certified soil scientist. Fertilization shall be limited to lime and wood ash.
 - (9) Removal of hazardous trees.
 - (10) Removal of invasive vegetation (see Notes on Native Trees and Shrubs and Their Use in Landscaping, by the Rochester Conservation Commission, on file with this article with the City Clerk).
 - (11) Minor accessory structures of 200 square feet or less (in which there is no storage of petroleum products, hazardous chemicals or materials). Such accessory structures shall not be constructed with any of the following materials: asphalt shingles or pressure-treated or chemically treated/preserved wood.
- C. Any uses not listed in this section are prohibited in the CO District.

§ 275-12.9. Conditional use approvals.

Conditional use approval may be granted by the Planning Board (RSA 674:21, II) after proper public notice and public hearing.

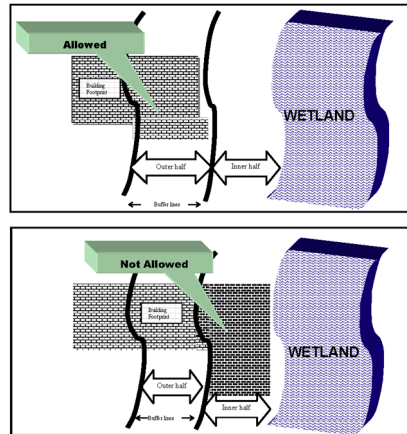
A. The following uses are allowed with a conditional use approval:

- (1) Roads and other accessways; drainageways; pipelines, power lines and other transmission lines; docks, boat launches, and piers; domestic water wells (and associated ancillary pipes and equipment); and replacement septic tanks and leach fields where evidence is submitted that no alternative location is available on the property, provided that all of the following conditions are found to exist:
 - (a) The proposed construction is essential to the productive use of land not within the CO District.
 - (b) Design and construction methods will be such as to minimize impact upon the wetlands and will include restoration of the site consistent with the permitted use.
 - (c) There is no feasible alternative route on land controlled by the applicant that does not cross the CO District nor has less detrimental impact on the wetlands. Nothing in this section shall limit the applicant from exploring alternatives with abutting property owners.
 - (d) Economic advantage is not the sole reason for the proposed location of the construction.

B. Buffer reductions.

- (1) Lots which are subject to the requirements of this CO District as defined in §§ 275-12.2 and 275-12.3 above may be allowed a buffer reduction of no more than 1/2 of any required buffer subject to all applicable provisions of this chapter, in the following situations:
 - (a) Expansion of existing structures may be permitted for lots located in the Industrial, DC, OC, and HC Districts.
 - (b) Construction of a new structure may be permitted for lots located in the Industrial, DC, OC, and HC Districts.
- (2) All the following conditions shall be met to allow buffer reductions:
 - (a) The structure for which the exception is sought cannot feasibly, after consideration of all reasonable alternatives, be constructed on a portion or portions of the lot which lie outside the CO District, or the application of the CO District eliminates greater than 50% of the buildable area located on the parcel or, in the judgment of the Planning Board, the proposed site layout would result in a significantly higher quality design.
 - (b) The proposed structure and use must be consistent with the purpose and intent of this article and provisions must be made to ensure that drainage from the structure will not adversely impact any wetlands.
 - (c) There shall be no impervious areas for parking within the reduced buffer for which the conditional use approval is sought.
 - (d) The maximum building coverage is limited to 50% of the outer half of the buffer zone, as shown in the diagram below.
 - (e) Best management practices must be demonstrated to the satisfaction of the Planning Board.

Buffer Reduction Examples



- (3) Buffer reduction may also be obtained explicitly by issuance of a NHDES dredge and fill permit, per § 275-12.10, Dredge and fill permits.

C. Administration of conditional use approvals.

- (1) The application shall be referred to the Conservation Commission for review and comment prior to the Planning Board making any final decision. In acting on the application, the Board shall consider any report received from the Commission. The Board shall then vote either to approve the application as presented, approve it with conditions, or deny it.
- (2) Prior to the granting of any conditional use approval under Subsections A and B of this section, the applicant may be required to submit a performance security in a form acceptable to the Planning Board, depending on the scale of the proposed use and potential threat to the wetlands. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Planning and Development Department to ensure that the construction will be carried out in accordance with the approved design. The security shall be submitted to and approved by the Planning and Development Department prior to the issuance of any permit authorizing construction.
- (3) The Planning Board may require the applicant to submit a wetlands impact assessment when necessary to evaluate an application made under this article. The cost of this assessment shall be borne by the applicant.
- (4) As outlined in RSA 676:4, I(g), the applicant may also be assessed reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications, reviews by the City's legal counsel, and any third party wetlands consultant as may be required by the Planning Board.

§ 275-12.10. Dredge and fill permits.

- A. Prior to filing an application for a New Hampshire Department of Environmental Services (NHDES) dredge and fill permit, the applicant is strongly encouraged to meet with the Conservation Commission to ensure that the proposed dredge and fill is consistent with the intent of this article.
- B. An approved NHDES dredge and fill permit, once acted upon, will change the CO District boundary, which will be applied from the new edge of wetland.

§ 275-12.11. Mitigation.

CO District mitigation shall be provided in the same watershed, if required by the Planning Board, at its discretion,

with consideration of recommendations by the Conservation Commission.

§ 275-12.12. Prohibited uses and activities.

- A. Expansion of motor vehicle recycling and junkyards is prohibited.
- B. There shall be no storage of petroleum products, hazardous chemicals or materials.
- C. Accessory structures shall not be constructed with any of the following materials: asphalt shingles or pressure-treated or chemically treated/preserved wood.
- D. There shall be no parking or storage of unregistered vehicles.

§ 275-12.13. Board of Adjustment.

Any variance or appeal to the Zoning Board of Adjustment shall be in accordance with RSA 676:5 and Article 4 of this chapter. Prior to holding a public hearing on an appeal or variance, the Zoning Board shall forward a copy of the plan and application to the Conservation Commission for review and comment. The Conservation Commission shall, after reviewing the plan and application, forward any appropriate recommendations to the Zoning Board of Adjustment for its consideration.

§ 275-12.14. Very poorly drained soils.

Any wetland or part of any wetland consisting of very poorly drained soils shall not count toward the minimum lot area or density requirements of any property in any zoning district.

Table I
Named Streams and Surface Water Table
Axe Handle Brook (Rickers and Howard Brooks)
Heath Brook
Hurd Brook
Willow Brook AKA Wardley Brook
Clark Brook
Baxter Lake
Rochester Reservoir
Hanson Pond AKA Squamanagonic Pond
Little Long Pond
Champlin Pond
No name pond south of Champlin Pond

Note: The above streams have been identified in the Water Resource Management and Protection Plan, prepared by the Southern New Hampshire Planning Commission, dated February 1991 and on file in the office of the Planning Board, as listed in Table I.

ARTICLE 13
Flood Hazard Overlay District (FHOD)

§ 275-13.1. Authority and purpose.

This article, adopted pursuant to the authority of RSA 674:16, shall be known as the "City of Rochester Floodplain Development Ordinance." The regulations in this article shall overlay and supplement the regulations in the City of Rochester Zoning Ordinance and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this article differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

§ 275-13.2. Regulatory floodway boundaries.

The following regulations in this article shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study, Strafford County, New Hampshire, together with the associated Flood Insurance Rate Maps dated May 17, 2005, which are declared to be a part of this article and are hereby incorporated by reference.

§ 275-13.3. Definitions.

As used in this article, the following words and phrases shall have the following meanings:

AREA OF SHALLOW FLOODING — A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual 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 community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AO, AH, A1-30, AE or A99.

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

BASEMENT — Any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

BUILDING — See "structure."

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

FEMA — The Federal Emergency Management Agency.

FLOOD BOUNDARY AND FLOODWAY MAP (FLOODWAY) — An official map of the community on which the Federal Emergency Management Agency has delineated the regulatory floodway. This map should not be used to determine the current flood hazard zone or base flood elevation; the Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.

FLOOD ELEVATION STUDY — 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.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood, mudslide (i.e., mudflow), and related erosion

areas having special hazards have been designated as Zone A.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See "Flood Elevation Study."

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source.

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 — See "regulatory floodway."

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers and ship building/repair facilities but does not include long-range storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed wall of a structure.

HISTORIC STRUCTURE — Any structure that is:

- A. Listed individually on the National Register of Historic Places (a listing maintained by the Department of 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:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR — 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 this article.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term

"manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — 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 community's Flood Insurance Rate Map are referenced.

ONE-HUNDRED-YEAR FLOOD — See "base flood."

REGULATORY FLOODWAY — 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. These areas are designated as floodways on the Flood Boundary and Floodway Map.

RIVERINE — Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SPECIAL FLOOD HAZARD AREA — An area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zones A, AO, A1-30, A99, and AH. (See "area of special flood hazard.")

START OF CONSTRUCTION — Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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 a 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 excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages, or sheds not occupied as dwelling units or not part of the main structure.

STRUCTURE — For floodplain purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage by any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should equal the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

WATER SURFACE ELEVATION — The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, whether specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

§ 275-13.4. Restrictions in regulatory floodway zone.

The following regulations, as well as the regulations contained in appropriate sections of this chapter, shall apply

to the regulatory floodway zone as delineated in § 275-13.2 above:

- A. All proposed development in any special flood hazard areas shall require a permit.
- B. The Director of Building, Zoning, and Licensing Services shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall:
 - (1) Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (2) Be constructed with materials resistant to flood damage;
 - (3) Be constructed by methods and practices that minimize flood damage; and
 - (4) Be 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.
- C. The placement of a manufactured housing unit is prohibited within the designated regulatory floodway, except in existing manufactured housing parks.
- D. Within the regulatory floodway, any development or encroachment (including fill) which would result in any increase in flood levels during the base flood discharge is prohibited.
- E. Where new and replacement water and sewer systems (including on-site systems) are proposed in flood-prone areas, the applicant shall provide the Director of Building, Zoning, and Licensing Services with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of floodwaters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- F. The Director of Building, Zoning, and Licensing Services shall maintain for public inspection, and furnish upon request, any certification of floodproofing and the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. This information must be furnished by the applicant. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- G. The Director of Building, Zoning, and Licensing Services shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. § 1334. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.
- H. Watercourses.
 - (1) In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Director of Building, Zoning, and Licensing Services. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Director.
 - (2) Within the altered or relocated portion of any watercourse, the applicant shall submit to the Director of Building, Zoning, and Licensing Services certification provided by a registered professional engineer assuring that the flood-carrying capacity of the watercourse has been maintained.
 - (3) Along watercourses that have a designated regulatory floodway, no encroachments, including fill, new

construction, substantial improvements, and other development, are allowed within the designated regulatory floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Director of Building, Zoning, and Licensing Services shall obtain, review, and reasonably utilize any floodway data available from a federal, state, or other source as criteria for requiring that development meet the floodway requirements of this article.

- (4) Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

§ 275-13.5. Standards.

- A. In special flood hazard areas the Director of Building, Zoning, and Licensing Services shall determine the one-hundred-year flood elevation in the following order of precedence according to the data available:
 - (1) In Zones A1-30 and AH, refer to the elevation provided in the community's Flood Insurance Study and accompanying FIRM or FHBM.
 - (2) In unnumbered A Zones, the Director of Building, Zoning, and Licensing Services shall obtain, review, and reasonably utilize any one-hundred-year flood elevation data available from federal, state, development proposals submitted to the community (example: subdivisions, site approvals, etc.) or other source.
 - (3) In Zone AO, the one-hundred-year flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or, if no depth number is specified on the FIRM, at least two feet.
- B. The Director of Building, Zoning, and Licensing Services' one-hundred-year flood elevation determination will be used as criteria for requiring in Zones A1-30, AE, AH, AO and A that:
 - (1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the one-hundred-year flood level.
 - (2) All new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the one-hundred-year flood level or, together with attendant utility and sanitary facilities, shall:
 - (a) Be floodproofed so that below the one-hundred-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards or practice for meeting the provisions of this article.
 - (3) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Recreational vehicles placed on sites within Zones A, A1-30, AH and AE on the City's FIRM must either:

- (a) Be on the site for fewer than 180 days; and
 - (b) Be fully licensed and ready for highway use; or
 - (c) Meet the permit requirements for placement of manufactured homes located on the Rochester FIRM.
- (4) New construction and substantial improvements.
- (a) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided the enclosed areas meet the following requirements:
 - [1] The enclosed area is unfinished or flood-resistant, usable solely for parking of vehicles, building access or storage;
 - [2] The area is not a basement; and
 - [3] Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
 - (b) Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - [1] A minimum of two openings have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - [2] The bottom of all openings shall be no higher than one foot above grade.
 - [3] Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exist of floodwaters.
- (5) Proposed structures to be located on slopes in special flood hazard areas, Zones AH and AD, shall include adequate drainage paths to guide floodwaters around and away from the proposed structures.

§ 275-13.6. Variances and appeals.

- A. Any order, requirements, decision or determination of the Building Inspector made under this article may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing, in addition to the usual variance standards under state law, that:
 - (1) The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
 - (2) If the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
 - (3) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.) for one hundred dollars (\$100.) of insurance coverage and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
- D. The community shall maintain a record of all variance actions, including their justification for their issuance,

and report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE 14
Historic Overlay District (HOD)
[Amended 3-5-2019]

§ 275-14.1. Table of contents.

§ 275-14.1.	Table of contents
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§ 275-14.5.	Definitions
§ 275-14.6.	Designation of Historic District
§ 275-14.7.	Identification of Historic District
§ 275-14.8.	Delineation of Historic District
§ 275-14.9.	Effect of inclusion in Historic District
§ 275-14.10.	Development involving property within Historic District
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§ 275-14.13.	Determination of hardship
§ 275-14.14.	Demolition by neglect
§ 275-14.15.	Appeals
§ 275-14.16.	Enforcement

§ 275-14.2. Purpose and intent.

- A. This article is established by the Rochester City Council pursuant to and in accordance with NH RSA 673:4 and 674:44a through 674:50. The purpose of the Rochester Historic Overlay District is to promote the general welfare of the community by:
- (1) Safeguarding the cultural, social, political, and economic heritage of the City;
 - (2) Fostering the preservation, restoration, and rehabilitation of structures and places of historic, architectural, and community value;
 - (3) Fostering civic pride in the beauty and noble accomplishments of the past;
 - (4) Furthering the attractiveness of the City of Rochester to home buyers, tourists, visitors, and shoppers, thereby providing economic benefit to the City;
 - (5) Conserving and improving the value of property in the District; and
 - (6) Enhancing opportunities, where applicable, for financial benefits for owners of historic properties through grants, low interest loans, tax credits, and other tax benefits.
- B. New construction is an essential process in a vital community, representing the current phase of an evolution that has been ongoing since the settlement of Rochester. There are a number of ways of designing new buildings and additions that will meet the objectives of this article. State of the art contemporary architecture is appropriate, and encouraged, provided that it is respectful of the historic fabric of the District.

§ 275-14.3. Applicability.

This article applies to all properties located within the boundaries of the Historic Overlay District.

§ 275-14.4. Historic District Commission.

A. Membership.

- (1) **Composition.** The Historic District Commission shall consist of seven regular members and up to five alternate members. Two seats among the regular members are designated for one member of the City Council and one member of the Planning Board, respectively. Likewise, two seats among the alternate members are designated to one member of the City Council and to one member of the Planning Board, respectively, which two alternate members may only sit for the regular City Council and Planning Board members, respectively. All Commission members shall be appointed in accordance with the provisions of Section 74 of the Rochester City Charter.
- (2) **Qualifications.** All members shall be residents of the City of Rochester. In reviewing the qualifications of a candidate for the Commission, the Council/Planning Board shall consider his/her demonstrated interest and experience in, and knowledge of, historic preservation and his/her ability to administer this article consistent with its purpose and intent. To the extent that such persons are available the Council/Planning Board shall seek members with backgrounds or interest in the fields of architecture, planning, historic preservation, history, archaeology, anthropology, engineering, construction, real estate, and law. At least one member shall live or work in the Historic District.
- (3) **Appointments.** The members of the Historic District Commission shall be appointed for terms of three years. Initial appointments shall be staggered so that subsequent terms will not be coterminous.

B. Powers and duties. The Historic District Commission shall have the following powers and duties:

- (1) **Applications.** Reviewing and approving, approving with conditions, or denying applications for certificates of approval.
- (2) **Consultation.** Calling upon City staff, citizens, abutters to applicants, and professionals, as it sees fit, for input, consultation, and recommendations on matters before the Commission.
- (3) **Surveys.** Conducting small area or community-wide surveys of historic, architectural, and cultural resources.
- (4) **National register.** Nominating structures and districts for listing in the National Register and reviewing all proposed National Register nominations within the City; keeping a record of all properties which are included in the local historic districts, listed in the National Register, and determined eligible for National Register listing.
- (5) **Planning.** Preparing historic resources components of local master plans and ensuring that historical resources are considered at every level of local decision-making.
- (6) **Advice and advocacy.** Advising other agencies of local, state, and federal government regarding, and advocating on behalf of, the identification, protection, and preservation of local historic, architectural, archaeological, and cultural resources.
- (7) **Liaison.** Acting as a liaison between local government and individuals or organizations concerned with historic preservation.
- (8) **Other applications.** Commenting on applications for site plan/subdivision approval, zoning amendments, variances, special exceptions, and other approvals affecting property in the Historic District or other historic resources.

- (9) Amendments. Investigating and recommending to the Planning Board and City Council amendments to this article and appropriate areas for designation as historic districts.
- (10) Education. Educating individual members of the Commission, municipal officials, property owners, and the public about the historic district and historic preservation.
- (11) Signage and recognition. Developing and administering a system of markers and monuments recognizing individual properties and the district and acknowledging special contributions toward historic preservation by members of the community.
- (12) Budget. Developing and submitting an annual request for funds to the City Council if desired. Subject to the availability of funds, the Commission may retain consultants.
- (13) Rules and regulations. Adopting, and from time to time amending, rules and regulations which are consistent with the intent of this article and appropriate state statutes.
- (14) Other. Undertaking any other appropriate action or activity necessary to carry out its mission as embodied in this article.

§ 275-14.5. Definitions.

The following definitions apply to this article only.

BUILDING — Any structure having a roof and intended for the shelter, housing, or enclosure of persons, animals, or personal property.

CONTRIBUTING PROPERTY (STRUCTURE OR SITE) — Also known as an "historic property." A property that contributes positively to the Historic Overlay District's architectural quality and integrity as a result of its location, design, history, condition, quality, age, materials, workmanship, feeling, and/or association.

EXTERIOR ARCHITECTURAL APPEARANCE — This encompasses the building itself and those individual elements which are integral to the building and are visible on the exterior. It includes colors, materials, texture, arrangement, architectural detailing and trim, the roof, windows, doors, foundation, steps, ramps, porches, decks, awnings, hardware, and light fixtures.

HARDSHIP — A situation where denial of the applicant's request to perform particular work upon a specific property that is not in conformance with the standards of this article would cause substantial difficulty for the applicant due to significant financial expense, loss of use of the property, diminution in the usability of the property, or impairment of the ability of an existing business to function effectively. (Note that this definition is different from the concept of hardship used elsewhere in this chapter regarding applications for variances.)

HISTORIC OVERLAY DISTRICT — Also known as "Historic District" and "District." An overlay zone district as described in this chapter.

MASSING — The shapes, sizes, and arrangement of the three-dimensional forms that compose a building.

NONCONTRIBUTING PROPERTY — A property which, due to its recent vintage (generally less than 50 years), incompatible design, incompatible and irretrievable alterations, or deteriorated condition, would not be considered to contribute to that character or quality of the District which the City seeks to preserve.

PROPORTION — The relation of one dimension to another, such as the height of a window compared to its width. Proportion affects visual order through coordination of such elements as height, width, depth, and spacing.

PUBLIC WAY — A road, sidewalk, footpath, trail, park, or navigable waterway owned by the City of Rochester or another governmental agency and intended to be accessible to the public.

SCALE — The perception of the size of a building or building element relative to the human body or other buildings or objects in the vicinity.

STRUCTURE — Anything constructed or erected, the use of which requires location on the ground, or attachment

to something having location on the ground. Examples include buildings, fences, walls, signs, and light fixtures.

TRADITIONAL — Sensitive to, evocative of, or harmonious with any particular style of architecture established prior to 1950 or the prevailing patterns, forms, or styles of architecture dating from the original settlement of the United States up to 1950.

§ 275-14.6. Designation of Historic District.

- A. Procedures for designation. The Rochester Historic District functions as a zoning overlay district. It is the role of the Historic District Commission to evaluate properties within the overlay district and to designate specific properties as contributing properties. The District boundaries may be amended and new historic districts may be designated and delineated following the amendment procedure described in this chapter¹⁶ with the provision that:
- (1) The Historic District Commission may initiate such amendments;
 - (2) The Historic District Commission shall have an opportunity to comment on any such proposed amendments prior to enactment by the Codes and Ordinances Commission and by City Council; and
 - (3) The Historic District Commission shall designate individual lots or parcels of land within the overlay district as contributing property upon determination by the Historic District Commission that the criteria for designation within this section are met.
- B. Criteria for designation. Any building, group of buildings, site, property, group of properties, or area (collectively referred to herein as "site") proposed for inclusion in the Rochester Historic District should generally (but not necessarily) be at least 50 years old and possess one or more of the features listed below. These criteria should be considered when the Commission, Planning Board and/or City Council deliberate the enlargement or reduction of an existing district or the creation of a new district. In any district which contains multiple properties or structures, not every property or structure need meet these criteria; rather the district overall should embody a meaningful degree of continuity, cohesiveness, integrity, and a prevailing conformance with one or more of the criteria.
- (1) The site embodies distinguishing characteristics of, or high quality in, design, detailing, materials, craftsmanship, or a particular architectural style.
 - (2) Its antique age, good condition, and special features make it worthy of preservation.
 - (3) Its unique location and characteristics make it an established and appreciated element or visual landmark for the community.
 - (4) The site is identified as the work of a master builder, designer, architect, engineer, or landscape architect whose individual work was influential in the development of the City of Rochester, region, state, or nation.
 - (5) The site contributes to the visual continuity of the District.
 - (6) One or more significant cultural, social, political, economic, or military events in the history of the City of Rochester, region, state, or nation occurred at the site.
 - (7) The site is identified with a person or persons of historic significance.

§ 275-14.7. Identification of Historic District.

- A. This district may be referred to as the "Historic Overlay District, "HOD," or "Rochester Historic District." A Zoning Map of the Rochester Historic District," as amended, which shows the Historic Overlay District, is

16. Editor's Note: See § 275-3.5, Amendments.

hereby incorporated as part of this article and is on file with the City Clerk. Within the District are contributing and noncontributing buildings as identified by the Historic District Commission and on file with the City of Rochester Planning and Development Department. The Zoning Map and all the notations, references, district boundaries, and other information shown thereon shall be as much a part of this article as if all were fully described therein. See § 275-14.8 which lists properties in the district by Assessor's Map and lot numbers.

- B. Surveys, maps and historic context papers. The Planning and Development Director or designee shall conduct or cause to be conducted such preliminary surveys, studies or investigations as deemed necessary or advisable to adequately inform the Historic District Commission of those properties located within the City which represent Rochester's history. The Planning and Development Director or designee shall memorialize the results of surveys, studies and investigations in a series of historic inventory forms, maps and/or historic context papers. Said inventory forms, maps, and context papers shall be maintained by the Planning and Development Department and shall be made available for public inspection at all reasonable times. These resources shall be referenced by the Historic District Commission when reviewing applications for changes or boundary adjustments within the Historic Overlay District.

§ 275-14.8. Delineation of Historic District.

The Rochester Historic District is defined as that area made up of the lots listed below as delineated on the Rochester Tax Maps. Unless otherwise noted or shown on the map, all of the land composing each lot shall be considered to lie within the District. The District also includes all City property necessary to make a contiguous district. (Note that in the case of discrepancy between the Zoning Map and this list of lots, the Zoning Map shall be determining.) Lots in the District include:

- A. Tax Map 116, Lots 156-162, and 201-204;
- B. Tax Map 120, Lots 322-324, 332-340, 342, 342-1, 343, 346, 347, 351, 352, 354, 355, 358-367, 379-381, 383-390, 392-408, and 419-422;
- C. Tax Map 121, Lots 9-18, 28, 29, 361-364, 366-368, 368-1, 369-400; and
- D. Tax Map 125, Lots 1, 181, 182, and 202-204.

§ 275-14.9. Effect of inclusion in Historic District.

- A. Approvals required. Any development involving properties included within the boundaries of the Historic Overlay District, unless determined exempt, requires the approval of a certificate of no negative effect or a certificate of approval before a building permit or any other work authorization will be issued by the City.
- B. Design guidelines.
 - (1) The Historic District Commission has adopted design guidelines, hereinafter referred to as "the guidelines." These guidelines set forth the standards necessary to preserve and to maintain the historic and architectural character of the Historic Overlay District. The standards apply to the exterior features of properties within the District and are intended to offer assistance to property owners undertaking construction, rehabilitation, alterations, or other exterior changes. The guidelines will be periodically reviewed by the Historic District Commission and amended at a public hearing as needed.
 - (2) The guidelines will be used in the review of requests for certificate of no negative effect or certificates of appropriateness. Conformance with applicable guidelines is strongly recommended for the approval of any proposed project.
 - (3) The guidelines effectively replace the architectural regulations under the site plan regulations for properties located within the Historic Overlay District. The architectural regulations and site plan

regulations and associated reviews do not apply.

- C. Special consideration for contributing and noncontributing buildings within the Historic District. To preserve and maintain the historic and architectural character of the District, the Historic District Commission or City Council may approve variations from the requirements set forth in the Land Use Code and may make recommendations to the Chief Building Official who has the authority to grant certain exceptions from the International Building Code (IBC) through the provisions of the International Existing Building Code (IEBC).
- D. To the extent practicable and appropriate, as determined by City staff and the Commission, applicants may file applications for various permits, to the Planning Board, Zoning Board of Adjustment, Building Department, etc., simultaneously, or in any appropriate order, in order to save time. This provision, however, shall not be construed in a manner which would prevent the Commission from conducting a thorough review as it sees fit.
- E. All City authorities, including the Historic District Commission and City Council, are authorized to grant economic and developmental benefits to historic properties within the Historic District.
- F. In cases where the Historic District Commission has purview, the Planning Board shall not have jurisdiction over architectural design. The architectural regulations under the site plan regulations shall not apply. Nonetheless, the Planning Board shall review all other elements of a site otherwise subject to its review.
- G. Property owned by the City of Rochester shall be subject to review and approval by the Commission in like manner to all other property in the City situated within the district; provided, however, that a vote by 2/3 of the total membership of the Rochester City Council may override any vote of the Commission pertaining to land or property owned by the City of Rochester.

§ 275-14.10. Development involving property within Historic District.

No building, structure, significant ground disturbance or sign may be constructed, altered, repaired, relocated or otherwise improved within the boundaries of the Historic Overlay District until sufficient information is submitted to the City of Rochester Planning Office and approved in accordance with the procedures established within the Municipal Code.

- A. Exempt activity. A certificate of appropriateness or certificate of no negative effect shall not be required for the following activities. A project may be subject to other requirements within this chapter.
 - (1) Work completed on a single-family or duplex building within the Historic Overlay District.
 - (2) Structures which are not buildings as defined in this article (such as light poles, street furniture, and fences).
 - (3) Work performed on the interior of buildings that does not effect the exterior appearance.
 - (4) Land uses. Land uses are not be regulated through this article herein nor by the Commission. Permitted uses are set forth elsewhere in this chapter. However, in cases where the applicant is unable or unwilling to develop a design which conforms to the guidelines and requirements herein because of unusual constraints in the nature of the proposed use, the Commission is by no means required to issue a certificate of approval simply to accommodate that permitted use. (Example: A gasoline station might be permitted in the Historic District, but if no design is presented for which the appearance of the canopy and the pump stations meet the standards of this article, then the application should be denied, even though this specific permitted use may thereby be precluded.)
 - (5) Elements which are appurtenant to a building but which are not integral to the building, including antennas, satellite dishes, flagpoles, mailboxes, window air conditioning units, and similar elements.
 - (6) Installation or removal of any plants.

- (7) Color of paint or stain of wood siding with the condition that the paint color or stain is from an approved historic paint color palette. Refer to the City of Rochester Planning Staff for approved historic paint color palettes.
- (8) Installation of pavement or other impervious or semi-impervious material in an already established parking area.
- (9) Minimally intrusive work that does not adversely affect the historic character of the property or District as determined by Planning Staff.

B. Certificate of no negative effect.

- (1) An application for a certificate of no negative effect may be made to the City of Rochester Planning and Development Department for approval of work that has no adverse effect on the physical appearance or character-defining features of a property located within the Historic Overlay District. An application for a certificate of no negative effect may be approved by the Planning and Development Director or designee with no further review if it meets the requirements set forth below.
 - (a) The Planning and Development Director or designee shall issue a certificate of no negative effect within 14 days after receipt of a complete application if:
 - [1] It is determined that the activity is an eligible work item and meets the City Historic Preservation Design Guidelines; and
 - [2] Any modifications to the proposed work requested by the Planning and Development Director or designee are agreed to by the owner/applicant; and
 - [3] The proposed work will not diminish, eliminate or adversely affect the significant historic and/or architectural character of the subject property or Historic District in which it is located.
 - (b) An application for a certificate of no negative effect shall include the following:
 - [1] Elevations or drawings of plans not less than 1/8 inch showing the proposed work.
 - [2] Photographs, building material samples and other exhibits, as needed, to accurately depict location, extent and design of proposed work.
 - [3] Demonstrated compliance with applicable design guidelines.
 - (c) The following work shall be considered for a certificate of no negative effect:
 - [1] Replacement of architectural features which creates no change to the exterior physical appearance of the building or structure.
 - [2] Installation of awnings on historic properties.
 - [3] Signs.
 - [4] Alterations to noncontributing buildings within the Historic Districts that have no adverse effect on its historic or architectural character.
 - [5] Alterations to non-street-facing facades on contributing buildings within the Historic District that have no adverse effect on its historic or architectural character.
 - [6] Small structures or additions of 250 square feet or less in size.
 - [7] Installation of site improvements, such as walkways, patios, decks, or similar significant features.

- (2) In the event that the Planning and Development Director or designee determines that the issuance of a certificate of no negative effect is not appropriate or the design guidelines are not met, the owner may apply for a certificate of appropriateness from the HDC.

C. Certificate of approval. An application for a certificate of approval shall be submitted to the Rochester Historic District Commission through the Planning and Development Department no fewer than 10 days prior to a Commission meeting. However, upon an affirmative vote of at least four members of the Commission this deadline may be reduced on a case-by-case basis for good cause.

- (1) Intent. It is the intent of this article to make the review process as simple and pleasant as practical. The applicant need only submit those materials which the Commission reasonably determines are necessary to conduct an appropriate review.

- (a) On small or straightforward projects submission of the application, a letter of intent, a verbal description, and/or one or more sketches drawn by the applicant may suffice.
- (b) In the case of more elaborate proposals or those potentially having a significant impact upon sensitive properties, any or all of the materials listed below may be required as the Commission sees fit. While the use of an architect is not required under this article, there will be many situations where it will be difficult to provide appropriate drawings and to meet the objectives of this article without the use of an architect, particularly where new construction or additions are involved.
- (c) Applicants are encouraged to speak with the Planning and Development Department prior to preparing an application package to get a preliminary sense of which of the items below might not be needed.

- (2) Application requirements.

- (a) The application package may include any or all of the items listed below as stipulated by the Historic District Commission:

[1] A completed application form as provided by the City shall include:

[a] The purpose of the proposed project.

[b] The nature and scope of the work to be performed.

[2] Site plans drawn to scale clearly depicting existing conditions and proposed work.

[3] Elevation drawings to scale of each affected facade of the building clearly depicting existing conditions and proposed work.

[4] Detail drawings of appropriate elements (such as the balustrade for a handicapped ramp).

[5] Photographs of each impacted side of the building.

[6] Sample, swatch, and/or manufacturer's cut sheet of materials to be used (such as a brick), as appropriate.

[7] A written description of how the project meets the applicable design guidelines.

[8] Any other items which the Commission may reasonably need to conduct its review.

- (b) No fees of any kind shall be charged for applications to the Commission or to cover any of the costs of reviewing the application.

- (3) Procedures for review of the application. Recognizing that a lengthy approval process can be costly to landowners, developers, and business owners, the Commission shall seek to take final action at its

earliest reasonable opportunity, which in many cases will be at the first regular meeting of the Commission at which the application is presented.

- (a) The Planning and Development Director or designee shall review the application materials submitted for certificate of appropriateness approval and request additional information as necessary.
- (b) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HDC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HDC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the design guidelines.
- (c) Action by Historic District Commission.
 - [1] The Historic District Commission shall take action, i.e., to approve, approve with conditions, or deny, on all applications within 65 days of the meeting at which the Commission accepts the application as complete. This time frame may be extended either by consent or request of the applicant or upon formal request from the Commission to, and written authorization from, the City Manager for an additional period not to exceed 65 days.
 - [2] Failure by the Commission to act within the period of time specified above (with or without extensions) shall be deemed to constitute approval of the application as submitted. A certificate of approval shall be effective for two years after the date of approval. If an applicant has not secured a building permit within that time frame, or has not substantially commenced work in cases where no building permit is required, the certificate shall lapse. The Commission may grant extensions as it reasonably determines appropriate.
- (d) Meetings of the Historic District Commission are public meetings and may require notice to the public as specified in New Hampshire State Statute and the City of Rochester Municipal Code. The public is encouraged to attend. When notice is required, the Planning and Development Department shall process notices for public hearings.
- (e) The Commission may seek advice from such professional, educational, cultural, or other resources as is deemed necessary.
- (f) The HDC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. The Commission may make nonbinding recommendations to the applicant on elements outside of its purview, such as on paint, color of wood, parking lot layout, or planting materials. The Commission shall notify the applicant of its decision. When an application is rejected as being incomplete or denied, the reason(s) for the decision shall be conveyed to the applicant and clearly stated in the record of proceedings of the Commission. Any steps recommended to remedy deficiencies or flaws in the proposal shall also be conveyed to the applicant.
- (g) A monitoring committee comprised of two representatives from the Commission shall be assigned to the approved project to oversee and approve amendments that may arise during construction.

D. Amendments. There are two processes for amending plans approved pursuant to a certificate of appropriateness. All requests for amendments must be in writing and accompanied by drawing(s) and elevations as specified below.

- (1) Insubstantial amendments.

- (a) Insubstantial amendments are minor modifications to HDC approved plans that:
 - [1] Address circumstances discovered in the course of construction that could not have been reasonably anticipated during the approval process; or
 - [2] Are necessary for conformance with building safety or accessibility codes and do not materially change the approved plans; or
 - [3] Approve specific building materials, finishes, design of ornamental trim and other such detail not provided in the HDC approved plans; or
 - [4] Change the shape, location or material of a building element or feature but maintain the same quality and approximate appearance of that found in the approved plans.
- (b) The Planning and Development Director or designee and the monitoring committee may authorize amendments to approved plans. Decisions of the Planning and Development Director or designee or monitoring committee are binding.
- (2) Other amendments. The Planning and Development Director or designee or monitoring committee may determine that the proposed changes do not meet the design guidelines and remand the matter to the HDC for a decision by the Commission. Approval of amendments by the Planning and Development Director or designee and the monitoring committee shall be reported to the HDC at their regularly scheduled meetings.

§ 275-14.11. Historic District demolition permit.

It is the intent of this article to preserve the historic and architectural resources that contribute to the history of Rochester. Consequently no demolition of any properties within the Historic Overlay District shall be permitted unless approved by the HDC in accordance with the standards set forth in this section.

A. Exempt activity.

- (1) Demolition of a single-family or duplex building within the Historic Overlay District.
- (2) Demolition of structures which are not buildings as defined in this article (such as light poles, street furniture, and fences).
- (3) Demolition work performed on the interior of buildings that does not effect the exterior appearance.
- (4) Demolition of elements which are appurtenant to a building but which are not integral to the building, including antennas, satellite dishes, flagpoles, mailboxes, window air-conditioning units, and similar nonhistoric elements.

B. Procedures for demolition of properties within the Historic Overlay District.

(1) Application.

- (a) An application for an historic district demolition permit for properties within an Historic District will be filed with or referred to the Planning and Development Director or designee by the Director of Building, Zoning and Licensing Services. The applicant will be provided a written response within 14 days of the request for a demolition permit describing the submittal materials needed for consideration. An application for demolition approval shall include:
 - [1] Written documentation that the Director of Building, Zoning and Licensing Services has determined the building an imminent hazard that cannot be repaired; or
 - [2] Narrative text, graphic illustrations or other exhibits that provide evidence that the building,

structure or object is of no historic or architectural value or importance.

- (b) The staff shall review the submittal material and prepare a staff report that analyzes the request relative to the criteria for approval.
- (2) Review procedures.
- (a) Criteria to be met.
 - [1] The HDC shall review the application, the staff report and hear evidence presented by the property owners and parties of interest to determine if the standards for demolition approval have been met. Demolition shall be approved if it is demonstrated that the application meets any one of the following criteria:
 - [a] The property has been determined by the City to be an imminent hazard to public safety and the owner/applicant is unable to make the needed repairs in a timely manner; or
 - [b] The structure is not structurally sound despite evidence of the owner's efforts to properly maintain the structure; or
 - [c] The structure cannot practically be moved to another appropriate location in Rochester; or
 - [d] No documentation exists to support or demonstrate that the property has historic, architectural, archaeological, engineering or cultural significance.
 - [2] Additionally, for approval to demolish and to grant a historic district demolition permit, all of the following criteria must be met:
 - [a] The structure does not contribute to the significance of the Historic Overlay District; and
 - [b] The loss of the building, structure or object would not adversely affect the integrity of the Historic Overlay District or its historic, architectural or aesthetic relationship to adjacent historic properties; and
 - [c] Demolition of the structure will be inconsequential to the historic preservation needs of the area.
 - (b) The HDC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to consider the demolition request.
 - (c) If the demolition request is denied because it does not meet the aforementioned standards, the applicant may request demolition approval based upon approval of a determination of hardship as set forth below.
 - (d) Before a demolition permit will be issued, a certificate of approval for the redevelopment as described above, must be approved. When a demolition permit must be issued because the building is an imminent hazard or because of the issuance of a determination of hardship, the permit may be received prior to the receipt of a certificate of approval.

§ 275-14.12. Historic District relocation permit.

The intent of this article is to preserve historic properties in their original locations within the Historic Overlay District. However, it is recognized that occasionally the relocation of a property may be appropriate as it provides an alternative to demolition or because it only has a limited impact on the attributes that make it significant. All properties within the Historic Overlay District are subject to this section.

- A. Exempt activity.
- (1) Relocation of a single-family or duplex building.
 - (2) Relocation of structures which are not buildings as defined in this section (such as light poles, street furniture, and fences).
 - (3) Relocation of elements which are appurtenant to a building but which are not integral to the building, including antennas, satellite dishes, flagpoles, mailboxes, window air-conditioning units, and similar nonhistoric elements.
- B. Application. An application for relocation shall include:
- (1) A written description and/or graphic illustrations of the building, structure or object proposed for relocation.
 - (2) A written explanation of the type of relocation requested (temporary, on-site or off-site) and justification for the need for relocation.
 - (3) A written report from a licensed engineer or architect regarding the soundness of the building, structure or object, its ability to withstand the physical move and its rehabilitation needs, once relocated.
 - (4) A conceptual plan for the receiving site providing preliminary information on the property boundaries, existing improvements and site characteristics and the associated planned improvements.
 - (5) If the applicant does not own the receiving site, proof from the site's property owner of the willingness to accept the relocated building, structure or object.
 - (6) Evidence that the applicant has or is seeking the necessary approvals to place the building on the identified receiving site.
 - (7) Evidence of the financial ability to undertake the safe relocation, preservation and repair of the building, structure or object; site preparation and construction of necessary infrastructure through the posting of bonds or other financial measures deemed appropriate.
 - (8) Supplementary materials to provide an understanding of the larger context for the relocated property and its impact on adjacent properties, the neighborhood or streetscape.
 - (9) Additional information may be requested by the Historic District Commission as needed to complete the review.
- C. Procedures for the review of historic district relocation permit.
- (1) The Planning and Development Director or designee shall review the application materials submitted for relocation approval. Upon determination of a complete application, the project shall be scheduled before the HDC.
 - (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the standards for relocation approval set forth below, the City Historic Preservation Design Guidelines and other applicable Land Use Code sections. This report will be transmitted to the HDC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HDC will review the application, the report and the evidence presented at the hearing to determine if the standards for relocation have been met.
 - (3) The HDC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.

D. Standards for relocation.

- (1) Relocation for a building will be approved if it is determined that it meets any one of the following standards:
 - (a) It does not contribute to the overall character of the historic district or parcel on which it is located and its relocation will not have an adverse impact on the Historic District or property; or
 - (b) The owner has obtained a determination of hardship; or
 - (c) The relocation activity is demonstrated to be an acceptable preservation method given the character and integrity of the building and its move will not adversely affect the integrity of the Historic District in which it was originally located or diminish the historic, architectural or aesthetic relationships of adjacent designated properties; and
- (2) Additionally, for approval to relocate and to grant a historic district relocation permit all of the following criteria must be met:
 - (a) It has been determined that the building, structure or object is capable of withstanding the physical impacts of relocation:
 - (b) An appropriate receiving site has been identified; and
 - (c) An acceptable plan has been submitted providing for the safe relocation, repair and preservation of the building, structure or object, including the provision of the necessary financial security.

§ 275-14.13. Determination of hardship.

It is the policy of the City to respect private property rights. The City recognizes, therefore, that there may be some circumstances in which the operation of this article could create an undue economic hardship. This provision is created to provide property owners with a means of demonstrating that such a hardship may exist and that they should be allowed to demolish a property within the Historic Overlay District because of that hardship. It is the intent of this provision to ensure that no private property is taken without just compensation.

- A. Standard of review. The standard of review for a determination of economic hardship will be whether refusing to allow the property owner to demolish the property would result in a violation of the prohibitions of the United States and New Hampshire Constitutions against taking of private property for public use without just compensation as those prohibitions are interpreted by the courts of New Hampshire and the United States. In applying the standards, the economic benefits of financial, developmental and technical assistance from the City and the utilization of any federal and state rehabilitation tax credit programs may be considered.
- B. Application requirements.
 - (1) Upon receiving a request for a certificate of economic hardship, the Planning and Development Director or designee shall provide a written response within 14 days as to the submittal materials required.
 - (2) Within five days after receipt of an application for a certificate of economic hardship, the Planning and Development Director or designee shall determine whether the application is complete. If he/she determines that the application is not complete, the Director shall notify the applicant in writing of the deficiencies. The Director shall take no further steps to process the application until the deficiencies have been remedied.
 - (3) The application fee shall be set to defray all costs of the review process, including the fees of an independent hearing officer.
- C. Review process.

- (1) When the application is complete, the Planning and Development Director or designee will refer the application to the Historic District staff member and the City Attorney for review. The Historic District staff member and City Attorney shall jointly prepare a report setting forth the City's response.
- (2) In the event the City response concludes that the application does not demonstrate a case of economic hardship, the application can apply for an administrative appeal before Zoning Board of Adjustment.
- (3) The Zoning Board of Adjustment will be contracted by the City to conduct an impartial quasi-judicial hearing on the question of economic hardship. If deemed necessary, the ZBA may hire, at the applicant's expense, a consulting professional(s) with sufficient legal and technical experience to conduct a fair hearing on the matter. The application, all support materials and the consultants/City's report shall be provided to the ZBA in advance of the hearing. At the hearing the applicant will be provided with an opportunity to present his/her application and may be represented by counsel. The City position will be presented by the City Attorney/consultant.

D. Appeal. An applicant may appeal the decision of the hearing officer to District Court.

§ 275-14.14. Demolition by neglect.

It is the intent of this article to address the range of circumstances that affect the preservation of the community's significant historic and architectural resources. It is further recognized that many historic buildings and structures are lost because of deterioration from lack of maintenance. Whether this occurs unintentionally or through deliberate decisions, the result is the same: the loss of community assets that cannot be replaced. Consequently, it is declared that the exterior features of any designated building or structure shall be preserved against decay and deterioration and kept free from structural defects. The designated structures shall receive reasonable care, maintenance and upkeep appropriate for their preservation, protection, perpetuation and use.

A. Standards for reasonable care and upkeep. The owner or such other person who may have legal possession, custody and control thereof of a designated property shall, upon written request by the City, repair the following exterior features if they are found to be deteriorating or if their condition is contributing to deterioration such that it is likely to compromise the building's structural integrity or as to create or permit the creation of any hazardous or unsafe condition to life, health or other property. These features include, but are not limited to:

- (1) Deterioration of exterior walls, foundations or other vertical supports that causes leaning, sagging, splitting, listing or buckling.
- (2) Deterioration of flooring or floor supports or other horizontal members that causes leaning, sagging, splitting, listing or buckling.
- (3) Deterioration of external chimneys that cause leaning, sagging, splitting, listing or buckling.
- (4) Deterioration or crumbling of exterior plasters or mortars.
- (5) Ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors.
- (6) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint or weathering due to lack of paint or other protective covering.
- (7) Rotting, holes and other forms of decay.
- (8) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, ornamental trim and other architectural details that cause delamination, instability, loss of shape and form or crumbling.

B. Enforcement procedures.

- (1) The HDC or Planning and Development Director or designee may file a petition listing specific defects, in accordance with Subsection A above, with the Director of Building, Zoning and Licensing Services, requesting that the official act under the following procedures to require the correction of the defects or repairs to designated properties.
- (2) Whenever a petition is filed, the Director of Building, Zoning and Licensing and Services shall attempt to make direct personal contact with the owner or other such persons having legal possession or custody and/or his/her representative. If personal contact cannot reasonably be accomplished, then written notification of the specific defects purported by the HDC and a request to inspect the property within 10 days will be mailed to the owner and other such persons having legal possession, custody and control and will be posted at a conspicuous location appropriate to the identified defects. In the written notification the Chief Building Official shall document the nature of the specific defects and the corrective action ordered.
- (3) After receiving agreement from the owner, his/her representatives or other such persons having legal possession, custody and control of the property for an inspection, the Chief Building Official and the HDC Officer shall, within 10 working days, conduct an investigation and prepare a written report determining whether the property requires work to address conditions set forth in Subsection A above.
- (4) If the property is found to contain conditions needing correction, the owner, his/her representative or other such persons having legal possession, custody and control of the property will be served within 14 days with a complaint identifying the property deficiencies and providing notice that a hearing will be held by the City Council within 45 days. The purpose of the hearing is to:
 - (a) Receive evidence concerning the charge of deterioration; and
 - (b) Develop a plan and schedule for making the needed repairs in a timely fashion, such that the building is stabilized and the deterioration is arrested; and
 - (c) Ascertain whether the owner or other parties intend to make application for financial assistance from the City to correct the building defects.
- (5) Following such notice and hearing, City Council will make a determination if there are any corrections required pursuant to Subsection A above and shall state in writing the findings of fact in support of that determination. If it is determined that the building or structure is undergoing deterioration or if its condition is contributing to deterioration, the owner or other parties of interest will be served an order to repair those defective elements of the structure within a reasonable specified time frame.
- (6) If the owner fails to make the necessary repairs within the identified time frame, the City may undertake the work to correct the deficiencies that create any hazardous and unsafe conditions to life, health and property. The expense of this work will be recorded as a lien on the property.

§ 275-14.15. Appeals.

Any applicant, person, or organization aggrieved by a decision of the Historic District Commission may appeal the decision to the Rochester Zoning Board of Adjustment in accordance with RSA 674:33 and any appeal procedures specified in the City ordinances. In its review of any appeals the Zoning Board shall be guided by the provisions of this article and other applicable law.

§ 275-14.16. Enforcement.

This article shall be enforced as provided for in the Rochester Zoning Ordinance.

ARTICLE 15

Special Downtown Overlay District (SDOD)**§ 275-15.1. Boundaries.**

The boundaries of the Special Downtown District coincide with the fire limits established in § 40-13 of the Code of the City of Rochester. The district includes those areas classified on the Rochester Zoning Map as Downtown Commercial (DC) and Neighborhood Mixed-Use (NMU) adjacent to North Main Street up to Washington Avenue and South Main Street in Rochester proper and Main Street in the NMU in Gonic and East Rochester.

§ 275-15.2. Regulations and restrictions.

The following regulations and restrictions shall apply in the Special Downtown District:

- A. Development within the Special Downtown District shall be exempt from the site plan review process; provided, however, that any construction of new structures within the Special Downtown District and/or any change to an existing structure or use within the Special Downtown District shall be subject to the site plan review process unless the Planning and Development Director, after consultation with the Director of Building, Zoning, and Licensing Services, the Commissioner of Public Works, the Fire Chief, the Police Chief, the Economic Development Director, and one representative from the Planning Board appointed by the Board Chair, certifies in writing to the Planning Board that such proposed construction or change will have no significant adverse impact on the Special Downtown District.
- B. Existing structures and uses are exempt from the parking and loading requirements contained in Article 26 of this chapter.
- C. New structures and uses, including changes to existing structures and uses, shall be subject to the parking and loading requirements contained in Article 26 of this chapter; provided, however, that where a public parking facility is available within 400 feet of a structure or use, the specific parking requirements may be determined by the Director of Building, Zoning, and Licensing Services (or the Planning Board in the case of projects that are referred to the Board) on an individual basis. For the purposes of this subsection, the term "public parking facility" means a publicly owned off-street parking facility for 10 or more vehicles.
- D. The Planning Board shall be notified within 10 days of all projects being reviewed pursuant to this article. At the request of any Planning Board member, any project that has been reviewed, or is being reviewed, under this article may be referred to the full Planning Board for regular site plan review. In the event that a Planning Board member requests in writing that a project be referred to the Planning Board for regular site plan review, the Planning Board shall, within 30 days of the date of the notification provided for in this subsection, vote as to whether or not regular site plan review of such project shall be required.
- E. There are no planning application fees or monumentation fees charged for any projects located in the Special Downtown District (whether reviewed administratively or referred to the Planning Board).

ARTICLE 16
(Reserved)

§ 275-15.2

ARTICLE 17
(Reserved)

§ 275-15.2

§ 275-18.1. Applicability of use regulations.

No building, structure, or land shall be used except for the purposes permitted in the zoning district as described in Article 18. All uses are subject to all other applicable sections of this chapter and other local, state, and federal laws, rules and regulations.

§ 275-18.2. Use tables.

Use regulations by zoning district are provided in the following tables which are located at the end of this chapter:¹⁷

- A. Table 18-A, Residential Uses.
- B. Table 18-B, Sales-Service-Office-Institutional Uses.
- C. Table 18-C, Food-Lodging-Public Recreation Uses.
- D. Table 18-D, Industrial-Storage-Transport-Utility Uses.
- E. Table 18-E, Agriculture-Animal Care-Land Oriented Uses.

§ 275-18.3. Permitted uses.

A use denoted in the use tables by the letter "P" is permitted in that zoning district "by right." For some particular uses within particular districts there are special criteria/conditions that apply, as articulated in Article 20, Standards for Specific Permitted Uses. Where these special criteria/conditions apply there is a reference in the right column of the table. Always check these special criteria/conditions to see if they are applicable.

§ 275-18.4. Conditional uses.

A use denoted in the use tables by the letter "C" is permitted in that zoning district by conditional use. Authorization of conditional uses is subject to review and approval by the Planning Board as articulated in Article 21, Conditional Uses. For some conditional uses within specific districts there are additional standards and/or criteria that apply, beyond the base criteria applicable to all conditional uses. Where these additional standards and/or criteria apply there is a reference in the right column of the table. Always check these criteria/conditions to see if they are applicable.

§ 275-18.5. Special exceptions.

A use denoted in the tables by the letter "E" is permitted in that zoning district by special exception. Authorization of special exceptions is subject to review and approval by the Zoning Board of Adjustment as articulated in Article 22, Special Exceptions. For some special exceptions within specific districts there are additional standards and/or criteria that apply, beyond the base criteria applicable to all special exceptions. Where these additional standards and/or criteria apply there is a reference in the right column of the table. Always check these special criteria/conditions to see if they are applicable.

§ 275-18.6. Uses not permitted/prohibited uses.

A use denoted in the tables by a dashed line "-" is not permitted in that zoning district.

17. Editor's Note: The tables are included as attachments to this chapter.

§ 275-18.7. Accessory uses.

Accessory uses are generally not listed in the attached tables. Permitted uses, conditional uses, and special exceptions are referenced to zoning districts whereas accessory uses are related to other uses (i.e., principal uses). They are defined in Article 2, Definitions, and discussed in Article 23, Accessory Uses. Nonetheless, some accessory uses which are also keyed to certain zoning districts (such as home occupations) are listed in the table; all accessory uses included in the table are labeled as such.

§ 275-18.8. Uses not listed.

- A. In the event that a proposed use is not specifically identified in the tables, the Zoning Administrator is authorized to select the listed use which most closely resembles the proposed use in impact and intensity. (A useful guide for examining nonresidential uses is the North American Industry Classification System.)
- B. In cases where no listed use is reasonably construed to closely resemble the proposed use, the Zoning Administrator may determine that there is no listing for the proposed use and that therefore it is not permitted in any zoning district.

§ 275-18.9. Most specific description to apply.

A proposed use shall be classified as the narrowest, most specific listed use that matches the proposed use. (Example: a proposed antique shop would be classified as an "antique shop" rather than as "retail sales.")

ARTICLE 19
Dimensional Regulations

§ 275-19.1. Overview.

- A. Dimensional requirements by zoning district are provided in the following tables which are located at the end of this chapter:¹⁸
- (1) Table 19-A, Dimensional Standards - Residential Districts.
 - (2) Table 19-B, Dimensional Standards - Commercial Districts.
 - (3) Table 19-C, Dimensional Standards - Industrial Districts.
 - (4) Table 19-D, Dimensional Standards - Special Districts.
- B. Additional dimensional standards are provided throughout this chapter.

§ 275-19.2. Dimensional provisions.

General dimensional regulations and regulations (as well as clarifications, notes, and references) specifically referenced to the tables follow:

- A. Building height.
- (1) Adjacent to residences. In any zone, required setbacks shall be increased by one foot for each foot buildings exceed 35 feet in height.
 - (2) Barns. In the AG District barns may exceed the height limit.
 - (3) Exceptions. Unless subject to FAA requirements, the height limits specified in the tables shall not apply to the following: chimneys, flares, stacks, storage silos, satellite dishes, antennas, elevator shafts, rooftop mechanical equipment, ventilators, skylights, church towers, cupolas, domes, pinnacles, spires, silos, water tanks, and similar elements, provided the combination of the building and element does not exceed 100 feet in height (unless otherwise specifically provided for in this chapter).
- B. Building separation. Except within the DC Zone, all buildings or open covered structures situated on the same lot must be separated from one another by a minimum of 10 feet or as regulated by the New Hampshire State Building or Fire Code.
- C. Building stories.
- (1) Floors below grade. Floors with any portion below grade do not count toward meeting requirements for a minimum number of stories. Any floor with at least 1/3 of the floor to ceiling space situated at or above grade shall count toward the maximum number of stories permitted.
 - (2) Upper floors. Upper story/attic spaces count toward the minimum required number of stories specified in the dimensional tables if a portion of the floor area of those upper story/attic spaces equal to at least 1/2 the floor plate of the building has a ceiling height of at least seven feet.
- D. Corner lots. On corner lots, for the purpose of setbacks, there shall be established a front, a street-side side, a (regular) side, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). The street-

18. Editor's Note: The tables are included as attachments to this chapter.

side setback shall apply to that side of the lot facing the other street. The street-side setback shall be the ordinary side setback in that district.

- E. Density rings. The density rings are shown on the Official City of Rochester Zoning Map that is adopted as part of this chapter and only apply to multifamily dwellings/developments. The rings are defined as follows: **[Amended 2-6-2018; 5-7-2019]**
- (1) There is no minimum lot area per dwelling unit applicable within the Downtown Commercial (DC) Zone District. For areas outside of the DC Zone District, the minimum lot area per dwelling unit within a one-mile radius of the center of Rochester shall be 5,000 square feet. The minimum lot area per dwelling unit outside of the one-mile radius of the center of Rochester shall be 7,500 square feet.
 - (2) The minimum lot area per dwelling unit within a one-half-mile radius of the center of Gonic and East Rochester shall be 5,000 square feet. The minimum lot area per dwelling unit outside of the one-half-mile radius of the center of Gonic and East Rochester, shall be 7,500 square feet.
 - (3) Any lot that is partially within the radius of a density ring shall be treated as if it were entirely within the radius of the density ring.
- F. Double frontage lots. On double frontage lots, for the purpose of setbacks, there shall be established a front, two sides, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). The regular rear setback shall apply to that section of the lot opposite the front.
- G. Exempt structures. Nonhabitable utilities and utility-type structures erected by a governmental, public utility or nonprofit agency which customarily are built within the road right-of-way, on undersized lots, or close to property lines, and which cannot reasonably be made to conform to the requirements of the dimensional tables, are exempt from those requirements.
- H. Frontage and access. Access to lots shall be taken from the same road where the lot frontage is located unless waived by conditional use.
- I. Frontage. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (1) Continuous. An area used to meet frontage requirements must be continuous and unbroken. Two or more discrete areas may not be added together to meet frontage requirements.
 - (2) Culs-de-sac. The Planning Board may reduce the required frontage on the curved end portion of a cul-de-sac by up to 20% by conditional use (due to the narrower frontage relative to lot width that naturally occurs along a cul-de-sac).
 - (3) Depth. The front portion of every lot must be at least the width of the required frontage from the front property line extending back at least the depth of the setback from the front property line.
- J. Lot area; usable area. No lot shall be approved unless a rectangle measuring at least 3,000 square feet can be fit inside the lot beyond any required setbacks, wetlands, wetland buffers, or slopes greater than 25%. The rectangle must be located in an accessible part of the lot and its width must measure at least 30 feet.
- K. Lot coverage. All of the following elements are considered part of lot coverage: buildings, roofed structures, or impervious surfaces.
- L. Multiple principal uses. Where there are multiple principal uses on one lot or parcel, minimum required lot sizes are not aggregated except where there are multiple residential uses; i.e., it is necessary only that the lot size meet the minimum requirement for any use proposed for the lot. (Example: A certain zoning district

stipulates a minimum lot size of 40,000 square feet for all permitted uses, including single-family and commercial both of which are allowed. To accommodate a single-family house and a commercial use on the same lot, a lot 40,000 square feet would be required, rather than a lot 80,000 square feet. However, to establish duplexes, townhouses, and apartments on the same lot, the minimum lot size would be based on the total number of dwelling units.) Nonetheless, as part of site plan review, the Planning Board may stipulate appropriate conditions to ensure compatibility of the multiple uses.

- M. Nonconformities, creation of. Except for open space lots and conservation land, lots and sites may not be created or modified in any manner that would make them nonconforming in terms of any dimensional requirements of this chapter.
- N. Open space lots; frontage. It is not necessary for open space lots and conservation land to be in compliance with any requirements of the dimensional tables. Minimum frontage of 12 feet is required in order to ensure access.
- O. Right-of-way encroachments. Within commercial districts where there is no minimum front setback, encroachments may occur within the public right-of-way as follows:
 - (1) Footings below grade may encroach as needed subject to approval of the Director of Building, Zoning, and Licensing Services and Public Works Department.
 - (2) Awnings over the sidewalk provided there is a vertical clearance of at least seven feet.
 - (3) Architectural elements, such as balconies, bay windows, and cornices, on upper floors provided the encroachment does not exceed two feet and provided there is a vertical clearance of at least 10 feet.
- P. Rounding off. In any calculation, where the final number results in a fraction of a unit, the number of units shall be rounded up to the next whole number where the fraction is 1/2 or greater. It shall be rounded down to the next whole number where the fraction is less than 1/2.
- Q. Setbacks for accessory uses. Setback requirements apply to buildings and roofed structures accommodating accessory uses in similar fashion as those accommodating principal uses except where otherwise specified.
- R. Setback application.
 - (1) Required setbacks apply to buildings, roofed structures, open air decks, porches, ground-mounted mechanical equipment, ground-mounted satellite dishes, fuel tanks, and bulkheads. The setback requirement applies whether the element is a principal or an accessory use. [See extensions beyond setbacks (i.e., into setback areas) below; special exception provisions for porches; and several other specific exceptions and special provisions regarding setbacks in this chapter.]
 - (2) Setbacks are measured to the building foundation, except where a portion of the building containing usable floor area extends beyond the foundation (such as on the upper floors in a garrison-style house). Where a building foundation is not present or not applicable, setbacks are measured to the most appropriate vertical fascia, eave board, or header joist for that part of the structure. For ground-mounted mechanical equipment, ground-mounted satellite dishes, fuel tanks, and bulkheads, setbacks are measured to the nearest part of the structure.
- S. Extensions beyond setbacks (i.e., into setback areas).
 - (1) Appurtenant elements to buildings or structures which do not contribute to usable floor area and do not have a foundation and which are not specifically included in Subsection R above may extend into the setback areas but may not extend beyond any property line. This includes, but is not limited to, architectural trim, awnings, bay windows, chimneys, decorative architectural elements, downspouts, window air-conditioning units, exterior steps, fire escapes, gutters, place of refuge decks, building-mounted satellite dishes, roof eaves, siding materials, and vents.

(2) In cases where any landing serving exterior steps exceeds 24 square feet in area, that landing (but not the steps) must meet all required setbacks.

- T. Triangular lots. Triangular lots shall contain one front lot line and two side lot lines.
- U. Triple frontage lots. On triple frontage lots, for the purpose of setbacks, there shall be established a front, two sides, and a rear. The ordinary front setback shall apply to that section of the lot which is deemed the front, as determined by the Director of Building, Zoning, and Licensing Services (based upon the locations of the front entrance, street address, path to the front, and driveway; E911 standards; the prevailing pattern of the other buildings on both blocks; impact upon the streetscapes; and other appropriate factors). For any side which faces a street the setback shall be the ordinary side setback in that district. The ordinary rear setback shall apply.

ARTICLE 20
Standards for Specific Permitted Uses
[Amended 2-3-2015; 7-7-2015]

§ 275-20.1. General provisions.

For certain permitted uses that could impact surrounding neighborhoods, conflict with adjacent uses, or have other significant impacts, specific standards are provided below. These standards apply only to those uses which are permitted by right shown as "P" in Tables 18-A through 18-E except where specifically noted otherwise. Other particular standards applicable to conditional uses, special exceptions, and accessory uses are articulated in separate articles.

§ 275-20.2. Conditions for particular uses.

For each individual use listed below, all of the specific conditions attached to that use must be met along with any other requirements of this chapter.

- A. Contractor's storage yard. Minimum setbacks from all property lines shall be 25 feet or as specified in the dimensional regulations table, whichever is greater. No structures or stockpiled materials related to the storage yard operation shall be situated within these setbacks. Heavy vehicles or equipment in working order may be parked within the setbacks provided that none is parked within 15 feet of a property line. A contractor's storage yard shall not be established in a floodplain.
- B. Day care-2 (day care - family). This use is not considered a home occupation. However, the review process for this use, where it is permitted by right, shall be the same as for home occupations where no special exception is involved. See § 275-24.5.
- C. Earth excavation.
 - (1) Regulations. No person shall perform earth excavation except in compliance with the provisions of RSA 155-E, as amended, this chapter, and the Site Plan Regulations applicable to earth excavation.
 - (2) Existing operation. Any existing excavation activity operating under a permit issued prior to the date of adoption of this chapter may continue until the expiration of the permit, except that any expansion or change in operation not covered by that permit shall be in compliance with the provisions of this section.
 - (3) Buffers. Buffers/setbacks are established as set forth in RSA 155-E and in Article 12, Conservation Overlay District. No excavation, processing, or removal of vegetation may occur within the buffers/setbacks specified. Where the buffer/setback has been removed or is not adequate, the Planning Board may stipulate reestablishment of the buffer/setback, as appropriate.
 - (4) Water table. For excavation of sand, gravel, or other subsurface materials (also see RSA 155-E), the seasonal high water table must be determined prior to Planning Board approval and it must be demonstrated that no ground disturbance or excavation will occur within four feet of that seasonal high water table except as provided below.
 - (a) Applicants shall submit the following as part of any review:
 - [1] Information about any types of fill material that may be deposited on the site.
 - [2] Recognizing that sand and gravel pits sometimes become unlawful dumps (due to no fault of the property owner or operator) posing potential harm to the underlying groundwater, the applicant shall submit a plan to discourage use of the site as a dump during and after excavation.
 - (b) The excavation of gravel materials below four feet above the stated seasonal high water table may

be allowed by special exception if the applicant can clearly demonstrate that such excavation will not adversely affect groundwater quality (in addition to other general conditions listed in Article 22, Special Exceptions). The Zoning Board of Adjustment and the Planning Board shall be required to review the reports provided and may require additional information, experts or studies to assist it in its review and approval of its issuance of any special exception and permit allowing such excavation.

(c) See Article 10, Aquifer Protection Overlay District, for other provisions within that district.

- (5) Abandoned sites. In the event the Director of Building, Zoning, and Licensing Services determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing before the Planning Board, to comply with any timetable and bonding requirements to be established by the Planning Board to complete reclamation. Should reclamation not be completed, the Board may request the City to authorize reclamation at the City's expense. The City's costs shall then constitute an assessment against the owner and shall create a lien against the property on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

D. Electric vehicle charging station. **[Added 8-2-2022¹⁹]**

- (1) An electric vehicle charging station installed as an accessory to a new or existing single-family home or a unit within a duplex property, and used for personal use and not as a means of income, is a permitted use in all zones and requires no site plan approval. Only Level 1 and Level 2 electric vehicle supply equipment shall be permitted on residential properties.
- (2) An electric vehicle charging station installed as accessory to a new or existing multifamily home or a commercial property is permitted per the use tables located at the end of the zoning chapter. Site plan review is required. All Level 1 and Level 2 and Level 3 electric vehicle supply equipment may be permitted on multifamily residential and commercial properties.
- (3) Electric vehicle supply equipment, as defined in the National Electrical Code, shall obtain any required building permits, electrical permits or other applicable permits prior to their location, construction, installation, or operation.

E. Farm; farm, crop.

- (1) Lot size. The minimum lot size is five gross acres for a farm and five gross acres for a crop farm.
- (2) Housing. The Planning Board is empowered to consider and approve special on-site housing arrangements to accommodate farm workers, such as cluster housing or temporary/seasonal housing, under site plan review.
- (3) Retail sales. Any farm goods produced on site along with limited related products, such as baked goods, non-alcoholic cider, etc., may be sold on site.
- (4) Livestock. Housing for any livestock for a farm shall be set back at least 100 feet from any side or rear lot lines. Housing for fowl, fur-bearing animals, and swine shall be set back at least 150 feet from any side or rear lot lines. The ZBA may reduce or waive this requirement by special exception. There is no setback for open pens and fencing provided animals are not left in such pens overnight.
- (5) Manure. Any significant storage areas for manure shall be set back at least 200 feet from any lot lines. Best management practices shall be followed in the handling of manure.

19. Editor's Note: With the addition of this Subsection D, the remaining subsections in this section were redesignated from Subsections D through V to Subsections E through W, respectively.

- (6) Performance standards. The general provisions of Article 28 of this chapter and RSA 432:33 shall apply.
- F. Gas station.
- (1) The minimum lot area shall be 30,000 square feet.
 - (2) Lot frontage shall be at least 150 feet.
 - (3) Pumps, lubricating and other outdoor service devices shall be located at least 30 feet from any lot lines.
 - (4) All automobile parts and dismantled vehicles are to be stored within a building, and no repair work is to be performed outside a building.
 - (5) The minimum setback for all portions of canopies shall be 20 feet from all lot lines or the required district setbacks, whichever is greater.
 - (6) Limited light maintenance activity is an accessory use and includes engine tune-ups, lubrication, brake repairs, tire changing, battery charging, car washing, detailing, polishing, and carburetor cleaning. Such activities as engine overhaul, vehicle painting, welding, and body or fender work would not be an accessory use.
- G. Junkyard. All materials shall be fully screened from the road and from all abutting property by a solid wall or fence at least eight feet in height. The Planning Board may stipulate a taller wall or fence, as appropriate.
- H. Lodging facility. For a lodging facility, the minimum lot size shall be 30,000 square feet plus 1,000 square feet per unit. Minimum lot size for a bed-and-breakfast shall be the minimum lot size for a single-family home according to the applicable zone district. The minimum lot size for a hotel in the Downtown Commercial (DC) Zone District shall be 7,500 square feet. **[Amended 5-7-2019]**
- I. Mini-warehouse. The front setback for all storage structures shall be 100 feet. Side and rear setbacks from any residential property shall be 75 feet.
- J. Manufactured housing subdivision, not part of an existing mobile home park. See Chapter 135 of the City Code for existing mobile home parks.
- (1) Overall development. **[Amended 9-6-2016]**
 - (a) All requirements otherwise applicable to subdivision of lots for conventional houses within a conservation subdivision shall apply.
 - (b) Additions to manufactured housing units (or "homes"). There shall be no additions constructed onto manufactured homes with the exception of garages, skirting, carports, cabanas, awnings, canopies, porches, decks, and steps. All must be approved by the Director of Building, Zoning, and Licensing Services.
- K. Manufactured housing unit, not part of an existing mobile home park. See Chapter 135 of the City Code for existing mobile home parks. **[Amended 9-6-2016]**
- (1) Manufactured homes are allowed only:
 - (a) On individual lots in the AG District;
 - (b) Within manufactured housing subdivisions located in the AG District; and
 - (c) Within established mobile home parks on approved pads/lots.
 - (2) Additions to manufactured homes. There shall be no additions constructed onto manufactured homes with the exception of garages, skirting, carports, cabanas, awnings, canopies, porches, decks, and steps.

All must be approved by the Director of Building, Zoning, and Licensing Services.

- L. Multifamily dwellings/development. The following requirements shall apply to multifamily dwellings/developments of three or more dwelling units: **[Amended 5-7-2019]**
- (1) Buffers from roads. Except for parcels within the Downtown Commercial (DC) Zone District, a fifty-foot buffer shall be established from all neighboring roads, including roads from which access is taken. The Planning Board shall determine treatment of the buffer area, whether it is to be left undisturbed, to have supplemental plantings installed, to be designated part of the overall open space plan for the development, and/or to be part of an individual lot but protected from construction. No roofed structures may be erected in the buffer area. This buffer shall not be required for parcels in the DC Zone District.
 - (2) Access. Any new multifamily development must take access from an existing collector or arterial road rather than an existing local road. The Planning Board may waive this requirement by conditional use upon a finding that it is preferable to take access from a local rather than a collector road and that taking access from the local road will have no significant adverse impact upon residents or property owners located on the local road.
 - (3) Commercial districts. Within any commercial districts, multifamily is allowed only as a secondary use.
 - (a) It must be situated on the second floor or on higher floors of a commercial building or in a separate building behind the commercial building; and
 - (b) At no time may the area of the multifamily dwellings exceed 80% of the square footage of the on-site commercial space.
 - (4) Downtown Commercial District. Within the Downtown Commercial (DC) District, multifamily is allowed with the following restrictions: **[Amended 1-7-2020]**
 - (a) For parcels fronting on the streets noted below, ground floor space of 30 feet multiplied by the building frontage, or 700 square feet, whichever is greater, shall be reserved for nonresidential uses as permitted in the DC District, unless otherwise required to comply with the State Building Code and/or Fire Code. Any area excluded due to the Building Code and/or Fire Code shall not count toward the minimum. This applies to the entire portion of the building fronting on the street. The remaining area of the first floor may contain residential units as a conditional use.
 - [1] Union Street.
 - [2] North Main Street south of the North Main Street Bridge.
 - [3] South Main Street.
 - [4] Wakefield Street south of Columbus Avenue.
 - [5] Hanson Street.
 - [6] Museum Way.
 - [7] Columbus Avenue (from Summer Street to South Main Street).
 - (b) The first floor commercial space may be split into different commercial uses totaling the required square footage.
 - (c) DC Zone District parcels not fronting on the above streets may contain multifamily use and units on all floors without restrictions.
 - (5) Sewer and water. Any new multifamily dwellings/developments must connect to the City of Rochester's public sewer and water systems.

- M. Nursing home. The minimum lot size for the zone shall be increased by 1,000 square feet for each patient bed. The permitted density shall be 1 1/4 times that otherwise permitted for residential uses in the district.
- N. Outdoor wood-fired hydronic heater or outdoor wood boiler.
- (1) "Outdoor wood-fired hydronic heater" or "outdoor wood boiler" means a fuel-burning device as defined by RSA 125-R.
 - (2) The installation and/or operation of outdoor wood-fired hydronic heaters is permitted in the Agricultural District only. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (3) The outdoor wood-fired hydronic heater shall be set back 25 feet from the nearest structure it serves.
 - (4) The outdoor wood-fired hydronic heater shall be set back 100 feet from any lot line.
- O. Parking facility, public. For a public parking facility, the following standards shall apply: **[Added 5-7-2019²⁰]**
- (1) Sizing and capacity of the facility shall be based on current and forecasted use patterns and demand for publicly accessible parking.
 - (2) Frontages along a primary commercial street shall, to the extent practicable, incorporate commercial business as a means of minimizing extended expanses of blank walls.
 - (3) An operations plan shall define the basic functions of the facility including signage, offsite wayfinding, hours of operation, access and control points, payment systems, and lighting and landscape installation.
 - (4) Rate schedules shall be subject to establishment and change by the City of Rochester and shall not be required for approval or conditioned by the Notice of Decision.
- P. Small wind energy systems.
- (1) Authority and purpose. This Subsection N is enacted in accordance with RSA 672:1, III-a, and 674:62 to 674:66. The purpose of this subsection is to accommodate the installation of small wind energy systems in the City of Rochester, while protecting the public's health, safety and welfare.
 - (2) Accessory use. A small wind energy system and meteorological tower are allowed as accessory uses to on-site principal residential or nonresidential uses that are legally established, including grandfathered nonconforming uses.
 - (3) Building permit. No small wind energy system or meteorological tower may be erected, constructed, or installed without a building permit issued by the Director of Building, Zoning, and Licensing Services. A building permit shall also be required for any physical modification to an existing small wind energy system.
 - (4) Meteorological towers. Meteorological towers shall be permitted on a temporary basis and must be removed within three years from the date the building permit for the tower is issued.
 - (5) Total capacity. The total capacity for one or more small wind energy systems situated on one site or lot may not exceed a rated capacity of 100 kilowatts.
 - (6) Application. An application for a building permit shall be submitted to the Director of Building, Zoning, and Licensing Services and shall include a site plan and documentation providing all of the following:
 - (a) Property lines and physical dimensions of the applicant's property. A survey may be required at the reasonable discretion of the Director of Building, Zoning, and Licensing Services if necessary to confirm compliance with the setback and other requirements of this subsection.

- (b) Locations, dimensions, and types of buildings on the property and on adjacent properties within 50 feet of the property lines.
 - (c) Locations of the proposed small wind energy system(s), foundations, guy anchors and associated equipment.
 - (d) Tower foundation blueprints or drawings.
 - (e) Tower blueprints or drawings.
 - (f) Height of proposed tower and setback requirements as outlined in this subsection.
 - (g) A plan showing the height of the overall prevailing canopy of trees within 300 feet of the tower.
 - (h) Any public road that is contiguous with the subject property.
 - (i) Any overhead utility lines.
 - (j) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower type, and nameplate generation capacity.
 - (k) Small wind energy systems that may be connected to the power grid, including a copy of the application for interconnection with the electric utility provider.
 - (l) Sound level analysis prepared by the wind generator manufacturer or a qualified engineer.
 - (m) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the New Hampshire State Building Code and to any local amendments adopted by the City of Rochester.
 - (n) Evidence of compliance with or nonapplicability of Federal Aviation Administration requirements.
 - (o) A shadow flicker analysis including:
 - [1] A plan showing the seasonal shadow patterns of the proposed facility, the occupied buildings on the abutting properties, and building setback lines on the abutting properties; and
 - [2] An evaluation of the shadow flicker impacts on the abutting properties, including the extent and length of shadow flicker impacts.
 - (p) List of abutters to the applicant's property.
 - (q) Any other information required for issuance of building and electrical permits.
- (7) Abutter notification and appeals.
- (a) The Director of Building, Zoning, and Licensing Services shall notify all abutters by verified mail, as defined in RSA 451-C:1, VII, upon application for a building permit to construct a small wind energy system. The cost of abutter notification shall be paid by the applicant. Abutters shall be afforded a thirty-day comment period prior to the issuance of a building permit. **[Amended 3-5-2019]**
 - (b) An appeal may be made to the Zoning Board of Adjustment pursuant to RSA 676:5.
 - (c) The Director of Building, Zoning, and Licensing Services shall also notify the City Council of the application.
 - (d) The Director of Building, Zoning, and Licensing Services shall determine whether the proposal qualifies as a development of regional impact pursuant to RSA 36:56. If the Director determines

that it does then he/she shall follow the procedures set forth in RSA 36:57.

- (8) Standards. The following standards apply to small wind energy systems. The Director of Building, Zoning, and Licensing Services shall evaluate the application for compliance with these requirements.
 - (a) Tower height. The maximum tower height is the lesser of:
 - [1] One hundred fifty feet; or
 - [2] Thirty-five feet above the height of the overall prevailing canopy of trees within 300 feet of the proposed tower.
 - (b) Setbacks. The following setback requirements apply to small wind energy systems:
 - [1] The tower must be set back (measured from the center of the tower base) from every property line of the subject property a distance equal to:
 - [a] The system height multiplied by 1.1; or
 - [b] The regular setback otherwise applicable in the zoning district, whichever is greater.
 - [2] The tower must be set back (measured from the center of the tower base) a distance equal to the system height multiplied by 1.5 from:
 - [a] Any occupied building on an abutting property;
 - [b] The buildable area on an abutting property as determined by the setbacks on that abutting property;
 - [c] Any existing utility transmission or distribution lines; and
 - [d] The edge of pavement of any public roads.
 - [3] Guy wires used to support the tower must be set back at least five feet from any property line.
 - (c) Sound level. The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe windstorms and utility outages.
 - (d) Shadow flicker. Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year of shadow flicker on abutting occupied buildings. The applicant has the burden of demonstrating compliance with this requirement. Potential impacts may be addressed through special siting and/or mitigation measures.
 - (e) Signs. All signs, including flags, streamers and decorative items, both temporary and permanent, are prohibited on small wind energy systems. Manufacturer identification or appropriate warning signs are allowed.
 - (f) Code compliance. The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code and with any local amendments adopted by the City of Rochester.
 - (g) Aviation. The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations, including but not limited to 14 CFR Part 77, Subpart B, regarding installations close to airports, and the New Hampshire Aviation Regulations, including but not limited to RSA 422-b and 424.

- (h) Visual impacts. Inherently, small wind energy systems can create some visual impacts due to the tower height needed to access wind resources. The purpose of this subsection is to reduce the visual impacts without unduly restricting the owner's access to the optimal wind resources on the property.
 - [1] The applicant shall demonstrate through project site planning and mitigation measures that the visual impacts of the small wind energy system, including ground-mounted electrical and control equipment, will be minimized for surrounding neighbors and the greater community. These measures may include, but are not limited to, special site selection, wind generator design, buffering, and screening.
 - [2] All electrical service leading to the small wind energy system shall be underground.
 - [3] The small wind energy system shall be either the stock color from the manufacturer or painted with a nonreflective, unobtrusive color that blends in with the surrounding environment. Approved colors for the latter include, but are not limited to, white, off-white or gray.
 - [4] A small wind energy system shall not be illuminated unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA regulations for determination to establish the required markings and/or lights for the small wind energy system. **[Amended 3-5-2019]**
 - (i) Approved wind generators. Selection of the manufacturer and model of the wind generator to be used in the proposed small wind energy system is limited to those that have been approved by the California Energy Commission, the New York State Energy Research and Development Authority, or (if applicable) the State of New Hampshire.
 - (j) Utility connection. If the proposed small wind energy system is to be connected to the power grid through net metering, it shall be in compliance with RSA 362-A:9.
 - (k) Unauthorized access. The tower shall be designed and installed so as not to provide step bolts or a ladder or other means readily accessible to the public for a minimum height of eight feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - (l) Clearing. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.
- (9) Discontinuation or abandonment.
- (a) If a small wind energy system is going to be discontinued or abandoned, the owner shall notify the Director of Building, Zoning, and Licensing Services by certified U.S. mail of the proposed date of discontinuation or abandonment.
 - (b) Upon discontinuation or abandonment, the owner shall physically remove the small wind energy system within 90 days from the date of discontinuation or abandonment. This period may be extended at the discretion of the Director of Building, Zoning, and Licensing Services upon request of the owner. Physical removal includes, but is not limited to:
 - [1] Removal of the wind generator and tower and related above-grade structures.
 - [2] Restoration of the location of the small wind energy system to its natural condition, except that any existing landscaping, grading or below-grade foundation may remain in the same condition.

- (c) In the event that an owner fails to notify the Director of Building, Zoning, and Licensing Services of discontinuation or abandonment, the system shall be considered discontinued or abandoned if it is out of service for a continuous twelve-month period. After such a period of time, the Director may issue a notice of abandonment to the owner of the small wind energy system.
 - (d) The owner shall have the right to respond to the notice of abandonment within 30 days from when he/she receives the notice. After review of the information provided by the owner, the Director shall determine if the small wind energy system has been discontinued or abandoned. If it is determined that the small wind energy system has not been discontinued or abandoned, the Director shall withdraw the notice of abandonment and notify the owner accordingly.
 - (e) If the owner of the small wind energy system does not respond to the notice of abandonment, the owner shall remove the wind generator and tower at the owner's sole expense within 90 days of receipt of the notice of abandonment. If the owner fails to physically remove the small wind energy system as called for herein, then the Director of Building, Zoning, and Licensing Services may pursue any appropriate legal action to have the small wind energy system removed at the owner's expense.
- (10) Systems exceeding 100 kilowatts in capacity. Wind energy systems exceeding a rated capacity of 100 kilowatts, either singly or in combination, are considered public utilities and are allowed by special exception only as specified in Table 18-D.
- (11) Definitions. The following definitions apply specifically to small wind energy systems, as presented in this subsection:

METEOROLOGICAL TOWER — A temporary structure erected to collect environmental information for the purpose of assessing the potential for a small wind energy system. The meteorological tower includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

MODIFICATION — Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Nonstructural maintenance and repair is not considered to be a modification.

NET METERING — The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

POWER GRID — The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

SHADOW FLICKER — The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and on nearby structures causing a repeating pattern of light and shadow.

SMALL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind generator, tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and which is used primarily for on-site consumption.

SYSTEM HEIGHT — The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

TOWER — The monopole, guyed monopole or lattice structure that supports a wind generator.

TOWER HEIGHT — The height above grade of the fixed portion of the tower, excluding the wind generator.

WIND GENERATOR — The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

- Q. Solid waste facility. Solid waste facilities shall be subject to the following requirements:
- (1) Lot size. The minimum lot size for solid waste facility uses shall be five acres.
 - (2) Coverage. Solid waste facility uses shall not occupy more than 75% of the land area of the lot on which they are located or occur.
 - (3) Zoning lines. Solid waste facilities shall be set back at least 100 feet from adjoining zoning boundary lines except where the adjoining district is an industrial district.
 - (4) Setbacks from rivers. Solid waste facilities shall be set back a minimum of 100 feet from the landward extent of the five-hundred-year floodplain and shall be screened from the river with a vegetative or other natural barrier to minimize visual impact unless otherwise specified in RSA 483:9. The following accessory structures or uses associated with a solid waste facility may also be located in the aforementioned setback areas if approved by NHDES and the Rochester Planning Board, with a recommendation from the Conservation Commission, as part of the site review process:
 - (a) Access roads;
 - (b) Drainage ditches and stormwater structures;
 - (c) Fencing, screening and earthen berms;
 - (d) Groundwater monitoring wells, piezometers, and other environmental monitoring devices;
 - (e) Piping and tanks and appurtenant systems;
 - (f) Sedimentation basins; and
 - (g) Utility lines.
 - (5) Other setbacks. Solid waste facilities shall be set back at least 50 feet from City-owned rights-of-way, provided that the setback for certain solid waste facilities shall be as specified below:
 - (a) Recycling and materials recovery facility. Setback for the front foundation face of any buildings and/or permanent vehicle storage or materials storage facilities at recycling and material recovery facilities shall be 100 feet from City-owned rights-of-way. Normal parking entrances and accesses are permitted within this setback, but permanent overnight truck or equipment parking is prohibited. In the event an alternative screen or buffer is approved by the Planning Board, this setback may be reduced.
 - (b) Transfer station or composting facility. Setback for the face of buildings or other physical structures used as transfer station or composting facilities shall be 50 feet or composting facilities shall be 100 feet from City-owned rights-of-way. Permanent parking of trucks or equipment within the setback is prohibited. Normal customer access and parking is permitted within the setback. In the event an alternative screen or buffer is approved by the Planning Board, this setback may be reduced.
 - (6) Entering property. The City shall have the right to enter the solid waste facility during all operating hours and at other reasonable times to administer and enforce the provisions of this subsection.
 - (7) Operational standards. Operational standards for and the operation of any solid waste facility shall be governed by and subject to the New Hampshire laws regarding solid waste management and regulations

promulgated thereunder by the New Hampshire Department of Environmental Services and other state or federal agencies having jurisdiction over the operation of such facilities.

- R. Stable, commercial.
- (1) The minimum lot size required shall be five acres.
 - (2) The side and rear setbacks for structures housing horses shall be 100 feet from any property line.
 - (3) Any storage areas for manure shall be set back at least 200 feet from any lot lines. Manure must be handled according to best management practices.
- S. Temporary structure. Temporary structures are subject to the following requirements. However, temporary structures erected for 15 or fewer days are exempt from this subsection herein.
- (1) A permit is required for temporary structures. An application must be submitted to the Director of Building, Zoning, and Licensing Services specifying the proposed location for the structure and its purpose. A fee will be charged in an amount determined by the City Council.
 - (2) Temporary structures are subject to all zoning setbacks.
 - (3) Temporary structures may not be placed forward of the front facade of the primary building on the lot (on corner lots, this applies only to the main entry facade, though other corner lot setbacks, as specified in this chapter, still apply).
 - (4) Temporary structures that were in place prior to the adoption of this subsection must be brought into compliance with this subsection within six months of its adoption.
- T. Vehicle sales. No vehicles or other equipment or materials may be stored or displayed within the road right-of-way. The City of Rochester shall take all appropriate steps to enforce this requirement. See enforcement provisions under Article 3, Administration.
- U. Veterinary clinic.
- (1) Veterinary clinics shall set back 100 feet from any residential property, restaurant or lodging establishment.
 - (2) All animals housed overnight shall be in completely enclosed buildings.
 - (3) The Planning Board may stipulate that appropriate sound mitigation devices be installed and that fences, walls, and/or vegetation be installed to screen the site where animals will be maintained out of doors.
- V. Warehouse.
- (1) All goods must be stored within a completely enclosed building or located in rear setbacks.
 - (2) If the warehouse or storage area constitutes less than 50% of the gross interior floor area of the building it shall be considered an accessory use.
- W. Yard sale, commercial.
- (1) A secondhand dealer license must be obtained from the City Council.²¹
 - (2) Items may be displayed outside on the lawn or driveway or in a garage or other structure. The items must be displayed neatly and may not be left outdoors overnight.

21. Editor's Note: See Ch. 110, Junk and Secondhand Dealers.

ARTICLE 21
Conditional Uses

§ 275-21.1. General provisions.

- A. Granting authority. Wherever a conditional use is authorized under this chapter, the authority to administer or grant conditional use approval is vested in the Planning Board. Conditional use approval may be granted only for those conditional uses referred to in Subsection C below.
- B. Purpose. Certain uses, structures, or conditions possess special characteristics such that if developed in certain locations or in certain ways may have significant adverse impacts. In order to safeguard the public interest and the interest of neighboring property owners, some uses, structures, and conditions require the Zoning Board of Adjustment to grant a special exception and others are designated as conditional uses to provide an opportunity for the Planning Board to review and evaluate these applications on an individual basis in contrast to uses which are simply permitted by right.
- C. Types of conditional uses.
- (1) There are two types of conditional uses covered under this chapter:
 - (a) Uses. Conditional uses for actual "uses" as listed in the Tables of Uses in Article 18 (e.g., townhouse or trade shop) and discussed in § 275-18.4.
 - (b) Departures from standards. Conditional uses to allow for certain departures from standards otherwise applicable, detailed all throughout this chapter (e.g., allowing for parking in a side setback or for buildings to exceed a certain height).
 - (2) The process is the same for both types of conditional uses. The term "conditional uses" is used throughout this chapter for both situations.
- D. Criteria and conditions.
- (1) The base criteria in § 275-21.3 below shall apply to all conditional uses. In addition, certain particular uses have specific criteria and/or conditions which must also be met in order for those uses to be approved as listed below in § 275-21.4, Conditions for particular uses. For those uses which are not specifically discussed below, it is necessary only that the base criteria be satisfied.
 - (2) It is not essential that the Planning Board specifically and outwardly articulate compliance with each criterion and condition. At its option, the Board may simply state that all of the criteria and conditions have been met, provided it is duly diligent and thorough in its consideration.
- E. Burden of persuasion. The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence as may be required by this chapter or by the Planning Board in its reasonable discretion, that the development, if completed as proposed, will comply with this article and will satisfy the specific requirements for the use or standard contained in this chapter.
- F. Pertinent information. In reviewing an application for a conditional use approval, the Planning Board shall consider the following information, as applicable to the case:
- (1) Compliance with the applicable requirements contained in this chapter;
 - (2) The results of any special investigative or scientific studies prepared in association with the proposed development;
 - (3) Special reports or analysis of the project or its impacts, prepared by the City or consultants;
 - (4) The findings, goals and objectives of the City's Master Plan;

- (5) The relationship of the development to the timing, location and cost of public improvements scheduled in the Capital Improvements Program and improvements necessitated by the development;
- (6) Testimony and evidence introduced at the public hearing on the application; and
- (7) Any other appropriate information or documentation.

G. Terms of approval.

- (1) The Planning Board may also impose, in addition to any applicable conditions specified in this chapter, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this chapter, including but not limited to the following:
 - (a) Increasing front, side, and rear setbacks in excess of the minimum requirements of this chapter;
 - (b) Screening of the premises from the street or adjacent property in excess of any minimum requirements of this chapter;
 - (c) Landscaping in excess of any minimum requirements of this chapter or the Site Plan Regulations;
 - (d) Modification of the exterior features of buildings or other structures;
 - (e) Limitations on the size of buildings and other structures more stringent than the requirements of this chapter;
 - (f) Footprint or lot coverage less than the allowed maximum of this chapter;
 - (g) Limitations on the number of occupants and methods and times of operation;
 - (h) Regulation of design of access drives, sidewalks, crosswalks, and other traffic features;
 - (i) Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this chapter or the Site Plan Regulations; and
 - (j) Other performance standards as appropriate.
- (2) Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with these conditions in an amount satisfactory to the City. The Planning Board may require that such conditions be annotated on a site plan or subdivision plat, or otherwise recorded at the Strafford County Registry of Deeds.

H. Existing uses and structures. Any use that was lawfully established prior to the adoption of this chapter and which is allowed as a conditional use, but for which a conditional use approval was never issued, is now permitted and may continue in the same manner and to the same extent as conducted prior to the adoption of this chapter. However, a conditional use approval shall be secured from the Planning Board before the use or structure or building in which the use is conducted may be intensified, enlarged, expanded, moved or significantly altered.

§ 275-21.2. Procedures.

- A. Application. Conditional uses authorized under this article may be granted only after application to and a public hearing by the Planning Board and subject to the provisions of RSA 674:16, as amended. The Planning Board may establish special procedures and fees for conditional use applications consistent with RSA 674:16, as it sees fit.
- B. Site plans and subdivisions. Where a conditional use application is related to a specific subdivision or site plan application, the application and review procedure for both shall be conducted concurrently.

- C. Appeals. Any persons aggrieved by a Planning Board decision on a conditional use application may appeal that decision to the Superior Court, as provided for in RSA 677:15.
- D. Expiration of conditional use approvals. Any conditional use approval shall expire or become null and void upon the expiration, lapse, nullification, withdrawal, or repeal of any site or subdivision plan to which the conditional use is attached.

§ 275-21.3. Base criteria.

The Planning Board shall grant a conditional use approval if, and only if, it reasonably determines that all of the following criteria are met (in addition to those criteria/conditions articulated for particular uses in § 275-21.4 below, or in addition to those articulated elsewhere in this chapter for departures from standards):

- A. Allowed use or departure. The use or departure from standards is specifically authorized under the Tables of Uses in Article 18 as a conditional use or is otherwise specifically authorized in this chapter;
- B. Intent of chapter. The proposal is consistent with the purpose and intent of this chapter;
- C. Intent of Master Plan. The proposal is consistent with the purpose and intent of the Master Plan;
- D. Compatibility. The proposal is compatible with general dimensional, use, and design characteristics of the neighborhood and surrounding area;
- E. Streetscape. The proposal will not adversely impact the quality of the streetscape;
- F. Resources. The use or departure will not have a significantly adverse impact upon natural, scenic, historic, or cultural resources and can be designed with sensitivity to environmental constraints; and
- G. Public facilities. The use does not place an undue burden upon the City's resources, including the effect on the City's water supply and distribution system, sanitary and storm sewage collection and treatment systems, fire protection, police protection, streets and schools.

§ 275-21.4. Conditions for particular uses.

For each individual use listed below, all of the specific conditions attached to that use must be met along with the base criteria articulated in § 275-21.3 above.

- A. Assisted living facility. The permitted density shall be 1 1/4 times that otherwise permitted for residential uses in the district.
- B. Conservation subdivision. See Article 33, Conservation Subdivisions.
- C. Convenience store. The following standards apply in the R2 Zone:
 - (1) The Planning Board shall determine hours of operation.
 - (2) Illumination of the store shall be limited to hours of operation, except for purposes of security.
- D. Flag lots. As part of any major subdivision (involving a new road) the Planning Board may approve the creation of one or more flag lots as a conditional use. Flag lots are allowed subject to the following terms/findings:
 - (1) Allowing the flag lot(s) accommodates a superior layout than what would otherwise be allowed;
 - (2) A tangible public benefit is gained such as the creation of additional or higher quality open space, preservation of important resources, or creating a trail network;
 - (3) The total number of flag lots shall not exceed 15% of the total number of lots in the subdivision (being

created at that time);

- (4) The total number of lots, including the flag lots, shall not exceed the number otherwise allowable based on frontage and lot size;
- (5) The width of the frontage and the entire "flagpole" leading to the main lot area is at least 25 feet; and
- (6) The Planning Board may stipulate shared driveways at its discretion, including for access to the flag lot, to reduce access points.

E. Gas station.

- (1) The minimum lot area shall be at least 30,000 square feet.
- (2) Lot frontage shall be at least 150 feet.
- (3) Pumps, lubricating and other outdoor service devices shall be located at least 30 feet from the front, side and rear lot lines.
- (4) All automobile parts and dismantled vehicles are to be stored within a building, and no repair work is to be performed outside a building.
- (5) The minimum setback for all portions of canopies shall be 20 feet from the front, side and rear lot lines or those setbacks established for the district, whichever is greater.
- (6) Limited light maintenance activity is an accessory use and includes engine tune-ups, lubrication, brake repairs, tire changing, battery charging, car washing, detailing, polishing, and carburetor cleaning. Such heavy maintenance activities as engine overhaul, vehicle painting, welding, and body or fender work is not an accessory use.

F. House of worship. Within residential zones all parking shall be located beyond the rear facade; provided, however, that the Planning Board may approve parking to the side of the building, but situated no further forward than the front facade by conditional use subject to adequate screening from the road.

G. Lodging facility. For a lodging facility, the minimum lot size shall be 30,000 square feet plus 1,000 square feet per unit. Minimum lot size for a bed-and-breakfast shall be the minimum lot size for a single-family home according to the applicable zone district. The minimum lot size for a hotel in the Downtown Commercial (DC) Zone District shall be 7,500 square feet. **[Amended 5-7-2019]**

H. Mini-warehouse. The front setback for all storage structures shall be 100 feet. Side and rear setbacks from any residential property shall be 75 feet.

I. Multifamily dwellings/developments in the Downtown Commercial District, as referenced in § 275-20.2L(4), shall: **[Added 1-7-2020²²]**

- (1) Have a sprinkler system installed as required by Building and Fire Codes.
- (2) Reserve a space to allow for a duct system as required by Building Codes.

J. Nursing home. The minimum lot size for the zone shall be increased by 1,000 square feet for each patient bed. The permitted density shall be 1 1/4 times that otherwise permitted for residential uses in the district.

K. Parking lot. For properties within the Downtown Commercial (DC) Zone District, Parking lots shall be limited to 20 parking spaces for any single tenant unless otherwise approved by the Planning Board pursuant to the standards below: **[Added 5-7-2019]**

- (1) The applicant demonstrates a unique commercial or market-based need for additional parking.
- (2) There is a lack of publicly accessible parking in the immediate vicinity.
- (3) Sharing parking with an adjacent use or property is impractical or not possible.
- (4) Negative visual effects of a large parking lot are minimized to the extent practicable through site design, breaking up large expanses of paving, shielding parking from direct public view, or placing parking to the side or behind buildings. Where possible, buildings in the DC District should front a primary street with parking placed to the side or rear.
- (5) The Planning Board may impose operational parameters regarding signage, limiting access points, and may require specific lighting and landscaping installation.

L. Parking facility, commercial. The Planning Board may approve a commercial parking facility based on the following standards: **[Added 5-7-2019]**

- (1) Sizing and capacity of the facility is based on current and forecasted use patterns and demand for publicly accessible parking.
- (2) Frontages along a primary commercial street, to the extent practicable, incorporate commercial business on the ground floor as a means of providing pedestrian interest and minimizing extended expanses of blank walls.
- (3) An acceptable operations plan defines the basic functions of the facility including signage, offsite wayfinding, hours of operation, access and control points, payment systems, and lighting and landscape installation.
- (4) Rate schedules and changes thereto shall remain the prerogative of the owner and shall not be required for approval or conditioned by the notice of decision.

M. Porkchop subdivision. The purpose of a porkchop subdivision (see definition in Article 2) is to help preserve the scenic character of neighborhoods by encouraging owners of parcels along existing roads and streets to concentrate subdivision to one side of the parcel and retain the remainder as open space and allowing some minimal level of development on parcels with significant acreage in the rear in order to avoid inducing property owners to develop culs-de-sac at a higher level of development. Porkchop subdivisions are allowed subject to the following requirements:

- (1) Quality of project. A finding by the Planning Board that the proposed development is superior to development that would likely occur otherwise.
- (2) Parcel size. The development parcel shall have a minimum size of six gross acres and minimum frontage of 150 feet on an existing public way.
- (3) Three lots. There shall be a maximum of three lots created from any one lot.
- (4) Minimum lot size. The minimum lot size for each new lot shall be 40,000 square feet or the minimum lot size for the district, whichever is greater.
- (5) Average lot size. The average lot size for new lots in the porkchop subdivision shall be at least 120,000 square feet or 1.5 times the minimum lot size for the district, whichever is greater.
- (6) Frontage. The minimum frontage for each new porkchop lot shall be 50 feet.
- (7) Common access. All lots shall be entered from a common access point.
- (8) Separate driveway. Each porkchop subdivision shall have a common driveway independent from any other subdivision.

- (9) No further subdivision. There shall be no further subdivision of any of the porkchop lots other than lot line adjustments.
 - (10) Single-family. The porkchop lots shall be used for single-family use only.
 - (11) Width. The all-season passable width of any shared driveway shall be 20 feet when serving two or more lots.
 - (12) Easement width. The width of the common driveway access easement shall be 30 feet. Additional width may be required to accommodate slope and drainage easements.
 - (13) Turnaround. An acceptable turnaround for the fire trucks may be required.
 - (14) Recording. A document satisfactory to the City Attorney shall be recorded establishing the conditions of use of any common driveway, providing for indemnification for the City for emergency services, and including suitable language to ensure that the private way will not become a City road or street.
- N. School, K-12; school, other. Within residential zones all parking shall be located beyond the rear facade; provided, however, that the Planning Board may approve parking to the side of the building, but situated no further forward than the front facade, by conditional use subject to adequate screening from the road.
- O. Senior housing.
- (1) The minimum development parcel shall be five gross acres.
 - (2) The project must provide special facilities and/or programs oriented toward seniors.
 - (3) The applicant must explain how he/she will meet the definition for senior housing in this chapter (see Article 2, Definitions).
 - (4) The developer/manager must provide documentation to the Planning Board demonstrating that the development meets the definition for senior housing in this chapter.
- P. Vehicle sales. No vehicles or other equipment or materials may be stored or displayed within the road right-of-way. The City of Rochester shall take all appropriate steps to enforce this requirement. See enforcement provisions under Article 3, Administration.
- Q. Warehouse.
- (1) All goods must be stored within a completely enclosed building or located in a fenced-in area.
 - (2) If the warehouse or storage area constitutes less than 50% of the gross interior floor area of the building it shall be considered an accessory use.

ARTICLE 22
Special Exceptions

§ 275-22.1. General provisions.

- A. Granting authority. Wherever a special exception is authorized under this chapter, the authority to administer or grant special exception approval is vested in the Zoning Board of Adjustment.
- B. Purpose. Certain uses, structures, or conditions possess special characteristics such that if developed in certain locations or in certain ways may have significant adverse impacts. In order to safeguard the public interest and the interest of neighboring property owners, these uses, structures, and conditions are designated as uses allowed by special exception.
- C. Types of special exceptions.
- (1) There are two types of special exceptions included in this chapter:
 - (a) Uses. Special exceptions for actual "uses" as defined in this chapter and as listed in the Uses Tables (e.g., contractor's storage yard).
 - (b) Departures from standards. Special exceptions to allow for certain departures from standards otherwise applicable, articulated throughout this chapter (e.g., allowing for reduced setbacks for garages).
 - (2) The process is the same for both types of special exceptions. The term "special exception" is used throughout this chapter for both situations.
- D. Criteria and conditions. The base criteria in § 275-22.2 apply to all special exceptions. In addition, certain particular uses have specific criteria and/or conditions which must also be met in order for those uses to be approved as listed below in § 275-22.3, Conditions for particular uses. For those uses which are not specifically discussed below, it is necessary only that the base criteria be satisfied.
- E. Burden of persuasion. The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence as may be required by this chapter or by the Zoning Board of Adjustment in its reasonable discretion, that the proposal will comply with this chapter.
- F. Pertinent information. In reviewing an application for a special exception, the ZBA shall consider the following information, as applicable to the case:
- (1) Compliance with the applicable requirements contained in this chapter;
 - (2) The results of any special investigative or scientific studies prepared in association with the proposed development;
 - (3) Special reports or analysis of the project or its impacts, prepared by the City or consultants;
 - (4) The findings, goals and objectives of the City's Master Plan;
 - (5) The relationship of the development to the timing, location and cost of public improvements scheduled in the Capital Improvements Program;
 - (6) Testimony and evidence introduced at the public hearing on the application; and
 - (7) Any other appropriate information or documentation.
- G. Terms of approval. The ZBA may also impose, in addition to any applicable conditions specified in this chapter, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this chapter, including, but not limited to, the following:

- (1) Increasing front, side, and rear setbacks in excess of the minimum requirements of this chapter;
 - (2) Screening of the premises from the street or adjacent property in excess of any minimum requirements of this chapter;
 - (3) Landscaping in excess of any minimum requirements of this chapter or the Site Plan Regulations;
 - (4) Modification of the exterior features of buildings or other structures;
 - (5) Limitations on the size of buildings and other structures more stringent than the requirements of this chapter;
 - (6) Footprint or lot coverage less than the allowed maximum of this chapter;
 - (7) Limitations on the number of occupants and methods and times of operation;
 - (8) Regulation of design of access drives, sidewalks, crosswalks, and other traffic features;
 - (9) Off-street parking and loading spaces in excess of, or less than, the minimum requirements of this chapter or the Site Plan Regulations; and
 - (10) Other performance standards as appropriate.
- H. Existing uses and structures. Any use that was lawfully established prior to the adoption of this chapter and which now may require a special exception is now permitted and may continue in the same manner and to the same extent as conducted prior to the adoption of this chapter. However, special exception approval shall be secured from the ZBA before the use or structure or building in which the use is conducted may be intensified, enlarged, expanded, moved, or significantly altered.
- I. Expiration. A special exception shall become null and void after three years from the date of approval unless a building permit is issued, a plat is recorded, or other appropriate action is taken pursuant to the special exception within that time frame.
- J. Procedures. See Article 4, Zoning Board of Adjustment and Building Code Board of Appeals.

§ 275-22.2. Base criteria.

The Zoning Board of Adjustment shall approve a special exception if, and only if, it reasonably determines that all of the following criteria are met (in addition to those criteria/conditions articulated for specific uses in § 275-22.3 below, or in addition to those articulated elsewhere in this chapter for departures from standards):

- A. Location. The specific site is an appropriate location for the proposed use or structure;
- B. Neighborhood. The proposed use would not be detrimental, injurious, obnoxious, or offensive to the neighborhood;
- C. Traffic. The proposed use would not create an undue hazard or nuisance to vehicular or pedestrian traffic;
- D. Public facilities. Adequate and appropriate facilities and utilities would be provided to ensure the proper operation of the proposed use or structure; and
- E. Master Plan. The proposed use or structure is consistent with the spirit of this chapter and the intent of the Master Plan.

§ 275-22.3. Conditions for particular uses.

For each individual use or departure from standards listed below, all of the specific conditions attached to that use must be met along with the base criteria articulated in § 275-22.2 above.

A. Adult-oriented establishments. Adult-oriented uses shall exist and be operated in accordance with the following requirements:

(1) Purpose. In the development and execution of this subsection, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this subsection. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area. Uses subject to these controls are as follows:

- (a) Adult bookstore.
- (b) Adult cabaret.
- (c) Adult motion-picture theater.
- (d) Adult mini-motion-picture theater.
- (e) Massage parlor.

(2) Location restrictions. No adult-oriented establishment shall be operated or maintained within 500 feet of a residentially zoned district, or within 500 feet of a church, a state-licensed day-care facility, a public library, a public park or playground, public or private educational facilities which serve persons age 17 or younger, an elementary school, or a high school. Only one of the above-regulated uses shall be allowed per block frontage on any street. No adult-oriented establishment shall be operated or maintained within 1,000 feet of another such establishment.

(3) Measurement. The distance limitations in Subsection A(2) shall be measured in a straight line from the main public entrances of said premises, or from the closest portion of any lot line of properties in residentially zoned districts.

(4) Sign requirements for adult-oriented establishments. Notwithstanding the sign provisions of this chapter, all adult-oriented establishments shall comply with the following sign requirements:

- (a) All signs shall be flat wall signs.
- (b) The amount of allowable sign area shall be one square foot of sign area per foot of lot frontage on a street; provided, however, that in no event shall such sign exceed 32 square feet in total area.
- (c) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk in front of the building.
- (d) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

B. Agricultural building, reuse of existing. An agricultural building that is more than 50 years old, no longer proposed for agricultural use, and not situated in an R1 or R2 District may be converted to a nonresidential use subject to the following standards:

- (1) The nonresidential activity shall occur completely within the agricultural building and there shall be no outside storage of material, equipment, or products.
- (2) The essential exterior architectural character of the building shall be maintained.

- C. Contractor's storage yard. Minimum setbacks from all property lines shall be 25 feet or as specified in Table 19-C, Dimensional Standards - Industrial Districts, whichever is greater. No structures or stockpiled materials related to the storage yard operation shall be situated within these setbacks. Heavy vehicles or equipment in working order may be parked within the setbacks provided that none is parked within 15 feet of a property line (see the corresponding section on contractor's storage yards in the Site Plan Regulations). A contractor's storage yard shall not be established in a floodplain as defined in Article 13, Flood Hazard Overlay District (FHOD).
- D. Earth excavation. New earth excavation projects shall be permitted only subject to meeting the following criteria/conditions, insofar as these additional standards are not superseded by RSA 155-E:
- (1) Additional criteria to be met, beyond those stated in RSA 155-E:
 - (a) It will not cause unreasonable soil erosion or a reduction in the capacity of land to hold water during the operation.
 - (b) It will not adversely impact the quality of the groundwater or of any underlying aquifer.
 - (c) It will not cause unsafe conditions on or excessive use of nearby roads.
 - (d) It will not have an undue adverse effect on the scenic or natural beauty of the area, other aesthetic values, historic sites, or rare and irreplaceable natural areas.
 - (e) Appropriate bonding for the reclamation of an excavation site shall be required prior to the start of any permitted earth excavation operation.
 - (2) Regulations. No person shall perform earth excavation except in compliance with the provisions of RSA 155-E as amended, this chapter, and the Site Plan Regulations applicable to earth excavation.
 - (3) Existing operation. Any existing excavation activity operating under a permit issued prior to the date of adoption of this chapter may continue until the expiration of the permit, except that any expansion or change in operation not covered by that permit shall be in compliance with the provisions of this subsection.
 - (4) Buffers. The following buffers/setbacks are established. No excavation, processing, or removal of vegetation may occur within the buffer. Where the buffer has been removed or is not adequate, the Planning Board may stipulate reestablishment of the buffer, as appropriate.
 - (a) A fifty-foot buffer along every lot line.
 - (b) A seventy-five-foot buffer from any perennial stream or wetland.
 - (c) Buffers specified in Article 12, Conservation Overlay District.
 - (d) A one-hundred-foot setback shall be established for excavation and processing from any existing dwelling located on an adjacent lot to the side or rear.
 - (5) Water table. The seasonal high water table must be determined prior to Zoning Board of Adjustment approval and, if excavation is proposed within four feet within the Aquifer Protection Overlay District or within two feet outside of the Aquifer Protection Overlay District, the following additional criteria must be met:
 - (a) The applicant must clearly demonstrate that the excavation activity will not adversely affect groundwater quality.
 - (b) The applicant must clearly demonstrate that such excavation will not create a health or safety hazard or provide a plan outlining measures to mitigate those hazards.

- (c) The applicant must clearly demonstrate that such excavation will not create a groundwater pollution hazard or provide a plan outlining measures to mitigate that hazard.
 - (d) The applicant must include a section in the reclamation plan that adequately addresses health, safety, and pollution concerns in this area after the excavation activities are complete.
 - (e) See Article 10, Aquifer Protection Overlay District, for other provisions within that district.
- (6) Abandoned sites. In the event the Director of Building, Zoning, and Licensing Services/Zoning Administrator determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing before the Planning Board, to comply with any timetable and bonding requirements to be established by the Planning Board to complete reclamation. Should reclamation not be completed, the Board may request the City to authorize reclamation at the City's expense. The City's costs shall then constitute an assessment against the owner and shall create a lien against the property on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

E. Farm; farm, crop.

- (1) Lot size. The minimum lot size is five gross acres for a farm and five gross acres for a crop farm.
- (2) Housing. The Planning Board is empowered to consider and approve special on-site housing arrangements to accommodate farm workers, such as cluster housing or temporary/seasonal housing, under site plan review.
- (3) Retail sales. Any farm goods produced on site along with limited related products may be sold on site.
- (4) Livestock. Housing for any livestock for a farm shall be set back at least 100 feet from any side or rear lot lines. Housing for fowl, fur-bearing animals, and swine shall be set back at least 150 feet from any side or rear lot lines. The ZBA may reduce or waive this requirement by special exception. There is no setback for open pens and fencing provided animals are not left in such pens overnight.
- (5) Manure. Any storage areas for manure shall be set back at least 200 feet from any lot lines. Best management practices shall be followed in the handling of manure.
- (6) Performance standards. The general provisions of Article 28 of this chapter and RSA 432:33 and 21:34-a shall apply.

F. Garage setbacks. A special exception may be granted to reduce side and/or rear setback requirements for garages (only applicable for residential use) in the residential districts subject to all of the following conditions/findings:

- (1) The lot must not have been created by a subdivision that occurred after January 1, 2006;
- (2) A finding by the Zoning Board of Adjustment that there is some existing pattern in the area for garage setbacks smaller than those required;
- (3) Locating the garage in conformance with the side and/or rear setback requirements would significantly impact existing vegetation, views from the residence, use of the setback, or site circulation, or is impractical due to lot dimensions or other constraints;
- (4) If a new driveway serves the garage, it must be endorsed by the City Engineer, prior to the public hearing;
- (5) Any reduction in setback shall not be greater than 50% of the required setback;
- (6) The proposed garage must be set back at least 10 feet from any existing building located on an adjacent

lot;

- (7) The proposed garage must be designed to blend with the architectural character of the neighborhood (siding, the arrangement of windows in a building, roof pitch, etc.); elevation drawings must be submitted to and approved by the ZBA;
 - (8) The garage does not exceed 24 feet in either length or width; and
 - (9) The garage walls do not exceed 10 feet in height (the roof may exceed this ten-foot limit).
- G. Junkyard. All materials shall be fully screened from the street and from all abutting property by a solid wall or fence at least six feet in height. The Planning Board may stipulate a taller wall or fence, as appropriate.
- H. Kennel (commercial).
- (1) The minimum lot size shall be three acres.
 - (2) Minimum setbacks for structures and pens housing dogs shall be:
 - (a) Front: 150.
 - (b) Side and rear: 100.
 - (3) The Planning Board may stipulate that appropriate sound mitigation devices be installed and that fences, walls, and/or vegetation be installed to screen the site.
- I. Residential facility. The minimum lot size shall be increased by 2,000 square feet per resident.
- J. Roadside farm stand.
- (1) The roadside structure shall be set back from the front lot line at least 20 feet.
 - (2) There shall be adequate off-street parking which shall have safe access to and from the road. A driveway permit shall be required in all cases.
- K. Solid waste facility. Subject to the same provisions stated in Article 20.
- L. Stable, commercial.
- (1) The minimum lot size required shall be three acres.
 - (2) The side and rear setbacks for structures housing horses shall be 100 feet from any lot lines.
 - (3) Any storage areas for manure shall be set back at least 200 feet from any lot lines. Manure must be handled according to best management practices.
- M. Veterinary clinic.
- (1) Veterinary clinics shall set back 100 feet from any residential property, restaurant or lodging establishment.
 - (2) All animals must be housed overnight in completely enclosed buildings.
 - (3) The Planning Board may stipulate that appropriate sound mitigation devices be installed and that fences, walls, and/or vegetation be installed to screen the site where animals will be maintained out of doors.
- N. Wireless communications facility. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (1) Co-location/zoning district. Subject to a determination by the Zoning Board of Adjustment that the

telecommunications equipment planned for the proposed site cannot be accommodated:

- (a) Within a zoning district where these facilities are permitted by right; nor
- (b) On any existing or approved antenna support structure in the City of Rochester; nor
- (c) On any prospective alternative tower structure in the City of Rochester for one of the following reasons:
 - [1] Structural capacity. The planned equipment would exceed the structural capacity of the existing or approved antenna support structures, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - [2] Interference. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified professional engineer and the interference cannot be prevented at a reasonable cost.
 - [3] Height constraints. Existing or approved antenna support structure within the required radius cannot accommodate the planned equipment at the necessary height as documented by a qualified professional engineer.
 - [4] Other reasons. Any other substantial reason that precludes the co-location. The burden of proof is upon the applicant to demonstrate that all reasonable alternatives to the erection of a new structure have been fully explored.

(2) Buffers.

- (a) In addition, for the purpose of buffering the proposed structure from neighboring properties and roads, the site proposed for the facility shall be surrounded by an area of dense tree growth, including a sufficient percentage of evergreen trees to partially screen the site in the winter, that extends continuously for a minimum distance equal to 1/2 the height of the proposed support structure.
- (b) In locations where this dense tree growth is not presently in place the Zoning Board of Adjustment may, at its option, where it determines that the intent of this requirement can otherwise be met, waive or reduce this requirement due to other mitigating conditions on or off the site and/or approve a tree planting and landscaping plan for the site (alternatively, the Board may defer review and approval of this plan to the Planning Board as part of site plan review). An appropriate method, such as a deed restriction, shall be employed to ensure that the buffer remains in place as long as the support structure is in place.

ARTICLE 23
Accessory Uses
[Amended 2-3-2015]

§ 275-23.1. General provisions.

The following provisions apply in evaluating proposed accessory uses, activities, structures, and situations.

A. List of accessory uses.

- (1) Accessory uses are included in this Article 23 and are generally not included in the Tables of Uses 18-A through 18-E. The principal uses listed in those tables are permitted based upon zoning district. In contrast, accessory uses are allowed if the principal use to which they are accessory is allowed. Nonetheless, some accessory uses (such as home occupations and helipads) also are controlled by zoning district or are approved by special exception, in which cases they are included in the tables.
- (2) Section 275-23.2 contains standards for specific accessory uses, activities, structures, and situations. This list is not exhaustive. Additional conditions articulated elsewhere may also apply.

B. Criteria.

- (1) If a proposed use is not listed within Article 23, the Director of Building, Zoning, and Licensing Services shall determine on a case-by-case basis whether it should be deemed an accessory use. This determination is based upon a judgment whether the proposed use:
 - (a) Is commonly or customarily observed as, or considered to be, an accessory use to the principal use;
 - (b) Is related to the principal use;
 - (c) Supports the principal use;
 - (d) Is subordinate to the principal use;
 - (e) Is in reasonable proportion to the principal use;
 - (f) Is incidental in its character; and
 - (g) Has relatively little impact, at least in comparison to the principal use.
- (2) Where appropriate, the Director of Building, Zoning, and Licensing Services may stipulate conditions or parameters for a proposed use which would reasonably render it an accessory use rather than a second principal use.

C. Accessory uses to residential uses.

- (1) Accessory uses to principal residential uses should be established for the benefit of the resident, residential development, and guests, and not for commercial purposes.
- (2) In some cases, the Director of Building, Zoning, and Licensing Services may determine that a proposed use is not an accessory use due to the particular scale or nature of the proposed use. (Example: A garage for passenger vehicles is an accessory use, but it would cease to be if the property owner stores vehicles for customers for a fee.)

D. Accessory uses to nonresidential uses. In some cases, the Director of Building, Zoning, and Licensing Services may determine that a proposed use is not an accessory use due to the particular scale or nature of the proposed use. Examples:

- (1) An on-site recreational facility serving employees of a business would be an accessory use, but if outside

people were invited to use the facility for a fee it would be considered a commercial recreational facility.

- (2) On-site vehicle maintenance for a fleet of vehicles used in an office complex would not be an accessory use even though it supports the principal use due to the potentially significant impacts of the maintenance operation.
 - (3) A contractor performing simple maintenance on his/her own vehicles on site would be considered an accessory use to a contractor's storage yard, but if the contractor performs work on other vehicles for a fee, the storage yard would be redefined as commercial vehicle service.
- E. Permitted by right. An accessory use is permitted by right if the principal use to which it is accessory is permitted by right, by conditional use, or by special exception.
- F. Dimension requirements. Detached accessory roofed structures are subject to the requirements articulated in Article 19, Dimensional Regulations, except for noted exceptions.
- G. Review. A proposed accessory use is subject to site plan or subdivision review if that use meets the threshold of review articulated in the Site Plan Regulations or the Subdivision Regulations.
- H. Secondary uses. Secondary uses (which are not deemed accessory uses since they are not actually supportive of a principal use) which clearly would have no significant negative impacts may be treated as accessory uses at the reasonable discretion of the Director of Building, Zoning, and Licensing Services. (Example: While gardening is an accessory use to a residence it is not accessory to a commercial use. However, it would be reasonable to permit the owner of a business to use vacant land at the rear of the business property for his/her own personal gardening.)

§ 275-23.2. Standards for specific accessory uses.

- A. The following standards shall apply to these specific accessory uses, activities, structures, and situations wherever they are allowed:
- (1) Accessory apartment. An accessory apartment is permitted subject to compliance with all of the following standards and procedures: **[Amended 4-4-2017]**
 - (a) It is permitted where and as specified in the Tables of Uses (by right or by special exception). However, if the accessory dwelling is detached from the single-family dwelling, it must be approved by a special exception;
 - (b) It is accessory to a single-family dwelling only and if detached from the single-family dwelling it is similar in architectural style;
 - (c) It must be two bedrooms or less;
 - (d) It may not exceed 800 square feet;
 - (e) It may be either part of the single-family dwelling or in a separate building, such as above a garage; if it is part of the single-family dwelling, an interior door shall be provided between the principal dwelling unit and the accessory dwelling unit; **[Amended 3-5-2019]**
 - (f) There may be only one per lot;
 - (g) The owner of the property must occupy one of the dwelling units and the owner must demonstrate that one of the dwelling units is his/her principal place of residence;
 - (h) At least one parking space must be provided for the unit;
 - (i) Where municipal sewer service is not provided, the septic system shall meet NHDES requirements

for the combined system demand for total occupancy of the property; and

- (j) It is exempt from site plan review but a letter of intent must be submitted to the Building Inspector to ensure that the above conditions are met.
 - (k) If it is a security apartment, it shall not exceed 800 square feet and it shall be attached to or located with an allowed commercial, office or industrial use. Such unit may be occupied by the business owner, family member or employee whose purpose is to provide security and/or protection of the business premises. This use shall require site plan review.
 - (l) If it is a caretaker apartment it shall be attached to or located with an allowed residential or nonresidential use and it shall be occupied by the owner, family member or employee of the principal use and the gross floor area does not exceed 800 square feet. This use shall require site plan review.
- (2) Accessory sales and service.
- (a) Small-scale retail sales and services may be offered as an accessory use in nonresidential districts which do not permit retail sales and service (including Airport, Hospital, Industrial, and Office Commercial Districts) where the activity is clearly established to serve on-site employees or customers of the principal use in an incidental, supportive, or subordinate manner.
 - (b) Generally, but not necessarily, such accessory uses are situated on the interior of the building housing the principal use with no separate entrance and no exterior evidence of the operation. (Examples: A newspaper or flower vendor located in the lobby of an industrial facility; a card shop located inside a hospital; a cafeteria or exercise facility serving employees.)
- (3) Animals and pets, keeping of. The following standards apply to the keeping of animals in a residence:
- (a) Household pets. Keeping typical household animals as pets, including dogs, cats, birds, small turtles, etc., is an accessory use provided their presence does not become a nuisance or a health hazard.
 - (b) Breeding pets. Breeding numerous animals on a frequent or regular basis for sale is considered a business and not an accessory use.
 - (c) Exotic animals. Keeping exotic animals as pets is an accessory use provided that one's ownership of the animals:
 - [1] Does not present a safety hazard to neighbors and the public;
 - [2] Does not pose a nuisance to neighbors; and
 - [3] Is in full compliance with all applicable local, state, and federal law.
 - (d) Livestock as pets. Keeping any small animals ordinarily defined as livestock as pets (such as chickens, but not including roosters) is an accessory use provided that:
 - [1] The animal lives in the house and is treated as a household pet;
 - [2] Reasonable accommodations are made for the animal in the house;
 - [3] The animal does not pose a health hazard; and
 - [4] The animal does not pose a nuisance to neighbors.
 - (e) Horses and other large livestock. Keeping fewer than 10 horses or other large animals defined as livestock is an accessory use to a residence subject to the following standards:

- [1] The activity is not carried out as a business.
 - [2] The residence is not located in the Residential-1 or -2 District.
 - [3] A lot in the AG District is at least three gross acres.
 - [4] A lot in all other districts is at least two gross acres.
 - [5] There is an additional 1/4 acre of land beyond the minimum specified in Subsection A(3)(e)[3] and [4] above for each animal kept beyond the first one.
 - [6] No area or structure for the housing, stabling, storage of manure/animal waste, or feeding of animals shall be located within 100 feet of any property line.
 - [7] Handling of manure/animal waste must follow best management practices and not be a nuisance for neighbors.
 - [8] No animals shall be pastured within 25 feet of any side or rear property line except where the abutting property owner consents to a reduced setback.
- (f) Chickens, fowl and other small livestock. Keeping fewer than 10 chickens, ducks, rabbits, bee hives, or other small animals defined as livestock is an accessory use to a residence subject to the following standards:
- [1] The activity is not carried out as a business;
 - [2] No roosters are allowed and the number of chickens is limited to fewer than 10 in the Residential-1 and -2 Districts;
 - [3] No area or structure for the housing, storage of manure/animal waste, or feeding of animals shall be located within 20 feet of any abutting property lines; and
 - [4] Handling of manure/animal waste must follow best management practices and not be a nuisance for neighbors.
- (4) Clubhouse, community center, recreation facilities, laundry, storage areas, and other facilities for a residential development.
- (a) The Planning Board shall review these uses for location, design, size, additional parking, and setback requirements.
 - (b) These uses and facilities shall only be used by residents of the development and their guests.
 - (c) There shall be no outside storage of materials or equipment.
 - (d) Buffers and screening shall be used to help alleviate any adverse effects on abutting residential properties.
 - (e) There shall be no emission of noise, odor, dust, vibrations, or smoke beyond property lines.
- (5) Commercial vehicles, parking of. Parking commercial vehicles outdoors overnight within residential districts is permitted as an accessory use as follows:
- (a) One small commercial vehicle, a passenger automobile, pickup truck or van, is allowed. Additional commercial vehicles may be allowed by special exception.
 - (b) Other larger types of commercial vehicles, those weighing over 26,000 pounds gross vehicle weight, are permitted only by special exception subject to the property owner being able to provide adequate buffering and sound mitigation.

- (c) Adequate off-street parking must be provided. Parking shall not be within any public right-of-way.
- (6) Construction trailer. A construction trailer is allowed when used in conjunction with an on-site construction project provided that:
 - (a) The placement of the trailer, including location, is approved by the Director of Building, Zoning, and Licensing Services;
 - (b) The trailer is not used for living or sleeping; and
 - (c) It is removed when the project is completed, terminated, or suspended for longer than four months.
- (7) Drive-through window. A drive-through window is subject to the following provisions:
 - (a) It must be located at the side or rear of the building;
 - (b) It is not permitted in NMU District; and
 - (c) Where adjacent to a residential property at the side or the rear, the drive-through window must have a thirty-five-foot buffer with appropriate planting or screening.
- (8) Driveways. See Article 5, Residential Zoning Districts, Article 6, Commercial Zoning Districts, and Article 26, Roads and Parking.
- (9) Dwelling for farm workers. This use is allowed by conditional use. The Planning Board shall review the location, design, and density of the dwelling.
- (10) Fence. Fences, walls, and similar structures (referred to herein simply as "fences") must be in compliance with the following requirements:
 - (a) A fence permit issued by the Director of Building, Zoning, and Licensing Services is required prior to the erection of any fence.
 - (b) The maximum fence height (from grade) in residential districts is six feet. Greater heights may be approved by special exception.
 - (c) The maximum fence height (from grade) in nonresidential districts is eight feet. Greater heights may be approved by special exception.
 - (d) Razor wire fences are not permitted in any district.
 - (e) Fences are exempt from setbacks provided they are fully contained on the subject property and do not encroach on any adjacent property or road right-of-way.
 - (f) The finished side of a fence shall face outward from the property on which the fence is located.
 - (g) Fences must conform to sight triangle requirements at corner lots. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (h) No fence shall be erected that blocks or limits the existing sight distance of an abutting driveway or right-of-way. A clear vision area extending along the full width of the front lot line between side lot lines shall be maintained 10 feet from the edge of road pavement or sidewalk at three feet six inches above the driveway surface (the height of a typical driver's eyes) to points three feet six inches above the road surface in both directions.
 - (i) With regard to existing fences on the effective date of this provision, which fence fails to comply with the requirements of Subsection A(10)(g) and (h), in the event that the Director of Building, Zoning, and Licensing Services, in a written administrative decision, determines that an existing

fence, by virtue of its height, location or otherwise, constitutes a hazard to public health and/or safety, then such fence shall be required to comply with the requirements of said Subsection A(10)((g) and (h) hereof within six months of the owner's official notification by the Director of such administrative decision, failing which, the fence in question shall be removed.

- (11) Flagpole. The maximum height for flagpoles is 30 feet in residential districts and 50 feet in nonresidential districts.
- (12) Fuel tank. Aboveground fuel tanks must be in compliance with setbacks. Fuel tanks situated in front yards must be fully screened.
- (13) Home occupation (see Table of Uses 18-A and Article 24, Home Occupations).
- (14) Mobile units. Mobile units are allowed as accessory uses with a permit issued from the Director of Building, Zoning, and Licensing Services as follows:
 - (a) As temporary residences for farm laborers or supervisory personnel employed on a seasonal basis provided the units are in place only during the season when used.
 - (b) As temporary living quarters for employees of itinerant businesses such as carnivals during the period when such businesses are actually being conducted but in no case for longer than 30 days.
 - (c) As temporary classroom space at an existing school facility.
 - (d) As temporary housing for a maximum period of 12 months while a new house is being built in the aftermath of destruction to the original house by fire or other causes.
- (15) On-site factory sales. In industrial districts where retail sales are not permitted, products manufactured on the premises may be sold on site as an accessory use by special exception. In addition, products manufactured by the same company or one of its subsidiaries at an off-site location may be sold on site provided a significant amount of the inventory is produced on site. The sales showroom must be subordinate to the on-site manufacturing component.
- (16) Outside display of merchandise. Goods for sale may be displayed outside subject to the following provisions:
 - (a) The outside display shall be in place only for the time during the day that the business is open. All portions of the display, including racks and other appurtenances, shall be stored inside except during hours of operation. However, this foregoing requirement shall not apply to the display of large equipment, vehicles, landscaping materials, and other items which are customarily maintained out of doors at all times.
 - (b) Goods must be displayed on the same property where the primary business is situated (unless otherwise approved as a flea market, farmers' market, temporary sales area, etc.).
 - (c) The outside display shall not impede pedestrian or vehicular traffic.
 - (d) Goods shall be displayed in an orderly fashion and shall not present any public hazard.
 - (e) The outside display shall not be located in any area designated for other purposes such as handicap ramps, fire lanes, or fire exits. Displays may be set up in parking lots with the approval of the Director of Building, Zoning, and Licensing Services upon a judgment that sufficient parking capacity is still available.
 - (f) Vehicles for sale (and other goods and materials) shall not be displayed, parked, or stored within any City or state road right-of-way at any time.

- (17) Outside storage of materials. Materials, goods, and equipment (or "materials" below) may be stored outside for nonresidential uses (this restriction does not apply to residential uses or temporary construction activities) subject to the following requirements:
- (a) Stored materials are subject to all setbacks.
 - (b) Materials must be stored in rear yards. However, materials may be stored in front or side setbacks in the General Industrial District by conditional use. Materials stored in front or side setbacks must be fully screened if deemed appropriate by the Planning Board.
 - (c) Materials must be screened with a six-foot-high solid fence or wall from any residential properties at the side or rear.
- (18) Parking areas/lots. See Article 5, Residential Zoning Districts, Article 6, Commercial Zoning Districts, and Article 26, Roads and Parking.
- (19) Sawmill, temporary. A temporary sawmill used to process wood cut on the premises shall conform to the following standards:
- (a) A permit issued from the Director of Building, Zoning, and Licensing Services is required. The Director may stipulate the location for the sawmill, hours of operation, and other conditions and may require surety to ensure the reclamation of the sawmill area.
 - (b) The sawmill shall be located at least 200 feet from any neighboring residences and at least 100 feet from any road.
 - (c) Processed materials shall not be stored on the site for more than two weeks.
 - (d) Upon the cessation of activity the impacted area shall be regraded and landscaped using best stormwater management practices to ensure reclamation that creates a post-impact runoff rate and quantity not exceeding the pre-impact levels.
- (20) Shed. In any zoning district, the minimum side and rear setbacks shall be the lesser of 10 feet or the ordinary setback for a single-story outdoor storage shed which is:
- (a) Two hundred square feet or less in floor area;
 - (b) Not situated on a permanent foundation; and
 - (c) Used in connection with a dwelling of four or fewer dwelling units.
- (21) Signage. See Article 29, Signage.
- (22) Storage areas. Storage areas within residential developments are permitted for recreational vehicles, boats, and overflow parking as authorized pursuant to site plan or subdivision approval.
- (23) Storage trailer. Storage trailers for temporary storage are permitted only in nonresidential districts and only as follows (this provision does not preclude use of temporary storage trailers in residential districts during active construction):
- (a) A permit issued from the Director of Building, Zoning, and Licensing Services is required.
 - (b) The trailer must be placed in the most unobtrusive location practical as stipulated by the Director of Building, Zoning, and Licensing Services, preferably in the rear.
 - (c) The trailer shall meet all setbacks.
 - (d) The trailer may not be placed in the front yard except by special exception upon a finding that it is

- not practical to place it in the rear or side yards.
- (e) The trailer must be adequately buffered from any dwellings on adjacent lots to the side or rear as stipulated by the Director of Building, Zoning, and Licensing Services.
 - (f) The trailer may be placed for only six months at a time. The Zoning Board of Adjustment may extend this time period once for up to an additional six months maximum by special exception.
 - (g) Any unregistered vehicle used for storage shall be treated as a storage trailer.
- (24) Streetside dining. An outdoor dining area or cafe is allowed within the public right-of-way if approved by the Rochester City Council. The dining area must not impede safe and efficient pedestrian and vehicular movement.²³
- (25) Swimming pool. The minimum rear setback for swimming pools that are used in connection with any dwelling with four or fewer units shall be 25 feet in the AG District and 10 feet in all other districts. Any building used in connection with a pool shall be subject to the rear setback ordinarily applicable.
- (26) Temporary structures. Temporary structures erected for more than 15 days are subject to all requirements listed below. Temporary structures erected for 15 or fewer days are exempt from Subsection A(26)(b) and (c).
- (a) A permit is required for temporary structures. An application must be submitted to the Department of Building, Zoning, and Licensing Services specifying the proposed location for the structure, its purpose, and its expected duration.
 - (b) Temporary structures are subject to all zoning setbacks.
 - (c) Temporary structures may not be placed forward of the front facade of the primary building on the lot (on corner lots, this applies only to the main entry facade, though other corner lot setbacks, as specified in this chapter, still apply).
- (27) Timber harvesting. Timber may be harvested in accordance with RSA 227-J:9 and best management practices.
- (28) Utilities and service areas. All outside storage areas, machinery, fuel storage tanks, service areas, and utility structures shall be placed in rear yards or screened with opaque fencing or vegetation such that they are not visible from the road.
- (29) Warehouse. A warehouse or storage area shall generally be considered an accessory use if it covers an area less than the area of the principal on-site use (such as a store or factory) that it serves.
- (30) Yard sales, personal. Personal yard sales on one's own residential property are allowed as an accessory use in residential districts provided that:
- (a) The resident sells primarily his/her own personal articles.
 - (b) The articles offered for sale were acquired largely for personal use rather than for commercial resale.
 - (c) The sales are conducted no more than twice in any calendar year.
 - (d) The sale does not last for more than three days, consecutively or in any two-week period.

23. Editor's Note: See Ch. 80, Food and Food Service, Art. II, Outdoor Dining Establishments.

ARTICLE 24
Home Occupations

§ 275-24.1. Requirements for all home occupations.

The following standards apply to all home occupations-1, -2, and -3:

- A. On resident's property. Home occupations shall be conducted by the individual on the property in which he/she resides.
- B. Inside the dwelling. All activity related to the home occupation shall be conducted inside the dwelling or inside a garage or barn-type outbuilding.
- C. Character. Home occupations must be subordinate to the residential use and must have little or no impact upon the neighborhood. There must be minimal indication of the home occupation evident from the road or from neighboring properties.
- D. Retail sales. There shall be no retail sales of goods or products on the premises, except:
 - (1) As may be incidental to the primary office or personal services occupation (such as sales of hair products to a salon customer);
 - (2) For goods shipped pursuant to mail/email/telecommunication order;
 - (3) To customers who visit by prearranged appointment only; or
 - (4) For barn sales as specified under home occupation-3.
- E. Delivery of goods. The regular receipt or delivery of merchandise, goods or supplies to or from the business shall be limited to U.S. mail service, a standard parcel delivery service utilizing a two-axle vehicle, or a private passenger automobile.
- F. Outside storage/parking. There shall be no outside storage or parking of materials, equipment, or vehicles (except for one ordinary passenger vehicle, pickup truck, or van related to the business). Box trucks are permitted by special exception subject to a determination that adequate buffering can be provided.
- G. Performance standards. There shall be no emission of noise, odor, dust, fumes, vibration, or smoke beyond the property or, in the case of multifamily dwellings, beyond the dwelling unit.
- H. Septic system. Septic system design/capacity for home occupations that utilize significant additional water or wastewater volumes, such as hair salons and catering services, shall be verified in writing by a licensed New Hampshire septic designer or a professional engineer.
- I. Multifamily dwellings. Home occupations are allowed in all residential property. Any proposal for a home occupation-2 or home occupation-3 in a dwelling other than a single-family dwelling shall be reviewed as a special exception (see § 275-24.6 below). In addition, the owner and residents of all units in the dwelling shall be notified of the hearing by certified mail.
- J. Parking.
 - (1) Adequate parking must be provided either on street or on site as determined by the Planning and Development Department (or the ZBA where a special exception is required).
 - (2) All parking design requirements stipulated in Article 5, Residential Zoning Districts, shall be met.
 - (3) Parking shall be located in a regular residential driveway, in the side yard, or in the rear yard. Parking can occur in the front yard if the Director of Building, Zoning, and Licensing Services has found that no other alternative exists. Back-to-back parking is permitted. If the amount of parking is noticeably greater

than that for a typical single-family dwelling then it shall be fully screened or buffered. It is emphasized that if parking cannot be handled properly and unobtrusively then the home occupation shall not be permitted.

- K. Hours of operation. Hours for customers to visit the home occupation are restricted to the following unless otherwise specifically approved: 8:00 a.m. to 7:00 p.m., Monday through Friday; 9:00 a.m. to 6:00 p.m. Saturday.
- L. Nontransferability. Home occupation approvals are not transferable; they are issued to a specific individual applicant for a specific home occupation at a specific site.
- M. Certificate of occupancy. Prior to the commencement of any home occupation, a certificate of occupancy must be obtained from the Director of Building, Zoning, and Licensing Services when deemed necessary by the Director or requested by the applicant.
- N. Expansion. No expansion of the scope, or significant change in the nature, of any home occupation for which an approval has been granted shall occur without subsequent review and approval.
- O. Revocation. An approval for a home occupation may be revoked by the Director of Building, Zoning, and Licensing Services for violation of any provisions of this chapter or of any conditions of the approval. Appeals of any such revocation shall be made to the Zoning Board of Adjustment.
- P. Commercial districts. Within commercial districts, where the use is allowed, it need not be pursued as a home occupation even if the business owner operates from his/her house. However, site review approval is still required and the applicant is responsible for obtaining all other applicable permits.

§ 275-24.2. Home occupation-1.

A home occupation-1 is an office-type home occupation. All of the following standards apply:

- A. Employees. There shall be no more than one employee working on site other than household members who reside with the operator;
- B. No customers. There shall be no customers who come to the residence;
- C. Deliveries. Minimal deliveries may be made to the residence;
- D. No signage. There shall be no signs visible from the road;
- E. No external indication. There shall be no external indication of the enterprise; and
- F. No review. No review or approval process is required except that a letter of intent must be submitted to the Planning and Development Department.

§ 275-24.3. Home occupation-2.

A home occupation-2 is an office or personal services type home occupation which may be more intensive than a home occupation-1. All of the following standards apply:

- A. Employees. There shall be no more than one employee working on site other than household members who reside with the operator.
- B. Five hundred square feet. There shall be no more than 500 square feet of area used for the business.
- C. Signage. There may be only one sign for the business visible from the street. The sign shall be nonilluminated and shall not exceed three square feet in area per side.
- D. Classes. Instruction in classes shall be limited to four pupils at one time.

§ 275-24.4. Home occupation-3.

A home occupation-3 is an office, personal services, processing, or small-scale craft-production type home occupation which is more intensive than home occupations-1 and -2. All of the following standards apply:

- A. Employees. There shall be no more than two employees working on site other than family or household members who reside with the operator.
- B. Area. There shall be no more than 1,000 square feet of area used for the business.
- C. Signage. There may be only one sign for the business visible from the street. The sign shall be nonilluminated and shall not exceed four square feet in area per side.
- D. Barn sales. If there is a barn on the property which was built prior to 1960 it may be used for retail sales (but not for the sales of any vehicles). The ZBA shall approve the type of items offered for sale as part of a special exception review to ensure there is no adverse impact upon the neighborhood.
- E. Classes. Instruction in classes shall be limited to eight pupils at one time.

§ 275-24.5. Review process without special exception.

A home occupation-2 or a home occupation-3 where no special exception is required shall be subject to the minor site plan review process as set forth in the Rochester Site Plan Regulations.

§ 275-24.6. Review process with special exception.

The review process for a home occupation-2 or a home occupation-3 where a special exception is involved requires the submission of a special exception application to the Zoning Board of Adjustment, ZBA approval, and then minor site plan review approval as set forth in the Rochester Site Plan Regulations.

§ 275-24.7. Prohibited home occupations.

The following occupations/activities shall not be considered home occupations:

- A. Bed-and-breakfast.
- B. Contractor's storage yard.
- C. Funeral home.
- D. Kennels or stables, commercial.
- E. Nursing home.
- F. Any vehicle or other heavy equipment repair.
- G. Restaurant.
- H. Retail sales operation (except as noted above).
- I. Veterinary clinic.
- J. Commercial yard sales (except for barn sales as noted above).

ARTICLE 25
(Reserved)

§ 275-24.7

ARTICLE 26
Roads and Parking

§ 275-26.1. Minimum parking requirements.

- A. Single-family. Minimum off-street parking requirements for single-family dwellings are two spaces.
- B. Two-family. Minimum off-street parking requirements for two-family dwellings are four spaces (two per dwelling unit).
- C. Size. Each parking space for single- and two-family uses shall be at least nine by 18 feet.
- D. Other uses. Minimum parking requirements for most uses are contained in the City of Rochester Site Plan Regulations. For any uses or changes of use which are not subject to site plan review the parking requirements contained in the Site Plan Regulations shall apply. However, in such cases, the Planning Board may adjust requirements by waiver.

§ 275-26.2. Driveways, curb cuts and parking design.

Note: Numerous additional requirements for parking and driveway design are contained in Article 5, Residential Zoning Districts, and in Article 6, Commercial Zoning Districts.

- A. Permit. A written permit from the Public Works Department is required prior to the construction or alteration of any driveway, curb cut, or access point into or out of the City of Rochester road system.
- B. Adequate surface. All parking areas and driveways shall have a smoothly graded, stabilized dust-free gravel surface or a paved/hard surface (asphalt, concrete, interlocking brick, etc.).
- C. Adequate drainage. Drainage for parking areas and driveways shall be designed to prevent stormwater from flowing onto adjacent property, sidewalks and public roads (unless adequate structures are present within the road right-of-way) as determined by Public Works.
- D. Setbacks. All driveways and parking areas shall be set back from side property lines at least five feet (the Site Plan Regulations may contain greater requirements). This requirement shall not apply to shared driveways and may be waived in situations where an abutting property owner consents to a reduced setback, or for driveways on lots in the R1, R2, NMU, or OC District where the setback would push the driveway into a space directly in front of the building (as determined by the Director of Building, Zoning, and Licensing Services, Zoning Administrator, Public Works Department, or Planning Board, as appropriate).

§ 275-26.3. Commercial vehicles.

Parking commercial vehicles outdoors overnight within residential districts is permitted as follows:

- A. No more than one commercial vehicle, a passenger automobile, pickup truck or van, is allowed.
- B. Other types of vehicles, such as truck tractors, box trucks or vehicles with more than two axles, are permitted on private property only by special exception subject to the property owner being able to provide adequate visual buffering, exhaust odor control, and sound mitigation.
- C. No commercial vehicle other than a passenger automobile, pickup truck or van may be parked overnight on a public road in a residential district (except when accommodating a residential relocation or by short-term permit/approval from the Police Department).

§ 275-26.4. Private roads.

Private roads are prohibited unless they are part of a plan approved by the Planning Board and noted as a private

road on said plan. Building permits shall only be issued pursuant to the provisions of RSA 674:41.

§ 275-26.5. Shared driveways.

Shared driveways providing access to new, separately platted lots are only permitted where those lots will have adequate frontage on an approved public road.

§ 275-26.6. Class VI roads.

Development on Class VI roads is regulated as follows:

A. General terms.

- (1) State law. This section is adopted pursuant to RSA 674:41. In case of conflict between this section and RSA 674:41, RSA 674:41 shall be determining.
- (2) Uses. Single-family use, farming, and forestry are the only permitted uses on lots accessed from Class VI roads.
- (3) Accessory uses. Any uses customarily accessory to a single-family residence may be established on the property. However, only home occupations-1 and -2 (for which there is only one employee other than household members) are permitted.
- (4) Subdivision. Any new lots to be subdivided out of existing lots on Class VI roads shall have a minimum frontage on the Class VI road of 300 feet and a minimum lot size of three acres.

B. Approval process. Shall be subject to the provisions of RSA 674:41.

C. Other provisions.

- (1) The applicant is not specifically required to maintain the road as part of any authorization for a building permit but he/she is urged to do so, on his/her own or in coordination with other property owners.
- (2) It is recognized that any applicant who chooses to build on a Class VI road does so at his/her own risk. If in the future abutting landowners seek to upgrade a Class VI road to a Class V road then the landowners, rather than the City of Rochester, shall be entirely responsible for the costs of upgrading that road (i.e., to be paid for by an individual developer, abutting landowners jointly through a private agreement, or through a betterment tax on abutting landowners if approved by City Council).
- (3) Any modifications to the road in the future must be approved by the City of Rochester Public Works Department.
- (4) If any Class VI road is brought up to City standards the reclassification to a Class V road must be approved by the Rochester City Council.
- (5) The Planning and Development Department shall maintain a record of Class VI roads or portions of Class VI roads upon which the City Council has authorized issuance of building permits.
- (6) See the Transportation Master Plan for a partial list of Class VI roads in the City.

ARTICLE 27
Miscellaneous Provisions
[Amended 7-7-2015]

§ 275-27.1. Buffers for residential property.

- A. All nonresidential development, including any parking and storage areas, shall be screened/buffered from any adjacent residential property situated to the side or rear as stipulated by the Planning Board under site review. The Board may stipulate plantings and/or fencing, as reasonably appropriate. See Figure 27-A, Screening Between Commercial and Residential Uses, as an example.
- B. All multifamily development, consisting of three units of more, including parking areas, shall be screened/buffered from any adjacent single-family dwellings situated to the side or rear as required by the Planning Board under site review. The Board may stipulate plantings and/or fencing, as reasonably appropriate. This requirement does not apply in situations where multifamily development is specifically designed to integrate with single-family dwellings in mixed-use developments.

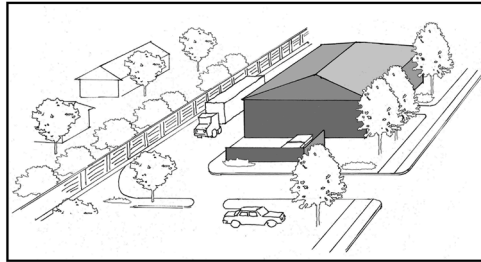


Figure 27-A, Screening Between Commercial and Residential Uses

§ 275-27.2. Cemeteries.

Pursuant to RSA 289:3, III, there shall be no construction, excavation, or development, nor placement of any buildings, structures, signage, or parking, inside or within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery. For the purposes of this section, the term "excavation" shall include the disturbance to a depth of 12 inches or more of soil for activities such as landscaping, utility trenching, tree planting, etc. No healthy tree with a diameter at breast height of eight inches or more may be cut or removed within 25 feet of any established burial ground or cemetery except by special exception for good cause and with appropriate mitigation. No new chain-link fence shall be installed in or around any cemetery.

§ 275-27.3. Impact fees.

- A. Purpose. This section is enacted pursuant to RSA 674:16 and 674:21: **[Amended 1-7-2020]**
- (1) To assess new development for its proportionate share of the public capital facility costs.
- B. Authority. **[Amended 1-7-2020]**
- (1) Impact fees may be assessed to new development to compensate the City of Rochester and the School Department for a proportionate share of the cost of the capital facility needs occasioned by new development. Any person who seeks a building permit for new development may be required to pay an impact fee in the manner set forth herein.
- (2) The Planning Board may, as a condition of approval of any subdivision or site plan, and when consistent with applicable Board regulations, require an applicant to pay an impact fee for the applicant's proportional share of public facilities affected by the development.

- (3) Nothing in this section shall be construed to limit the authority of the Planning Board or the City to require exactions for off-site improvements, other conditions of approval, or to assess other fees governed by other statutes, ordinances, or regulations.

C. Definitions. For the purposes of this section, the following terms shall have the meanings indicated:

IMPACT FEE — A fee or assessment imposed upon development, including subdivision or building construction, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the City of Rochester or the Rochester School Department, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; stormwater, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space. **[Amended 1-7-2020]**

NEW DEVELOPMENT —

- (1) An activity that results in any one of the following:
 - (a) The creation of a new dwelling unit or units;
 - (b) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units;
 - (c) Construction resulting in a new nonresidential building or a net increase in the floor area of any nonresidential building; or
 - (d) The conversion of an existing use to another use if such change results in an increase in the demand on public capital facilities that are the subject of impact fee assessments. **[Amended 1-7-2020]**
- (2) New development shall not include the replacement of an existing manufactured home or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on public capital facilities.

OFF-SITE IMPROVEMENTS — Highway, drainage, sewer, or water upgrades or improvements that are necessitated by a development but which are located outside the boundaries of the property, as determined by the Planning Board during the course of subdivision or site plan approval. **[Added 1-7-2020]**

D. Assessment methodology.

- (1) Proportionality. The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The Planning Board may prepare, adopt, or amend studies or reports that are consistent with the above standards, and which define a methodology for impact fee assessment for public capital facilities, and impact fee assessment schedules therefor.
- (2) Existing deficiencies. Upgrading of existing facilities and infrastructure, the need for which is not created by new development, shall not be paid for by impact fees.

E. Administration.

- (1) Accounting. In accord with RSA 673:16, II, and 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the City's general fund, may be spent upon order of the City Council, and shall be used solely for the capital improvements for which they were collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fees were collected to meet. In the event that bonds or similar debt instruments have been or will be issued by the City of

Rochester or the Rochester School District for the funding of capital improvements that are the subject of impact fee assessment, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.

- (2) **Assessment.** All impact fees imposed pursuant to this section shall be assessed at the time of Planning Board approval of a subdivision plan or site plan. When Planning Board approval is not required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, as determined by the Building Inspector. Impact fees shall be intended to reflect the effect of development upon municipal and/or school facilities at the time of the issuance of the building permit. **[Amended 1-7-2020]**
- (3) **Security.** In the interim between assessment and collection, the Building Inspector may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed impact fees.
- (4) **Collection.** Impact fees shall be collected as a condition for the issuance of a certificate of occupancy. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this section shall prevent the Building Inspector, with the approval of the Planning Board, and the assessed party from establishing an alternate, mutually acceptable schedule of payment. **[Amended 1-7-2020]**
- (5) **Refund of fees paid.** The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest, under the following circumstances:
 - (a) When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six years from the date of the full and final payment of the fee; or
 - (b) When the City of Rochester or, in the case of school impact fees, the Rochester School District has failed, within the period of six years from the date of the full and final payment of such fee, to appropriate its proportionate non-impact fee share of related capital improvement costs.

F. Appeals.

- (1) A party aggrieved by a decision made by the Building Inspector regarding the assessment or collection of impact fees authorized by this section may appeal such decision to the Planning Board.
- (2) In accord with RSA 676:5, III, appeals of the decision of the Planning Board in administering this section may be made to Superior Court, as provided in RSA 676:5, III, and 677:15.

G. Waivers. The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

- (1) An applicant may request a full or partial waiver of school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 55 or over in a development that is also maintained in compliance with the provisions of RSA 354-A:15, Housing for Older Persons. The Planning Board may waive school impact fee assessments on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years. **[Amended 1-7-2020]**
- (2) A person may request a full or partial waiver of impact fees for construction within a subdivision or site plan approved by the Planning Board prior to the effective date of this section. Prior to granting such a waiver, the Planning Board must find that the proposed construction is entitled to the five-year exemption provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to

phases of a phased development project where active and substantial development, building and construction has not yet occurred in the phase in which construction is proposed. [Amended 3-5-2019]

- (3) The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the City Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind and may not be credited to other categories of impact fee assessment. The applicant shall pay all costs incurred by the City for the review of such proposal, including consultant and counsel fees.
- (4) The Planning Board shall waive all of an impact fee assessment for properties located in the Downtown Commercial District, with the district boundaries defined as the boundaries that exist at the time of the approval of this amendment. [Amended 1-7-2020]
- (5) The impact fee assessment for accessory dwelling units shall be waived with the stipulation that this waiver is reviewed every two years. [Added 1-7-2020]

§ 275-27.4. Lots split by municipal boundaries.

For lots split by municipal boundaries the provisions of RSA 674:53 shall apply. In applying dimensional controls to that portion of the lot within Rochester, the dimensions of the entire lot shall be considered without reference to the City line.

§ 275-27.5. Rivers and shoreland protection.

(Note that listed rivers are subject to change.)

- A. Shoreland protection. Provisions of the New Hampshire Comprehensive Shoreland Protection Act, RSA 483-B, apply to bodies of water included under that Act.
- B. Rivers management. The Isinglass River and the Cochecho River are protected under the New Hampshire Rivers Management and Protection Program, RSA 483.

§ 275-27.6. Lots split by zoning district boundaries.

Where the boundary line of a zoning district divides a lot in single or joint ownership at the time of passage of the ordinance establishing the boundary line, the following provisions shall apply:

- A. The uses and other standards for either district may, at the option of the owner, extend beyond the zoning boundary line up to a maximum distance of 100 feet from that zoning boundary line. For any area in which this allowance is used, for any period of time in which this allowance is used, that area shall be treated as if its zoning designation were the zone that is being extended.
- B. The provisions of Subsection A of this section shall not apply to a lot divided by the Recycling Industrial Zoning District boundary line. In the case of a lot divided by the Recycling Industrial Zoning District boundary line, the uses and regulations permitted and/or applicable to the Recycling Industrial Zoning District shall not be extended into the adjoining zoning district.
- C. Overlay districts. The provisions of this section shall not apply to overlay districts.

§ 275-27.7. Temporary noncompliance.

The Director of Building, Zoning, and Licensing Services is authorized to approve a temporary permit/approval for

a noncomplying structure or a noncomplying use incidental to a development where it is reasonably required for that development on a temporary basis. The permit/approval may be issued where the Director of Building, Zoning, and Licensing Services reasonably determines that:

- A. The temporary structure or use will not be counter to the public interest.
- B. The temporary structure or use will not harm any abutter.
- C. The temporary structure or use will not be counter to the spirit of this chapter.
- D. Proper safeguards are taken.
- E. A reasonable time frame has been established.
- F. No reasonable alternative is available.
- G. Appropriate surety has been provided to ensure compliance with the conditions above.

§ 275-27.8. Planned unit developments.

Four planned unit developments (PUDs) were approved by the City of Rochester under a City ordinance which is no longer in effect, Section 42.32, Planned Unit Developments, adopted December 5, 2001, and amended December 7, 2004. The creation of new planned unit developments is not permitted under this chapter. The four approved PUDs, including Secretariat Estates, Highfield Commons, the Homemakers, and the Villages at Clark Brook (the original names), may be built in accordance with the provisions of Section 42.32 of the former Zoning Ordinance and the approved master plans for each of those PUDs.

§ 275-27.9. Murals. [Added 3-2-2021]

- A. Purpose: The City of Rochester understands the importance of adopting regulations for murals on private property and public property. The regulations for murals were formulated as a means to continue visual aesthetic while allowing for creative expression in appropriate locations and with sensitivity to the Historic Downtown nature of permitted areas. The established review criteria provide guidance concerning the compatibility and appropriateness of theme, location, design, placement, massing, scale, and materials of mural art with no intrusion into the artistic expression or the content of work.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:
 - HISTORIC WALL GRAPHICS — Includes any graphic shown to be at least 60 years old that is recognized as distinctly important in the social science of history that records, studies, and explains the character and significance of past human activities in Rochester.
 - MURAL — Any permitted art painted or applied directly on a building, structure, fence, or object within the public view that is located on public or private property.
 - SIGN — For definitions of numerous sign types see Article 29, Signage.
 - VANDALISM — Any unpermitted writings, drawings, or other material posted on a public or private property. Typically this is unlawfully placed on property not owned by the person posting the material.
- C. Zones where murals are permitted:
 - (1) Murals are permitted by conditional use permit in the following districts: Neighborhood Mixed Use, Downtown Commercial District, Office Commercial, Highway Commercial, and Granite Ridge Development District.
- D. Approval for murals:

- (1) General requirements.
 - (a) The City of Rochester exempts public art, including murals, that are located outside the Historic Overlay District from Article 29, Signage. However, murals must be permitted and approved, per the process below.
 - (b) Murals that include trademarks, service marks, or other markings, colors, or patterns identifying or associated with business, profession, trade, occupation, may be permitted if it is shown that they are historic wall graphics on private property. Otherwise, such will be considered commercial applications and shall be considered signs.
 - (c) All applications shall include the property owner's signature indicating their approval of the submission of the application and of the mural.
 - (d) All applications shall include a description of the artist's qualifications.
 - (e) All applications shall include a long-term maintenance plan.
 - (f) Any mural without approval may be considered vandalism or a sign and enforced accordingly.
 - (g) Rotating murals in which an applicant plans to apply more than one mural to the same wall within a year period require approval for each submission.
- (2) Murals on public property.
 - (a) Applicants shall submit a public art install application for review and approval by the City Council.
- (3) Murals on private property that is visible from the public right-of-way.
 - (a) Applicants shall submit a public art install application for review and approval by Arts and Culture Commission.
 - (b) Once the Arts and Culture Commission has approved the install, the applicant must check if they are in the Historic Overlay District. Any mural located within the Historic Overlay District that is visible from the public right-of-way shall be reviewed by the Historic District Commission and must comply with the Department of Secretary Interiors Standards for treatment for historic masonry buildings.
 - (c) Once HDC approval is obtained, the applicant shall apply for a permit from the Planning Board.

E. Review criteria:

- (1) Location.
 - (a) The mural complements and enhances the building.
 - (b) The mural does not cover or detract from significant or character defining architectural features.
 - (c) The mural enhances and complements the surround neighborhood.
 - (d) The treatment and application of murals located on properties within the Historic District Overlay follows the National Parks Services Department of Secretary Interiors Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings Technical Preservation Services. The mural enhances the building or wall and is incorporated architecturally into the character of the Historic District.
 - (e) Murals that are mounted onto buildings are done so in a way that prevents damage from moisture and condensation behind the attached panel. The hanging or anchoring of murals should be

reversible.

- (f) The mural does not cover over the exterior surfaces of any building opening such as windows, doors and vents. This excludes any City-sanctioned event that may involve temporary window paintings.

(2) Design.

- (a) Preparation to substrate must be identified and condition must also be addressed including surface conditions, fragility, permeability, and porosity.
- (b) The scale of the mural is appropriate for the building. Murals located on the primary street facade shall not exceed more than 25% of the area of facade of which the mural is located.
- (c) The mural enhances the surrounding neighborhood.
- (d) The mural is an original design.
- (e) The name, logo, or other indicator of the sponsor of the mural or the mural artist shall be discreetly displayed and shall not exceed 5% of the overall design.
- (f) Materials are of superior quality and intended for exterior use.
- (g) Use of reflective, neon, or fluorescent paints is limited.
- (h) Permanent installations have a weatherproof and vandalism-resistant coating.
- (i) The mural contains no defamation, incitement, obscenity, illegal content, or images of child pornography. Obscene matter is that which the average resident of the City, applying community standards, would find, taken as a whole, appeals to a prurient interest and lacks serious literary, artistic, political, or scientific value.

F. Maintenance:

- (1) The maintenance of the mural is the responsibility of the property owner. In the case of murals on public property, maintenance shall be the responsibility of the organization that commissioned the mural.
- (2) The long-term maintenance plan must be prepared and include a plan for periodic touch up or repainting condition of the surface must be inspected.
- (3) The mural must be properly maintained to ensure that material failure, such as peeling paint, is corrected and vandalism is removed promptly in accordance with the Property Maintenance Code.
- (4) A long-term maintenance plan for periodic touch up or repainting is required with submission.
- (5) Rotating murals (in which an applicant plans to apply more than one mural to the same wall within a year period) requires approval for each submission.

G. Enforcement:

- (1) When an official interpretation is deemed necessary, the Zoning Administrator will determine if a proposal is a mural or sign. This decision may be appealed by the Zoning Board of Adjustment.

ARTICLE 28
Performance Standards

§ 275-28.1. Purpose.

The purpose of these performance standards (or "impact mitigation standards") is to protect the community from hazards and nuisances, to set measurable standards and thresholds where practical, to recognize that certain valuable and responsible entities will inevitably produce certain impacts, and to provide accommodations for those operations subject to reasonable limitations.

§ 275-28.2. General provisions.

- A. **Applicability.** The performance standards contained herein shall apply to all property in the City of Rochester, whether developed or not, and whether subject to site plan or subdivision review or not.
- B. **Mitigation.** All uses, activities, and development in the City of Rochester shall be conducted in a manner that will most effectively prevent, eliminate, minimize, and/or mitigate the creation of any dangerous, noxious, injurious, or otherwise objectionable impacts from noise, glare, light, heat, dust, smoke, vibration, water pollution, air pollution, use of flammable materials, radiation, radioactivity, electrical disturbance, waste generation, sewage generation, vermin, or invasive or destructive plant species, as reasonably determined by the Director of Building, Zoning, and Licensing Services.
- C. **Confinement to property.** Property owners, residents, tenants, businesses, and developers shall take measures to confine such impacts within buildings or, at a minimum, to prevent their being perceptible or extending beyond lot lines.
- D. **Nuisance or hazard.** Any use, activity, or development which regularly, persistently, or significantly violates these provisions by creating a nuisance or hazard beyond the lot lines shall be prohibited.
- E. **Safety data sheets.** Any applicant, business, or property owner shall provide to the Fire Department, Director of Building, Zoning, and Licensing Services, Planning Board, Planning and Development Department, or other local authorities copies of Safety Data Sheets (MSDS) for all pertinent materials and processes upon request.
- F. **Applicable law.** All uses, activities, and development shall be carried on in conformance with all applicable local, state, and federal law.

§ 275-28.3. Noise.

- A. **General terms.**
 - (1) No persistently loud or disruptive noise shall be permitted.
 - (2) All noise that could be objectionable due to intermittence, beat frequency, or shrillness shall be appropriately muffled, mitigated, or terminated.
 - (3) No external loudspeakers shall be permitted except for special events for which approval is granted by the Director of Building, Zoning, and Licensing Services or the Police Department, as appropriate.
- B. **Maximum decibels.** The following standards apply to any steady noise, measured at the lot line:

Maximum Permitted Decibels*		
Zoning District	Day	Night
Residential	60	50
Commercial	65	55
Industrial	70	60

***Notes to table:**

- A. The Commercial District includes the Hospital Special District. The Industrial District includes the Airport Special District.
 - B. Day includes the hours between 7:00 a.m. and 10:00 p.m., Monday through Friday, and 9:00 a.m. to 10:00 p.m. on Saturday and Sunday.
 - C. Night includes the remaining hours.
- C. Measurement. The preferred method for measuring noise is with a sound-level meter meeting the standards of the American National Standards Institute [ANSI S1.4-1983 (R 2006)], American National Standard Specification for Sound-Level Meters, or as amended. The instrument should be set to the A-weighted response scale and the meter to the slow response. Measurements should be conducted in accordance with current ANSI guidelines for the measurements of sound.
- D. Reference information. The following table is provided for reference only.

Sample Sound Levels in Decibels	
Decibels	Activity
30	Whisper
40	Quiet room
50	Rain
60	Conversation, dishwasher
70	Busy traffic, vacuum
80	Alarm clock
90	Lawn mower
100	Snowmobile, chain saw

Source: New Hampshire Sunday News, July 7, 1996, from the American Speech-Language-Hearing Association.

- E. Exemptions; special exceptions. The following uses and activities shall be exempt from the provisions of this section:
- (1) Safety signals, warning devices, emergency relief valves, emergency generators, and other equipment when in operation due to an emergency, or testing or other planned operation.
 - (2) Unamplified human voices and crowd noises generated at gatherings open to the public.
 - (3) Power tools, including lawn mowers, snowblowers and chain saws, when used for the construction or maintenance of property (subject to any specific restrictions under this chapter or other applicable law or regulation).
 - (4) Music and entertainment uses for which the ZBA has granted a special exception to exceed the limits

herein subject to appropriate conditions.

§ 275-28.4. Other specific standards.

- A. Glare or light.
 - (1) All exterior lights shall be designed, located, installed, and directed in such a manner so as to prevent glare and objectionable light trespass onto neighborhood properties or roads.
 - (2) Any new light installations shall be in compliance with the lighting requirements under the Site Plan Regulations, whether site plan review is required or not.
 - (3) Lights pointed in the direction toward any adjoining property or any road shall not be used. Floodlights may only be used in accordance with the lighting requirements under the Site Plan Regulations.
- B. Heat. There shall be no emission or transmission of heat so as to be discernible at the lot line.
- C. Odors. No use or operation shall create objectionable odors detectable beyond the lot line except agricultural uses within the Agricultural Zone. Objectionable odors are those that are offensive, foul, unpleasant, or repulsive and, due to their nature, concentration and duration, preclude abutting or neighboring property owners the reasonable enjoyment of their property.
- D. Dust or smoke. No observable dust or smoke from any commercial or industrial operation shall be exhausted into the air except as may be specifically approved by NHDES Division of Air Resources.
- E. Vibration.
 - (1) No vibration which is transmitted through the ground shall be discernible without the aid of instruments at any point beyond the lot line.
 - (2) No vibration which is transmitted through the ground shall exceed a maximum displacement of "G peak" measured at any point beyond the property line using either seismic or electronic vibration measuring equipment (subject to appropriate instrumentation being available to the Director of Building, Zoning, and Licensing Services).
- F. Water pollution. No hazardous or toxic material may be discharged into any stream, river, pond, or private septic system or into the ground such that any deterioration in the quality of the groundwater or surface water could result.
- G. Air pollution. Any emissions of fumes or gases into the atmosphere shall be in compliance with the standards set by the New Hampshire Department of Environmental Services, Division of Air Resources.
- H. Regulated hazardous materials. All use or storage of regulated hazardous materials shall be carried out with adequate safety, fire suppression, and firefighting devices. All reasonable measures shall be taken to reduce any potential fire hazards.
- I. Radiation/radioactivity.
 - (1) Any emission of radioactivity shall be in compliance with the standards of the Atomic Energy Commission.
 - (2) Any emission of radiation shall be in compliance with the standards of the New Hampshire Department of Health and Human Services. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- J. Electrical disturbance. No electrical disturbance adversely affecting the operation of any equipment located beyond the boundaries of the operation shall be permitted.

- K. Waste disposal.
 - (1) No waste material shall be placed upon or left to remain upon any open area outside of any building except in appropriate waste containers. This provision shall not apply to properly licensed junkyards.
 - (2) Dumpsters. All dumpsters associated with new applications, including changes in use, shall be fully screened so they are not visible from a public way (road, sidewalk, footpath, trail, park, or navigable waterway owned by the City of Rochester or another governmental agency and intended to be accessible to the public).
 - (3) The treatment and disposal of any waste materials, liquid and solid, including hazardous materials, shall be in compliance with all standards of the New Hampshire Department of Environmental Services, Divisions of Waste Management and Water, and of the New Hampshire Department of Health and Human Services. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (4) Those generating, transporting, or receiving regulated waste must meet the licensing and registration requirements of state and federal law.
- L. Sewage disposal. All sewage disposal shall be in compliance with the standards of the New Hampshire Department of Environmental Services. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- M. Vermin. No use or activity shall cause, or result in a condition conducive to, the propagation of rodents, insects, or other vermin.
- N. Plant species. No person shall install any plants clearly determined to be invasive or destructive. Refer to the New Hampshire Department of Agriculture, Markets, and Food prohibited invasive species list.
- O. Site restoration.
 - (1) No site which has been abandoned; on which construction or development had been occurring but which has been indefinitely suspended; or on which any building or structure has been destroyed, demolished, burned, or abandoned shall be left to remain in a disorderly, unsightly, or hazardous state or in a condition that causes undue erosion, sedimentation, environmental degradation, or impairment of neighboring properties. Some reasonable allowance may be made for such sites for a temporary period not to exceed 90 days upon notification from the Director of Building, Zoning, and Licensing Services to allow property owners to restore or stabilize the sites.
 - (2) The property owner, business owner, and contractor shall take all reasonable measures to clean, clear, restore, stabilize, regrade, and plant the site as appropriate in order to remove, correct, or mitigate any disorderly, unsightly, or hazardous conditions. The Director of Building, Zoning, and Licensing Services may take any appropriate measures to effect compliance with this provision, including correcting conditions and then placing a lien on the property for which the owner would be responsible for financial restitution to the City. Any aggrieved party may request a hearing before the Building Code Board of Appeals for actions taken by the City under this provision.

§ 275-28.5. Administration.

- A. At the request of the Planning Board or Director of Building, Zoning, and Licensing Services, an applicant shall submit appropriate information and materials to demonstrate that the performance standards herein will not be violated when the proposed use is put into operation.
- B. In implementing these standards, the Planning Board (in the case of site plan review) or the Director of Building, Zoning, and Licensing Services may call upon specified standards, technical specifications, and the technical expertise of appropriate local, state, and federal agencies.

- C. Where there is an alleged violation, if determinations can reasonably be made by the Director of Building, Zoning, and Licensing Services using equipment and personnel normally available to the City, such determinations shall be made before notice of violation is issued.
- D. Where technical complexity or expense make it unreasonable for the City to maintain the personnel or equipment necessary for making difficult or unusual determinations, the Director of Building, Zoning, and Licensing Services may take any action to secure appropriate equipment, obtain support from other agencies, or otherwise investigate the violation as permitted by the New Hampshire Revised Statutes Annotated.
- E. Where it is determined that there is a violation of the performance standards, the costs of special investigations or use of special equipment may be imposed upon the entity responsible for the violation, as reasonably determined by the Director of Building, Zoning, and Licensing Services.

ARTICLE 29
Signage
[Amended 6-16-2015]

§ 275-29.1. Applicable regulations.

All signs shall comply with the regulations for the erection and construction of signs contained in the Building Code of the City of Rochester and other applicable City regulations, except as shall be under the jurisdiction of RSA 236:69 to 236:89. Signs shall be permitted in accordance with the following regulations.

§ 275-29.2. Purpose and intent.

The purpose of this article is to create a legal framework to regulate the type, number, location, size, and illumination of signs on private property in order to maintain and enhance the character of the City's commercial district and residential neighborhood and to protect the public from hazardous and distracting displays.

§ 275-29.3. Nonconforming signs. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

A sign which was lawfully established prior to the adoption or amendment of this article but which does not meet the requirements of this article is considered a nonconforming sign. Nonconforming signs and sign structures may remain or must be removed as follows:

- A. Applicable provisions of Article 30, Nonconforming Property, of this chapter shall apply unless superseded herein.
- B. No changes in the sign or sign structure are permitted except for basic maintenance and repairs necessary to keep the sign in good working order or other changes which bring the sign into compliance. No nonconforming sign shall be reconstructed, modified, or relocated except for changes to the sign face itself within the same size and shape to accommodate a change of copy. A nonconforming sign which is damaged beyond repair due to a cause beyond the control of the owner may be replaced within one year of when damage occurs.
- C. Nonconforming signs may not be altered in any way.
- D. Existing temporary signs which are not in compliance with this article are not considered to be "grandfathered" under this article. If any notification of noncompliance is given from the Director of Building, Zoning, and Licensing Services or his/her designee, these signs or conditions must be brought into compliance within 60 days from that notification.

§ 275-29.4. Permit required. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

All signs, regardless of size, shall require the issuance of a sign permit before public display unless otherwise specifically exempt by this article.

§ 275-29.5. Application process.

Application for a sign permit shall be to the Building, Zoning, and Licensing Services Department.

- A. The application should contain the following:
 - (1) Name, signature, address and telephone number of the applicant.
 - (2) Owner's authorization for the application if not the applicant.

(3) Location of the building, structure or lot on which the sign will be located.

(4) The district where the sign will be located.

B. Historic District. Signs in the Historic District, except for portable easel, placard, and sandwich board signs, are subject to review by the Historic District Commission (see Article 14, Historic Overlay District).

§ 275-29.6. Construction documents. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the Building, Zoning, and Licensing Services Department showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional where required by the International Building Code.

§ 275-29.7. Changes to signs.

No sign shall be structurally altered, enlarged or relocated, except in conformity with the provisions herein, until a proper permit, if required, has been secured. The changing or maintenance of movable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign, shall not be deemed a structural alteration.

§ 275-29.8. Permit fees.

Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted within this jurisdiction.

§ 275-29.9. Prohibited signs.

The following devices and locations shall be specifically prohibited:

- A. Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.
- B. Except as provided for elsewhere in this article, signs encroaching upon or overhanging public rights-of-way. No sign shall be attached to any utility pole, light standard, street tree or any other public facility located within the public right-of-way.
- C. Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or to have the appearance of municipal vehicle warnings from a distance.
- D. Any sign attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:
 - (1) The primary purpose of such a vehicle or trailer is not the display of signs.
 - (2) The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer, and do not break the silhouette of the vehicle.
 - (3) The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.

- E. Vehicles and trailers used primarily as static displays, advertising a product or service, or utilized as storage, shelter or distribution points for commercial products or services for the general public. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- F. Snipe signs.

§ 275-29.10. Exempt signs.

The following signs shall be exempt from the provisions of this chapter:

- A. Official notices authorized by a court, public body or public safety official.
- B. Directional, warning or information signs authorized by federal, state, or municipal governments.
- C. Memorial plaques, building identification signs and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.
- D. The flag of a government or noncommercial institution, such as a school.
- E. Works of fine art displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.
- F. Street address signs and combination nameplate and street address signs that contain no advertising copy and which do not exceed six square feet (0.56m²) in area.
- G. Signs required, or deemed necessary for the public welfare and safety, by a municipal, state, or federal agency such as traffic control and directional signs.
- H. Interior signs.

§ 275-29.11. Definitions.

For the purpose set forth in this article the following definitions apply:

ABANDONED SIGN — A sign structure that has ceased to be used and the owner intends no longer to have used.

ANIMATED SIGN — A sign employing actual motion or the illusion of motion. Animated signs, which are differentiated from changeable signs as defined and regulated by this article, include the following types:

- A. **ELECTRICALLY ACTIVATED** — Animated signs producing the illusion of movement by means of electronic, electrical or electromechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below.
- B. **FLASHING** — Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For the purposes of this article, "flashing" will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds eight seconds.
- C. **MECHANICALLY ACTIVATED** — Animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

ARCHITECTURAL PROJECTION — Any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein. See also "awning," "backlit awning" and "canopy, attached and freestanding."

AWNING — An architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable, including such structures that are internally illuminated by fluorescent or other light

sources.

AWNING SIGN — A sign displayed on or attached flat against the surface or surfaces of an awning. See also "wall or fascia sign."

BACKLIT AWNING — An awning with a translucent covering material and a source of illumination contained within its framework.

BANNER — A flexible substrate on which copy or graphics may be displayed.

BANNER SIGN — A sign utilizing a banner as its display surface.

BILLBOARD — See "off-premises sign" and "outdoor advertising sign."

BUILDING — A structure which has a roof supported by walls for shelter, support, or enclosure of persons, animals, or chattel.

CANOPY (ATTACHED) — A multisided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns at additional points. The surface(s) and/or soffit of an attached canopy may be illuminated by means of internal or external sources of light. See also "marquee."**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

CANOPY (FREESTANDING) — A multisided overhead structure supported by columns but not enclosed by walls. The surface(s) and/or soffit of a freestanding canopy may be illuminated by means of internal or external sources of light.

CANOPY SIGN — A sign affixed to the visible surface(s) of an attached or freestanding canopy.

CHANGEABLE SIGN — A sign with the capability of content change by means of manual or remote input, including signs which are:

A. ELECTRICALLY ACTIVATED — Changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices, or it may be from an external light source designed to reflect off the changeable component display. See also "electronic message sign or center."

B. MANUALLY ACTIVATED — Changeable sign whose message copy or content can be changed manually.

COMBINATION SIGN — A sign that is supported partly by a pole and partly by a building structure.

COPY — Those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

DEVELOPMENT COMPLEX SIGN — A freestanding sign identifying a multiple-occupancy development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord, approved in accordance with § 275-29.12G.**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

DIRECTIONAL SIGN — Any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

DOUBLE-FACED SIGN — A sign with two faces, back to back.

ELECTRIC SIGN — Any sign activated or illuminated by means of electrical energy.

ELECTRONIC MESSAGE SIGN OR CENTER — An electrically activated changeable sign whose variable message capability can be electronically programmed.

EXTERIOR SIGN — Any sign placed outside a building.

FLAG — A sign constructed of cloth and attached to a staff or pole.

FLASHING SIGN — See "animated sign, electrically activated."

FREESTANDING SIGN — A sign principally supported by a structure affixed to the ground and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground.

FRONTAGE (BUILDING) — The length of an exterior building wall or structure of a single premises orientated to the public way or other properties that it faces.

FRONTAGE (PROPERTY) — The length of the property line(s) of any single premises along either a public way or other properties on which it borders.

ILLUMINATED SIGN — A sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated) or reflecting off its surface(s) (externally illuminated).

INTERIOR SIGN — Any sign placed within a building, but not including window signs as defined by this article. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

MARQUEE — A permanent roof-like structure, including the structural support system, projecting beyond a building wall at the entrance to a building or extending along and projecting beyond the building wall. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

MENU BOARD — A freestanding sign orientated to the drive-through lane for a restaurant that advertises the menu items available from the drive-through window, and which has no more than 20% of the total area of such a sign utilized for business identification.

MULTIPLE-FACED SIGN — A sign containing three or more faces.

NONCONFORMING SIGN — Any sign that existed lawfully prior to the adoption or amendment of this article which now does not conform to the provisions of this article. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

OFF-PREMISES SIGN — A sign which pertains to a business, industry, or other activity which is not located on the premises upon which the sign is located.

OFF-PREMISES SIGN, DIRECTIONAL — A sign on private property whose only purpose is to direct vehicular traffic for delivers and visitation and is not intended to be used as a form of advertisement.

ON-PREMISES SIGN — A sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

OUTDOOR ADVERTISING SIGN — A permanent sign erected, maintained or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of, products sold on, or the sale or lease of, the property on which it is displayed.

PERMANENT SIGN — A sign that is displayed for more than a total of 90 days in any one year.

POLE SIGN — See "freestanding sign."

POLITICAL SIGN — A temporary sign intended to advance a political statement, cause or candidate for office. A legally permitted outdoor advertising sign shall not be considered to be a political sign.

PORTABLE SIGN — Any sign not permanently attached to the ground or to a building or building surface.²⁴

PROJECTING SIGN — A sign other than a wall sign that is attached to or projects more than 18 inches (457 millimeters) from a building face or wall or from a structure whose primary purpose is other than the support of a sign. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

REAL ESTATE SIGN — A temporary sign advertising the sale, lease or rental of the property or premises upon which it is located.

SANDWICH BOARD SIGN — A portable sign shaped like an A-frame with a sign pane on one or both sides.

24. Editor's Note: The definition of "premises sign" which immediately followed this definition was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

SIGN — Any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

SIGN AREA — The area of the smallest geometric figure or the sum of the combination of regular geometric figures which comprise the sign face. The area of any double-sided or V-shaped sign shall be the area of the largest single face only. The area of a sphere shall be computed as the area of a circle. The area of all other multiple-sided signs shall be computed as 50% of the sum of the area of all faces of the sign.

SIGN FACE — The surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border.

SIGN STRUCTURE — Any structure supporting a sign.

SNIPED SIGN — Any sign of any size, made of any material, including paper, cardboard, wood and metal, when such sign is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, fences or other objects, and the advertising matter appearing thereon is not applicable to the premises upon which said sign is located.

SPECIAL EVENT — A temporary sign that is either on site or off site that provides identification or information pertaining to a special event or occurrence sponsored by a nonprofit or civic organization.

TEMPORARY SIGN — A sign not constructed for or intended for permanent use. Temporary signs may not be displayed for more than a total of 30 days in any one year.

WALL OR FASCIA SIGN — A sign that is attached to a vertical wall of a building that projects not more than 18 inches from the building or structure wall. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

WINDOW SIGN — A sign within one foot of a window intended to be visible to and readable from the public way or from adjacent property. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

§ 275-29.12. General provisions.

- A. Conformance to codes. Any sign hereafter erected shall conform to the provisions of this article or regulation within this jurisdiction.
- B. Signs in rights-of-way. No sign other than an official traffic sign or similar sign shall be erected within two feet of the lines of any street, or within any public way, unless specifically authorized by other ordinances or regulations of this jurisdiction or by specific authorization of the City Council after a recommendation is made by the Licensing Board.
- C. Projections over public ways. Signs projecting over public walkways shall be permitted to do so only subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum height of eight feet from grade level to the bottom of the sign. Signs, architectural projections or sign structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the jurisdiction for such structures.
- D. Traffic visibility. No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.
- E. Computation of frontage. If a premises contains walls facing more than one property line or encompasses property frontage bounded by more than one street or other property usages, the sign area(s) for each building wall or property frontage will be computed separately for each building wall or property line facing a different frontage. The sign area(s) thus calculated shall be permitted to then be applied to permitted signs placed on each separate wall or property line frontage.

- F. Maintenance, repair and removal. Every sign permitted by this article shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the Director of Building, Zoning, and Licensing Services, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this article, the owner thereof or the person or firm using the same shall, upon written notice by the Director of Building, Zoning, and Licensing Services, forthwith in the case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this article, or shall remove it. If within 10 days the order is not complied with, the Director of Building, Zoning, and Licensing Services shall be permitted to remove or cause such sign to be removed at the expense of the owner and/or the user of the sign. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- G. Master sign plan required. All landlord or single-owner controlled multiple-occupancy development complexes, such as shopping centers or planned industrial parks, shall submit to the Building, Zoning, and Licensing Services Department a master sign plan prior to issuance of new sign permits. The master sign plan shall establish standards and criteria for all signs in the complex that require permits and shall address, at a minimum, the following: **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (1) Proposed sign locations.
 - (2) Materials.
 - (3) Type of illumination.
 - (4) Design of freestanding sign structures.
 - (5) Size.
 - (6) Quantity.
 - (7) Uniform standards for non-business signage, including directional and informational signs.
- H. Illumination.
- (1) No internally illuminated sign shall be used within 100 feet of any residential zone.
 - (2) On externally illuminated signs, the light source shall be steady, stationary, shielded, downcast, and directed solely at the sign. The sign surface shall be nonreflective.
 - (3) Illuminated signs shall send no glare onto the road or onto any neighboring residential properties.
- I. Removal of portable and other movable and temporary signs.
- (1) The Zoning Administrator, or other City personnel designated by the City Manager, shall cause to be removed any sign placed on or over any public right-of-way or public property that is without a valid permit or is not in compliance with the terms of a valid permit, or where such a sign is exempt from permit requirements, the sign is not in compliance with the standards and provisions of this article.
 - (2) Signs related to an adjacent principal use. Where a sign that is placed on or over any public right-of-way or public property in violation of this article is related to a principal use of adjacent private property, the Zoning Administrator, or other City personnel designated by the City Manager, shall notify the owner of the principal use or the property that a violation exists and shall specify a time limit for removal of the sign. If the owner fails to comply with the order for removal, the Zoning Administrator, or other City personnel designated by the City Manager, shall remove the sign and the owner shall be liable for the cost of said removal and subsequent storage. If the owner does not redeem the sign within 30 calendar days from the date that the sign is removed, the sign shall be deemed to be abandoned and may be disposed of by the City as abandoned property.

- (3) Other signs. Where a sign that is placed on or over any public right-of-way or public property in violation of this article is not erected in connection with elections or political campaigns, and is unrelated to a principal use of adjacent private property, the Zoning Administrator, or other City personnel designated by the City Manager, shall remove the sign and it shall be deemed to be abandoned and may be disposed of by the City as abandoned property.

§ 275-29.13. Specific sign requirements.

- A. Animated signs. Animated signs, except as prohibited in § 275-29.9C, are permitted in Granite Ridge Development, commercial and industrial zones only. Changeable signs, manually activated, are permitted for nonresidential uses in all zones. Changeable signs, electrically activated, are permitted in all nonresidential zones.
- B. Awning signs.
 - (1) The copy area of awning signs shall not exceed an area equal to 25% of the background area of the awning or awning surface to which such a sign is affixed or applied, or the permitted area for wall or fascia signs, whichever is less.
 - (2) Neither the background color of an awning nor any graphic treatment or embellishment thereto, such as striping, patterns or valances, shall be included in the computation of sign copy area.
- C. Canopy signs.
 - (1) The permanently affixed copy area of canopy or marquee signs shall not exceed an area equal to 25% of the face area of the canopy, marquee or architectural projection upon which such sign is affixed or applied.
 - (2) Graphic striping, patterns or color bands on the face of a building, canopy, marquee or architectural projection shall not be included in the computation of sign copy area.
- D. Directory signs. For businesses located on secondary streets within the Downtown Commercial District. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (1) Not to exceed four square feet in area.
 - (2) Permission must be obtained in writing from the property owner on whose premises the sign is to be placed.
 - (3) These signs shall not obscure any portion of road, intersection, or sidewalk.
- E. Directional signs. No more than two directional signs shall be permitted per street entrance to any lot. There shall be none in residential zones. For all other zones, the maximum area for any directional sign visible from adjacent property or rights-of-way shall be 10 square feet. Not more than 25% of the area of any directional sign shall be permitted to be devoted to business identification or logo, which area shall not be assessed as identification sign area.
- F. Development and construction signs; planned unit development signs. **[Amended 9-4-2018]**
 - (1) Development and construction signs. Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates shall be permitted in all zoning districts, subject to the following limitations:
 - (a) Such signs on a single residential lot, residential subdivision or multiple residential lots, and nonresidential uses shall be limited to one sign, not greater than 10 feet in height and 32 square feet in area.

- (b) Such signs for commercial or industrial projects shall be limited to one sign per street front.
 - (c) Development and construction signs may not be displayed until after the issuance of building permits by the Building, Zoning, and Licensing Services Department and must be removed not later than 24 hours following issuance of a certificate of occupancy for any or all portions of the project. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (2) Planned unit development signs. These signs shall be used to identify a project and/or inform the public of the name of a development.
- (a) Such signs shall only be used for planned unit developments.
 - (b) Such signs shall be no greater than 16 square feet.
 - (c) Such signs may not be lit.
 - (d) Such signs are allowed in open space.
 - (e) Such signs shall require approval from the Planning Board. The Board may require specific materials, landscaping, or other features.
 - (f) This subsection shall also apply to previously approved planned unit developments.
- G. Electronic message centers. All permitted electronic message centers (EMCs) shall be equipped with a sensor or other device that automatically determines the ambient illumination and be programmed to automatically dim according to ambient light conditions at all times of the day or night. Electronic changing signs may be freestanding or building mounted, one- or two-sided, may be a component of a larger sign or billboard, and shall conform to the following minimum requirements along with all other requirements for signage within this article:
- (1) Electronic message center portion of the sign shall not make up more than 75% of the actual sign surface. In no case shall an electronic message center exceed 32 square feet.
 - (2) Animation on static EMCs shall be limited to the actual changing of the message. No flashing, blinking, or pulsating of lights shall be allowed. Electronic message centers must be equipped to freeze in one position or discontinue the display in the event that a malfunction occurs.
 - (3) Minimum display time. All illumination elements on the face of static electronic changing signs shall remain at a fixed level of illumination for a period of not less than eight seconds.
 - (4) Software for operating the EMC must be able to show current and factory brightness levels upon request. The owner/installer of electronic message displays shall certify as part of the application that signs will not exceed the brightness levels specified in this subsection.
 - (5) The brightness shall not exceed 0.3 footcandle at night.
 - (6) Flashing or animated signs (including temporary interior window displays or banners) of red, amber, or green colored lights shall not be permitted.
- H. Flags. Each store front may be allowed one "open" or "welcome" flag that is positioned at a height so as not to impede the flow of pedestrians.
- I. Home occupation signs. See Article 24, Home Occupations. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- J. Marquee. No marquee shall be erected unless designed by a registered structural engineer and approved by the Director of Building, Zoning, and Licensing Services. It may extend over the sidewalk across the right-of-way to the curblines provided it has a minimum height above the sidewalk of 10 feet above the curb level

and does not exceed five feet in height.

- K. Off-premises signs. Off-premises signs are prohibited except for the following signs if permission is granted from the owner of the off-premises location. A setback of at least five feet is required for these signs and they shall not be placed in the road right-of-way (i.e., they must be placed on private property).
- (1) One freestanding sign per business directing people to the site. The sign may not exceed two square feet per side or four feet in height. No illumination is allowed. It may include only the name and/or logo, with simple directions. The sign must be durable and constructed of solid, finished materials.
 - (2) A real estate sign, one per premises, shall not exceed six square feet per side.
 - (3) Yard sale signs (see Subsection V).
 - (4) A sign for an office park or industrial park may be erected at the entrance to the park on an out parcel or within the road right-of-way, with the approval of the City Manager.
 - (5) A promotional banner for a special event may be placed anywhere in the City, including across a public road, if approved by the City Manager.
 - (6) Two seasonal agricultural directional signs not to exceed four square feet each are permitted when intended to direct patrons to a farm for the purpose of purchasing or picking seasonal agricultural produce or products during the season within which the produce is available for sale or harvest.
 - (7) One portable sign on the sidewalk in front of businesses in the Downtown Commercial District, Special Downtown Overlay District, and Neighborhood Mixed-Use District lying in density rings.
 - (8) Road signs.
- L. Political signs; political advertising. The following provisions are in addition to the political advertising controls established under RSA 664:14, 664:17, and 664:2, as amended:
- (1) Political advertising shall be defined in RSA 664:2, as amended. No political advertising shall be placed or affixed upon any public property, including City rights-of-way. No political advertising shall be placed or affixed upon private property without the owner's consent.
 - (2) Signature, identification, and lack of authorization shall be in accordance with RSA 664:14, as amended.
 - (3) Political signs shall not be erected in the City Adopt-A-Spots or the Rochester Common.
 - (4) Removal of signs shall be in accordance with RSA 664:17, as amended.
 - (5) The area and location of signs used in conjunction with uses allowed by the Board of Adjustment as special exceptions shall also be approved by the Planning Board and shall conform to the sign regulations for the district in which they are located. The area and location of such signs shall be in harmony with the character of the neighborhood in which they are located.
 - (6) Political signs shall not require a sign permit. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- M. Portable signs. Portable signs shall be permitted only in the Downtown Commercial District, Special Downtown Overlay District, and Neighborhood Mixed-Use District lying in density rings, subject to the following limitations:
- (1) No more than one such sign may be displayed on any property, and the sign shall not exceed a height of four feet or an area of eight square feet per side.
 - (2) Any portable sign that is placed on a sidewalk:

- (a) Shall be situated directly in front of the business(es) which is being advertised.
 - (b) Shall not block passage along the sidewalk, including passage for handicapped persons, and shall not present a safety hazard.
- (3) May be displayed during business hours only.
 - (4) Appropriately placed to minimize appearance of clutter as determined by the Director of Building, Zoning, and Licensing Services.
 - (5) Only one sign per individual business.

N. Projecting signs. Signs are permitted in the following zones:

- (1) Multiple projecting signs shall be permitted on buildings having multiple occupants provided only that one projecting sign per occupant will be permitted.
- (2) Projecting signs shall:
 - (a) Not overhang any public property or public right-of-way.
 - (b) Be attached to the side of a building with a decorative support bracket engineered to and designed to withstand wind loads.
 - (c) Extend from the side of the building no more than 11 feet.
 - (d) Be part of the wall sign calculations, which cumulative total, including both projecting and wall signs, shall not exceed 20% of the wall area to which the sign is attached.
 - (e) Maintain a clear vertical distance above any public sidewalk a minimum of 10 feet.

O. Roadside farm stand signs. No more than two signs with a maximum combined total of 20 square feet are permitted.

P. Real estate signs. Real estate signs shall be permitted in all zoning districts, subject to the following limitations:

- (1) Real estate signs located on a single residential lot shall be limited to one sign, not greater than eight square feet in area and six feet in height.
- (2) Real estate signs may not be illuminated in residential districts.
- (3) There may be no more than one sign per street frontage, except that on lots with more than 500 feet of street frontage a second sign may be placed.
- (4) Real estate signs shall be removed not later than 10 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.

Q. Sandwich board signs. See Subsection M, Portable signs.

R. Street banners. Temporary street banners used to inform the public about community events and activities may be placed within or above the road right-of-way or in other public locations if approved by the City Manager and signed off from all departments.

S. Special promotion, event and grand opening signs. Signs temporarily displayed to advertise special promotions, events and grand openings shall be permitted for nonresidential uses and for all commercial and industrial districts subject to the following limitations:

- (1) Such signs shall be limited to one sign per street front.

- (2) Such signs may be displayed for not more than 30 consecutive days in any twelve-month period, and not more than 30 days in any calendar year. The signs shall be erected no more than five days prior to the event or grand opening and shall be removed not more than one day after the event or grand opening.
 - (3) The total area of all such signs shall not exceed 32 square feet.
- T. Special event signs in public ways. Signs advertising a special community event shall be allowed in or over public rights-of-way, subject to approval by the City Manager as to the size, location and method of erection. The City Manager may not approve any special event signage that would impair the safety and convenience of use of public rights-of-way or obstruct traffic visibility.
- U. Window signs. Window signs shall be permitted for any nonresidential use in all Downtown Commercial and Industrial Districts, subject to the following limitations:
- (1) The aggregate area of all such signs shall not exceed 25% of the window area on which such signs are displayed within the Historic District.
- V. Yard sale signs.
- (1) Yard sale signs may not be placed prior to three days before the sale and must be removed within 24 hours after the sale. The date and time of the yard sale must be on the sign.
 - (2) They may not exceed six square feet and may not be illuminated.
 - (3) The signs may be placed off premises for noncommercial sales related to a single residential dwelling unit (or informal joint sales among neighbors) provided they are not placed on utility poles, are not a distraction to traffic, and comply with § 275-29.14, Requirements by zoning district.

§ 275-29.14. Requirements by zoning district.²⁵

The following special requirements shall apply in each respective zoning district:

- A. Residential zoning districts.
- (1) For permitted nonresidential uses one freestanding sign with a maximum area of six square feet per side plus one attached sign not to exceed 12 square feet is permitted. Signs shall have a maximum height of six feet.
 - (2) Internally illuminated signs (including neon signs and signage placed in a window) are not permitted.
 - (3) No sign may be illuminated between the hours of 9:00 p.m. and 7:00 a.m. with the exception of signage:
 - (a) Showing property addresses;
 - (b) For residential communities; and
 - (c) For businesses and organizations during any specific hours in that time period that the businesses are open.
- B. Nonresidential zoning districts.
- (1) Baseline. The following advertising signage is permitted for one nonresidential use occupying a single building in commercial and industrial zoning districts (except as otherwise indicated in this article). Additional allowances beyond these limitations or other restrictions for various situations are shown in the subsequent subsections. Dimensional standards are as follows:

25. Editor's Note: See also Table 29-A, Signs, included as an attachment to this chapter.
275:190

Zoning District	Maximum Area (square feet)	Maximum Height (feet)
Highway Commercial	75	30
General Industrial		
Hospital		
Granite Ridge Development		
Airport	50	20
Recycling Industrial		
Downtown Commercial	25	15
Neighborhood Mixed-Use	20	8
Office Commercial		

Note: All signs that are to be located in the Historic District are also subject to the provisions of Article 14, Historic Overlay District.

- (2) Freestanding signs. Only one freestanding sign shall be permitted on a lot even if there is more than one building or use on that lot. No part of any freestanding sign shall be located within five feet of any property line.
- (3) Wall signs. No wall sign shall exceed 10% of the area of the building frontage as measured by the width of the wall containing the main public entrance by the height (measured from the floor level to the top of the first floor cornice area, or to one foot below secondary story window) of the building to which it is attached. For buildings with multiple tenants having store fronts only, the facade rented by the tenant shall be considered as wall area for a sign. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
 - (a) A maximum of four signs. Buildings located in the Granite Ridge Development District, between the service road and Route 11, are allowed one additional wall-mounted sign per tenant on the rear facade. The same size restrictions as applied to the front facade shall determine the size of sign.
- (4) Temporary signs. One temporary sign is allowed at any one time, including portable and banner signs. For portable signs (where they are permitted; see below) the maximum area is eight square feet and the maximum height is four feet. Banner signs, not exceeding 60 square feet, are permitted for grand openings of new business only, and may be displayed for a maximum of 30 consecutive days. Permits are required for these signs with a fee set by the City Council. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (5) Directory signs. For each additional independent enterprise on a site beyond one, an additional 10 square feet may be added to one freestanding directory sign not to exceed 100 square feet. Property owners of separate adjoining lots may also elect to have one joint directory sign.
- (6) Attached directory signs. One additional attached directory sign of the principal uses within a multi-tenant building is permitted on the exterior wall at each entrance to the building. It shall not exceed three square feet plus one square foot for each independent enterprise.
- (7) Upper floor units. Each upper floor occupant may use one attached sign placed at no higher than the second floor level, not to exceed six square feet per side for each occupant plus window signs. Window signage shall not exceed 25% of the total window area.

- (8) Multiple occupant sites. On multiple occupant sites up to three portable signs for independent enterprises may be placed at the same time.
- (9) Secondary entrance. By conditional use permit issued by the Planning Board, any site with at least 300 feet of linear lot frontage and with a second driveway entrance located at least 200 feet from the primary entrance may have a second freestanding sign at the second entrance not to exceed 16 square feet and eight feet in height.
- (10) Corner or multiple frontage lots. By conditional use permit issued by the Planning Board, any corner lot or a rear frontage lot (or double frontage) may have one additional freestanding sign with a maximum area of 24 square feet on the second frontage provided the property across the street on that second frontage is not zoned residential.
- (11) Specific zoning districts. Internally illuminated signs are permitted only in the Highway Commercial, Downtown Commercial, Granite Ridge Development, and Industrial Districts.

ARTICLE 30
Nonconforming Property

§ 275-30.1. Introduction.

- A. Nonconforming property refers to a site with a condition which does not conform to one or more requirements of this chapter, as amended, but where the condition was lawfully established prior to the adoption of the chapter provision(s) with which it does not comply.
- B. There are four nonconforming conditions:
 - (1) Nonconforming uses;
 - (2) Nonconforming lots (such as those with less than required area or frontage);
 - (3) Nonconforming structures (such as buildings that do not meet setbacks, height limits, or size limits); and
 - (4) Other nonconforming site conditions.

§ 275-30.2. Vested nonconforming property.

- A. Continuation. A nonconforming property/condition may be continued as it existed at the time of passage of this chapter or as it existed at the time it was made nonconforming by passage of any amendment to this chapter, except as otherwise provided in this section.
- B. Permit issued. In any case where a building permit has been issued prior to the effective date of any amendment to this chapter, for a structure or use which would not be permitted under that amendment, the structure may be built or altered or the use established as a nonconforming structure or use as permitted under the building permit, provided that construction or alteration is commenced within six months after issuance of the permit and is diligently prosecuted to completion.
- C. Vested application. Pursuant to RSA 676:12, VI, proposed changes in these ordinances or other land use regulations shall not apply to any plat or application which has been the subject of notice by the Planning Board pursuant to RSA 676:4, I(d), prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the Planning Board pursuant to RSA 676:4, I(d), so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. The provisions of this subsection shall also apply to proposals submitted to Planning Board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the Planning Board within 12 months of the end of the design review process.

§ 275-30.3. Changes to nonconforming property.

- A. Nonconforming property or a nonconforming condition may not be expanded, enlarged, extended, or intensified except as specifically provided for in this article and not without appropriate approvals from the Historic District Commission, Conservation Commission, ZBA and Planning Board.
- B. A reduction in the nonconformity of a nonconforming use, structure or condition must be approved by the Planning and Development Department and the Director of Building, Zoning, and Licensing Services and may also be required to obtain Historic District Commission, ZBA and Planning Board approvals if the Director of Building, Zoning, and Licensing Services determines that issues associated with the changes are problematic and fall within the jurisdiction of these boards or commission.

§ 275-30.4. Nonconforming uses.

- A. Abandonment. If a nonconforming use has been discontinued for a period of at least one year it shall be

considered abandoned by the owner and may not be resumed nor shall any other nonconforming use be established. Abandonment shall be construed as cessation of operations during that year where the circumstances around the cessation of operations are reasonably indicative of:

- (1) An intention to cease or relinquish the use; or
 - (2) An overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use.
- B. Conversion to conforming use. If a nonconforming use is converted to a conforming use, the nonconforming use shall be considered abandoned and may not be converted back again into a nonconforming use.
- C. Special exception/conditional use. Any existing use which is not a permitted use but which was allowed as a special exception or a conditional use in a district shall continue to be allowed as long as it shall comply with all of its original requirements of approval.
- D. Single-family homes. Existing single-family homes located in a zoning district which does not permit single-family use may be expanded or enlarged without limitation, by right, subject only to the setbacks, height, and maximum lot coverage within that district and other applicable provisions of this chapter.

§ 275-30.5. Nonconforming lots.

- A. Allowance to use. A nonconforming lot in separate ownership may, by right, be used in any manner allowed in that zoning district provided that:
- (1) The lot is a legal lot of record and is duly recorded at the Strafford County Registry of Deeds as such;
 - (2) All setback requirements are met;
 - (3) Legitimate access can be provided to the lot;
 - (4) The lot can accommodate water, sewer, and drainage facilities as needed; and
 - (5) The lot meets minimum lot and/or coverage requirements as provided for in Article 19, Dimensional Regulations.
- B. Special exception. A nonconforming lot which does not meet all of the criteria listed above may be used for a proposed allowed use only by special exception based upon the standard criteria for special exceptions and a finding by the ZBA that the proposed use of the nonconforming lot is reasonable.
- C. Existing buildings. An existing building situated on a nonconforming lot may be expanded by right, subject to other provisions of this chapter and compliance with setbacks, coverage, etc., since the nonconforming nature of the undersized lot is not affected by the expansion.

§ 275-30.6. Nonconforming structures.

- A. Expansion. In accordance with § 275-30.3 above, a nonconforming structure may be expanded by right where the proposed expansion does not increase the nonconformity. (Example: If a portion of a building encroaches into the rear setback, an addition could be placed in the front of the building but not within the rear setback area.)
- B. Any nonconforming structure or part thereof declared unsafe by a proper governmental authority may be restored to a safe condition without Historic District Commission, Conservation Commission, ZBA or Planning Board action provided that no more than 50% of the value of the structure is being replaced.

§ 275-30.7. Other nonconforming site conditions.

Where there are other nonconforming conditions on a property under this chapter, those conditions shall be eliminated, reduced, or mitigated at such time that the owner of the property proposes any further development or redevelopment of that property. In the course of reviewing a new application, the Planning Board shall determine what degree or type of mitigation is appropriate with reasonable consideration given to the extent of the nonconformity, the scale of the proposed new development, the impact of the nonconformity, and other appropriate factors.

§ 275-30.8. Reconstruction.

A nonconforming structure or use that is damaged or destroyed by fire or any other hazard may be restored by special exception subject to the following terms/findings:

- A. Restoration must be commenced within 24 months of when the damage occurred;
- B. The damage was not intentionally caused by the property owner;
- C. The overall impact of the restored structure or use is determined to be no more adverse than the original structure or use;
- D. In the case of nonconforming structures, reasonable efforts are made to minimize, mitigate, or eliminate the nonconforming conditions; and
- E. Modifications to the original building configuration may be approved for good cause as determined by the Director of Building, Zoning, and Licensing Services.

§ 275-30.9. Other terms.

- A. Changed to conforming condition. Once any nonconforming condition is changed to a conforming condition the nonconforming condition may not be restored. Furthermore, once a nonconforming condition is reduced it may not afterward be restored to the earlier condition of greater nonconformity.
- B. Lessen nonconforming condition. A property owner may by right seek to lessen a nonconforming condition. In applying to do so, he/she may not be compelled to completely eliminate the nonconforming condition, unless, as part of that application, it is determined that elimination of the condition is reasonable and not unduly burdensome.
- C. Signs. Signs deemed to be nonconforming under this chapter shall be regulated under Article 29 of this chapter.
- D. RSA. The provisions of RSA 674:39, Five-Year Exemption, apply as appropriate.

ARTICLE 31
(Reserved)

§ 275-30.9

ARTICLE 32
(Reserved)

§ 275-30.9

ARTICLE 33
Conservation Subdivisions

§ 275-33.1. Purpose.

- A. Master Plan. Promotion of conservation subdivisions is a core goal of the City of Rochester Master Plan. This section is adopted pursuant to RSA 674:21, Innovative Land Use Controls, I(f), Cluster development. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- B. Development of choice. Through density bonuses, cost savings, flexibility in design, and other advantages, it is the City's desire that conservation subdivisions will be the development pattern of choice in the R2 and AG Districts.
- C. Objectives. Conservation subdivisions provide myriad public benefits. The various objectives are to:
- (1) Maintain the rural character of Rochester.
 - (2) Create open space that is usable and accessible.
 - (3) Provide active and passive recreational opportunities.
 - (4) Prevent disruption of existing topography.
 - (5) Accommodate natural drainage systems.
 - (6) Preserve important ecological features, wetlands, streams, ponds, floodplains, forests, fields, natural vegetation, and tree cover.
 - (7) Protect aquifers and groundwater quality.
 - (8) Protect significant archaeological resources.
 - (9) Discourage fragmentation of undeveloped parcels of land.
 - (10) Preserve high quality farm soils and provide opportunities for agriculture.
 - (11) Minimize site disturbance, erosion, and sedimentation.
 - (12) Promote innovative site design.
 - (13) Reduce costs for the developer and maintenance costs for the City by reducing infrastructure.
 - (14) Discourage the creation of frontage lots and provide buffers on scenic collector roads.
 - (15) Protect scenic views.
 - (16) Provide a mix of housing types.
 - (17) Encourage bicycle and pedestrian paths.
 - (18) Promote efficiency in road and utility layout.
 - (19) Locate houses on parts of the land most conducive to development.

§ 275-33.2. Applicability.

- A. Conditional use. A conservation subdivision is a major subdivision involving the creation of a new road. It is allowed by conditional use in the R1, R2, AG, OC, and HC Districts when the Planning Board determines that the proposal meets the intent of a conservation subdivision as expressed in this article, in the Subdivision

Regulations, and in the City of Rochester Master Plan. While the conservation subdivision is the preferred form of subdivision it is allowed by conditional use rather than by right in order to ensure that it does meet this intent. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

- B. Five acres or five lots. A conservation subdivision may be developed for any parcel of at least five gross acres or where the total number of buildable lots is five or more and which involves the creation of a new road.

§ 275-33.3. General provisions.

- A. Subdivision regulations.
 - (1) Special procedures and additional standards for conservation subdivisions may be established in the Subdivision Regulations including the following, as appropriate:
 - (a) Procedures for submission, review, and approval.
 - (b) Lot orientation.
 - (c) Road design.
 - (d) Determination of appropriate open space areas with due consideration for natural, scenic, and cultural resources.
 - (e) Treatment and ownership of open space.
 - (f) Required improvements to open space.
 - (g) Dedication of open space to the City or another organization.
 - (h) Requirements for covenants, easements, and deed restrictions.
 - (i) Standards for a homeowners' association.
 - (j) Setting up a stewardship fund for the open space.
 - (k) Treatment of individual or community wells and leach fields.
 - (2) Absent such special procedures, the ordinary subdivision procedures shall apply.
- B. Meeting all requirements. Obtaining subdivision approval for the number of lots "permitted" in this article is subject to meeting all requirements of the Subdivision Regulations and complying with the requirements of New Hampshire Department of Environmental Services. This is not guaranteed, particularly where there are significant density enhancements.
- C. Dimensions. See Table 19-A, Dimensional Standards - Residential Districts, for dimensional regulations for conservation subdivision lots.
- D. Open space percentage. The proposed open space areas shall consist of a minimum of 40% of the buildable area of the property. All parts of the parcel constitute buildable area except for those lands which are wetlands, steep slopes over 25%, or aboveground utility easements.
- E. Other zoning district. If a portion of a parcel of land is situated in a zoning district in which conservation subdivisions are not permitted, that portion of the land shall not be developed as a conservation subdivision.
- F. Frontage lots. If any recently created lot has been subdivided from the parent tract within two years prior to the date that the application for the conservation subdivision is submitted (or from the date that a conventional subdivision is submitted, if it is subsequently modified to be a conservation subdivision), then the total number of lots permitted in the conservation subdivision shall be reduced by 1.5 lots for each such frontage

lot formerly created.

- G. Frontage on new roads. All new lots shall have frontage only on newly created local roads on the interior of the subdivision.
- H. Buffer. The portion of the tract fronting on existing roads shall be preserved as a buffer to the maximum extent practical.
- I. Merging of frontage lots. Undeveloped existing frontage lots that are part of the overall tract shall be merged with the remainder of the tract as part of a resubdivision for the development, to the extent practical.
- J. Adjacent development. Where proposed lots will be contiguous to existing single-family dwellings, the Planning Board may, at its option, require that the proposed lots conform to the dimensional requirements for conventional subdivisions or that other buffering methods be used.

§ 275-33.4. Base density.

The base density for a conservation subdivision shall be determined by one of the following two approaches, as stipulated by the Planning Board:

- A. Yield plan approach. The yield plan is the theoretical layout showing the lots that would reasonably be approvable and buildable under a conventional subdivision. The Planning Board must vote to endorse the yield plan as meeting the objective of this subsection. The number of lots in the endorsed yield plan is then multiplied by 1.3, which is the base density bonus for a conservation subdivision.
- B. Adjusted tract acreage approach. The adjusted tract acreage approach is used to derive an objective and consistent measure of the total carrying capacity of the tract. The method is less subjective than the yield plan approach but it is not as good an indicator of what could be built conventionally. The steps are to:
 - (1) Determine gross tract acreage;
 - (2) Subtract the acreage of any existing road rights-of-way and existing rights-of-way for overhead utilities;
 - (3) Subtract the acreage of very poorly drained soils, ponds and streams to ordinary high-water mark, and slopes of 25% or greater;
 - (4) Subtract 1/2 the acreage of non-wetland floodplains;
 - (5) Multiply by 0.75 (allowance for new roads, other infrastructure, wetland buffers, poorly drained soils, inaccessible upland areas, and typical loss of density due to platting constraints);
 - (6) Divide by the minimum permitted lot size for a conventional single-family subdivision in the district; calculate proportionally if the tract lies in two zoning districts (see Table of Dimensional Standards in Article 19); and
 - (7) Multiply by 1.3 (density bonus).

§ 275-33.5. Base density bonus.

Conservation subdivisions receive a base density bonus of 30% beyond conventional subdivisions based upon yield plans or assumed in the adjusted tract acreage approach. Additional density enhancements beyond the base density bonus may be awarded as specified in § 275-33.6 below.

§ 275-33.6. Density bonus enhancements.

Density enhancements beyond the base density determined above shall be awarded where the Board determines that the applicant meets the intent of the requirements below. Each enhancement percentage shall be based upon

the number of dwelling units established in the base density. Multiple enhancements are cumulative and shall be added to the base density (except that only one additional open space enhancement shall be allowed among the three alternatives). Appropriate easements, covenants, and/or deed restrictions shall be incorporated to protect the enhancements where deemed necessary by the Board.

- A. Additional open space enhancement.
 - (1) A five-percent enhancement shall be awarded where the percentage of open space as defined in this article exceeds 50%.
 - (2) A ten-percent enhancement shall be awarded where the percentage of open space as defined in this article exceeds 60%.
 - (3) A fifteen-percent enhancement shall be awarded where the percentage of open space as defined in this article exceeds 70%.
- B. Open space access/linkage enhancement. A five-percent enhancement shall be awarded when at least one of the following three is incorporated in the plan:
 - (1) Special trail designs are incorporated in the open space areas.
 - (2) The general public is granted access to the open space.
 - (3) The open space/trail network is linked with open spaces/trail networks on an adjoining parcel(s).
- C. Natural resources enhancement. A five-percent enhancement shall be awarded when recommended by the Conservation Commission where significant environmental resources are protected, including specimen trees, other important vegetation, boulders, rock outcrops, and/or important wildlife habitats.
- D. Agriculture enhancement. A five-percent enhancement shall be awarded where the development protects agriculturally valuable lands and allows for agricultural use in perpetuity through an appropriate legal instrument. The affected lands must constitute a significant proportion of the open space. It is required only that permission be granted in a way that reasonably provides for agricultural use; whether the lands are actually placed in agricultural use does not affect the validity of this enhancement.
- E. Viewshed enhancement. A five-percent enhancement shall be awarded where lands or corridors that contribute significantly to the visual landscape, such as open fields containing stone walls, are protected.
- F. Historic resources enhancement. A five-percent enhancement shall be awarded when recommended by the Historic District Commission where historically or architecturally significant buildings or structures are preserved, restored, and/or protected, as appropriate.
- G. Architectural design enhancement. A five-percent enhancement shall be awarded for establishing architectural standards for single-family houses to promote excellence in building design. The standards shall be established either through private covenants or as conditions of approval. The architectural regulations contained in the Site Plan Regulations, Article 14, Historic Overlay District, and the Architectural Jewels series in the Rochester Times Newspaper may be used for guidance.
- H. Other enhancement. A five-percent enhancement may be awarded for any other measure which the Planning Board deems worthy, such as making a contribution to the school or other department to mitigate costs of serving the project, contributing to a stewardship fund to monitor the open space if donated to a nonprofit organization, instituting innovative methods of protecting resources, or offering special traffic mitigation approaches.

§ 275-33.7. Allowed uses. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

All uses permitted in the zoning district within which the conservation subdivision is located are permitted in the

conservation subdivision under the same terms. Two-family, three-family, and four-family dwellings are permitted in conservation subdivisions provided:

- A. At least half of the proposed units are single-family dwellings;
- B. A system of street blocks or a modified grid is used;
- C. The units are carefully integrated into the development (such as placing the units on larger lots at intersections, fronting on greens, or on alternating or cross streets);
- D. The architectural designs provide for a harmonious fit with single-family dwellings.
- E. The development standards under Article 5, Residential Zoning Districts, shall apply;
- F. None of these multifamily uses are located within 200 feet of the project boundary; and
- G. Each unit shall be considered equivalent to one house lot for density purposes.

§ 275-33.8. Zero lot line subdivision.

A zero lot line subdivision is a special technique where side setbacks are reduced on the same side of all adjoining lots to accommodate usable side setbacks. (Example: All of the houses along one block would have no side setback on the southerly side but an extra large setback on the northerly side, resulting in usable side setbacks for all properties on the northerly side.) A zero lot line subdivision is permitted subject to the following:

- A. One-foot setback. The minimum side setback for the building and all appurtenant elements of the building (chimney, porches, windowsills, etc.) shall be at least one foot (rather than zero feet, to allow for error).
- B. Block. The same standards shall apply to all lots along an entire section or block to ensure adequate spacing between houses.
- C. Privacy. Special design standards shall be incorporated to foster privacy in side setbacks, such as through prohibitions on windows on the facing side elevation of the adjacent house, and are established in deeds or through other appropriate mechanisms.
- D. Usability. Special standards are incorporated to foster quality design and usability of side setbacks and are established in deeds or through other appropriate mechanisms.
- E. Clearance zone. A minimum six-foot clearance is established (on one or both lots) by easement or other method alongside the facade of the building on the reduced setback side. The purpose is to allow for firefighting access and maintenance for both lot owners. No fence or other obstruction may be constructed within this clearance zone.
- F. Total side setbacks. The total side setbacks for the subject district must be maintained. (Example: If the ordinary side setback in the zoning district is 15, then the total of both side setbacks in the zero lot line subdivision must total at least 30.)
- G. Fire Department. Approval by the Fire Department to ensure all necessary access for firefighting.

§ 275-33.9. Open space.

- A. Undeveloped. Areas designated as open space shall be set aside as such in perpetuity, free of any roads, development or subdivision (except for minor lot line adjustments that do not decrease the amount or quality of open space).
- B. Allowed uses. The following uses and activities are allowed within the open space by right:
 - (1) Agriculture;

- (2) Forestry;
 - (3) Gardens;
 - (4) Paths;
 - (5) Outdoor recreational activities;
 - (6) Open-air recreational structures; and
 - (7) Cemeteries.
- C. Discretionary uses. The Planning Board may approve any of the following uses and activities within the open space at its discretion:
- (1) Underground utilities;
 - (2) Individual or common leach fields and wells;
 - (3) Small accessory structures; and
 - (4) Drainage structures.
- D. Separate lots. The open space shall be established as one or more separate open space lots, independent from individual house lots.
- E. Frontage. The open space lots shall have at least 10 feet of frontage to allow for reasonable access but wider frontages are preferred.
- F. Public access. Allowing for public access to open space is encouraged but it is not required. However, residents of the subdivision may not be restricted from access to the open space.
- G. Noncontiguous tracts. At its discretion, the Planning Board may approve a conservation subdivision that incorporates two noncontiguous tracts, one for development on which the dwelling units will be developed, and a second that will be preserved as open space.