

**Town of Chester  
New Hampshire**

**Zoning Ordinance**

**As of March 8, 2022**

## Town of Chester Zoning Ordinance

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## **Article 1 – Purpose and Authority**

The zoning, building regulations and districts, as set forth in this Ordinance, are adopted pursuant to RSA 674:16 and are for the purpose of promoting the public health, general welfare and safety of the Town of Chester; to lessen congestion in streets; to secure safety from fires, panic and other dangers; to provide adequate light and air; and to prevent overcrowding of land due to the undue concentration of population, as provided for by Chapter 674, Sections 16-21A of the New Hampshire Revised Statutes Annotated, as may be amended.

The further purpose of the Zoning Ordinance of the Town of Chester is to implement the goals and objectives of the orderly development and growth of the Town of Chester as set forth in the Town's Master Plan as adopted, and further revisions of the Master Plan as the needs of the Town dictate.

## **Article 2 – Definitions**

The following terms, unless specifically indicated to the contrary, shall have the meaning set forth below. Words or terms used in the singular shall include the plural and words or terms used in the plural shall include the singular. The word "shall" is interpreted to be mandatory, and the word "used" shall also mean "intended" or "designed to be used."

2.1 - Abutter - As used herein, means (1) 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; and (2) affected municipalities and the regional planning commission(s) in the event of developments having regional impact. 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.

2.2 - Accessory Building - A detached building on the same lot with the primary building, the use of which is clearly incidental to that of the primary building or use of the land.

2.3 – Agritourism – Activities which attract visitors to a working farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm. (5/14/2019)

2.4 - Approved Streets - Any street which has been accepted or opened or has otherwise received the legal status of a Class V highway or better prior to application for subdivision or building permits, or any street which in locations and lines corresponds with:

a) A street shown on a subdivision plat approved by the Planning Board.

2.5 – Assisted Living Residences - Means any entities that provide housing and holds themselves out, through marketing, advertising, or use of the term "assisted living" or a similar designation, as providing housing primarily for elderly persons, who require some support services for their daily living activities including basic medical assistance. Assisted Living Residences typically require residents to be mobile and capable of performing most routine tasks. (5/14/2019)

2.6 - Bed and Breakfasts – A single-family, owner occupied, dwelling unit with or without an Accessory Dwelling Unit, that is used to accommodate transient guests for a fee, and which may offer a breakfast meal. This definition excludes Lodging Houses, Rooming Houses or Apartment Houses. (5/11/2021)

2.7 - Bedroom - Any room within a residential unit planned, intended, designated, designed, or used for sleeping other than a kitchen, bathroom, living room, family room, dining room, enclosed porch, sunroom, family room or small utility room. A room designated as a spare room, home office, study, library, guest room or den shall be considered a bedroom if it is separated from other rooms by a doorway.

2.8 - Building - Any structure that has a roof and is intended to shelter people, animals or chattel.

2.9 - Building Face or Wall - All window and wall area of a building in one plane or elevation.

2.10 - Building Height - The vertical distance between ground elevation and the ridge of a roof or center line on a flat roof.

2.11 - Building Width - The horizontal distance at right angles to the ridge of a roof or center line on a flat roof.

2.12 - Campground - A place where tents, travel trailers or other temporary facilities are placed for use by vacationers, sportsmen and the like for short periods of time.

2.13 - Certified Soils Scientist - A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists.

2.14 - Club - An association of persons, whose membership is controlled by its members, organized for social, recreational, charitable, or other purposes of common interest, which are not conducted primarily for gain.

2.15 - Conditional or Special Use Permits - A permit issued in accordance with RSA 674:21 after public hearing by the Planning Board on any proposal under Section 5.5 or 5.6, or by the Administrator of Innovative Land Use Controls under Article 6, authorizing development pursuant to said Sections or Article.

2.16 - Condominium - Real property or any interest therein pursuant to RSA 356-B:3 V. In addition, any buildings involving cooperative ownership and conversion of existing buildings to cooperative ownership or condominium shall be considered a condominium for the purpose of this Ordinance.

2.17 - Conservation Area - Land within an open space subdivision that is permanently protected through deed restriction (conservation easement) enforceable by the Town of Chester. This land may consist of, but is not limited to, fields and agricultural land, forests, recreation areas for non-motorized recreation only, and land that is constrained from development such as wetlands.

2.18 - Constrained Acreage or Land - Land that is restricted from development or inclusion in unit count calculations due to the existence of wetlands and submerged areas, watercourses, the FEMA-designated 100-year floodplain, dedicated public rights-of-way, private rights-of-way, and slopes of twenty-five percent (25%) or more.

2.19 - Conventional Subdivision Process - The procedures used by the Chester Planning Board to review subdivision applications that do not qualify or are not otherwise required to follow the provisions of Article 6 (Open Space Subdivision).

2.20 - Development Concept Map - A map submitted by an applicant for open space subdivision approval outlining the proposed conceptual development scenario.

2.21 - Development Constraints - Area of the site that includes wetlands and submerged areas, watercourses, the FEMA-designated 100-year floodplain, dedicated public rights-of-way, private rights-of-way, and slopes of twenty-five percent (25%) or more.

2.22 - Duplex - A building designed or used for residential purposes containing two (2) principal dwelling units separated by a common wall at least 10 feet in length or a common floor / ceiling

assembly. In all cases both units shall be supported by a common foundation. (5/8/2018)

2.23 - Duplex Unit - A single-family dwelling unit with a maximum of two bedrooms.

2.24 - Dwelling - A building that is designed for or contains one or more dwelling units.

2.25 - Dwelling Unit (Unit) - A building or part of a building used as a place of residence for one family having housekeeping facilities including kitchen, bath and toilet.

2.26 - Educational Institutions - Public and private elementary and secondary schools and post-secondary institutions of higher learning. Private elementary, secondary, and post-secondary educational institutions shall be classified as businesses. (3/8/2022)

2.27 - Family - One or more persons occupying a single dwelling unit having not more than five unrelated persons. Foster children are allowed according to New Hampshire State Regulations.

2.28 - Floodway - The channel of a river or other water course and its adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot.

2.29 - Floor Area - The internal, heated living space area of a single dwelling unit exclusive of closets or other storage areas. Floor area shall specifically exclude any garage, shed, porch or similar structure or accessory use.

2.30 - Frontage - The distance along a lot line dividing a lot from a Town approved road.

2.31 - Hazardous or Toxic Materials or Liquids - Materials or liquids that pose a threat, present or future, to the environment whether in use, storage or transit including without exception hazardous waste as defined in RSA 147-A:2, VII.

2.32 - Impervious Surfaces - As used herein, means those areas which prevent or impede the infiltration of stormwater into the soil as it had entered under natural conditions prior to development. These areas cause rain and snow-melt water to run off at a higher rate of flow than occurred prior to development. Impervious surfaces include, but are not limited to, rooftops, sidewalks, walkways, patios, decks, driveways, parking lots, storage areas, paving stones, swimming pools, compacted gravel and soil surfaces, outdoor storage of goods such as stored lumber in lumber yards, awnings and other fabric or plastic coverings. (3/8/2022)

2.33 - Internal Lot - For the purposes of Table 1, Section 6.12.2 and Section 7.13.2, an Internal Lot is a lot situated within an Open Space or Age-Friendly subdivision which was approved as a lot on which a dwelling or other type of structure is or will be located. (5/11/2021)

2.34 - Kennel - A use of premises on which four or more dogs other than personal pets at least four months of age are kept boarded or trained whether or not in special structures or runways. The foregoing definition shall specifically exclude veterinarian clinics which are defined as a structure in which small animals or pets are given medical or surgical treatment and are cared for during the period of such treatment.

2.35 - Lot - A distinct tract of land recorded in a legal deed, court decree or subdivision plan filed in the records of Rockingham County, New Hampshire.

2.36 - Manufactured Housing - Manufactured housing means any structure, transportable in one or more sections which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, 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 herein shall not include pre-site built housing as defined below.

2.37 - Multi-Family Dwelling - A residential building designed to be used for occupancy by three to six families having separate housekeeping facilities whether or not attached by common vertical walls or other means including apartment houses, condominiums, cooperatives or other residences involving a form of shared ownership.

2.38 - Nursing Homes - means a long-term care facility licensed by the state that offers 24-hour room and board and health care services, including basic and skilled nursing care, hospice care and rehabilitation, and may also offer a full range of other therapies, treatments, and programs. Nursing homes may or may not cater exclusively to seniors. Nursing Homes' do not include facilities designed or intended for treatment of alcohol and/or substance abuse. (5/14/2019)

2.39 - Open Space - Conservation areas maintained in a natural, undisturbed, or re-vegetated condition.

2.40 - Open Space Subdivision - A subdivision approved in accord with Article 6 of this Ordinance.

2.41 - Parent Lot - Any lot, as it existed on the date the Open Space Subdivision Ordinance went into effect.

2.42 - Parking Space - An off-street space available for the parking of one motor vehicle and not including the driveways or passageways appurtenant thereto, and giving access thereto and having direct access to an approved street.

2.43 - Passive Recreation - Low impact, low noise, non-motorized, and non-commercial recreation activities, such as hiking, fishing, hunting, cross-country skiing, snow shoeing, orienteering, wildlife observation and the like.

2.44 - Premises - A lot or number of lots on which are situated a building or a group of buildings designed as a unit or on which a building or a group of buildings are to be constructed.

2.45 - Pre-Site Built Housing - Pre-site built housing means 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 U.S. Department of Housing and Urban Development, minimum property standards and local building codes, for installation, or assembly and installation, on the building site. Pre-site built housing as defined herein shall not include manufactured housing as defined above.

2.46 - Recreation Vehicle - "Recreation vehicle" shall mean a self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping, or travel purposes and is used solely as a family or personal conveyance. (5/8/2018)

2.47 - Senior Housing - Housing, in compliance with the federal Fair Housing Act, as amended, that is intended and designed to meet the needs of persons 55 years or older.

2.48 - Setback - The distance between the nearest portion of a building or structure and the nearest portion of a lot line or right of way, whichever is closer.

2.49 - Setback, Front - Shall apply to all structures except driveways.

2.50 - Setback, Side or Rear - Shall apply to all structures. For the consideration of driveways, the side setbacks shall run to the front of the lot. Consequently, no driveway may be located within the side setback distance of either front corner of the lot.

2.51 - Sign - Any device affixed to the ground or a structure that brings a visual message to the public. Said sign may consist of one or more sections or modules in which case the sum of the square feet of all sections or modules shall be considered when meeting the requirements of this Ordinance.

2.52 – Sign, Area and Size - The size of a sign is determined by the perimeter of the most exterior edges of the shape. The message may be on both sides. In the case of multiple module signs, the perimeter of all modules combined, will determine the sign area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle, or any other easily recognizable geometric shape and then computing the area. Where a sign is of a three-dimensional round or irregular shape, the largest cross section shall be used in a flat projection for the purpose of computing the sign area. (3/8/2022)

2.53 – Sign, Changeable Copy - A manual sign that may have the message changed through the use of moveable letters and/or numerals; or an electronic sign that may have a changeable, static, or alternating message. (3/8/2022)

2.54 – Sign, Common - A wall sign or group of signs on a single structure identifying all businesses on a single lot. (3/8/2022)

2.55 – Sign, Flashing - Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity or color at all times when in use including a revolving illuminating sign.

2.56 – Sign, Ground - A sign erected on a free-standing frame, mast or pole and not attached to any building.

2.57 – Sign, Maintain - To permit a sign, sign structure or any part of each to continue or to repair or refurbish a sign, sign structure or any part thereof.

2.58 – Sign, Movable - A sign not affixed to or part of a permanent structure, to include any signs painted on or attached to any vehicle, whether motorized or not. (3/8/2022)

2.59 - Sign, Off-Premises - A sign which directs public attention to goods or services that are primarily offered at other than the premises on which the sign is located. (3/8/2022)

2.60 – Sign, Removal - For the purpose of removal, signs shall also include the sign structure.

2.61 – Sign, Structure - Any structure which supports or is capable of supporting any sign including decorative cover. A sign structure may be a single pole and may or may not be an integral part of the building or structure.

2.62 – Sign, Wall - Any sign attached to, painted on, or displayed on any wall or glazing of any building so that the exposed face of the sign is parallel to the plane of the wall. (3/8/2022)

2.63 - Single-Family Attached Dwelling Units (Two-Family Dwelling) - A single-family dwelling attached to one other single-family dwelling by a common wall or other means.

2.64 - Single-Family Detached Dwelling Units (Single-Family Dwelling) - Any building designed for and occupied by not more than one family, and which is not attached to any other dwelling unit by any means.

2.65 - Structure - That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built above or below the surface or composed of parts joined together in some definite manner.

2.66 - Tract Resource Map - A scaled and surveyed map submitted by an applicant for open space subdivision approval showing the existing conditions of a potential development site, and signed by a licensed land surveyor and wetlands scientist.

2.67 - Unconstrained Acreage or Land - Land other than constrained acreage or land that is not otherwise restricted from development. See definition of “Constrained Acreage or Land.”



## **Article 3 – Establishment of Districts**

### **3.1 - Division of Town into Districts**

For the purpose of this Ordinance, the Town of Chester is divided into the following districts as shown on the official Town of Chester Revised Zoning Maps.

Zone R1 - General Residential and Agricultural District

Zone C1 - Commercial District

Zone C2 – Limited Commercial/Light Industrial

Zone FP - Flood Plain Conservation District

Zone W - Wetlands Conservation District

Zone T1 - Telecommunication District Overlay

### **3.2 - Zoning Map**

#### **3.2.1 - Zones R1, T1, C1 and C2**

The district's Zones R1, T1, C1 and C2 provided for in Section 3.1 above shall be bound as shown on a map entitled "Town of Chester Zoning Map 1997," filed with the Town Clerk, and all amendments and explanatory manner thereon which is hereby declared to be part of the Zoning Ordinance and the Official Zoning Maps of the Town of Chester.

#### **3.2.2 - Zone FP**

The Flood Plain Conservation District (Zone FP) shall be bound by the areas designated "Flood Hazard Areas" on a map entitled "Generalized Development Constraints Map, 1997" which is part of the Official Zoning Maps of the Town of Chester and the Federal Insurance Administration Flood Hazard Boundary Maps (FHBM).

#### **3.2.3 - Zone W**

The Wetlands Conservation District (Zone W) shall be bound as shown on a map entitled "Wetlands and Agricultural Soils Map 1984" which is part of the Official Zoning Maps of the Town of Chester.

### **3.3 - Interpretation of Zoning District Boundary Lines**

#### **3.3.1 - Town of Chester Zoning Map 1997**

The zoning district boundary lines as shown on the "Town of Chester Zoning Map 1997" are the center lines of streets and other public ways and the nearest shore of waterways unless otherwise indicated. Where the zoning district boundaries are so indicated that they parallel the center lines of streets and other public rights of way, such boundaries shall be interpreted as parallel thereto and at a distance there from as shown on the Zoning Map.

### 3.3.2 - Zones FP and W

The zoning district boundary lines for Zones FP and W shall be interpreted as provided in Sections 5.6 and 5.7.

### **3.4 - Determination of Boundary Lines**

When uncertainty exists as to the location of a boundary, the Planning Board shall determine the exact location of the zoning district boundary line.

Insert Map Here

TOWN OF CHESTER, NH  
ZONING MAP

FLOOD INSURANCE RATE MAP  
FEDERAL EMERGENCY MANAGEMENT AGENCY

TOWN OF CHESTER  
ROCKINGHAM COUNTY  
NEW HAMPSHIRE

Community No. 330182  
Date Issued: May 17, 2005

Panels:

33015C0170E

33015C0335E

33015C0341E

33015C0342E

33015C0355E

33015C0360E

33015C0365E

Maps are available for viewing in the Planning Board Office during regular business hours.



## **Article 4 – General Zoning Provisions**

### **4.1 - Nuisance Provisions**

Any use or other establishment that may be injurious or obnoxious because of the production or emission of smoke, fumes, dust or other refuse material, noise, vibration, radiation, or the like condition or that endangers the health, safety, peace or enjoyment of the community or creates a disturbance or annoyance is prohibited.

### **4.2 - Nonconforming Uses**

#### **4.2.1 - Continuation of Nonconforming Use**

A pre-existing lawful use of land or buildings may be continued although such use does not conform to the provisions of this Ordinance. Such nonconforming use may not be enlarged or extended and if it is discontinued for more than one year, any subsequent use of the land shall only be a conforming use except as provided below.

#### **4.2.2 - Change in Nonconforming Use**

A nonconforming use may be changed only to a use permitted in the district in which it is located and when changed to a conforming use no building or land shall be permitted to revert to a nonconforming use.

#### **4.2.3 - Damage to Nonconforming Use**

Where a structure does not conform to the Zoning Ordinance or a structure containing a nonconforming use is damaged by fire, flood, wind or act of God, such structure may be reconstructed and used as before provided such reconstruction commenced within eighteen months.

#### **4.2.4 - Repair or Alteration to Nonconforming Building**

A nonconforming building may be repaired or structurally altered provided it does not extend the area or volume of space occupied by the nonconforming use.

### **4.3 - Sanitary Protection Requirements**

#### **4.3.1 – Purpose**

These sanitary protection requirements are provided to protect the public health and well-being of the Town of Chester and are based on the findings of the Master Plan and resource maps contained therein.

Sanitary protection requirements shall be those required by laws and regulations of the State of New Hampshire, as well as the following provisions.

#### **4.3.2 - Design Approval**

Sewage disposal system designs must have a prior approval from the Building Inspector before being submitted for State approval.

#### 4.3.3 – Procedure

Applicant for a sewage disposal system design approval shall arrange with the Building Inspector to be present when test pits are dug to obtain data for submission to Department of Environmental Services pursuant to RSA 485-A:29, et seq. The Building Inspector shall be present solely for the purpose of verifying the location and depth of such test pits and shall not be responsible for judgments as to soil types, water table elevation or other similar data. In the event that the applicant obtains test pit data for the Department of Environmental Services approval in the absence of the Building Inspector, the Building Inspector may require the applicant at the applicant's further expense to perform such tests again with the Building Inspector being present.

#### 4.3.4 - Requirements

4.3.4.1 - Test Pit Location - At least one of the test pits referred to in Sub-section 4.3.3 above shall be located within the confines of the proposed leach field bed.

4.3.4.2 - Prohibited Systems - Cesspools and sewage lagoons shall be specifically prohibited from use for the disposal of commercial, residential or industrial waste.

4.3.4.3 - Slope Limitations - No sewage disposal system shall have fill or cover at a center point exceeding five feet above the original ground level elevation. No leach field bed shall be located on land having slopes of twenty percent (20%) or more. Leach field beds located on slopes between fifteen percent (15%) and twenty percent (20%) shall have a maximum width of 10 feet.

4.3.4.4 - Setback from Right of Way - No septic tank, leach field or leach barrier shall be located within 40 feet of the right of way of a public or private right of way. <sup>1</sup>

4.3.4.5 - Setback from Wells - No new sewage disposal system shall be located within one hundred (100) feet of any proposed or existing well. <sup>1</sup>

4.3.4.6 - Setback from Lot Lines - No new sewage disposal system, tank, leach field or leach barrier shall be located within any front, side or rear setbacks of any lots. <sup>1</sup> (5/8/2018)

#### 4.4 – Signs (5/8/2018)

##### 4.4.1 – Purpose

The purpose of this Article is to provide standards for the size and treatment of signs within the various zoning districts to preserve the visual and rural character of the community, which the Town, through its Master Plan, is guided to maintain. The Town also recognizes the need for regulation of the size and location of signs related to public and vehicular traffic safety. Signs shall be permitted in any district subject to the requirements contained in this Article, and should be consistent with the goals of the Master Plan.

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<sup>1</sup> A pre-existing septic system, on a non-conforming lot that does not have, in the opinion of the designer and Building Inspector, any other option for relocation of the system, shall not be subject to these constraints; provided that they meet the specifications of the State of New Hampshire Department of Environmental Services current rules for "subdivision and individual sewage disposal system design". (5/10/2011)

#### 4.4.2 - District Requirements

4.4.2.1 - Zone R-1 (Residential) – One (1) sign shall be allowed per lot, or, in the case of multiple housing units on a single lot, then one (1) sign shall be allowed per dwelling unit. Each sign shall not exceed six (6) square feet in area, or exceed six (6) feet in height, including the mounting structure, and shall not be located within five (5) feet of any public right of way. (5/8/2018)

One (1) additional sign shall be permitted when there is an approved Home Occupation or Home Business. Each such sign shall not exceed four (4) square feet in area, or exceed six (6) feet in height, including the mounting structure, and shall not be located within five (5) feet of any public right of way. (5/8/2018)

4.4.2.2 - Zone R-1 (Agricultural) – (5/8/2018)- The purpose of this subsection is to support the Granite State Farm to Plate Food Policy and Principles, as defined in RSA 425:2-a, by increasing the allowable signage for farming and agriculture as defined in NH RSA 21:34-a as may be amended from time to time.

Local farm stands engaged in sales of such foods shall be allowed the following signage:

- a. In lieu of the standard allowed residential sign (see 4.4.2.1), one combination sign identifying the farm, farm stand / sales location and agricultural commodities for sale shall be allowed.
- b. A combination sign shall have a top / headboard sign not exceeding nine (9) square feet in area (e.g. six (6) feet long and one and a half (1.5) feet high).
- c. One temporary removable sign per agricultural commodity, not exceeding three (3) square feet in area (e.g. three (3) feet long and one (1) foot high), which shall be placed below the headboard sign and shall only be displayed when the referenced agricultural commodity is in stock and being sold.
- d. Said combination sign shall not exceed six (6) feet in height, including the mounting structure, and shall not be located within five (5) feet of any public right of way.
- e. To preserve the visual and rural character of the community, the signage allowed under this subsection shall be located in close proximity of the access point to the farm stand / sales location. For the purpose of this subsection, close proximity is defined as fifty (50) feet to either side of the entrance to the farm stand / sales location.

4.4.2.3 - Zone C1 and C2 - In Zones C1 and C2, a permit from the Building Inspector is required for signs. On any lot there may be no more than one Common Sign, either freestanding or wall-mounted. Common Signs shall not exceed thirty (30) square feet in area and fifteen (15) feet in height, including the mounting structure.

4.4.2.3.1 - Each individual owner or tenant is allowed one (1) additional wall-mounted sign not exceeding fifteen (15) square feet in area.

4.4.2.3.2 - Properties or units for sale or rent may have one additional temporary sign not exceeding fifteen (15) square feet in area.



4.4.2.3.3 - No sign shall exceed fifteen (15) feet in height, including the mounting structure, or be located within ten (10) feet of any public right of way.

4.4.2.4 - Site Plan Review - Any application for Site Plan Review shall include a plan for any proposed signs for individual owners and tenants within the complex. The locations and size descriptions of all signs for individual owners or tenants shall be designated on the plan. The maximum wall sign area permitted for each individual owner or tenant is fifteen (15) square feet.

#### 4.4.3 - Sign Regulations

The following regulations shall apply to all signs:

4.4.3.1 - Signs shall be constructed and placed in such a way that they do not endanger traffic by obstructing the view of highways, streets, intersections, or by confusion with official street signs or traffic signals.

4.4.3.2 - Each sign shall be constructed of durable material and shall be properly attached to the ground, and be maintained in a high state of repair at all times.

4.4.3.3 - The use of movable signs shall be prohibited.

4.4.3.4 - Flags, banners or pennants containing commercial content shall be considered signs. National, State, and historically significant or military service flags shall not be considered signs.

4.4.3.5 - Flags, banners and pennants without content intended to draw attention to signs shall be prohibited because of their distracting detriments to vehicular traffic safety.

4.4.3.6 - Signs which flash, revolve, are animated, create the illusion of movement, are neon or internally illuminated, have moving or revolving copy, shall be prohibited because of their distracting detriments to vehicular traffic safety.

4.4.3.7 - Signs may be lighted externally. Such lighting shall be shielded so as not to present a vision impairment, safety issue for vehicular traffic, and shall be downcast to meet the Lighting Requirements of Article 15 of the Chester Zoning Ordinance. Signs shall not be externally lighted between the hours of 10:00 p.m. and 7:00 a.m.

4.4.3.8 - No sign shall be mounted to any tree or utility pole, or project over any street or sidewalk lane.

4.4.3.9 - Building-mounted signs shall not extend above the eave of a hip, gambrel or other pitched roof building, or below the main roof deck line of a building with a mansard roof.

4.4.3.10 - Off-premises signs shall be prohibited. Existing off-premises signs shall not be expanded upon.

#### 4.4.4 - Additional On-Site Signs Allowed under this Article

4.4.4.1 - Residential identification and house number signs limited to less than one (1) square foot in area.

4.4.4.2 - Signs required or erected by government agencies.

4.4.4.3 - Signs indicating the National or State Register of Historic Places status of a property.

4.4.4.4 - Incidental signs on-site indicating Open, Closed, Sale, or Business Hours limited to one (1) square foot in area.

4.4.4.5 - Incidental signs on-site guiding traffic safely to disability and regular parking spaces, loading spaces, stacking lanes, entry and drive exits, direction of traffic flow, and pedestrian ways on private property not exceeding three (3) square feet in area and bearing no advertising.

4.4.4.6 - Signs regulating or defining the access to private property limited to one (1) square foot in area. This includes (for example) signs such as those indicating whether or not someone could trespass, hunt, hike, bike, or snowmobile on private property.

4.4.4.7 - Signs identifying conservation properties limited to eight (8) square feet in area.

4.4.4.8 - Temporary Signs - Temporary signs that comply with the following standards do not require approval.

4.4.4.8.1 - Definition - Temporary Sign:

a. A banner, pennant, poster or advertising display constructed of paper, cloth, canvas, plastic sheet, cardboard, wallboard, wood, metal or other like materials and that appears to be intended to be displayed for a reasonably short or definite limited period of time, e.g. such as a weekend "yard sale" where the sign would be installed five (5) days in advance and would be taken down within two (2) days after the yard sale, or thirty (30) days or less for a fundraising or other community event.

b. A single "OPEN" flag sign, limited to eight (8) square feet in area.

c. If the sign display area is permanent but the message displayed is subject to periodic manual changes, that sign shall not qualify as a temporary sign.

4.4.4.8.2 - All Temporary Signs shall be securely constructed and properly secured, and shall comply with Article 4.4.3.

4.4.4.8.3 - Allowed Temporary Signs:

a. Properties in Zone R-1 for sale or rent may have one additional temporary sign which shall not exceed four (4) square feet in area.

b. Signs erected in Zone R-1 by or with the consent of the property owner, where such signs coincide with the timing of a political campaign or other matter on which voters may vote, and where the combined area of such signs shall not exceed thirty-two (32) square feet. Said signs shall be removed within seven (7) days after the conclusion of the political campaign or relevant election.

c. Signs erected in Zone R-1 Agricultural shall be allowed for the sale of seasonal agricultural commodities (see 4.4.2.2.c). (5/8/2018)

#### 4.4.5 - Administration and Enforcement

All applications for sign permits shall be submitted to and approved or disapproved by the Building Inspector. The Building Inspector is hereby authorized and directed to administer the provisions of this Ordinance.

#### 4.4.6 - Nonconforming Signs

4.4.6.1 - This Article shall not be construed to require removal, lowering or other change or alteration of any structure or sign not conforming to this Article as of the effective date hereof, or to otherwise interfere with the continuance of any nonconforming use or to require any change in the construction, alteration and intended use of any sign structure under construction or alteration which was begun prior to the effective date of this Article and is diligently completed within one year thereof, provided said nonconforming use was a pre-existing conforming use under the previous Chester Zoning Ordinance.

4.4.6.2 - Any sign which is structurally altered or relocated shall be brought into compliance with all the provisions of this Article.

4.4.6.3 - Any legally established nonconforming sign required to be relocated by reason of road alterations by the Town of Chester or State of New Hampshire may be relocated upon obtaining a permit, provided that each sign shall be relocated to another site on the owner's property, which site is in conformance with this Article, provided further that the dimensions of said sign are not increased.

#### 4.4.7 - Severability Clause

If any provision of this ordinance is declared invalid by a court, then the remaining provisions of the ordinance shall still be valid.

Agricultural Sign Example: (5/8/2018)



## 4.5 - Off-Street Parking Requirements

### 4.5.1 - Minimum Space Requirements

The following minimum number of parking spaces shall be provided on premises and maintained by the owner/developer of a property for each proposed, new or altered building, or use which may not involve a building or structure.

4.5.1.1 - Dwelling or manufactured house - At least two spaces for each dwelling unit.

4.5.1.2 - For industrial and manufacturing establishments there shall be at least one and one-half (1.5) parking spaces provided for each employee on the major shift.

4.5.1.3 - For commercial retail establishments there shall be a minimum of five parking spaces established plus one parking space for each 400 square feet of selling space.

4.5.1.4 - For office establishments there shall be a minimum of one parking space per employee plus an additional ten percent (10%) of said space reserved for visitor parking.

### 4.5.2 - Parking Lot Requirements

The following requirements shall govern parking lots:

4.5.2.1 - Parking Lot - Parking lot shall mean a parking area having ten or more parking spaces.

4.5.2.2 - Accessible Parking - The regulations of the US Department of Justice 2010 ADA Standards for Accessible Design, as may be amended from time to time, shall apply. (3/10/2020)

4.5.2.3 - No required parking space shall serve more than one use.

4.5.2.4 - The minimum width of aisles providing access to parking spaces shall be in accordance with the following schedule:

<u>Angle of Parking</u>	<u>Minimum Aisle Width</u>
Parallel	12 feet
30 degrees	12 feet
45 degrees	13 feet
60 degrees	18 feet
90 degrees	23 feet

4.5.2.5 - Parking lots shall have an area designed for accessible parking and have the proper permanent sign(s) to mark the accessible spaces (RSA 265:73-a). (3/10/2020)

4.5.2.6 - A minimum of eight (8) foot wide strips of land shall be provided on at least three (3) sides of the parking lot for the storage of plowed snow. The snow storage area may not encroach on the area required for off-street parking spaces or any fire lanes.

4.5.2.7 - Off-street parking spaces shall be established no further than 200 feet from residential buildings and 500 feet from industrial or commercial buildings.

4.5.2.8 - Parking spaces shall be so arranged as not to cause automobiles to back onto any street.

4.5.2.9 - Each parking space shall be a minimum of 9 feet by 20 feet.

#### 4.5.3 - Site Plan Review

Parking space requirements not specifically mentioned in this Ordinance shall be governed by the Planning Board in the exercise of the authority granted to it pursuant to Site Plan Review Regulations.

### **4.6 – Recreation Vehicles** (5/8/2018)

#### 4.6.1 - Permanent Residence

Recreation vehicles shall not be used as a permanent residence and may be stored only unoccupied in all zones of the Town of Chester.

#### 4.6.2 - Temporary Residence

Recreation vehicles and the like may be used as a temporary residence while constructing a house. The applicant must first obtain a building permit. Occupancy is for one year, provided said trailer is hooked up to an approved septic system and well, verified by the Building Inspector. Up to 12 additional months may be granted by the Building Inspector provided it can be shown that an occupancy permit will be obtained during this additional time.

#### 4.6.3 - Temporary Occupancy by Visitors

Recreation vehicles and the like may be used for temporary occupancy by visitors to an existing residence. A permit from the Building Inspector is required for any stay longer than two weeks.

### **4.7 - Earth Material Removal**

Earth material removal shall be in accordance with the Excavation Regulations adopted by the Planning Board per RSA 155-E.

### **4.8 – Farming**

In keeping with the goals of the Master Plan, a Right to Farm Ordinance is hereby written to encourage and protect farms and farming in the Town of Chester. In order to protect the existing farms in the Town of Chester and to encourage others who might want to farm, it is recognized that farming is a right and is allowed to exist as a permitted use in the Town of Chester subject to the restrictions and regulations of the Town of Chester and State health and sanitary codes for intensive fowl and livestock farms and the University of New Hampshire Best Management Practices. The right to farm as used in this Ordinance shall include the use of necessary equipment, farm machines, farm labor, application of fertilizers for the purpose of producing agricultural products such as vegetables, grains, hay, fruit, trees, plants, etc. The right to farm shall also include the right to use land for grazing by animals, breeding, boarding

and schooling of equine, and the raising of livestock and fowl when conducted in accordance with generally accepted agricultural practices.

#### 4.8.1 - Prohibited Uses

The following uses are specifically prohibited under this section.

4.8.1.1 - Composting of sludge / biosolids, short paper fibers (SFP), food wastes or any materials not generated on the site is not considered an agricultural activity.

4.8.1.2 - Animal husbandry for the purpose of supplying animals or animal blood serums or animal tissues to educational research or pharmaceutical research institutes or production facilities.

4.8.1.3 - Conducting medical testing or experimentation on animals.

4.8.1.4 - Harvesting of blood plasma and serums from animals.

#### 4.8.2 - Best Management Practices

4.8.2.1 - Livestock shall not be penned, tied or housed within a one hundred (100) foot protective radius around a residential well nor shall manure be stored within such a radius.

### **4.9 - Home Occupation / Home Business**

The Town of Chester recognizes the need for some citizens to use their place of residence for limited non-residential activities. However, the Town believes that the need to protect the integrity of its residential areas is of paramount concern.

A "Home Occupation" shall be differentiated from a "Home Business" by the impact either may have on the neighborhood or Town.

#### 4.9.1 - Home Occupation

Home Occupations are permitted in the Residential/Agricultural District subject to the approval of the Building Inspector and the following standards:

4.9.1.1 - The Home Occupation shall be carried out only by the family, which resides on the premises and one non-family member, and involve only a service provided or goods produced on those premises by those residents.

4.9.1.2 - The activity shall be operated entirely within a principal living unit and/or accessory structure.

4.9.1.3 - The activity shall be incidental and subordinate to the use of the premises for dwelling purposes and will not alter the general character of the neighborhood or reduce the value of any surrounding property.

4.9.1.4 - The activity shall result in no external evidence of the enterprise except for a permitted sign under Subsection 4.4 of the Town of Chester Zoning Ordinance and shall not have an adverse effect on the environment or the surrounding properties as a result of

noise, odors, smoke, dust, lights, soil, water or air pollution or electrical or electronic interference of any kind beyond the property wherever or whenever such might occur.

4.9.1.5 - There shall be no increase in traffic or demand for additional parking. All parking must take place on-site. On-street parking is prohibited.

4.9.1.6 - A Town resident intending to start a Home Occupation shall apply to the Building Inspector, in writing, of that intent. If the Building Inspector agrees that the standards noted in subsection 4.9.1.1 through 4.9.1.5, above, are met, a permit will be issued and the resident may proceed with the Home Occupation without further review.

4.9.1.7 - Any activity that does not meet all of the standards of the preceding subsections, 4.9.1.1 through 4.9.1.5, shall not be considered a Home Occupation, but may be considered a Home Business. Approval of a Home Business must be sought from the Planning Board in accord with the provisions of the following subsection, 4.9.2 Home Business.

#### 4.9.2 - Home Business

Home Businesses are permitted in the Residential/Agricultural (R-1) District subject to the approval of the Planning Board and the following criteria:

4.9.2.1 - A Home Business shall be carried out only by the family, which resides on the premises and not more than two (2) on-premises employees who are not residents.

4.9.2.2 - The activity shall be incidental and subordinate to the use of the premises for dwelling purposes and will not alter the general character of the neighborhood or reduce the value of any surrounding property.

4.9.2.3 - The activity shall result in no external evidence of the enterprise except for a permitted sign under Subsection 4.4 of the Town of Chester Zoning Ordinance and shall not have an adverse effect on the environment or the surrounding properties as a result of noise, odors, smoke, dust, lights, soil, water or air pollution or electrical or electronic interference of any kind beyond the property wherever or whenever such might occur.

4.9.2.4 - Parking areas shall be located at the side or rear of the property subject to the setback requirements for accessory structures and be screened from roads and surrounding properties in such manner as approved by the Planning Board. On-street parking is prohibited.

4.9.2.5 - The activity shall have no outdoor display of goods, and no outdoor storage of materials or equipment unless screened from roads and surrounding properties by natural or structural means to such an extent and in such manner as may be specifically required and approved by the Planning Board.

4.9.2.6 - The residence or accessory buildings shall not provide window displays or other characteristics or features normally associated with commercial use.

4.9.2.7 - There shall be no change in the exterior appearance of the residence or other structures on the property as result of the use, unless specifically approved or required by the Planning Board.

4.9.2.8 –The Planning Board may require some or all the requirements of Site Plan Review as a condition of approval. (3/10/2020)

4.9.2.9 - A Town resident intending to start a Home Business shall apply to the Planning Board for a permit. At a duly noticed meeting of the Planning Board with abutter notification, the Planning Board shall review the application against the standards given in subsections 4.9.2.2 through 4.9.2.8. When it is determined by the Planning Board that the application meets these standards, a permit shall be issued.

4.9.2.10 - If within one (1) year after a permit has been issued, but has not been implemented, that permit becomes null and void.

4.9.2.11 - Home Business permits are not transferable. In the event the permittee is no longer operating the business or resides on the premises, the business shall cease unless a new permit is issued by the Planning Board.

4.9.2.12 - Any activity that does not meet all of the standards of the preceding subsections, 4.9.2.1 through 4.9.2.8, shall be considered a Commercial Use. Approval of a Commercial Use in a Residential Zone must be sought from the Zoning Board of Adjustment by variance.

#### **4.10 - Erection of Buildings or Structures on Streets**

No building or structure shall be erected on any lot within any part of the Town of Chester nor shall a building permit be issued for the erection of a building or structure unless the street giving access to the lot upon which the building or structure is proposed to be placed is a Town-approved street and the lot has the required minimum frontage on said approved street, except as provided for in Articles 6.

#### **4.11 - Number of Dwellings per Lot**

Except as provided in Article 6, only one dwelling consisting of either a single-family or two-family dwelling shall be permitted per lot.

#### **4.12 - Minimum Floor Area**

The minimum floor area for any dwelling unit shall be at least 600 square feet, excluding basements within said dwelling unit.

#### **4.13 - Premature Work**

No construction or alteration of land shall be permitted at any site in anticipation of subdivision or site plan approvals, special or conditional use permits, special exceptions or variances, excavation permits or building permits, or any other permit or approval required by this Ordinance.

#### **4.14 – Fences** (5/9/2017)

4.14.1 – Definition: A barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to mark a boundary, separate lots, control access, or contain



domestic animals.

4.14.2 – Permit: Only fences located along a roadway right-of-way shall require a building permit.

4.14.3 – Location: The location of a fence shall meet all the following requirements:

4.14.3.1 – Fences must be located on the fence owner's lots. (5/11/2021)

4.14.3.2 – No fence shall be placed within ten (10) feet of the edge of a public roadway.

4.14.3.3 – No fence shall be placed in a manner that obstructs the sight distances for road or driveway intersections.

a. For roadways, the required sight distance is defined as two hundred and fifty (250) feet in both directions, measured (10) feet back from the edge of the roadway and at an elevation of four (4) feet high.

b. For driveways, the required sight distance is defined as two hundred (200) feet in both directions, measured (10) feet back from the edge of the roadway and at an elevation of four (4) feet high.

4.14.3.4 – To promote and facilitate the maintenance of fencing on both sides, fences shall be no closer than three (3) feet to any lot line.

4.14.4 – Height: - Fences shall not exceed seventy-two (72) inches in height. Fence height shall be measured from ground level to the top of the fencing material.

4.14.4.1 - Fence posts are exempted from this height restriction.

4.14.5 – Prohibited – The use of razor wire is prohibited in all districts.

## **Article 5 – Zoning Regulations**

### **5.1 - Application of Regulation**

Subsequent to the passage of this Ordinance, buildings or land shall hereinafter be used, constructed, altered or enlarged only in conformity with the regulations specified herein for the Zoning District in which it is located.

### **5.2 - Merger**

Lots merged for zoning purposes may not be subdivided without the approval of the Planning Board in accordance with the Subdivision Regulations. This provision applies to all lots that have been voluntarily merged. This provision also applies to all lots deemed merged on or before September 17, 2010 by the provisions of the Chester Zoning Ordinance. Refer to NH RSA 674:39-a. (5/10/2011)

### **5.3 - General Residential and Agricultural District (Zone R1)**

#### **5.3.1 - Purpose**

This district is intended to recognize the unique scenic, historic, rural and natural characteristics of this portion of the Town of Chester, while encouraging development in this area in a manner which will protect these important characteristics. This district has the concomitant purpose, deemed by the Town as requiring protection, of encouraging and protecting farms and agricultural operations in this portion of the Town of Chester.

#### **5.3.2 - Permitted Uses**

5.3.2.1 - Single-family and duplex dwellings.

5.3.2.2 - Open Space Development. (See Articles 6 & 7)

5.3.2.3 - Home Occupation/Home Business.

5.3.2.4 - Churches and other similar places of worship.

5.3.2.5 - Educational Institutions, public or private, offering general and/or specific educational courses. (Requires Site Plan Review)

5.3.2.6 - Kindergarten and child-care centers.

5.3.2.7 - General farming and forestry activities. (See Section 4.8 - Farming).

5.3.2.8 - Private residential accessory uses or buildings including private garages provided all other lot requirements are satisfied.

5.3.2.9 - Antenna towers solely used for communication up to 60 feet in height, except licensed amateur radio operators, which are limited to 90 feet in height.

5.3.2.10 - Manufactured housing dwellings on individual lots provided they are placed on a permanent foundation and their placement in all respects complies with this Ordinance and any building codes in force at the time of placement. Clustering of manufactured housing dwellings is specifically prohibited in the Town of Chester.

5.3.2.11 - Clubs, except whose chief activity is a service customarily carried on as a business.

### 5.3.3 - Special Exception Uses

5.3.3.1 - Saw mills and logging operations and other woodworking operations.

5.3.3.2 - General store provided that no yard depth shall be less than those specified for the Commercial Zone.

5.3.3.3 - Conversion or addition to a single-family dwelling to accommodate an accessory dwelling unit pursuant to the provisions of Article 9, "Accessory Dwelling Units.

5.3.3.4 - Facilities for the processing of agricultural products provided there is no pollution of streams or sources of water supply.

5.3.3.5 - Campgrounds.

5.3.3.6 - Restaurants (excluding coffee, sandwich shops, drive-in and fast food service type).

5.3.3.7 - Nonconforming lots. *(5/13/2014)*

a) Upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Wetlands Conservation District on vacant lots provided that all of the following conditions are found to exist:

b) The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town of Chester.

c) The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot, which are outside the Wetlands Conservation District.

d) Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the exception.

e) The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of these provisions.

f) The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of ground water, or other reason.

g) The Board of Adjustment may themselves or upon petition from the Building Inspector, Conservation Commission, Planning Board or abutters, hire a qualified

consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

h) Special exception for nonconforming lots shall not apply to any development pursuant to Article 6.

5.3.3.8 - Golf Courses, provided:

a) - The parcel is on a paved, Town-approved road and has a minimum of fifty (50) acres and two hundred and ninety (290) feet of frontage;

b) - Only one clubhouse, pro shop and restaurant shall be permitted as part of any golf course, and no other commercial uses or facilities shall be allowed;

c) - All parking and building must be reasonably screened from all abutters and the setback shall be one hundred (100) feet;

d) - All greens, fairways and tees must be properly swaled, sloped, drained and maintained in a manner to prevent storm water runoff onto adjacent lands and to prevent the contamination of abutting wells wetlands and streams by fertilizers and pesticides;

e) - During the months of December, January, February and March, such golf courses may be available to the public for cross-country skiing and snow- shoeing (excluding motorized vehicles);

f) - The Town of Chester Planning Board shall have Site Plan Review approval for the golf course which shall be treated as a commercial use;

g) - The land cannot be designated for open space in a cluster and cannot be used to satisfy any of the open space or density requirements.

5.3.3.9 - Agritourism, provided: (5/14/2019)

a) - The property has a primary use of agriculture;

b) - Nothing in this section shall exempt new, re-established, or expanded agricultural operations from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use allowed by RSA 674:32-a through RSA 674:32-d, or would otherwise be unreasonable in the context of an agricultural use, the Zoning Board of Adjustment, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use, unless such waiver would have a demonstrated adverse effect on public health or safety, or the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use.

c) - The proposed agritourism activity, which shall be treated as a commercial use, shall be subject to Planning Board site plan review.

5.3.3.10 – Assisted Living Residences, provided: (5/14/2019)

- a) Per NH Section 161-J:2, an "Assisted Living Residence" shall not include:
  - i. A correctional facility.
  - ii. A facility for the treatment of alcoholism or substance abuse.
  - iii. An emergency shelter for homeless persons or victims of domestic or family violence.
  - iv. A hospital which means an institution which is engaged in providing to patients, under supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of such persons. The term "hospital" includes psychiatric and substance abuse treatment hospitals.
  - v. A hotel, motel, or recreational facility providing temporary overnight accommodations.
  - vi. Any community living facility operating pursuant to RSA 126-A:19, provided that all of the residents of the facility have been placed there in accordance with RSA 126-A:19.
- b) Assisted living residences shall also not include Sober Living Houses/Residences, otherwise known as "alcohol and drug free housing".
- c) The assisted living residence, which shall be treated as a commercial use, shall be subject to Planning Board site plan review.
- d) Minimum Tract Area - The minimum tract area shall be ten (10) acres.
- e) Maximum Occupancy - The maximum occupancy of assisted living residences shall not exceed sixteen (16) residents.
- f) Buffer - A landscaped buffer area having a minimum depth of one hundred feet (100') shall be provided between any proposed structure and the perimeter of the property in order to provide an adequate division or transition from abutting land uses. Whenever possible, the natural vegetation shall be retained, or if required, vegetation shall be planted of sufficient size to shield the development from abutting properties. Buffer areas may include fences or berms, as well as shrubs or trees.
- g) Infrastructure - No dwellings, accessory structures, collector or service roads, parking areas, septic systems, wells or other infrastructure shall be permitted within the designated buffer area. However, access roads are permitted to cross this buffer area.

- h) Aesthetic Standards - The structures shall architecturally and aesthetically conform to, and not detract from, the overall residential character of the neighborhood.

5.3.3.11 – Nursing Homes - the proposed nursing home, which shall be treated as a commercial use, shall be subject to Planning Board site plan review. (5/14/2019)

- a) Minimum Tract Area - The minimum tract area shall be ten (10) acres.
- b) Buffer - A landscaped buffer area having a minimum depth of one hundred feet (100') shall be provided between any proposed structure and the perimeter of the property in order to provide an adequate division or transition from abutting land uses. Whenever possible, the natural vegetation shall be retained, or if required, vegetation shall be planted of sufficient size to shield the development from abutting properties. Buffer areas may include fences or berms, as well as shrubs or trees.
- i) Infrastructure - No dwellings, accessory structures, collector or service roads, parking areas, septic systems, wells or other infrastructure shall be permitted within the designated buffer area. However, access roads are permitted to cross this buffer area.
- c) Maximum Occupancy - The maximum occupancy of nursing homes shall not exceed fifty (50) residents.
- d) Aesthetic Standards – The structures shall architecturally and aesthetically conform to, and not detract from, the overall residential character of the neighborhood.

5.3.3.12 - Bed and Breakfasts - A proposed Bed and Breakfast shall be considered as a commercial use, not as a Home Occupation or Home Business. (5/11/2021)

- a) Number of Rental Units – A Bed and Breakfast shall contain no more than four (4) bedrooms for rent. The bedrooms shall be located within or attached to the single-family unit.
- b) Rental period – Rental periods for individual guests or parties shall not exceed thirty (30) consecutive days or more than forty-five (45) days in a calendar year.
- c) Aesthetic Standards – Any alteration of the exterior appearance shall maintain aesthetic continuity (doors, windows, siding and trim type and color, and roofing) with the single-family residence, except for a permitted sign under Subsection 4.4 of the Town of Chester Zoning Ordinance.
- d) Site Plan Review – A Bed and Breakfast shall be subject to site plan review by the Planning Board.
- e) Parking – Two (2) spaces for the dwelling unit plus one (1) space for each rented room shall be required on premises.
- f) Sewage Disposal - The applicant shall submit, for review and approval by the Building Inspector, either:

- i. a letter from a licensed septic system designer certifying the current system can handle the additional flow to be generated, or
- ii. a new DES-approved septic system design to address the additional flow to be generated.

(NH DES rules require 60 gpd/guest, based on the actual number of guests each bedroom can accommodate).

- g) Use Limitation – A Bed and Breakfast shall not be used for any other hospitality or business-related uses.

#### 5.3.4 - Prohibited Uses

Any use which is not specifically permitted or permitted by special exception in Zone R1 is prohibited.

5.3.4.1 - Runways and Heliports - Runways and heliports are specifically prohibited in Zone R1.

#### 5.3.5 - Dimensional and Area Requirements

See Table 1 for dimensional and lot size requirements.

5.3.5.1 - Configuration - Every lot shall be capable of containing a circle with a diameter of two hundred (200) feet.

5.3.5.2 – All lots shall be subject to the requirements detailed in Subsection 5.7.5.2. (3/10/2020)

### 5.4 - Commercial District Zone (C1)

#### 5.4.1 - Purpose

This district is designed to provide commercial areas to serve limited commercial and business needs to the general public and to minimize adverse environmental and aesthetic impacts on the Town of Chester in general and areas abutting the district in particular. All non-residential construction in the Commercial District (Zone C1) shall be required to go before the Chester Planning Board for Site Plan Review. (5/8/2012)

#### 5.4.2 - Permitted Uses

5.4.2.1 - Any use permitted in Zone R1 subject to all the provisions specified for such zone.

5.4.2.2 - Retail, personal service, and business establishments of a type consistent with the purpose of this Ordinance to serve limited commercial needs of the Town of Chester are the following:

- a) retail, grocery, meat, produce, drugs, stationery, hardware, baked goods;
- b) barber and beauty shops;

c) shops for the collection and distribution of clothing materials for dry cleaning establishments;

d) banks;

e) restaurants, coffee and sandwich shops (except for drive-in type or fast-food service).

5.4.2.3 - Business and/or professional offices for individual or group practice including doctors, dentists, lawyers, counseling services, engineers, architects, planners, insurance and accountants.

5.4.2.4 - Veterinarian clinic.

5.4.2.5 - Gasoline service stations which may have a garage for repairs to automobiles only, but not to include body or fender repair, paint spraying or used car sales lots.

5.4.2.6 - Funeral homes.

#### 5.4.3 - Prohibited Uses

Any use which is not specifically permitted in Zone C1 is prohibited.

5.4.3.1 - Runways and Heliports - Runways and heliports are specifically prohibited in Zone C1.

#### 5.4.4 - Dimensional and Area Requirements

See Table 1 for dimensional and lot size requirements.

### 5.5 - Limited Commercial/Light Industrial Zone (C2)

#### 5.5.1 - Purpose

This district is designed to provide areas to serve limited commercial and light industrial needs to the general public and to minimize adverse environmental and aesthetic impacts on the Town of Chester in general and areas abutting the district in particular. All non-residential construction in the Limited Commercial/Light Industrial Zone (C2) shall be required to go before the Chester Planning Board for Site Plan Review. (5/8/2012)

#### 5.5.2 - Permitted Uses (5/11/2010)

##### 5.5.2.1 - Agriculture / Forestry

Commercial Greenhouses  
Horticultural Nursery  
Fish Hatchery

##### 5.5.2.2 - Recreational Facilities

Indoor commercial Recreation Facilities  
Any indoor sport (including without limitations soccer, tennis,



football, racquet ball, skating facility)  
Aquatics  
Climbing Wall

Outdoor commercial Recreation Facilities

Golf/Driving Range  
Miniature Golf  
Batting cages  
Paintball Course  
Climbing Wall  
Geo Caching  
Campground  
Health/Athletic Clubs

5.5.2.3 - Multi-Unit Commercial Service Establishments

Metal Working  
Light Manufacturing  
Machine Shop  
Engine Rebuilding  
Transmission Repair  
Auto Body Repair (5/8/2018)  
Radio Communications  
Computer Repair  
Printing/Copying

5.5.2.4 - Cemeteries

Animal  
Human

5.5.2.5 - Light Industrial Establishments

Warehouse/Storage Yard  
Storage Units (refrigeration/dry)  
Furniture/Cabinet Manufacturing  
Planing mill, sawmill and similar uses  
Open storage of lumber and building material

5.5.2.6 - (5/8/2018)- Retail, personal service, and business establishments of a type consistent with the purpose of this Ordinance to serve limited commercial needs of the Town of Chester are the following:

- a) retail, grocery, meat, produce, drugs, stationery, hardware, baked goods;
- b) barber and beauty shops;
- c) shops for the collection and distribution of clothing materials for dry cleaning establishments;
- d) banks;

e) restaurants, coffee and sandwich shops (except for drive-in type or fast-food service).

5.5.2.7 - Retail, personal service, and business establishments of a type consistent with the purpose of this Ordinance to serve limited commercial needs of the Town of Chester are the following:

5.5.2.8 - Business and/or professional offices for individual or group practice including doctors, dentists, lawyers, counseling services, engineers, architects, planners, insurance and accountants.

5.5.2.9 - Veterinarian clinic.

5.5.2.10 - Gasoline service stations which may have a garage for repairs to automobiles only, but not to include body or fender repair, paint spraying or used car sales lots.

5.5.2.11 - Funeral homes.

5.5.2.12 - Facilities for the processing of agricultural products provided there is no pollution of streams or sources of water supply.

5.5.2.12 - Logging operations.

### 5.5.3 - Prohibited Uses

5.5.3.1 - Any use permitted under Section 5.3.2 (R1). (5/8/2018)

5.5.3.2 - Any use, which is not specifically permitted in Zone C2, is prohibited.

5.5.3.3 - Residential Housing of any type. (5/14/2013).

5.5.3.4 - Runways and Heliports.

Runways and heliports are specifically prohibited in Zone C2.

### 5.5.4 - Dimensional and Area Requirements

See Table 1 for dimensional and lot size requirements.

## 5.6 - **Flood Plain Conservation District (Zone FP)** (5/10/2016)

### 5.6.1 – Authority

This Ordinance, adopted pursuant to the authority of RSA 674:16 [and 674:21], shall be known as the Town of Chester Floodplain Management Ordinance. The regulations in this Ordinance shall overlay and supplement the regulations in the Town of Chester 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 Ordinance 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.

## 5.6.2 - District Boundaries

5.6.2.1 - The following regulations in this Ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (“FEMA”) in its “Flood Insurance Study for the County of Rockingham, NH” dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps dated May 17, 2005 or as amended, which are declared to be a part of this Ordinance and are hereby incorporated by reference.

## 5.6.3 - Permitted Uses

5.6.3.1 - Permitted uses in the Flood Plain District are as follows:

- a) Any use otherwise permitted by the Zoning Ordinance and state and federal laws that does not involve new development except as provided in Subsection 5.6.3.2, or does not alter the surface configuration of the land by the addition of fill or by dredging as a common treatment association with a permitted use;
- b) Agricultural use including grazing, hay production, truck gardening, and silage production provided that such use is shown not to cause significant increases in surface or ground water contamination by pesticides, fertilizers or other toxic or hazardous substances, and that such use will not cause or contribute to soil erosion;
- c) Forest and tree farming including the construction of access roads for said purpose;
- d) Wildlife habitat development and management;
- e) Recreational uses consistent with the purpose and intent of these provisions as defined in Subsection 5.6.1 provided said uses do not result in increasing the velocity of flood water run-off;
- f) Conservation areas and nature trails;
- g) Water impoundment and construction of well water supplies;
- h) Drainage ways to include streams, creeks or other paths of normal run-off water and common agricultural land drainage.

5.6.3.2 - The following uses are allowed by special use permit from the Planning Board:

- a) The construction of fences, foot bridges, catwalks, wharves, and boathouses not intended or used for occupancy or storage of hazardous materials and which are normally associated with use in or near water provided that:
  - 1) Said development is constructed on posts or pilings so as to permit the unobstructed flow of water;
  - 2) The natural contour of the Flood Plain is preserved; and

3) The Planning Board has reviewed and approved the proposed construction by granting a special use permit.

#### 5.6.4 - Conditional Uses

A conditional use permit may be granted by the Planning Board for the construction of roads and other access ways and for pipelines, power lines and other transmission lines provided that all of the following conditions are found to exist:

5.6.4.1 - The proposed construction is essential to the productive use of land not within the Flood Plain Conservation District.

5.6.4.2 - Design and construction methods will be such as to minimize detrimental impact upon the Flood Plain and will include restoration of the site as nearly as possible to its original gradient condition.

5.6.4.3 - No alternative route which does not cross a Flood Plain or has less detrimental impact on the Flood Plain is feasible.

5.6.4.4 - Economic advantage alone is not a reason for the proposed construction.

5.6.4.5 - Prior to the granting of conditional use permit use under this subsection, the applicant may be required to submit a performance security to the Planning Board in a form acceptable to the Board. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Planning Board to ensure that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.

5.6.4.6 - The Planning Board with the concurrence of the Conservation Commission may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this part. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications.

#### 5.6.5 - National Flood Insurance Program

5.6.5.1 - Purpose - Certain areas of the Town of Chester, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Chester, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance. The Town does not wish to permit new development in the Flood Plain District.

5.6.5.2 - Applicability to Certain Existing Structures - Buildings and other structures that are valid nonconforming uses under Section 4.2 may be repaired, altered, or reconstructed to the extent permitted under Section 4.2, but only in compliance with the criteria in the

following subsections. Nothing in the following subsections is intended to permit any construction or other development unless permitted under Section 4.2 and other applicable provisions of this ordinance.

5.6.5.3 - Definitions – The following definitions shall apply only to this Floodplain Management Ordinance, and shall not be affected by, the provisions of any other Ordinance of the Town of Chester.

5.6.5.3.1 - Base Flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

5.6.5.3.2 - Base Flood Elevation means the elevation to which floodwater is expected to rise during the base flood.

5.6.5.3.3 - Basement - Means any area of a building having its floor sub-grade on all sides.

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

5.6.5.3.5 - FEMA - Means the Federal Emergency Management Agency.

5.6.5.3.6 - Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1) The overflow of inland or tidal waters.
- 2) The unusual and rapid accumulation or runoff of surface waters from any source.

5.6.5.3.7 - Flood Insurance Rate Map (FIRM) means the official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Chester.

5.6.5.3.8 - Flood Plain or flood prone area means any land area susceptible to being inundated by water from any source (see definition of "flood").

5.6.5.3.9 - Flood proofing means 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.

5.6.5.3.10 - Highest Adjacent Grade - Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

5.6.5.3.11 - Historic Structure - Means any structure that is:

- a) Listed individually in 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:

i) By an approved state program as determined by the Secretary of the Interior, or

ii) Directly by the Secretary of the Interior in states without approved programs.

5.6.5.3.12 - Lowest Floor - Means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor: Provided, that such an enclosure is not built so as to render the structure in violation of the applicable non- elevation design requirements of this Ordinance.

5.6.5.3.13 - Mean Sea Level - Means the National Geodetic Vertical Datum ("NGVD") of 1929, North American Vertical Datum ("NAVD") of 1988 or other Datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

5.6.5.3.14 - Manufactured home means a structure, transportable in one or more section, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers. The term includes but is not limited to, the definition of "manufactured home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 CFR 3282.7(a)). This includes manufactured homes located in a manufactured home park or subdivision.

5.6.5.3.15 - Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or for sale.

5.6.5.3.15 - New Construction means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or

after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

5.6.5.3.16 - Persons include any individuals or group of individuals, corporations, partnership, association or any other entity.

5.6.5.3.17 - Recreational Vehicle - Is defined as:

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

5.6.5.3.18 - Regulatory Floodway - [means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Insurance Rate Map.]

5.6.5.3.20 - Riverine means relating to, formed by or resembling a river (including tributaries, stream, brook, etc.).

5.6.5.3.21 - Special Flood Hazard Area (SFHA) - is the land in the floodplain within the Town of Chester subject to a one percent (1%) or greater possibility of flooding in any given year. The area is designated as Zone A on the FIRM.

5.6.5.3.22 - Start of Construction - Includes substantial improvements, 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 site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include 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 part of the main structure.

5.6.5.3.23 - Structure means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

5.6.5.3.24 - Substantial Damage - Means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal

or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

5.6.5.3.25 - Substantial Improvement – Means any combination of repairs, reconstruction, alterations, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should equal:

- a) The appraised value prior to the start of the initial repair or improvement, or
- b) In the case of damage, the value of the structure prior to the damage occurring.
  - i. 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 that 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".

5.6.5.3.26 - Variance means a grant of relief by a community from the terms of a flood plain management regulation.

5.6.5.3.27 - Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

5.6.5.4 - Permit Requirement - No person shall erect, construct, enlarge, alter, repair, improve, move or demolish any building or structure without first obtaining a separate permit for each building or structure from the Building Inspector.

All proposed development in special flood hazard areas shall require a permit. No man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment shall be commenced until a separate permit has been obtained from the Building Inspector for each change.

No manufactured home shall be placed on improved or unimproved real estate without first obtaining a separate permit for each manufactured home from the Building Inspector.

5.6.5.5 - Application - To obtain a permit, the applicant shall first file a permit application on a form furnished for that purpose. The form must be completed and submitted to the Building Inspector with a fee of (see "Town of Chester Building Code Permit Fee Schedule") before the issuance of a permit will be considered.



5.6.5.6 - Review of Application - The Building Inspector, is responsible for receiving applications and examining the plans and specifications for the proposed construction or development.

After reviewing the application, the Building Inspector shall require any additional measures which are necessary to meet the minimum requirements of this document.

5.6.5.6.1 - The Building Inspector shall review proposed development 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.

5.6.5.6.2 - The Building Inspector shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a special flood hazard area, all new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall:

- i) 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.
- ii) be constructed with materials resistant to flood damage
- iii) be constructed by methods and practices that minimize flood damage and
- iv) 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.

5.6.5.6.3 - The Planning Board and Building Inspector shall review subdivision proposals and other proposed new development to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a special flood hazard area, any such proposals shall be reviewed to assure that:

- i) all such proposals are consistent with the need to minimize flood damage within the special flood hazard area,
- ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
- iii) adequate drainage is provided to reduce exposure to flood hazards.

5.6.5.6.4 - The Building Inspector shall require that all subdivision proposals and other proposed new developments greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.

5.6.5.6.5 - The Planning Board and Building Inspector shall require within special flood hazard areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood water into the systems and discharges from the systems into flood waters.

5.6.5.6.6 - The responsible person shall require within special flood hazard areas

i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and

ii) on-site waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

5.6.5.6.7 - The applicant shall obtain, and reasonably utilize any base flood elevation data available from a Federal, State or other source, including data submitted for development proposals submitted to the Town (i.e. subdivisions, site plan approvals). In Zone A where a base flood elevation is not known, the flood elevation shall be at least 2 feet above the highest adjacent grade. The base flood elevation will be used as criteria for requiring that:

i) all substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation and

ii) all substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or flood proofed to or above the base flood elevation and be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

5.6.5.6.8 - For all substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:

i) The as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.

ii) If the structure has been flood proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood proofed.

iii) Any certification of flood proofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

5.6.5.6.9 - In riverine situations, prior to the alteration or relocation of a water course the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent

communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.

5.6.5.6.10 - The applicant shall submit to the Building Inspector certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated water course can and will be maintained.

5.6.5.6.11 - The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirements:

No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.

5.6.5.6.12 - The Building Inspector shall require that all manufactured homes to be placed within a special flood hazard area shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and shall be securely anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that

- i) over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;
- ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side;
- iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and
- iv) any additions to the manufactured home be similarly anchored.

5.6.5.6.13 - All recreational vehicles placed on sites within a special flood hazard area shall either:

- i) Be on the site for fewer than 180 consecutive days;
- ii) Be fully licensed and ready for highway use; or
- iii) Meet all standards of this ordinance and the elevation and anchoring requirements for “manufactured homes” in section 5.5.6.12 of this ordinance.

5.6.5.6.14 - For all substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

- i) The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
- ii) The area is not a basement;
- iii) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. 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: A minimum of two openings having a total net area of not less than one square inch of every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood water.

5.6.5.6.15 - Variations and Appeals

1. Any order, requirement, decision or determination of the Building Inspector made under this Ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden in demonstrating that the grant of a variance is not contrary to the public interest or the spirit of the Ordinance to prove that:
  - a) The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - b) If the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  - c) The variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that:
  - a) The issuance of a variance to construct below the base flood level will result in increased premium rates or flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - b) 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.
4. The community shall:

- a) Maintain a record of all variance actions, including their justification for their issuance, and
- b) Report such variances issued in an annual or bi- annual report submitted to FEMA's Federal Insurance Administrator.

## **5.7 - Wetlands Conservation District**

### **5.7.1 - Authority and Purpose**

By the authority granted in RSA 674:16, 17, 20 and 21, and by the interest of public health, safety and general welfare, the Chester Wetlands Conservation District is hereby enacted to regulate the uses of land subject to standing water or extended periods of high water table. The specific intent of this district is:

5.7.1.1 - To prevent the development of structures and land uses on naturally occurring wetlands which would contribute to the pollution of surface and/or ground water.

5.7.1.2 - To prevent the destruction of natural wetlands which provide flood protection, ground water recharge, pollution abatement, and the augmentation of stream flow during dry periods, and which are important for such other reasons as cited in RSA 482-A:1.

5.7.1.3 - To prevent unnecessary or excessive expense to the Town of Chester to provide and maintain essential services and utilities which arise because of unwise use of wetlands.

5.7.1.4 - To encourage those uses that can be appropriately and safely located in wetlands.

5.7.1.5 - To preserve and enhance those aesthetic values associated with wetlands of the Town of Chester.

5.7.1.6 - Protect wildlife habitats and maintain ecological balances; and

5.7.1.7 - Protect unique and unusual natural areas.

### **5.7.2 - Definitions**

5.7.2.1 - General Wetlands (all wetlands) - Wetland areas are defined in accord with the State of New Hampshire statutory definition presented in RSA 482-a and the federal wetland definition used by the US Army Corps of Engineers in administering Section 404 of the Clean Water Act. The definition of wetland is as follows: "Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstance do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." The criteria to qualify an area as wetlands are that it possesses three essential characteristics: (1) hydrophytic vegetation (2) hydric soils, (3) wetland hydrology, which is the driving force creating the wetland. All three of these characteristics must be present to define an area as a wetland.

5.7.2.2 - Prime Wetlands - Any wetland that meets the criteria for Prime Wetland designation under State of New Hampshire Wt 701.04. The criteria are (1) the wetland shall

have the presence of hydric vegetation, and wetlands hydrology. (2) At least 50 % of the Prime wetland shall have hydric A soils (very poorly drained) and the remaining soils shall be hydric B soils (poorly drained). Prime wetlands identified by the Town are found on “Wetlands & Hydric Soils” map and the “Chester Wetland Inventory & Prime Wetland Designation” map.

5.7.2.3 - Vernal Pool – A body of water that provides essential breeding habitat for certain amphibians and invertebrates, does not support fish, and meets the criteria established by the New Hampshire Fish and Game Department, Non-game and Endangered Wildlife Program, Identification and Documentation of Vernal Pools in New Hampshire.

5.7.2.4 - Buffers – Buffers are naturally vegetated upland areas immediately adjacent to a wetland or body of water that serve to improve water quality by minimizing erosion and filtering surface water flow of sediments and pollutants created by human disturbance. Buffer areas help stabilize the hydrology in the watershed by intercepting rainfall, snowmelt and overland flow and promoting infiltration into the soil. This action reduces large fluctuations in the water levels and minimizes downstream flooding potential. Buffers are complex ecosystems that provide critical habitat for many species of plants and animals and improve the biodiversity of the wetland, stream or water-body communities they shelter.

5.7.2.5 - Setbacks – Setbacks refer to distance requirements from wetlands or surface waters for specific activities, such as construction or septic systems, rather than on maintaining naturally vegetated land around wetlands or surface waters.

5.7.2.6 - No Clearing Buffer Zone – any removal of trees or vegetation in excess of 50% of the basal area annually.

5.7.2.7 - Environmental Impact Assessment (EIA) - an EIA is an environmental assessment that evaluates wetland impact as a result of the planned activities. The EIA shall include an evaluation of all sensitive receptors including the identification and evaluation of vernal pools within and adjacent to the project area. At a minimum, the EIA will consist of a functional assessment or compute a functional value index (CFVI) of the impacted wetland site and identify the location of the impacted area relative to other protected lands or sensitive flora or fauna. The functional assessment shall use the relevant components of the U.S. Army Corps of Engineers New England Highway methodology or other comparable published methodologies, and a review of surrounding land use, soils, vernal pools, habitat, endangered species, and similar data as appropriate. Additionally, if impact to the wetlands is identified then a mitigation plan must also be prepared to describe the mitigation measures to be employed to minimize any impacts to the wetlands or sensitive species.

5.7.2.8 - Compensatory Mitigation - means creation of a new wetland, restoration of a wetland, or preservation of land to offset the impact of a project by replacing or partially replacing wetlands functions and values lost due to the project, or by substituting the value added to a wetland or wetland system for the functions or values lost.

### 5.7.3 - District Boundaries

5.7.3.1 - The Chester Wetlands Conservation District is defined as those areas of Town that contain marshes, ponds, bogs, lakes, as well as soils that are identified as poorly or very

poorly drained by the National Cooperative Soil Survey conducted by the U.S.D.A. Soil Conservation Service.

5.7.3.2 - The district is hereby defined as shown on a map designated as the "Town of Chester Wetlands and Agricultural Soils Map 1984" which is part of the official zoning maps of the Town of Chester. For a detailed explanation of soil types, refer to "Soils Survey of Rockingham County, New Hampshire, October, 1994" on file with the Planning Board and the Soil Conservation Service in Exeter, New Hampshire.

5.7.3.3 - Additional soil survey data prepared by a certified soil scientist may be substituted for the "Town of Chester Wetlands and Agricultural Soils Map 1984" in determining the exact location of wetland boundaries.

5.7.3.4 - In the event the area is incorrectly designated as being poorly drained or very poorly drained soils in the Town of Chester's Wetland Conservation District map and evidence to the effect is satisfactorily presented to the Planning Board, the restrictions contained in this Section shall not apply. However, conversely in the event that an area not so designated has poorly drained or very poorly drained soils within the meaning of the aforementioned Section, the restrictions contained in this Section shall apply. Such evidence may be obtained by adequate on-site soil investigation analysis conducted by a qualified soils scientist.

#### 5.7.4 - Permitted Uses (Wetlands)

5.7.4.1 - Hydric B Soil (Poorly Drained Soils) - Permitted uses in areas of poorly drained soils are as follows:

- a) Any use otherwise permitted by the Zoning Ordinance and state and federal laws that neither involves erection of a structure nor does it alter the surface configuration of the land by the addition of fill or by dredging as a common treatment associated with a permitted use;
- b) Agricultural use including grazing, hay production, truck gardening, and silage production provided that such use is shown not to cause significant increases in surface or ground water contamination by pesticides or other toxic or hazardous substances, and that such use will not cause or contribute to soil erosion;
- c) Forest and tree farming including the construction of access roads for said purpose;
- d) Wildlife habitat development and management;
- e) Recreational uses consistent with the purpose and intent of these provisions as defined in Subsection 5.7.1;
- f) Conservation areas and nature trails;
- g) Water impoundment and construction of well water supplies;
- h) Drainage ways to include streams, creeks or other paths of normal run-off water and common agricultural land drainage.

5.7.4.2 - Hydric A Soil (Very Poorly Drained Soil) - Permitted uses in areas containing very poorly drained soils, marshes, bogs, open water or major streams are as follows:

a) Uses specified in Subsection 5.7.4.1 shall be permitted except that no alteration of the surface configuration of the land by filling or dredging, and no use which results from the erection of a structure except as provided for in Subsection 5.7.4.2(b) below shall be permitted.

b) The construction of fences, foot bridges, catwalks, wharves, and boathouses not intended or used for occupancy or storage of hazardous materials and which are normally associated with use in or near water provided that:

- 1) Said structures are constructed on posts or pilings to permit the unobstructed flow of water;
- 2) The natural contour of the wetland is preserved; and
- 3) The Planning Board has reviewed and approved the proposed construction by granting a special use permit.
- 4) The NHDES Wetlands Bureau has approved a permit for any wetland impacts.

#### 5.7.5 - General Provisions

5.7.5.1 - Boundary Appeals - In the event that the Building Inspector or Conservation Commission questions the validity of the boundaries of a wetland area on a specific parcel of land or upon written petition of the owner or any abutter of said property to the Planning Board, the Board may call upon the services of a qualified soil scientist to examine said area and to report his findings in writing to the Planning Board for their determination of the boundary. The cost of such appeal shall be borne by the petitioner.

5.7.5.2 - Lot Size Determinations - Areas designated as having poorly drained soils may be used to fulfill twenty percent (20%) of the minimum lot size required by Town Ordinances and Subdivision Regulations, provided that each lot shall contain a contiguous non-wetland area, at least one (1) acre in size, with a configuration capable of accommodating principle and accessory structures, driveways, and sewage disposal including primary and auxiliary leach field locations. No part of the one (1) acre contiguous non-wetland may contain "D" and "E" slopes. No part of areas designated as having very poorly drained soils, or bodies of water and/or "D" and "E" slopes, as defined by the Subdivision and Individual Sewage Disposal Systems Design Rules (NH), may be used to satisfy minimal lot size requirements. See Table 1 and Article 5.3.5 - Dimensional and Area Requirements. (3/10/2020)

5.7.5.3 - Septic Tanks and Leach Fields - No septic tank or leach field may be located within 75 feet of the high-water mark of any body of water, poorly drained soil or very poorly drained soil. Setbacks from bodies of water shall be increased to 100 feet if the soil adjacent the body of water has a "sandy-skeletal" structure. No building shall be erected within 75 feet of the high-water mark of any body of water or poorly drained soil, except as provided in Subsection 5.6.3.2(b).



5.7.5.4 - Building Setbacks – No building shall be erected within 75 feet of the high-water mark of any body of water or poorly drained soil, except as provided in Subsection 5.7.4.2 b).

5.7.5.5 - Conflicting Provisions - In the event that the provisions of the Wetlands Conservation District are found to conflict with other provisions of the Chester Zoning Ordinance, State of New Hampshire statutes or other ordinance or regulation, the more restrictive or the one imposing the higher standard shall apply.

#### 5.7.6 - Conditional Uses

A conditional use permit may be granted by the Planning Board for the construction of roads and other access ways for pipelines, power lines and other transmission lines provided that all of the following conditions are found to exist:

5.7.6.1 - The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.

5.7.6.2 - Design and construction methods will be such as to minimize detrimental impact upon the wetlands and will include restoration of the site as nearly as possible to its original gradient condition.

5.7.6.3 - No alternative route, which does not cross a wetland or has less detrimental impact on the wetland is feasible.

5.7.6.4 Economic advantage alone is not a reason for the proposed construction.

5.7.6.5 - Prior to the granting of conditional use permit use under this part, the applicant may be required to submit a performance security to the Planning Board in a form acceptable to the Planning Board depending on the scale of the proposed use and potential threat to the wetlands source. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Planning Board to ensure that the construction has been carried out in accordance with the approval design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.

5.7.6.6 - The Planning Board with the concurrence of the Conservation Commission may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this part. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications.

#### 5.7.7 - Exemption for Existing Residential Structures

Notwithstanding other provisions in this Section, the construction of additions and extensions to one and two-family dwellings, and accessory buildings shall be permitted within the Wetlands Conservation District provided that:

5.7.7.1 - The dwelling lawfully existed prior to the effective date of this Ordinance; and

5.7.7.2 - That the proposed construction conforms with all other applicable ordinances and regulations of the Town of Chester.

#### 5.7.8 - Buffers and Setbacks

Buffers and setbacks reduce the adverse effects of human activities on wetlands and surface water by protecting water quality, protecting, and providing wildlife habitat, reducing direct human disturbance from dumped debris, noise, carnivorous pets, and many other possible effects; and maintaining aesthetic diversity and recreational value. A buffer thus provides a mosaic of interdependent functions. (5/13/2014)

Minimum buffers and setbacks shall be maintained in the Wetlands Conservation District, according to Table 2: Setbacks, No Cut and No Clearing Zones.

Approved driveways may cross wetlands and their buffers. However, to minimize the wetland impact areas:

a) driveways shall not cross the wetlands and their buffers/setbacks in the front setbacks at angles less than sixty-five (65) degrees to the line of the front setback and front lot line; and (3/8/2022)

b) driveways shall be designed to cross the wetlands and their buffers/setbacks over the shortest possible distance and in compliance with the design requirements of the Town's Driveway Regulations. (3/8/2022)

As referenced in Table 2, the Exeter River is defined as that portion of the river that runs through Chester between the Fremont Town Line and the Raymond Town Line.

### 5.8 - Telecommunications Facility District (5/13/1997)

#### 5.8.1 – Authority

By the authority granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21, and procedurally under the guidance of 675:1, II, and in the interest of public health, safety and general welfare of the residents of Chester, these regulations are enacted.

#### 5.8.2 - Purpose and Goals

This Ordinance is enacted in order to establish general guidelines for the siting of telecommunications towers and antennas and to enhance and fulfill the following goals:

5.8.2.1 - Preserve the authority of Chester to regulate and to provide for reasonable opportunity for the siting of telecommunications services to provide such services to the community quickly, effectively and efficiently.

5.8.2.2 - Reduce adverse impacts such facilities may create, including, but not limited to; impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.

5.8.2.3 - Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.

5.8.2.4 - Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.

5.8.2.5 - Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon Chester.

5.8.2.6 - Provide constant maintenance and safety inspections for any and all facilities.

5.8.2.7 - Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for Chester to remove these abandoned towers to protect the citizens from imminent harm and danger.

5.8.2.8 - Provide for the removal or upgrade of facilities that are technologically outdated.

### 5.8.3 - Definitions

5.8.3.1 - Alternative Tower Structure - Innovative siting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

5.8.3.2 - Antenna - Shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

5.8.3.3 - FAA - An acronym that shall mean the Federal Aviation Administration.

5.8.3.4 - FCC - An acronym that shall mean the Federal Communications Commission.

5.8.3.5 - Height - Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

5.8.3.6 - Planning Board or Board - Shall mean the Town of Chester Planning Board and the regulator of this Ordinance.

5.8.3.7 - Pre-existing Towers and Antennas - Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this Ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this Ordinance that predates an application currently before the Board.

5.8.3.8 - Telecommunications Facilities - Shall mean any structure, antenna, tower, or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services.

5.8.3.9 - Tower - Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

5.8.4 - Siting Standards

5.8.4.1 - General - The uses listed in this section are deemed to be permitted uses that may require further review under this Ordinance in accordance with Section 5.8.7 (Conditional Use Permits). However, all such uses must comply with other applicable Ordinances and Regulations of Chester (including Site Plan Review). The following tables represent the siting standards for the listed uses as delineated by the districts in which they are located in Chester.

a) Principle or Secondary Use - Subject to this Ordinance, an applicant who successfully obtains permission to site under this Ordinance, the Zoning Ordinance as a second and permitted use may construct telecommunications facilities in addition to the existing permitted use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including, but not limited to, set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed and antennas that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an "accessory use."

b) Use Districts - These districts are identified as Map #5, Lot #19; Map #5, Lot #001; and Map #3, Lot #2, as shown on the Town of Chester Tax Maps dated October 6, 1995.

c) Height Requirements - These requirements and limitations shall preempt all other height limitations as required by the Chester Zoning Ordinance and shall apply only to telecommunications facilities. These height requirements may be waived through the Conditional Use Permit process only if the intent of the Ordinance is preserved (e.g. where a two hundred (200) foot tower would not increase adverse impacts but provide a greater opportunity for co-location) in accordance with Section 5.8.8 (Waivers).

<u>District</u>	<u>New Tower Construction</u>	<u>Co-location on Existing Structures</u>
Telecomm Overlay (T-1)	180 feet	Current Height

#### 5.8.5 - Applicability

5.8.5.1 - Public Property - Telecommunications Facilities controlled by the Town and used for municipal government purposes shall be exempt from the provisions of Section 5.8. Telecommunications Facilities situated on Town owned property and used by a non-governmental entity for non-governmental purposes shall be subject to Section 5.8, and all other applicable provisions of the Zoning Ordinance.

5.8.5.2 - Amateur Radio Receive-Only Antennas - This ordinance shall not govern any tower, or the installation of any antenna that is under ninety (90) feet in height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

5.8.5.3 - Essential Services and Public Utilities - Telecommunications facilities shall not be considered infrastructure, essential services or public utilities, as defined or used elsewhere in the Town's Ordinances and Regulations. Siting for telecommunication facilities is a use of land, and is addressed by this Article.

#### 5.8.6 - Construction Performance Requirements

5.8.6.1 - Aesthetic and Lighting - The guidelines in this Subsection shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements, in accordance with Subsection 5.8.8 (Waivers), only if it determines that the goals of this Ordinance are served thereby.

- a) Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
- b) At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment. These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.
- c) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- d) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- e) Towers shall not contain any permanent or temporary signs, writing, symbols or any graphic representation of any kind.

5.8.6.2 - Federal Requirements - All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with Subsection 5.8.10, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

5.8.6.3 - Building Code Safety Standards - To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within thirty (30) days, such action shall constitute an abandonment and grounds for the removal, in accordance with Subsection 5.8.10, of the tower or antenna, as abandoned, at the owner's expense through execution of the posted security.

5.8.6.4 - Additional Requirements for Telecommunications Facilities - These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

a) Setbacks and Separations

- 1) The tower fall zone shall be located entirely within the bounds of the site.
- 2) Tower must be set back a distance equal to one hundred twenty-five percent (125%) of the height of the tower from any off-site residential structure.
- 3) Tower, guys and accessory facilities must satisfy the minimum zoning district setback requirements.
- 4) Towers over ninety (90) feet in height shall not be located within one-quarter (1/4) mile of any existing tower that is over ninety (90) feet in height.

b) Security Fencing - Towers shall be enclosed by security fencing not less than six (6) feet in height, and shall also be equipped with an appropriate anti-climbing device.

c) Landscaping

- 1) Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least ten

(10) feet wide outside the perimeter of the compound. Natural vegetation is preferred.

2) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.

3) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

#### 5.8.7 - Conditional Use Permits

5.8.7.1 - General - All applications under this Ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulations. In addition, applications under this Ordinance shall also be required to submit the information provided for in this Section.

5.8.7.2 - Issuance of Conditional Use Permits - In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect on the proposed tower on adjoining properties, and preserve the intent of this Ordinance.

a) Procedure on Application - The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.

b) Decisions - Possible decisions rendered by the Planning Board include Approval, Approval with Conditions, or Denial. In acting upon an application, the Planning Board must comply with the Federal Telecommunications Act, including any prohibitions on denying certain requests deemed "eligible facilities request" for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the writing record. (5/14/2013)

c) Factors Considered in Granting Decisions

1) Height of proposed tower or other structure.

2) Proximity of tower to residential development or zones.

3) Nature of uses on adjacent and nearby properties.

4) Surrounding topography.

5) Surrounding tree coverage and foliage.

6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

- 7) Proposed ingress and egress to the site.
- 8) Availability of suitable existing towers and other structures as discussed in Subsection 5.8.7.3.
- 9) Visual impacts on viewsheds, ridgelines and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- 10) Availability of alternative tower structures and alternative siting locations.

5.8.7.3 - Information Required - Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a sealed plan in accordance with the Site Plan Review Regulations and further information including: a sealed elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200 feet away), and any other information deemed necessary by the Planning Board to assess compliance with this Ordinance. Furthermore, the applicant shall submit the following prior to any approval by the Board:

- a) The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
- b) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town process, shall become part of the application requirements.
- c) Each applicant for an antenna and/or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two (2) miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence can consist of:
  - 1) Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
  - 2) Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.



- 3) Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
- 4) Substantial Evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- 5) Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing towers or structures are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
- 6) Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers or structures unsuitable.

d) The applicant proposing to build a new tower shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a Condition to any Approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of Chester, and grounds for a Denial.

e) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with RSA 676:4(g).

#### 5.8.8 - Waivers

5.8.8.1 - General - Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to ensure an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

- a) The granting of the waiver will not be detrimental to the public safety, health or welfare, or injurious to other property, and will promote the public interest.
- b) The waiver will not, in any manner, vary the provisions of the Chester Zoning Ordinance or Chester's Master Plan.
- c) Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.

d) A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

- 1) topography and other site features
- 2) availability of alternative site locations
- 3) geographic location of property
- 4) size/magnitude of project being evaluated and availability of co-location

5.8.8.2 - Conditions - In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

5.8.8.3 - Procedures - A petition for any such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial.

#### 5.8.9 - Bonding and Security and Insurance

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and/or unwilling to remove the tower in accordance with Subsection 5.8.10. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. Furthermore, the Planning Board shall require that submission of proof of adequate insurance covering accident or damage.

#### 5.8.10 - Removal of Abandoned Antennas and Towers

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said antenna or tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters, and the last known owner/operator of the tower. If the abandoned antenna or tower is not removed within ninety (90) days the Town may execute the security and have the antenna or tower removed. If there are two or more users of a single antenna or tower, this provision shall not become effective until all users cease using the tower.



**TABLE 1**

**Table of Dimensional and Area Requirements**

Zoning District	Minimum Lot Size	Unit Density	Minimum Frontage	Maximum Impervious Surface Area	Maximum Building Width	Maximum Height (Stories/Ft.)	Minimum Front Setback	Minimum Side Setback	Minimum Rear Setback
	(Acres)	(Acres per Unit)	(Feet)	(% of each Lot Area)	(Feet)	(See Note 1)	(Feet)	(Feet)	(Feet)
<b>R1 - Single Family</b>	<b>2 Acres</b>	<b>2</b>	<b>290'</b>	<b>15%</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>40'</b>	<b>25'</b>	<b>25'</b>
<b>R1 - Duplex / Two Family</b>	<b>3 Acres</b>	<b>1.5</b>	<b>430'</b>	<b>15%</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>40'</b>	<b>25'</b>	<b>25'</b>
<b>C1, C2</b>	<b>2 Acres</b>	<b>NA</b>	<b>290'</b>	<b>40%</b>	<b>30'?</b>	<b>2.5 / 30'</b>	<b>75'</b>	<b>50'</b>	<b>50'</b>
<b>R1 - Article 6 Open Space Parent Lot</b> <i>(See Note 2)</i>	<b>25 Acres</b>	<b>See Article 6.7</b>	<b>60'</b>	<b>NA</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>75'</b>	<b>75'</b>	<b>75'</b>
<b>R1 - Article 6 Open Space Internal Lots</b> <i>(See Note 3)</i>	<b>See Article 6.12.2.2</b>	<b>See Article 6.7</b>	<b>See Article 6.12.2.2</b>	<b>NA</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>25'</b>	<b>15'</b>	<b>15'</b>
<b>R1 - Article 7 Age-Friendly Parent Lot</b>	<b>12 Acres</b>	<b>See Article 7.8.1</b>	<b>60'</b>	<b>NA</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>75'</b>	<b>75'</b>	<b>75'</b>
<b>R1 - Article 7 Age-Friendly Internal Lots</b>	<b>See Article 6.12.2.2</b>	<b>See Article 7.8.1</b>	<b>See Article 6.12.2.2</b>	<b>NA</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>25'</b>	<b>15'</b>	<b>15'</b>
<b>Assisted Living Residences &amp; Nursing Homes</b>	<b>10 Acres</b>	<b>NA</b>	<b>60'</b>	<b>15%</b>	<b>NA</b>	<b>2.5 / 33'</b>	<b>100'</b>	<b>100'</b>	<b>100'</b>

NA – Not Applicable

(1) - Except for farm buildings on farms of not less than ten (10) acres for which there are no height limitations.

(2) – These dimensions apply to the original peripheral / external lot line of the original parent lot(s) of the Open Space Subdivision. (5/11/2010)

(3) - These dimensions apply to the internal lots within the Open Space Subdivision. (5/10/2016)

**TABLE 2**

**Table of Setbacks and No Clearing Buffer Zones (See Note 5)**

	<b>Wetlands</b>	<b>Ponds, Creeks &amp; Streams</b>	<b>Vernal Pools</b>	<b>Exeter River</b>	<b>Open Space Subdivision Parent Lot Boundary</b>	<b>Age-Friendly Subdivision Parent Lot Boundary</b>	<b>Assisted Living Residences &amp; Nursing Homes</b>
	<i>(Feet)</i>	<i>(Feet)</i> <i>(See Note 1)</i>	<i>(Feet)</i>	<i>(Feet)</i> <i>(See Note 4)</i>	<i>(Feet)</i>	<i>(Feet)</i>	<i>(Feet)</i>
<b>Roads</b> <i>(See Note 2 &amp; 3)</i>	<b>50'</b>	<b>50'</b>	<b>100'</b>	<b>50'</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
<b>Structures</b>	<b>75'</b>	<b>75'</b>	<b>100'</b>	<b>75'</b>	<b>75'</b>	<b>75'</b>	<b>100'</b>
<b>Septic Systems</b>	<b>75'</b>	<b>75'</b>	<b>100'</b>	<b>75'</b>	<b>65'</b>	<b>65'</b>	<b>100'</b>
<b>Wells</b>	<b>25'</b>	<b>25'</b>	<b>25'</b>	<b>25'</b>	<b>65'</b>	<b>65'</b>	<b>100'</b>
<b>Underground Utilities</b>	<b>na</b>	<b>na</b>	<b>na</b>	<b>na</b>	<b>65'</b>	<b>65'</b>	<b>100'</b>
<b>No Clearing Buffer Zones</b> <i>(See Notes 3 &amp; 5)</i>	<b>25'</b>	<b>25'</b>	<b>50'</b>	<b>25'</b>	<b>50'</b>	<b>50'</b>	<b>100'</b>

*(1) Includes seasonal streams.*

*(2) Excludes cases where the road has NH DES approval to cross wetlands (5/10/2011.)*

*(3) Clearing incidental to state-approved roads and approved and permitted driveway construction is exempted.*

*(4) See Subsection 5.7.8 – Buffers and Setbacks, Town of Chester Zoning Ordinance.*

*(5) See Subsection 5.7.2.6 for the definition of No-Clearing Buffer Zone.*

## **Article 6 – Open Space Subdivision**

### **6.1 – Authority**

This Article is adopted pursuant to the provisions of NH RSAs 674:16 and 674:21, Innovative Land Use Controls, and is adopted to effectuate the master plan for the Town of Chester. The effective date of adoption of this Article is February 23, 2005.

The Chester Planning Board shall administer the application, review and approval process for Open Space Subdivisions through the subdivision and site plan review process. The authority for implementing this article is delegated to the Planning Board under NH RSAs 674:16 and 674:21.

### **6.2 - Purpose and Objectives** (5/11/2021)

The purpose of the open space subdivision article is to allow future subdivision in the Town of Chester to be creatively designed so that new homes are sited across the landscape in a way that reduces sprawl and protects the natural resources and rural character of Chester. As readily developable land decreases in Chester, traditional, grid subdivision design methods are less likely to preserve the natural resources and rural character of the Town. Another purpose of this article is to provide for a greater diversity of housing types to meet the needs of all of Chester's residents.

6.2.1 - Additional Purposes - In addition to this general purpose, open space subdivisions shall promote the following objectives:

- a.) Reduce the occurrence of strip development along existing town-approved roads and streets.
- b.) Promote efficient use of land in harmony with its natural features.
- c.) Maintain the rural and open character of the town and encourage the preservation of open space.
- d.) Protect historic, archeological, and cultural features.
- e.) Protect valuable wildlife and habitat areas.
- f.) Reduce adverse impacts of growth on surface water and groundwater quality.
- g.) Locate buildings and structures on portions of the site that are most appropriate for development considering development suitability and conservation importance.
- h.) Allow for site design that encourages a more practical utility and transportation network.
- i.) Preserve opportunities for agriculture and farming within the town.
- j.) Protect areas of town with a high co-occurrence value per the Conservation Commission's Natural Resource Inventory maps.

### **6.3 - Applicability**

All subdivisions of lots in existence as of the date of adoption of this Ordinance in the R1 District and meeting the provisions stated below are eligible to be developed subject to either the requirements of this article or the Town's conventional subdivision regulations and in accordance with Table 1 -Table of Dimensional and Area Requirements. (5/13/2014)

### **6.4 - Definitions**

The following definitions shall apply to this article.

6.4.1 - Bedroom: Any room within a residential unit planned, intended, designated, designed or used for sleeping other than a kitchen, bathroom, living room, family room, dining room, enclosed porch, sunroom, or small utility room. A room designated as a spare room, home office, study, library, guest room or den shall be considered a bedroom if it is separated from other rooms by a doorway.

6.4.2 - Conservation Area: Land within an open space subdivision that is permanently protected through deed restriction (conservation easement) enforceable by the Town of Chester. This land may consist of, but is not limited to, fields and agricultural land, forests, recreation areas for non-motorized recreation only, and land that is constrained from development such as wetlands.

6.4.3 - Constrained Acreage or Land: Land that is restricted from development or inclusion in unit count calculations due to the existence of wetlands and submerged areas, watercourses, the FEMA-designated 100-year floodplain, pre-existing dedicated public rights-of-way, private rights-of-way and slopes of twenty-five percent (25%) or more. (5/12/2015)

6.4.4 - Conventional Subdivision Process: The procedures used by the Chester Planning Board to review subdivision applications that do not qualify or are not otherwise required to follow the regulations of this article (open space subdivision) or Article 7 – Age-Friendly Subdivision. (5/11/2021)

6.4.5 - Development Concept Map: A map submitted by an applicant for open space subdivision approval outlining the proposed conceptual development scenario.

6.4.7 - Duplex: A building designed or used for residential purposes containing two (2) principal dwelling units separated by a common wall at least 10 feet in length or a common floor / ceiling assembly with both units supported by a common foundation. (5/11/2021)

6.4.8 - Duplex Unit: A single-family dwelling unit with a maximum of two bedrooms. A Duplex Unit is one half (1/2) of a Duplex. (5/11/2021)

6.4.8 - Duplex Unit: A single-family dwelling unit with a maximum of two bedrooms.

6.4.9 - Open Space: Conservation areas maintained in a natural, undisturbed, or re-vegetated condition.

6.4.10 - Parent Lot: Any lot, as it existed on the date the Open Space Subdivision Ordinance went into effect.

6.4.11 - Passive Recreation: Low environmental impact, low noise, non-motorized, and non-commercial recreation activities, such as hiking, fishing, hunting, cross-country skiing, snow shoeing, orienteering, wildlife observation and the like.

6.4.12 - Senior Housing: Housing, in compliance with the federal Fair Housing Act, as amended, that is intended and designed to meet the needs of persons 55 years or older.

6.4.13 - Tract Resource Map: A scaled and surveyed map submitted by an applicant for open space subdivision approval showing the existing conditions of a potential development site, and signed by a licensed land surveyor and wetlands scientist.

6.4.14 - Unconstrained Acreage or Land: Land other than constrained acreage or land that is not otherwise restricted from development. See definition of “Constrained Acreage or Land.”

6.4.15 – Workforce Housing: See definition in Subsection 6.14.3. (5/11/2021)

## **6.5 - Permitted Uses**

With the exception of areas designated for conservation, the following uses or housing types shall be permitted in any Open Space Subdivision:

6.5.1 - Single-family detached dwelling units (single-family dwelling).

6.5.2 - Duplex units.

6.5.3 – deleted. (5/11/2021)

6.5.4 - deleted. (5/11/2021)

6.5.5 - Multi-family dwellings consisting of three to six units.

6.5.6 - Private recreational facility or clubhouse for use solely by residents of the Open Space Subdivision.

6.5.7 - Home Occupations as defined by 4.9.1.

6.5.8 - Private residential accessory uses or buildings, as defined by 5.3.2.8.

6.5.9 - Any use not specifically listed above is prohibited, even if allowed in the underlying zone.



## **6.6 – Procedure**

Applications for open space subdivisions shall follow the procedures set forth in the relevant sections of the Town of Chester Subdivision Regulations. Where there are differences between the requirements of this article and the Subdivision Regulations, the requirements for this article shall prevail. The applicant shall conform with any additional requirements set forth in the Subdivision Regulations for the Town of Chester unless specifically addressed by this article. In general, these regulations formalize the Design Review Phase from Section 3.2.2 of the Town’s Subdivision Regulations.

### **6.6.1 - Pre-Application Conference**

Before submitting a formal application for an open space subdivision, the applicant shall schedule an appointment with the Planning Board to review preliminary subdivision concepts and discuss approval procedures, including submittal requirements and design standards. This conference shall include a preliminary review by the Planning Board of the applicant’s overall design concept.

### **6.6.2 - Complete Applications**

Applications for open space subdivisions shall not be accepted as complete without completion of the application requirements set forth in the Subdivision Regulations as well as the steps outlined in this article:

- a.) Determination of unit density. (See Section 6.7).
- b.) Identification of conservation areas: includes Tract Resource Map, resource analysis and identification of conservation areas. (See Section 6.8).
- c.) Determination and approval of proposed incentives. (See Section 6.9).
- d.) Development Concept Map. (See Section 6.10).
- e.) Subsequent to completion of these steps, the applicant shall follow the applicable sections from the Town of Chester’s Subdivision Regulations beginning with section 3.3.1: submission of a completed application.

### **6.6.3 - Professional Services**

The Planning Board may retain, at the applicant’s expense, a certified planner, registered professional engineer, certified wetlands scientist, hydrologist, and any other applicable professional to represent the Planning Board and assist the Planning Board in determining compliance by the applicant with this Ordinance and other applicable regulations.

### **6.6.4 - Limitation on Subdivision**

No lot shown on a plan for which a permit is granted under this article may be further subdivided and a note to this effect shall be placed on the final plat. This shall be a condition of the approval of the open space subdivision and shall be in the form of a written agreement between the Planning Board and the applicant and such restriction shall appear in each deed granted under this article.

6.6.5 - Open Space Subdivisions Which Include Two or More Zoning Districts

In cases where an application for subdivision under the open space subdivision article includes two or more zoning districts, the appropriate dimensional requirements shall be applied proportionately to the parcels per the respective underlying zoning district.

**6.7 - Determination of Number of Units Permitted**

The first step in the open space subdivision approval process is the determination of unit density. This figure is determined by calculating the allowed number of units and bedrooms based on the parent lot's size and development constraints, and the housing types.

6.7.1 - Unit Density Formula

The maximum number of units allowed is calculated by a formula based upon the acreage of unconstrained land on the parent lot. To qualify as a parent lot, the lot must be at least twenty-five (25 acres in size (See Table 1). (5/12/2015)

6.7.1.1 - Unconstrained Acreage - To determine unconstrained acreage, subtract the acreage of constrained land from the total (gross) acreage of the proposed parent lot.

6.7.1.2 - Base Number of Allowable Residential Dwelling Units - To determine the "base" number of allowable residential dwelling units on the site, divide the unconstrained acreage by the required number of acres per unit. The required number of acres are three (3) acres for each single-family unit plus one and three-quarters (1.75) acres for each duplex unit.

6.7.1.3 - Maximum Number of Duplex or Multi-Family Units - The maximum number of duplex or multi-family units allowed may not exceed fifty percent (50%) of the total number of units. In order to calculate the maximum number of duplex or multi-family units allowed, divide the unconstrained acreage by four and three quarters (4.75) acres (3 acres per single-family unit plus 1.75 acres per duplex or multi-family unit). The result is the number of single-family units and the number of duplex or multi-family units allowed.

Round down fractional units of 0.5 or less, and round up fractional units greater than 0.5. The resulting number is the "base density" permitted on the site.

6.7.1.4 - Final Determination of Density - The Planning Board shall have final determination whether the number of units described by the applicant is accurate and, during the review of the conceptual plans, may calculate an alternate figure to ensure conformity with the intent of the ordinance. The number of dwelling units permitted in the Open Space Subdivision shall be noted on the final plat.

6.7.2 - Bedrooms Permitted

The maximum number of bedrooms permitted in the open space subdivision (not the individual dwelling units) shall be determined by adding together the products of the number and types of dwelling units of each housing type times the factors below:

- a.) single-family unit - 3.5 bedrooms per family unit
- b.) duplex unit - 2.5 bedrooms per family unit (average 5 bedrooms per duplex) (5/11/2021)

- c.) multi-family unit – 2.5 bedrooms per multi-family unit (5/11/2021)
- d.) workforce single-family housing unit - 2.0 bedrooms per family unit (5/11/2021)
- e.) workforce duplex or multi-family housing unit – 2.0 bedrooms per family unit (5/11/2021)

These figures should be calculated as an average for the entire subdivision. For example, for a subdivision of single-family units, there may be a mix of the number of bedroom units as long as the average for the entire subdivision is 3.5 bedrooms per unit or less.

6.7.2.1 - Document Notation of Maximum Number of Bedrooms - The number of bedrooms permitted in the open space subdivision shall be noted on the final plat, in agreements filed with the plat, and in recorded deeds for the subdivision and the individual units. The number of bedrooms permitted shall also be noted in any restrictive covenants, and condominium documents

6.7.2.2 - Final Determination of Number of Bedrooms - The Planning Board shall have final determination whether the number of bedrooms calculated and described by the applicant is accurate and in review of floor plans, may calculate an alternate figure to ensure conformity with the intent of the ordinance.

**6.8 - Identification and Selection of Conservation Areas**

Following the Planning Board’s preliminary approval of the unit density and bedroom counts, the project applicant shall submit a Tract Resource Map highlighting all existing natural and cultural features on the property per section 6.8.2 and an outline of proposed conservation areas per sections 6.8.1, 6.8.3, and 6.8.4.

6.8.1 - Minimum Conservation Area Requirements

A minimum of fifty percent (50%) of the parent lot must remain as a permanently protected conservation area through deed restriction enforceable by the Town of Chester. Of this conservation area, fifty percent (50%) of the acreage is to be unconstrained land.

Example 1: (5/11/2021)

Parent lot: **100 acres**  
 Acreage with development constraints: **30 acres**  
 Acreage without development constraints: **70 acres**

Minimum required conservation area (fifty percent (50%) of the one hundred (100) acre parent lot): **50 acres**

Required unconstrained acreage to be included within the conservation area (fifty percent (50%) of the fifty (50) acre conservation area): **25 acres**

Land free of development and conservation area constraints available for the clustered placement of new units (seventy (70) acres minus twenty-five (25) acres): **45 acres**

The total number of single-family units and total number of bedrooms permitted in this example is calculated in the following manner:

$$70 \text{ acres} / 3 \text{ acres per single-family unit} = \text{single-family } 23 \text{ units}$$

$$23 \text{ single-family units} \times 3.5 \text{ bedrooms per single-family} = 80 \text{ bedrooms}$$

In the case where the fifty (50) percent maximum density bonus for Workforce Housing (See Section 6.9 – Incentives) is obtained, the combined total number of single-family and single-family workforce housing units permitted in this example is 34 units.

$$23 \text{ single-family units} \times 1.5 \text{ density bonus} = 34 \text{ total single-family and single-family workforce housing units}$$

Assuming a minimum 50% of the units are restricted as workforce housing, the bedroom count is determined as follows:

$$17 \text{ workforce single-family units} \times 2.0 \text{ bedrooms} = 34 \text{ bedrooms}$$

$$17 \text{ non-workforce single-family units} \times 3.5 \text{ bedrooms} = 59 \text{ bedrooms}$$

$$\text{Total number of bedrooms} = 93 \text{ bedrooms}$$

In the case of a mix of housing types, the maximum number of duplex or multi-family units permitted in this example is 15 duplex or multi-family units plus 15 single-family units (70 acres divided by 4.75 acres per duplex / multi-family and single-family unit) for a total of 30 dwelling units.

$$15 \text{ duplex and/or multi-family units} \times 2.5 \text{ bedrooms} = 37 \text{ bedrooms}$$

$$15 \text{ single family units} \times 3.5 \text{ bedrooms} = 52 \text{ bedrooms}$$

$$\text{Total number of bedrooms} = 93 \text{ bedrooms}$$

When there is a mix of housing types, the total number of single-family unit bedrooms permitted shall not exceed an average of 3.5 bedrooms for the single-family units, and an average of 2.5 bedrooms for the remaining housing types.

In the case where the maximum density bonus for Workforce Housing (See Section 6.9 – Incentives) is obtained, the combined, total number of single-family, workforce housing single-family, duplex / multi-family, and workforce housing duplex / multi-family units permitted in this example is 44 dwelling units. Assuming a minimum workforce housing restriction of 50%, the bedroom count is determined as follows:

$$11 \text{ single-family units} \times 3.5 \text{ bedrooms} = 38 \text{ bedrooms}$$

$$11 \text{ workforce single family units} \times 2.0 \text{ bedrooms} = 22 \text{ bedrooms}$$

$$11 \text{ duplex and/or multi-family units} \times 2.5 \text{ bedrooms} = 27 \text{ bedrooms}$$

$$11 \text{ workforce duplex and/or multi-family units} \times 2.0 \text{ bedrooms} = 22 \text{ bedrooms}$$

$$\text{Total number of bedrooms} = 109 \text{ bedrooms}$$

Example 2: (5/11/2021)

Parent lot: **100 acres**

Acreage with development constraints: **60 acres**

Acreage without development constraints: **40 acres**

Minimum required conservation area (fifty percent (50%) of the one hundred (100) acre parent lot): **50 acres**

Required unconstrained acreage to be included within the conservation area (fifty percent (50%) of the fifty (50) acre conservation area): **25 acres**

Land free of development and conservation area constraints for the clustered placement of new units (40 acres minus 25 acres): **15 acres**

The total number of single-family units and total number of bedrooms permitted in this example is calculated in the following manner:

$$40 \text{ acres} / 3 \text{ acres per single-family unit} = \text{single-family } 13 \text{ units}$$

$$13 \text{ single-family units} \times 3.5 \text{ bedrooms per single-family} = 45 \text{ bedrooms}$$

In the case where the fifty (50) percent maximum density bonus for Workforce Housing (See Section 6.9 – Incentives) is obtained, the combined total number of single-family and single-family workforce housing units permitted in this example is nineteen (19) units.

$$13 \text{ single-family units} \times 1.5 \text{ density bonus} = 19 \text{ total single-family and workforce single-family housing units}$$

Assuming a minimum fifty percent (50%) of the units are restricted as workforce housing, the bedroom count is determined as follows:

$$9 \text{ workforce single-family units} \times 2.0 \text{ bedroom} = 18 \text{ bedrooms}$$

$$10 \text{ single family units} \times 3.5 \text{ bedrooms} = 35 \text{ bedrooms}$$

$$\text{Total number of bedrooms} = 53 \text{ bedrooms}$$

In the case of a mix of housing types, the maximum number of duplex or multi-family units permitted in this example is eight (8) duplex or multi-family units plus eight (8) single-family units (40 acres divided by 4.75 acres per duplex / multi-family and single-family unit) for a total of sixteen (16) dwelling units.

$$8 \text{ duplex and/or multi-family units} \times 2.5 \text{ bedrooms} = 20 \text{ bedrooms}$$

$$8 \text{ single family units} \times 3.5 \text{ bedrooms} = 28 \text{ bedrooms}$$

$$\text{Total number of bedrooms} = 48 \text{ bedrooms}$$

When there is a mix of housing types, the total number of bedrooms permitted shall not exceed an average of 3.5 bedrooms for the single-family units, and an average of 2.5 bedrooms for the remaining housing types.

In the case where the maximum density bonus for Workforce Housing (See Section 6.9 – Incentives) is obtained, the total number of single-family, workforce housing single family, duplex and/or multi-family, and workforce housing duplex and/or multi-family units permitted in this example is 24 units.

*16 single-family units x 1.5 density bonus = 24 total single-family, workforce single-family housing, duplex and/or multi-family, and workforce housing duplex and/or multi-family units*

Assuming a minimum workforce housing restriction of 50%, the bedroom count is determined as follows:

- 6 single-family units X 3.5 bedrooms = 21 bedrooms
- 6 workforce single family units X 2.0 bedrooms = 12 bedrooms
- 6 duplex and/or multi-family units X 2.5 bedrooms = 15 bedrooms
- 6 workforce duplex and/or multi-family units X 2.0 bedrooms = 12 bedrooms

Total number of bedrooms = 60 bedrooms

6.8.1.1 - Waiver for Reduction of Unconstrained Acreage - In rare situations where inclusion of 50% (or 60% if the applicant elects such under Section 6.9) of the unconstrained acreage in the conservation area does not leave enough land for the location of all units allowed, the applicant may submit an application to partially waive this requirement and reducing the amount of unconstrained acreage to be included in the conservation area. The applicant shall demonstrate by engineered design the need for the reduction. The Planning Board shall have final determination whether the amount of acreage reduction requested by the applicant is appropriate, and upon advice of the Board's professional engineer, may approve an alternate acreage amount, but it shall not approve more than the minimum amount of relief necessary.

#### 6.8.2 - Tract Resource Map

Identification of existing natural and cultural resources and proposed conservation areas - To identify appropriate conservation lands and develop the Tract Resource Map, the applicant shall consider the objectives of this article (Section 6.2 - Purpose and Objectives), and any unique natural and cultural features of the property. At a minimum, the following resources must be included on the Tract Resource Map:

- a.) Existing farms and farmland
- b.) Land for recreational use including potential trail linkages to adjoining lands
- c.) Lands that adjoin other conservation lands and larger tracts of land which have the potential to create continuous networks of conservation
- d.) Environmentally sensitive lands
- e.) Unique or special wildlife habitats
- f.) Lands inappropriate for development such as steep slopes, wetlands, floodplain, etc.

- g.) Rural character of the surrounding area
- h.) Scenic rural roads and viewsheds
- i.) Existing trails
- j.) Stone walls
- k.) Historic structures (such as old barns) and old foundations
- l.) Forest areas
- m.) Proposed conservation areas

6.8.2.1 - No proposed lot lines, roads, utilities, or house sites should be delineated on this map.

#### 6.8.3 - Permitted Uses within Conservation Areas

Land designated for conservation shall be limited to the following uses:

- a.) Open Space
- b.) Agricultural, Forestry or Forest Operations with a management plan in accordance with UNH Best Management Practices for Forestry and Agriculture approved by the Town of Chester Conservation Commission and on file with the Town Clerk.
- c.) Passive Recreation (see 6.4.11)
- d.) Community or public use of historic structures identified in Section 6.8.2.
- e.) Water supplies and distribution systems.

#### 6.8.4 - Conservation Area Design

Design of conservation areas shall consider the following standards:

6.8.4.1 - Conservation areas should be free of all structures except historic buildings, stone walls, foundations, and resources listed in section 6.8.2.

6.8.4.2 - Water supplies and distribution systems, and storm water management systems may be placed within up to ten percent (10%) of the total conservation area.

6.8.4.3 - Preserved conservation areas shall incorporate as many of the resources listed in 6.8.2 as possible while being accessible to the largest practicable number of units within the development.

6.8.4.4 - Conservation areas shall remain in their natural state to the largest extent possible.

6.8.4.5 - At least seventy-five percent (75%) of designated conservation area should be contiguous with no portion less than one hundred (100) feet wide. Conservation areas shall be interconnected wherever possible to provide a continuous network of open lands within the development. In general, narrow conservation strips less than 300 feet wide shall be discouraged.

6.8.4.6 – Wherever possible, preexisting trails shall be preserved for public access and passage and use as defined in Article 6.4.11 – Passive Recreation. (5/9/2017)

#### 6.8.5 - Conservation Commission Advisory Review

During review of open space subdivision applications, the Town of Chester Planning Board shall request advisory review of proposed tract resource maps by the Town of Chester Conservation Commission. The commission shall review a proposed tract resource map, proposed ownership scenarios, and related materials for conformance with the Town of Chester Master Plan and the Wetlands Conservation District protections of this Ordinance. See Section 5.7.

#### 6.8.6 - Ownership Provisions for Conservation Areas (5/8/2012)

6.8.6.1 - Ownership of conservation areas may be held:

- a.) by private, equally shared fee ownership by the development's homeowner's association; or
- b.) by a qualified land trust; or
- c.) by public ownership through dedication to the Town of Chester, the Rockingham County Conservation District or other qualified conservation organization.

6.8.6.2 - The Planning Board has the right to determine whether a proposed land trust or conservation organization is qualified for ownership of the easement or fee ownership of the conservation area.

In accordance with Section 3.10.1 of the Chester Subdivision Regulations, the Planning Board may require the applicant to reimburse the Town for any reasonable cost it incurs in the process of making this determination. Such cost may include, but is not limited to, attorney's fees.

#### 6.8.7 - Conservation Areas in Private Ownership

Where conservation lands result from the application of open space subdivision zoning requirements, or are otherwise existing, and which are not deeded to the Town, they shall be described in a conservation easement deed executed by the owner and delivered to the Town of Chester, the Rockingham County Conservation District or other qualified conservation organizations. The Town of Chester shall not grant final approval for any development under this section until the recordable instrument is received and approved by the Town's Conservation Commission. However, this requirement of approval by the Chester Conservation Commission does not alter the fact that a conservation restriction required under this Article, which has been approved by the Planning Board as part of a subdivision or other approval, is deemed to create an enforceable conservation restriction as defined in N.H. R.S.A. 477:45, I,



regardless of whether an instrument describing such restriction has been executed or recorded.  
See N.H. R.S.A. 674:21-a. (5/8/2012)

6.8.7.1 - If the Town so requests, it shall be named, on all such conservation easements as either a co-holder of the easement or a third-party beneficiary with rights of enforcement. Further, the Town of Chester shall reserve the right to monitor all properties under easement via the Chester Conservation Commission to ensure that the terms of the easement are being complied with. The Town of Chester reserves the right to employ all legal means in order to assure compliance with the terms of the easement, including seeking injunctive relief to enforce the restriction and recovering costs and attorney's fees related to such enforcement effort.

6.8.7.2 - The shared fee ownership of the conservation areas shall not be severed by any means from any of the housing units or housing lots created by the open space subdivision.

6.8.7.3 - In the case of ownership by a homeowner's association or a condominium association, a provision shall be included in the declaration of covenants (or such other recordable document governing the ownership and use of the conservation area) for a homeowner's association, or in the declaration of condominium for a condominium development, for the long-term stewardship of the conservation areas. Such documents shall also include a provision stating that upon dissolution of the homeowners or condominium association, the ownership of the conservation area is automatically deeded to the Town of Chester Conservation Commission, its successor or assigns, or, alternatively, to the Rockingham County Conservation District or other qualified conservation organization as determined by the Chester Planning Board.

## **6.9 – Incentives**

Applicants under this article who provide the community with certain amenities as a result or part of new subdivisions may receive a density bonus beyond what is allowed in the underlying district. In no situation may the bonus increase the unit count beyond sixty-five percent (65%) of the site's allowed base figure. Final determination of incentives shall be made by the Planning Board in its review of the application and in accordance with the following:

6.9.1 – Deleted. (5/11/2021)

6.9.2 - Where the open space subdivision addresses the Town's workforce housing needs through the provision of workforce housing as defined in Section 6.14, up to a fifty percent (50%) unit count bonus may be awarded. When this incentive bonus is used, at least fifty percent (50%) of the units of the entire open space subdivision must be restricted as workforce housing. (Note: Any applicant requesting the workforce housing unit count bonus must comply with of Section 6.14 of this Article, and the availability of this incentive is limited by the fair share provisions of Sections 6.14.10 through 6.14.12.) (5/11/2021)

6.9.3 - Where 60% or more of the total parent lot is to be protected as conservation areas in perpetuity the development may be awarded up to a fifteen percent (15%) unit bonus.

6.9.4 – Deleted (5/9/2017)

6.9.5 - Protection of historically significant resources from development: Where a development protects historically significant buildings, resources, or landscapes the development may be awarded up to a five percent (5%) unit count bonus. Historical significance must be established under RSA 227-C:1 or relevant provisions of the Town of Chester's Master Plan. The Planning Board shall have final determination whether the resource is historically significant and may consult with the Conservation Commission in making this determination.

## **6.10 - Selection of Development Area**

### **6.10.1- Development Concept Map**

Upon establishment and Planning Board approval of proposed conservation areas and total unit count figures (including incentive bonuses), the applicant shall identify appropriate areas for development on the Development Concept Map. The development concept map should include at a minimum:

- a.) - Conservation areas indicating which areas are to remain undeveloped and trail locations.
- b.) - Boundaries of areas to be developed and proposed street, road, and lot layout (please see section 6.12.1 Dimensional Requirements, 6.12.2 Perimeter Setbacks and Buffers, and 6.12.3 Infrastructure).
- c.) - Number and type of housing units proposed.
- d.) - Number of bedrooms for each dwelling unit.
- e.) - Proposed methods for and location of water supply, storm-water management (e.g., best management practices), and sewage treatment.
- f.) - Inventory of preserved and disturbed natural features and prominent views.
- g.) - Preliminary development envelopes showing lawns, pavement, buildings, and grading.
- h.) - Deleted. (5/11/2021)
- i.) - Preliminary designation of any workforce housing units.
- j.) - Proposed methods for ownership and management of conservation areas.

### **6.10.2 - Preliminary Approval of Development Concept Map**

The Planning Board shall issue a report of findings on the development concept map to the applicant within 28 days based upon compliance with the principles listed below.

- a.) Avoid locating buildings in open fields. Preference will be to locate units at the edges of fields along more heavily vegetated areas.
- b.) Units shall be sited so as to use existing vegetation to buffer the view of new structures from pre-existing public places and roads.

- c.) Locate units in a manner that enables access by all unit owners/renters to conservation areas.
- d.) Minimize clearing of vegetation at the edge of existing roads, clearing only as much as necessary to create a driveway entrance with adequate sight distance.
- e.) Minimize the disturbance of natural features of the landscape.
- f.) Minimize the number of curb cuts on existing town, county, and state roads.
- g.) Use curves in the driveway and new roads to increase the screening of buildings.
- h.) Consider the potential impact of new homes on existing neighbors when new structures are located.
- i.) Avoid locating new homes near existing farms and farmlands.
- j.) Build new homes only on lands that are most suitable for development and associated wells and septic systems.

6.10.2.1 Preliminary approval of the development concept map shall not constitute subdivision approval, nor shall it be deemed acceptance of the open space subdivision plan for review.

**6.11 - Integration with Subdivision Regulations Procedures**

Once the Planning Board has issued its report on the Development Concept Map, the applicant may proceed to section 3.3.1 (Completed Application) of the Town’s Subdivision Regulations. However, after review of the Planning Board’s report, the applicant may choose to develop an updated development concept map for subsequent review by the board.

**6.12 - Additional Requirements**

6.12.1 - External Perimeter Setbacks and Buffers

All new units built adjacent to the perimeter of the boundary of the development or with frontage on or adjacent to an existing public road shall conform to all building setbacks as noted on Table 1 – Table of Dimensional and Area Requirements. Pre-existing structures in setbacks or buffers may be allowed to remain at the Board’s discretion. (5/11/2010)

6.12.1.1 - Setback

- a) All new construction of above-ground structures shall be subject to a seventy-five (75) foot setback from the perimeter boundary of the parent lot(s) of the Open Space Subdivision.
- b) All new construction of below-ground structures such as wells and water lines, septic systems and lines or other utilities shall be subject to a sixty-five (65) foot setback from the perimeter boundary of the parent lot(s) of the Open Space Subdivision. (5/14/2019)

6.12.1.2 – Buffer - The total periphery of the development area (the area containing units

and other structures) of the Open Space Subdivision, exclusive of cuts for roads and trails shall be buffered. The buffer shall meet the following requirements:

- a) The buffer shall be a minimum of 50' wide and shall be clearly marked on the plan.
- b) The buffer may be included in the perimeter setback area.
- c) The buffer shall be landscaped to diminish the effect of lighting and sound upon the abutters to the Open Space Subdivision.
- d) Minimum planting shall be three rows of at least fifty percent (50%) coniferous trees planted parallel to the lot line. The trees shall have a minimum height of six (6) feet and be planted 16 feet on center or closer, staggered to maximize screening effect. Pre-existing natural growth and topographical conditions will be taken into account by the Planning Board in its assessment and application of such minimum plantings requirement to an Open Space Subdivision, and may reduce the amount and type of plantings required. Proposed plantings and landscaping of the buffer shall receive Board approval.
- e) The developer shall leave the existing natural vegetation in the buffer intact unless, at the Board's discretion, the developer is required to augment the buffer with additional plantings.
- f) Each unit that abuts the buffer shall contain a deed notification requiring the owner to preserve the buffer.
- g) Unit owners who clear or otherwise destroy the vegetative buffer shall be liable for restoration of the buffer per specifications listed in 6.12.1.2 (d). These unit owners may also, at the Board's discretion, be liable to reimburse the Town for any legal costs incurred in the enforcement of this ordinance.

#### 6.12.2 - Internal Dimensional and Design Requirements

In addition to the primary objective of maintaining the Town of Chester's rural character (section 6.2), this Article is designed to provide flexibility in the layout and siting of individual internal structures, roads, utilities, and lots. Therefore, dimensional requirements are significantly lower than those of the underlying R1 district.

6.12.2.1 - Open Space Developments may consist of either individual lots with private ownership or a single lot held in common.

6.12.2.2 - All lots or locations of dwelling units shall be required to have contiguous buildable areas or construction envelopes comprised of at least one third (0.33) of an acre of unconstrained land as defined in Subsection 6.4.14 of this Article. In addition, such buildable areas or construction envelopes shall also not include land located within any setbacks, such as wetland or lot line setbacks. *(5/10/2016)*

Furthermore, these buildable areas shall meet the minimum standard of being able to demonstrate the fitting of a rectangle, with an area of not less than 0.30 acres, comprised of

solely unconstrained land, with a width over length ratio of not less than 0.60 (examples: 90'/150' = 0.60, 100'/140' = 0.714, 110'/130' = 0.84). (5/10/2016)

The alternative to meeting the requirement of buildable-area rectangles for all lots shall be to submit fully engineered septic designs for the lots in question. A fully engineered septic design would include the finish grading of the lot, complete septic system, driveway and well, dwelling unit location (including garage, deck, shed etc.). Such lots shall be noted on the Open Space plans, and the developer shall construct these lots to the fully engineered plans as submitted. (5/10/2016)

6.12.2.3 - No interior lot lines may extend into the conservation area or the buffer of the parent lot(s).

6.12.2.4 - In all circumstances all occupied buildings must have fire sprinkler systems regardless of minimum distances between structures.

6.12.2.5 - Side Setback: 40' separation for principal buildings, no side yard less than 15'

6.12.2.6 - Front Setback: 25'

6.12.2.7 - Maximum Building Height: 2.5 stories or 33'

6.12.2.8 - Other than side and front setbacks and maximum building height, all dimensional requirements will be project specific and are subject to the approval of the Planning Board.

#### 6.12.3 - Perimeter Setbacks and Buffers

All units built adjacent to the perimeter of the boundary of the development or with frontage on or adjacent to an existing public road shall conform to all building setbacks as required in the underlying zoning district (see Table 1 – Table of Dimensional and Area Requirements). Pre-existing structures in setbacks or buffers will be allowed to remain.

#### 6.12.4 - Infrastructure

##### 6.12.4.1 - Water

All open space subdivision lots of one (1.0) acre or less shall be served by a community water supply system, and shall conform to the applicable requirements of the NHDES and the Town of Chester. (5/10/2016)

6.12.4.2 - Sanitary Protection Requirements - All open space subdivisions shall have adequate on-site facilities and conform to the applicable requirements of the NHDES and section 4.3 of the Town of Chester's Zoning Ordinance.

6.12.4.2.1 - No waste disposal system shall be located in the conservation area.

6.12.4.2.2 - In applying the requirements of Section 4.3.2, the phrase "Planning Board" shall be substituted for the phrase "Building Inspector."

6.12.4.3 – Utilities - All new electric distribution lines (excluding main line feeders and high voltage transmission lines), telephone service lines, and services constructed within the

confines of and providing service to customers in a newly platted residential area shall be buried underground; unless the Planning Board specifically shall find that:

- a.) The placing of utilities underground would not be compatible with the development planned.
- b.) Topographical, soil or any other conditions make the underground installation unreasonable or impractical.

6.12.4.4 – Roads - In order to preserve the character of the land and meet the objectives of this article, the Planning Board may allow modifications to the Town of Chester’s street design guidelines within the subdivision regulations. For example, the Board may consider waiver requests for narrower road widths or tighter turn radii for the road design to better suit the individual design constraints of special parent lots. The Board shall have final determination authority over whether the requests are appropriate and upon advice of the board’s professional engineer, may approve or deny such requests.

6.12.4.5 - Drainage Systems - Open Space Subdivisions shall be required to have closed drainage systems in cases where the lot frontages are less than one hundred and fifty (150) feet along the roads, or less than one hundred and twenty (120) feet on a cul-de-sac. (5/10/2016)

Closed drainage systems shall be constructed pursuant to the standards specified in Subsection 4.7.6 of the Subdivision Regulations. (5/10/2016)

6.12.5 - Condominium or Association Documents

Each Open Space Subdivision development shall be made subject to restrictive covenants or other obligations enforceable by the Town and owners within the development, in a form acceptable to the Planning Board, to secure the open space requirements of Subsections 6.8.6 and 6.8.7 of this article, and to create legal obligations on the part of all owners in the development to share the cost of maintenance, repair and replacement of sewage disposal, water supply, road, drainage, and other such systems in the open space development as applicable.

**6.13 – Deleted** (5/11/2021)

**6.14 - Workforce Housing Requirements**

6.14.1 - Applicability of Workforce Housing Requirements

All applicants requesting the fifty percent (50%) Workforce Housing unit count bonus (see Section 6.9, Incentives) shall comply with the requirements of this section.

6.14.2 – Purpose

The purpose of this section is to create economic incentives for the development of workforce housing units; to promote households within environmentally sound developments; and to enable the Town to better accommodate a fair share of the State’s workforce housing needs by providing “reasonable and realistic opportunities for the development of workforce housing” as required by NH RSAs 674:58 and 674:59.

### 6.14.3 – Definitions

For this article

6.14.3.1 - “workforce housing” is defined as housing which is intended for sale and which is affordable to a household with an income of no more than one hundred percent (100%) of the “Median Area Income (MAI)” for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development for Chester’s HUD defined “Primary Metropolitan Statistical Area (PMSA)”. “Workforce housing” also means rental housing, which is affordable to a household with an income of no more than sixty percent (60%) of the MAI for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than twenty percent (20%) of the units, or in which more than fifty percent (50%) of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

*(The 2019 HUD one hundred (100) percent MAI limit for homeowners in our PMSA, Lawrence, MA-NH, is \$102,100.00 for a family of four. The estimated maximum affordable purchase price limit is \$335,000.00 for a family of four.)*

*(The 2019 HUD sixty (60) percent MAI limit for renters in our PMSA, Lawrence, MA-NH, \$55,130.00 for a family of three. The estimated maximum affordable monthly rent limit is \$1,380.00 for a family of three.)*

### 6.14.4 – Location and Construction Timetable of Workforce Units

6.14.4.1 - Workforce units shall have the same basis quality of construction and appearance of the other structures throughout the development.

6.14.4.2 - During construction of a project approved under the Open Space Subdivision Ordinance, the developer must maintain at least the proportionate share of workforce units proposed as a percentage of total units during the build-out period.

### 6.14.5 - Non-Expandable Construction

6.14.5.1 - Units constructed under an incentive for workforce housing must be finished in their entirety and may not be expanded in a manner which will exceed the income/resale cap set by the New Hampshire Housing Finance Authority.

6.14.5.2 - A unit shall not contain any unfinished area, which if finished would cause that unit to exceed the income/resale cap set by the New Hampshire Housing Finance Authority.

6.14.5.3 - Any site improvements, including accessory buildings, structures, landscaping, pools and the like, on a lot containing workforce housing or in association with a workforce housing unit shall be limited to those improvements which do not exceed the income/resale cap set by the New Hampshire Housing Finance Authority.

#### 6.14.6 – Workforce (Affordable) Unit

6.14.6.1 - Housing with a combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed thirty percent (30%) of a household's gross annual income.

6.14.6.2 - A rented dwelling unit having an annual gross rent which does not exceed thirty percent (30%) of the sixty percent (60%) MAI households. Gross rent means the cost of contract rent, plus the additional cost, if any, for heat, hot water, cooking and domestic electricity necessary for occupancy of a given rental unit. Contract rent means the monthly payment made by a tenant to a landlord for the right to occupy a rental housing unit under the terms and conditions of a lease.

6.14.6.3 - An owner-occupied dwelling unit with a cost of mortgage principal, interest, property taxes, association fees and homeowner's insurance which does not exceed thirty percent (30%) of 100% MAI households.

The calculation of mortgage principal and interest shall be based upon the payment required on a thirty (30) year fixed rate mortgage, assuming a ten percent (10%) down payment and prevailing mortgage interest rates within the area. Other financing terms and conditions may be applied to workforce housing units as provided under various homeownership programs, such as those of the Farmers Home Administration, the U.S. Department of Housing and Urban Development, and the New Hampshire Housing Finance Authority for which eighty percent (80%) MAI households may be eligible where there are firm commitments for such units available to the project, or available to subsequent buyers of resold units.

#### 6.14.7 - Option to Purchase

Upon completion, and upon resale or vacancy of workforce units which take place during the period these provisions are applicable to the project, the owner shall provide an exclusive option to purchase or lease any or all workforce units to the New Hampshire Housing Finance Authority or to another workforce housing program available within the community as approved by the Town of Chester, Planning Board.

#### 6.14.8 - Resale Restrictions on Owner-Occupied Workforce Housing Unit

6.14.8.1 - Initial occupancy and resale of owner-occupied workforce units is limited to one hundred percent (100%) MAI households. One hundred percent (100%) MAI is expressed as a percent of median area income, as updated to the year in which the sale takes place.

6.14.8.2 - The resale price may not exceed the original price multiplied by a factor of one (1) plus the percentage increase in median area income from the year of initial occupancy to the year in which the unit is resold, plus the cost of property improvements, other than normal maintenance, made by the owner.

6.14.8.3 - These restrictions and those in 6.14.6 shall be recorded in deed restrictions on all properties approved as workforce units under this Ordinance, and the restrictions shall be binding upon subsequent owners of the property for a period of thirty (30) years from the date of initial occupancy.



#### 6.14.9 - Occupancy Restrictions in Workforce Rental Units

6.14.9.1 - Workforce units which are rented shall be occupied by sixty percent (60%) MAI tenants as defined in Section 6.14.6.

6.14.9.2 - Vacancies which occur in workforce units which are rented shall be subsequently rented to another household within the same income range expressed as a percentage of median area income updated to the year in which the subsequent tenant assumes occupancy, unless no such tenant is found after a sixty (60) day good faith effort.

6.14.9.3 - Total gross rent to be charged to subsequent tenants shall not exceed the gross rent at initial occupancy times a factor equal to one (1) plus the percentage increase in the median area income, updated to the year in which the subsequent tenant household occupies the unit.

6.14.9.4 - Current Section 8 Utility Allowance Schedules prepared by the New Hampshire Housing Finance Authority may be used to make appropriate adjustments between gross rent and contract rent.

6.14.9.5 - These restrictions and those of Subsection 6.14.6 shall be binding upon the owner of the property and all subsequent owners of the property, as set forth in deed restrictions binding upon the owner and subsequent owners of the property for a period of fifteen (15) years from the date of initial occupancy.

#### 6.14.10 - Compliance

##### 6.14.10.1 - Burden of Proof

(a) It is incumbent upon the property owner/developer to show evidence that the open space subdivision qualifies under this section for Workforce Housing.

(b) Written Statement of Intent – See R.S.A. 674:60, I.

6.14.10.2 - Verification of Income - The developer shall provide for the proper qualification of occupants of workforce housing units by verification of income by an appropriate agency which may be a local public housing authority, a local non-profit housing organization, a workforce housing committee created by the Town of Chester, or by the New Hampshire Housing Finance Authority.

6.14.10.3 - Certificate of Occupancy - No certificate of occupancy shall be issued to a workforce unit from the Town of Chester without:

a) Written confirmation of the income eligibility of the tenant or buyer of the workforce unit; and

b) Confirmation of the rent or price of the workforce units as documented by an executed lease or Purchase and Sale Agreement.

6.14.10.4 – Monitoring - Ongoing responsibility for monitoring the compliance with resale and rental restrictions on workforce units shall be the responsibility of the Board of Selectmen of the Town of Chester or their designee.

6.14.10.5 - Annual Reports - The owner of a project containing workforce units for rent shall prepare an annual report certifying that the gross rents of workforce units and the household incomes of tenants of workforce units have been maintained in accordance with Subsection 6.14.9.2. Such reports shall be submitted to the Board of Selectmen of the Town of Chester or their designate and shall list the contract rent and occupant household incomes of all workforce units for the calendar year, and the dates of initial occupancy of each household. Failure to file a complete report with sworn certification by the owner shall be considered a violation of the Zoning Ordinance.

6.14.10.6 - Hearing and Review Process - The Planning Board and applicant will follow the review process set forth in R.S.A. 674:60, II and III.

6.14.11 - Calculation of Fair Share Workforce Housing

The calculation of fair share, workforce housing requirements shall be provided to the Board of Selectmen by the Planning Board or designee appointed by the Planning Board after public hearing and shall be calculated in accordance with the Master Plan and other appropriate state and federal guidelines.

6.14.12 - Termination of Incentive System

For workforce housing, the Incentive shall remain in effect until the fair share amount of workforce housing units has been approved by the Planning Board.

6.14.13 - Reinstatement of the Incentive System

The fair share accommodation of eighty percent (80%) MAI individuals shall be calculated every ten (10) years according to most current census data available. A previous unmet fair share unit accommodation balance, if any, should not be carried over to the subsequent decade. The fair share housing calculation, once determined, shall be filed with the Town Clerk. The Workforce Housing Incentive shall be reinstated provided a fair share housing need is calculated.

## **Article 7 – Age-Friendly Subdivision**

### **7.1 – Authority**

This Article is adopted pursuant to the provisions of NH RSAs 674:16 and 674:21, Innovative Land Use Controls, and is adopted to effectuate the Master Plan for the Town of Chester. The effective date of adoption of this Article is May 14, 2019.

The Chester Planning Board shall administer the application, review, and approval process for the age-friendly zoning allowance through the subdivision and site plan review process. The authority for implementing this article is delegated to the Planning Board under NH RSAs 674:16 and 674:21.

### **7.2 - Purpose and Objectives**

Throughout 2017 and 2018, in cooperation with the Tufts Foundation and AARP, Chester participated in the state-wide, Age-Friendly Community Initiative. This community assessment included multiple outreach events for Town citizens to discover and discuss potential opportunities to make Chester a more inclusive community for people of all ages. This ordinance is intended to address the primary concern expressed by our citizens during the Initiative.

Our Town is a growing community. Most of the housing units being built, however, are generally too large and expensive for, among others, seniors who desire to downsize and stay in Town. Age-Friendly subdivisions also provide for young adults who wish to live in Chester.

Historically Chester’s zoning regulations required two (2) acre lots for single-family homes, and twenty-five (25) acre tracts or larger for open space developments. Builders argue that they must construct large, expensive housing units to meet their profitability requirements.

The objective of this ordinance is to provide an alternative to encourage builders to build the housing types that meet the needs of Chester’s citizens. These age-friendly neighborhoods are envisioned to consist of smaller, affordable, low-maintenance homes for all people regardless of age, ability, or disability.

Lots twelve acres or greater in size may be developed under this article, however, to prevent fundamentally altering the rural character of Chester and to ensure that age-friendly subdivisions blend with existing development, the number of units per subdivision will be limited and shall require the approval of a conditional use permit application by the Planning Board.

7.2.1 - Additional Purposes - In addition to this general purpose and objectives, age-friendly subdivisions shall also promote the objectives listed in Article 6.2.1.

### **7.3 - Procedure and Administration of Conditional Use Permits**

#### **7.3.1 - Application**

(a) Application Form: An application for a conditional use shall be initiated by filing an application with the Planning Board. The Planning Board is authorized to produce an application form for Conditional Use Permit Applications, which may provide for additional submission requirements as the Planning Board deems necessary.

(b) Subdivision Plan Review: The conditional use permit application hearing may occur simultaneously with a hearing on a subdivision application for the same project.

### 7.3.2 - Summary of Process

(a) The Planning Board may retain, at the applicant's expense, a certified planner, registered professional engineer, certified wetlands scientist, hydrologist, and any other applicable professional to represent the Planning Board and assist the Planning Board in determining compliance by the applicant with this Ordinance and other applicable regulations.

(c) The Planning Board may refer the conditional use permit application to the Conservation Commission, prior to the public hearing on the application, for review and comment if the proposed project contains or abuts wetlands or conservation property. In acting on the application, the Board shall consider any written comments or reports received from the Conservation Commission.

(d) After holding a duly noticed public hearing on the application, at which the Planning Board first determines that the application is complete, and accepts public comment on the proposed project, the Board shall consider the criteria set forth in Article 7. The Planning Board shall then vote to approve the application as presented, approve it with conditions, or deny it.

(e) Any decision of the Planning Board granting a conditional use permit shall be in writing, and shall be noted on the final plat to be recorded.

(f) Any decision denying a conditional use permit shall be in writing, stating the reasons for the denial.

### 7.3.3 - Application Requirements

#### 7.3.3.1 - Required Documents:

(a) Completed Conditional Use Permit Application Form.

(b) Application requirements set forth in Article 6.6.2.

(c) List of Abutters with Mailing Addresses.

(d) Appropriate Application Fees (see Conditional Use Permit Application Form).

### 7.3.4 - Hearing Procedure

(a) Burden of Proof - The applicant for a conditional use permit bears the burden of persuasion, through the introduction of sufficient evidence through testimony or otherwise, that the development will comply with the terms of this Ordinance and will satisfy the specific requirements for the use which are contained in this Article.

### 7.3.5 - Required Criteria

The applicant for a conditional use permit must prove, through the application form, written submissions and testimony and evidence at the hearing, that all the following conditions exist:

- (a) The proposed subdivision will not unreasonably detract from the rural character of the surrounding area;
- (b) The proposed subdivision will not negatively impact the value of property in the surrounding area;
- (c) No other age-friendly subdivisions exist or have been approved for development within one (1) mile of the perimeter of the parent lot of the proposed subdivision.
- (d) The subdivision will comply with all other requirements and conditions set forth in this Article 7 and applicable requirements and conditions set forth in Article 6 and the Town's Subdivision Regulations.

#### 7.3.6 - Review Factors

In reviewing an application of a conditional use permit, the Planning Board shall consider the following information in its deliberations, as may be applicable to the case:

- (a) Application, plans, other required information and documents and any other submissions by Applicant.
- (b) Reports analyses and comments by Town Departments, Boards, Officers, Counsel or Consultants;
- (c) The findings, goals and objectives of the most recent edition of the Town of Chester's Master Plan;
- (d) The relationship of the development to the timing, location and cost of public improvements scheduled in the Chester Capital Improvements Program;
- (e) The findings, goals and objectives of the Chester Zoning Ordinance; and
- (f) Testimony and evidence introduced at the public hearing on the application.

#### 7.3.7 - Required Findings

In order to approve the application, the Planning Board must find, based on the application, information and testimony submitted by the application that, when completed as proposed by the applicant, the subdivision will comply with all requirements of this Article, including the criteria set forth above in Article 7.7.5, and with any applicable conditions, requirements, regulations, or standards established in this Zoning Ordinance for subdivisions or in the Town's Subdivision Regulations.

#### 7.3.8 - Conditions of Approval

- (a) All conditions of approval shall be stated in writing in the Planning Board's decision.
- (b) Representations made at a public hearing or in material submitted to the Planning Board by an applicant to obtain a conditional use permit shall be deemed conditions of the issuance of the permit.

(c) Additional Conditions: The Planning Board may attach other reasonable conditions to its approval where such conditions are shown to be necessary to further the objectives of this Ordinance or the Master Plan, or which would otherwise allow the general conditions and requirements of this Article 7 to be satisfied.

(d) The Planning Board shall require that such conditions be annotated on a subdivision plan.

#### **7.4 - Applicability**

All current and future subdivisions of lots in the Residential / Agricultural (R1) District and meeting the provisions stated below are eligible to be developed subject to either the requirements of this article or the Town's conventional subdivision regulations and in accordance with Table 1 - Table of Dimensional and Area Requirements and Table 2 – Table of Setbacks and No Clearing Buffer Zones.

#### **7.5 - Definitions**

The following definitions shall apply to this article:

7.5.1 – Gross Living Area (GLA) – For the purposes of this article, GLA shall be defined as enclosed, finished areas that are suitable for year-round habitation or use, including, but not limited to: bedrooms, living rooms, kitchens, home offices, bonus rooms, bathrooms, closets, hallways, stairways, bay windows, four-season porches, finished basements, finished lofts or attics. To ensure conformity with the intent of the ordinance, the Planning Board shall have the final determination whether areas not listed here qualify as GLA.

Under this article, GLA shall be calculated by measuring the exterior building dimensions per floor. Finished areas that are below-grade shall be included in the calculation of the GLA.

7.5.2 – Non-Gross Living Area (NGLA) – For the purposes of this article, NGLA shall include, but not be limited to: garages, three-season porches, decks, patios, unfinished basements and utility spaces. To ensure conformity with the intent of the ordinance, the Planning Board shall have the final determination whether areas not listed here qualify as NGLA.

7.5.3 - Universal Design – Universal design is the design and construction of a dwelling unit and its immediate surroundings so that the dwelling unit may be accessed, and used to the greatest extent possible, by all people regardless of age, size, ability, or disability (see subsection 7.13.6.2).

All other definitions listed in Article 2 and Article 6 of the Town of Chester's zoning ordinance shall also apply.

#### **7.6 - Permitted Uses**

Except for areas designated for conservation, the following uses or housing types shall be permitted in any age-friendly neighborhood:

7.6.1 - Single-family detached dwelling units (single-family dwelling).

7.6.2 - Duplex units.

7.6.3 - Home Occupations as defined by 4.9.1.

## **7.7 - Non-Permitted Uses**

7.7.1 – Accessory dwelling units are prohibited.

7.7.2 – Accessory structures such as detached garages or sheds are prohibited.

7.7.3 - Any use not specifically listed above is prohibited, even if allowed in the underlying zone.

## **7.8 – Subdivision Application Procedure**

Applications for age-friendly neighborhood subdivisions shall follow the procedures set forth in the relevant sections of the Town of Chester Subdivision Regulations. Where there are differences between the requirements of Articles 6.6.1 thru 6.6.4 and the Subdivision Regulations, the requirements for Article Articles 6.6.1 thru 6.6.4 shall prevail. The applicant shall conform with any additional requirements set forth in the Subdivision Regulations for the Town of Chester unless specifically addressed by Articles 6.6.1 thru 6.6.4. (Note: these regulations formalize the Design Review Phase from Section 3.2.2 of the Town’s Subdivision Regulations.)

## **7.9 - Determination of Number of Units & Bedrooms Permitted**

The first step in the open space subdivision approval process is the determination of unit density. This figure is determined by calculating the allowed number of units and bedrooms based on the parent lot’s size and development constraints, and the proposed dwelling unit types.

7.9.1 - Unit Density Formula - The maximum number of residential dwelling units allowed is calculated by a formula based upon the acreage of unconstrained land on the parent lot. To qualify as a parent lot, the lot must be at least twelve (12) acres in size (See Table 1).

7.9.1.1 - Unconstrained Acreage –The calculation method in Article 6.7.1.1 shall apply.

7.9.1.2 - Base Number of Allowable Residential Dwelling Units - The calculation method in Article 6.7.1.2 shall apply. The required number of acres for this Article are one-point-seven-five (1.75) acres for each single-family unit and one-point-two-five (1.25) acres for each duplex unit (two-point-five (2.5) acres per duplex).

Round down fractional units of zero-point-five (0.5) or less, or round up fractional units greater than zero-point-five (0.5). The resulting number is the “base density” permitted on the site.

7.9.1.3 – Total Maximum Number of Residential Dwelling Units – The total maximum

number of residential dwelling units allowed per age-friendly subdivision shall be ten (10) units.

7.9.1.4 - Final Determination of Density - The Planning Board shall have the final determination whether the number of units proposed by the applicant is accurate. During its review of conceptual plans, the Planning Board may adjust the number of units proposed by the applicant to ensure conformity with the intent of the ordinance. The number of dwelling units permitted in the age-friendly subdivision shall be stated on the final plat.

#### 7.9.2 - Bedrooms Permitted

7.9.2.1 - Single-Family Unit – A maximum of two (2) bedrooms per single-family unit.

7.9.2.2 - Duplex Unit – A maximum of two (2) bedrooms per duplex unit (four (4) bedrooms total per duplex).

### 7.10 - Identification and Selection of Conservation Areas

Article 6.8 shall apply to Identification, Selection and Calculation Methods, Waiver for Reduction of Unconstrained Acreage, Tract Resource Map, Permitted Uses within Conservation Areas (excluding Section 6.8.3.d), Conservation Area Design, Conservation Commission Advisory Review, Ownership Provisions for Conservation Areas, and Conservation Areas in Private Ownership.

### 7.11 - Selection of Development Area

Article 6.10, except for Articles 6.10.1.h and 6.10.1.i, shall apply.

### 7.12 - Integration with Subdivision Regulations Procedures

Article 6.11 shall apply.

### 7.13 - Additional Requirements

7.13.1 - External Perimeter Setbacks and Buffers - See Article 6.12.1 shall apply.

7.13.1.1 – Setback - Article 6.12.1.1 shall apply.

7.13.1.2 – Buffer - Article 6.12.1.2 shall apply.

7.13.2 - Internal Dimensional and Design Requirements - Article 6.12.2 shall apply.

7.13.3 - Infrastructure

7.13.3.1 - Water - Article 6.12.4.1 shall apply.

7.13.3.2 - Sanitary Protection Requirements - Article 6.12.4.2.

7.13.3.3 – Utilities – Utilities as defined in Article 6.12.4.3, may be, but are not required to be, installed underground.



7.13.3.4 – Roads – Roads under this article may be designated as private roads. To meet the lot compatibility and affordability objectives of this article, the Planning Board may approve modifications to the Town of Chester’s street design guidelines set forth in the subdivision regulations. For example, the Board may consider waiver requests for narrower road widths or tighter turn radii for the road design to better suit the individual design constraints of special parent lots.

7.13.3.5 - Drainage Systems – Age-Friendly Subdivisions shall be required to have closed drainage systems in cases where the lot frontages are less than one hundred and fifty (150) feet along the roads, or less than one hundred and twenty (120) feet on a cul-de-sac.

Closed drainage systems shall be constructed pursuant to the standards specified in Subsection 4.7.6 of the Subdivision Regulations.

7.13.4 – Dwelling Unit Size Limitations – The maximum square footages of this subdivision article are intended to be conservative to promote and maintain the affordability of these dwelling units.

7.13.4.1 – Single-family units shall not exceed a maximum of twelve hundred (1,200) square feet of GLA.

7.13.4.2 – Duplex units shall not exceed a maximum of twelve hundred (1,200) square feet of GLA per duplex unit (total of twenty-four hundred (2,400) square feet of GLA per duplex).

7.13.4.3 – Garages shall be attached and shall not exceed a maximum of five hundred and seventy-six (576) square feet in area. Dwelling units may be constructed with one-car, two-car, or no garages.

7.13.4.4 – To maintain the affordability objectives of this subdivision article, the GLA of the dwelling units shall not be expanded by additions, or conversions of attics, basements, or garages into GLA in excess of the maximum permitted GLA.

7.13.5 – Notice of Prohibition of Expansion of Gross Living Area and Other Prohibitions - Prior to a Certificate of Occupancy being issued, the owner shall record an approved Notice of Prohibitions and Restrictions at the Rockingham County Registry of Deeds. The notice shall record all prohibitions and restrictions associated with the property, such as, but not limited to: size restrictions on unit GLA and garages, prohibition against accessory dwelling units, prohibition against sheds or other detached structures. All expenses for the recording of this notice at the Registry shall be borne by the owner.

7.13.6 – Dwelling Unit Design Requirements – The dwelling unit design requirements of this subdivision article are intended to promote the age-friendly habitability and accessibility of these dwelling units.

7.13.6.1 – One-story living – All dwelling units shall incorporate the Master Bedroom and bath, kitchen, dining and living room areas on the accessible, ground floor entry level.

7.13.6.2 – All dwelling units shall incorporate “universal design” components and/or adhere to the current “Standard on Accessible and Usable Buildings and Facilities” otherwise known as “ICC/ANSI A117.1” published by the International Code Council and American National Standards Institute, Inc.

No-step entry - No use of steps or stairs shall be required to enter a universal home or the home's main rooms.

Wide doorways – The doorways shall be 34-36 inches wide for wheelchair passage.

Wide hallways – The hallways shall be 36-42 inches wide for wheelchair passage.

Thresholds shall be flush with the floor – To make it easy for wheelchairs to get through doorways and prevent walking people from tripping.

Some additional examples of universal design components are:

Floors and bathtubs with non-slip surfaces – To help everyone stay on their feet.

Good lighting – To help people with poor vision.

Lever door handles and rocker light switches - For people with poor hand strength.

#### **7.14 - Suggested Subdivision Components**

7.14.1 – Shared Facilities – These components are intended to reduce the financial burden of home ownership, and to reduce space requirements on the parent lot.

7.14.1.1 – Age-Friendly Subdivisions may include, subject to Planning Board approval, shared infrastructure which may include:

- i. Shared driveways.
- ii. Shared water systems.
- iii. Shared septic systems.
- iv. Rain gardens or other drainage systems.
- v. Community solar systems.

7.14.1.2 – Age-Friendly Subdivisions may include, subject to Planning Board approval, shared recreational amenities such as:

- i. Outdoor gathering places for recreation and social engagement.
- ii. Onsite trail network to allow for walking and exercise.
- iii. Community garden area.

7.14.2 – Management - The intent of this component is to reduce the physical burden of home ownership.

7.14.2.1 – Age-Friendly Subdivisions may consist of condominiums, consisting of single-family and/or duplex dwelling units with shared ownership of the outdoor and open space areas. Yard and driveway maintenance may be funded through condominium association fees.

Or:

7.14.2.2 – Age-Friendly Subdivisions may consist of fee simple absolute ownership of single-family and/or duplex dwelling units and shared ownership of the open space areas. Yard and driveway maintenance may be funded through homeowner association fees.

### 7.14.3 – Practices

7.14.3.1 – Infrastructure systems shall follow Best Management practices where practicable.

7.14.3.2 – Efforts should be made to maximize the energy efficiency of these age-friendly dwelling units, including the architectural design elements, the siting and orientation of structures, and the choices of HVAC systems and construction materials.

7.14.3.3 – Recreational and infrastructure amenities should be shared to help to achieve the size and affordability goals of this Article, and to increase the attractiveness of the neighborhood in general.

### **7.15 - Condominium or Association Documents**

Every age-friendly subdivision development shall be subject to covenants, restrictions or other obligations enforceable by a homeowners' association and/or individual unit owners in a form acceptable to the Planning Board, to insure compliance with the subdivision's approval and the requirements of this Article, including the open space requirements of Articles 6.8.6 and 6.8.7, and to create legal obligations on the part of all owners in the development to share the costs of maintenance, repair and replacement of the subdivision's infrastructure, including, but not limited to, sewage disposal, water supply, roads, drainage, and other such systems as applicable. The covenants, restrictions and other obligations shall, at the sole discretion of the Town of Chester, be enforceable by the Town. The Town shall, in addition to any other available legal or equitable relief, be entitled to recover all costs and expenses, including attorney fees and court costs, incurred in the enforcement of any such covenants, restrictions, or other obligations.

## **Article 8 – Phasing**

### **8.1 - Phasing, In General**

#### 8.1.1 - General Requirement

Every applicant shall demonstrate that a proposed development will not adversely affect public health, safety or welfare due to a sudden demand on service(s) which cannot be provided for by a reasonable expenditure of public funds. In the event that the Planning Board determines after review of all the facts that such a sudden demand will exist, then the proposed development shall be phased over such a period of time to allow the Town to manage and meet the demands created for such services.

Piecemeal development of a Lot of Record to avoid phasing is prohibited. Any Subdivision Application submitted on a portion of a Lot of Record which has been approved or conditionally approved within the previous twelve (12) months will be considered part of the original Application for purposes of evaluating the demand on services and phasing on the new Application may be imposed as if it were part of the original Application.

#### 8.1.2 – Services

Such services shall include, but not be limited to, police and fire protection, schools, water supply, drainage, transportation, highway maintenance, or other public services.

### **8.2 - Phasing of Developments Pursuant to Article 6**

#### 8.2.1 - Minimum Phasing Requirement

Pursuant to RSA 674:21 I (b), (e), (f), any development under Article 6 shall be phased over a period of at least two years.

#### 8.2.2 - General Requirement

Every applicant shall demonstrate that a proposed development under Article 6 will not adversely affect public health, safety or welfare, due to a sudden demand on service(s) which cannot be provided for by a reasonable expenditure of public funds. In the event that the Administrator determines after a review of all the facts that such a sudden demand will exist, then the proposed development shall be phased over such a period of time which may be in excess of that specified in Subsection 8.2.1, to allow the Town to manage and meet the demands created for such services.

Piecemeal development of a Lot of Record to avoid phasing is prohibited. Any Subdivision Application submitted on a portion of a Lot of Record which has been approved or conditionally approved within the previous twelve (12) months will be considered part of the original Application for purposes of evaluating the demand on services and phasing on the new Application may be imposed as if it were part of the original Application.

#### 8.2.3 – Services

Such services shall include, but not be limited to, police and fire protection, schools, water supply, drainage, transportation, highway maintenance, or other public services.

### **8.3 - Waiver Provisions**

#### 8.3.1 - Additional Incentives

If necessary to provide a realistic opportunity for development of low/moderate income housing in the Town of Chester pursuant to Article 6 and Article 7, the Administrator, after public hearing, may modify or waive the phasing requirement in Subsection 8.2.1.

## **Article 9 – Accessory Dwelling Units**

*(5/8/2018)*

### **9.1 – Purpose**

To offer a diversity and range of affordable housing, in recognition of the growing necessity for, and societal benefits of:

households where adults wish to give care and support to their parents in a semi-independent living arrangement,

elderly and disabled citizens in need of independent living space for caregivers,

recent college graduates saddled with significant student loan debt,

persons or families of low and moderate income,

where these regulations shall provide additional housing opportunities, without the requisite for further land development, additional buildings, and increased roads and infrastructure in the Town of Chester.

### **9.2 - Approval Process**

The addition of a single dwelling unit within or attached to a detached single-family dwelling existing at the time of application shall be permitted by special exception issued by the Zoning Board of Adjustment in any residential district, if the requirements of Article 9.4 and Article 11.4 of the Chester Zoning Ordinance are satisfied.

### **9.3 - Definitions**

#### **9.3.1 - Accessory Dwelling Unit**

A residential dwelling unit that is within or attached to a detached single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same lot the principal single-family dwelling unit is located.

### **9.4 – Requirements**

Accessory dwelling units shall comply with the following requirements:

#### **9.4.1 - Setbacks and Dimensional Area Requirements**

Attached accessory dwelling units shall comply with all setbacks and dimensional area requirements of Articles 4 and 5, and Tables 1 and 2, of the Chester Zoning Ordinance.

#### **9.4.2 - Interior Door**

An interior connecting door shall be provided between the principal dwelling unit and the accessory dwelling unit.

#### **9.4.3 – Parking**

The applicant(s) shall provide adequate onsite parking for residents of both the existing single-family dwelling and the accessory dwelling unit. *(5/8/2018)*

#### 9.4.4 - Sewage Disposal

The applicant(s) shall obtain a NH DES approved plan pursuant to the requirements of NH RSA 485-A:38, to meet the anticipated increased demand created by the proposed accessory dwelling unit. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current rules or predecessor rules, or the existing system fails or otherwise needs to be repaired or replaced. (5/8/2018)

#### 9.4.5 – Residency

One of the two dwelling units shall be occupied by the owner(s) of the property as their principal place of residence, except for bona-fide temporary absences, and the owner(s) shall provide such proof of residency annually to the Tax Assessor's Office. When a property is owned by an entity, not a natural person, or held in trust, an officer or member of the entity or beneficiary of the trust shall occupy one of the dwelling units. (5/8/2018)

#### 9.4.6 - Minimum Area of the Accessory Dwelling Unit

The total gross square footage of the accessory dwelling unit shall be at least six hundred (600) square feet, whether within or attached to, or a combination thereof, the primary dwelling.

#### 9.4.7 - Maximum Area of the Accessory Dwelling Unit

The total gross square footage of the accessory dwelling unit shall not exceed one thousand (1,000) square feet, whether within or attached to, or a combination thereof, the primary dwelling.

#### 9.4.8 - Aesthetic Standards

The exterior of an attached accessory dwelling unit shall maintain aesthetic continuity (doors, windows, siding and trim type and color, and roofing) with the existing single-family dwelling. The intent of this provision is so the attached accessory dwelling unit shall not detract from the overall character of the neighborhood.

#### 9.4.9 - Maximum Number of Bedrooms

The accessory dwelling unit shall be limited to a maximum of two (2) bedrooms.

#### 9.4.10 - Code Requirements (5/11/2021)

The accessory dwelling unit shall meet the same life, health and safety code requirements as other new multifamily dwelling units, except that the requirements of Article 3.1.1.1 of the Town's Building Code shall not apply.

#### 9.4.11 - Impact Fees

The accessory dwelling unit shall be subject to the Town of Chester's impact fees. Said impact fees shall be paid prior to the issuance of a building permit.

#### 9.4.12 – Notice of Limited Occupancy (5/8/2018)

Prior to occupancy of the second dwelling unit, the owner shall record an approved *Notice of Limited Occupancy* at the Rockingham Registry of Deeds. The expense of recording at the Registry shall be borne by the owner.

9.4.13 - Detached Accessory Dwelling Units

Detached accessory dwelling units are not authorized or permitted by this Article.

9.4.14 - Condominium Conveyance Prohibited (5/8/2018)

The conveyance of an accessory dwelling unit separate from the conveyance of the principal dwelling unit on a lot is prohibited.

9.4.15 - Multi-Family Dwellings and Manufactured Housing (5/8/2018)

Accessory Dwelling Units associated with attached, single-family dwellings such as duplexes, townhouses and other multi-family dwellings and manufactured housing as defined in RSA 674:31 are prohibited.



Send recorded copy to:

TOWN OF CHESTER  
84 Chester Street  
Chester, NH 03036

**NOTICE OF LIMITED OCCUPANCY**

**Town of Chester, New Hampshire**

Under the provisions of Article 9 of the Town of Chester Zoning Ordinance, the undersigned property owner stipulates that one (1) Accessory Dwelling Unit has been constructed within or attached to the subject single-family dwelling as permitted by Special Exception approved by the Chester Board of Adjustment on \_\_\_\_\_, 20\_\_ .

Map #: \_\_\_\_\_ Block # \_\_\_\_\_ Parcel/Lot # \_\_\_\_\_

Property Owner(s)

\_\_\_\_\_

Property Address

\_\_\_\_\_

Conditions: The Special Exception requires that the constructed Accessory Dwelling Unit remain compliant with all provisions of Article 9 of the Chester Zoning Ordinance, including, but not limited to, the following:

1. The attached accessory dwelling unit shall comply with all setback and dimensional area requirements of the Chester Zoning Ordinance.
2. An interior connecting door shall be provided between the principal and accessory dwelling units.
3. Onsite parking for the principal (two spaces) and accessory (2 spaces) dwelling units must be provided.
4. A New Hampshire DES approved septic system must be installed, to meet current standards, should the existing system be deemed inadequate or fail.
5. One of the two dwelling units shall be occupied by the property owner as their principal place of residence.
6. The Accessory Dwelling Unit shall be a minimum of 600 gross square feet in size, but not exceed 1,000 gross square feet in size, whether within, attached, or a combination thereof, to the primary dwelling unit.
7. The exterior of the accessory dwelling unit shall maintain aesthetic continuity with the existing single-family dwelling.

- 8. The Accessory Dwelling Unit shall be limited to a maximum of two (2) bedrooms.
- 9. The accessory dwelling unit shall meet and maintain the same life, health and safety code requirements as other new multifamily dwelling units, including Article 3.1.1.1 of the Town of Chester’s Building Code.

\_\_\_\_\_  
Owner/Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner/Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Building Inspector, Town of Chester

\_\_\_\_\_  
Date

## **Article 10 – Administration and Enforcement**

The Building Code as adopted by the Town of Chester are specifically incorporated herein by reference.

### **10.1 - Building Inspector**

This Ordinance shall be administered and enforced by the Building Inspector who shall be appointed by the Board of Selectmen.

### **10.2 - Building Permit** (5/8/2012)

#### 10.2.1 - Application for Building Permit

Application for a building permit shall be applied for on a form provided by the Town of Chester and shall be accompanied by data in accordance with the Town of Chester Building Code.

#### 10.2.2 - Permit Required

No construction, reconstruction, alteration or repair of a building or structure shall commence without a building permit issued by the Building Inspector, except such ordinary repairs and maintenance as are exempted from building permits by the Building Code.

10.2.2.1 - Required Permits and Approvals - No building permit may be issued unless all necessary subdivision approvals, site plan approvals, special use permits, conditional use permits, special exceptions, variances, and driveway permits have been issued.

10.2.2.2 – Deleted (5/9/2017)

10.2.2.3 - Residential building permits shall be approved or denied within 30 days of meeting all the application requirements outlined in this ordinance. (5/9/2017)

Permits for non-residential (commercial and light industrial) and residential applications encompassing more than 10 dwelling units shall be approved or denied within 60 days of meeting all the application requirements outlined in this ordinance. (5/9/2017)

#### 10.2.3 - Applicability of Zoning Ordinance

No building permit may be issued for any premises unless the building and other structures and use of the premises comply in all respects with the provisions of this Ordinance or the terms of a variance granted by the Board of Adjustment provided, however, that a permit may be issued when the effect of construction, reconstruction or alteration is to eliminate all violations of this Ordinance on the premises.

#### 10.2.4 - Architecture

The building shall conform with the existing architecture of the community where such has been made a condition of conventional subdivision or “open space” subdivision approval. (5/8/2012)

#### 10.2.5 – Temporary Toilet Facilities

Any site for which a Permit is issued for construction, reconstruction or alteration shall provide toilet facilities accessible to the owner and all on-site contractors and tradesman for the duration of the Permit. Any Permit issued for construction, reconstruction or alteration which will interrupt

the availability of toilet facilities for more than a 24-hour period shall be conditioned upon the recipient of the Building Permit providing temporary-portable enclosed toilet facilities on site or within 300 feet of the site, until such time as the site has permanent approved and inspected toilet facilities. A civil fine of \$275.00 will be assessed for each day of violation of this subsection and the "Certificate of Occupancy" will not be issued until all fines have been paid. (5/10/2011)

#### **10.2.6 - Building and Site Numbers**

The issuance of a Building Permit shall be conditioned upon the maintenance of the 911 system building and site number in a location on the site which is conspicuous and visible to emergency service vehicle operators from the roadway. Failure to properly maintain the 911 system number at the building site shall be sufficient cause for the Building Inspector to issue an immediate Cease and Desist Order and upon failure to comply with this requirement, the inspector shall have the right to issue a Stop Work Order as well as pursue any other remedies available under this Ordinance and New Hampshire law for purposes of zoning enforcement.

#### **10.3 - Certification of Foundation**

A Certification of Foundation is required following the construction of the foundation and before any building material is placed on the foundation. (5/8/2012)

#### **10.4 - Commencement of Construction**

Construction must commence within six (6) months after issuance of the building permit. If construction is not commenced within this period of time, the applicant must reapply. (5/9/2017)

#### **10.5 - Construction Completion**

Construction must be complete within one (1) year after issuance of the building permit. If construction is not completed within this period of time, the applicant must reapply. (5/9/2017)

#### **10.6 - Certificate of Occupancy**

No areas of buildings or other structures which are hereinafter constructed, reconstructed, or altered, shall be occupied, and no premises shall be used, except for agriculture, until a certificate of occupancy has been issued by the Building Inspector. No certificate of occupancy shall be issued for any premises unless the proposed use of the land, buildings and other structures therein shall comply with the provisions of this Ordinance or a variance issued by the Board of Adjustment and all applicable health, safety, fire, building codes, regulations, and ordinances.

#### **10.7 - Violations**

##### **10.7.1 - Cease and Desist Order**

The Building Inspector shall issue to the owner and/or occupant of any premises where it is determined that a violation of this Ordinance exists an order to cease and desist the violation. Cease and desist orders shall specify the nature of the violation and shall inform the owner and/or occupant of their right to appeal the order to the Board of Adjustment within twenty (20) days.

10.7.2 - Court Action

In the event that a Cease-and-Desist Order is neither complied with nor appealed to the Zoning Board of Adjustment within the prescribed time, the Town shall take appropriate court action to remedy such violation.

10.7.3 - Fines

Violations of this Ordinance are punishable in accordance with RSA 676:15, 676:17, 676:17-a, and/or 676:17-b. (5/10/2011)

## **Article 11 – Zoning Board of Adjustment**

### **11.1 - Zoning Board of Adjustment**

#### **11.1.1 - Establishment**

In accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 673:1, 674:33, and 674:34, as amended, and as hereinafter provided, a Board of Adjustment is established.

#### **11.1.2 - Organization**

The Board of Adjustment shall consist of five (5) members and five (5) alternates appointed by the Board of Selectmen in accordance with the provisions of RSA 673:3 I(a) and 673:6. (3/8/2022)

#### **11.1.3 - Powers**

The Board of Adjustment shall perform all duties and have all the powers provided by New Hampshire Revised Statutes Annotated in accordance with Chapters 674:33 and 674:34, as amended.

#### **11.1.4 - Meetings**

Meetings of the Board of Adjustment shall be held at the call of the Chairman and at all such times that the Board of Adjustment may determine. All meetings shall be open to the public. The Board of Adjustment shall keep a record of proceedings showing the vote upon every question. Every rule, regulation, and every order requirement, decision or determination of the Board of Adjustment shall be filed in the Office of the Town Clerk and shall become a public record. The concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of an administrative official or to decide in favor of an appellant or to decide any matter which is required to pass or to affect any Variance or Special Exception from the strict application of the provisions of this Ordinance.

### **11.2 - Application Procedure**

#### **11.2.1 - Time Limit for Appeal from an Administrative Decision**

An application for appeal to the Board of Adjustment seeking relief from a decision of an administrative official shall be filed on forms provided by the Board of Adjustment, within thirty (30) days of the date of the decision being appealed from.

#### **11.2.2 - Public Hearing and Notice**

Upon receipt of an application for a special exception, variance or appeal of an administrative decision, the Board of Adjustment shall hold a public hearing. Notice thereof shall be given as follows:

11.2.2.1 - The applicant and all the abutters shall be notified of the hearing by certified mail, return receipt requested, stating the time and place of the hearing and such notice shall be mailed not less than five (5) days before the date fixed for the hearing of the appeal.

11.2.2.2 - A public notice of the hearing shall be published in a newspaper of general circulation in the area not less than five (5) days before the date fixed for the hearing of the appeal.

11.2.2.3 - The public hearing on the appeal shall be held within forty-five (45) days of the receipt of the notice of appeal. (3/10/2020)

11.2.2.4 - Any party may appeal in person or by his agent or attorney at the hearing of an appeal.

11.2.2.5 - The cost of advertising and costs of mailing notices of appeal shall be payable by the person making the appeal prior to the hearing. Failure to pay such costs shall constitute valid grounds for the Board of Adjustment to terminate further consideration and to deny the appeal without public hearing.

### **11.3 - Conditions for Granting of a Variance**

The Zoning Board of Adjustment may on appeal grant a variance from the strict terms of this Ordinance if all the following criteria are found by the Board of Adjustment to be satisfied, and such findings are specified in the Board of Adjustment's decision: <sup>1</sup>

- a) Any conditions necessary to meet one or more of the foregoing criteria may be attached to approval of the variance; and
- b) Any variance shall grant the minimum relief from the terms of the Ordinance that is necessary to relieve the unnecessary hardship.

Each variance granted by the Board of Adjustment shall therefore be based upon and accompanied by specific finding or findings or by evidence produced at the hearing that the following conditions are satisfied:

#### **11.3.1 - Public Interest**

Granting of the variance must not be contrary to the public interest. (5/10/2011)

#### **11.3.2 - Spirit of the Ordinance**

The spirit of the Ordinance is observed. (5/10/2011)

#### **11.3.3 - Substantial Justice**

Granting the variance would do substantial justice. (5/10/2011)

#### **11.3.4 - Value of Surrounding Property**

The values of surrounding properties are not diminished. (5/10/2011)

#### **11.3.5 - Hardship**

Denial of the variance would result in unnecessary hardship to the owner. RSA 674:33 (b) (5) provides the criteria for establishing unnecessary hardship (5/10/2011):

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<sup>1</sup> The Zoning Board of Adjustment follows NH RSA 674:33, as amended from time to time. (5/10/2011)

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) 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 the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

#### **11.4 - Conditions for Granting of a Special Exception**

Special exception means the use which would not be appropriate generally or without restriction in a particular district, and, accordingly, is allowable only upon such conditions as are established by this Ordinance, for the uses set forth in Subsection 5.3.3 and 5.7.8, and only after a public hearing.

The Zoning Board of Adjustment, in its discretion, may require Site Plan Review by the Planning Board as a condition of approval. Site Plan Review by the Planning Board may result in additional conditions being set to ensure compliance with the intent of the Chester Zoning Ordinance.

*(5/10/2016)*

##### **11.4.1 - Findings**

For the purpose of this Ordinance, the following findings shall first be established prior to the grant of all special exceptions subject to the conditions as defined in Subsection 11.4.2.

11.4.1.1 - That the use will not be detrimental to the character and enjoyment of a neighborhood by reason of undue variation from the kind, and adverse violation of the character or appearance of the neighborhood.

11.4.1.2 - That the use will not be injurious, obnoxious, or offensive and thus detrimental to the neighborhood.

11.4.1.3 - That the use will not be contrary to the public health, safety, or welfare by reason of undue traffic, congestion or hazards, undue risk to life and property, unsanitary or unhealthful emissions or waste disposal or similar adverse causes or conditions.

11.4.1.4 - That as to all uses subject to site plan review by the Planning Board pursuant to RSA 674:43 and the Chester Site Plan Review Regulations, that approval by the Planning Board of the applicant's site plans are on file with the Board of Adjustment prior to final approval.

11.4.1.5 - That there shall be no detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location, or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust or other



pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

11.4.1.6 - That there shall be no creation of a traffic safety hazard or substantial increase of traffic congestion in the vicinity.

11.4.1.7 - That there shall be no excessive demand on municipal services including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

11.4.1.8 - That there shall be no significant increase of storm water runoff onto adjacent property or streets.

11.4.1.9 - That there shall be no adverse impact on surface or ground water from onsite water supply or sewage disposal.

11.4.1.10 - That there shall be no severe soil erosion or water pollution.

11.4.1.11 - That there shall be no danger to abutting property posed by potential collapse of any structure.

#### 11.4.2 - Conditions

Special exception approvals may be subject to appropriate conditions including the following:

11.4.2.1 - Front, side, or rear yards in excess of the minimum requirements of this Ordinance.

11.4.2.2 - Screening of the premises from the street or adjacent property by walls, fences, or other devices.

11.4.2.3 - Modification of exterior features of buildings or other structures.

11.4.2.4 - Limitations on the size of buildings or other structures more stringent than minimum or maximum requirements of this Ordinance.

11.4.2.5 - Limitations on the number of occupants and methods and times of operation.

11.4.2.6 - Grading of the tract for proper drainage.

11.4.2.7 - Regulation of design for access drives, sidewalks, and other traffic features.

11.4.2.8 - Off street parking and loading spaces in excess of the minimum requirements of this Ordinance.

11.4.2.9 - Regulation for signs more stringent than the requirements of this Ordinance.

11.4.2.10 - Measures to mitigate adverse environmental impact including erosion, mass soil movement and water pollution during and after construction.

11.4.2.11 - The Board of Adjustment may require the posting of a bond in an amount sufficient to secure the construction of necessary improvements.

11.4.2.12 - Restrictions requiring structures to be constructed and situated on the lot such that, upon collapse, the structure would cause no damage to abutting property.

#### 11.4.3 - Expiration of Special Exception and Variance

The granting of a Special Exception or Variance use shall be deemed to authorize only one particular use. The Special Exception or Variance shall expire if the authorized use ceases for more than twelve (12) months for any reason. The approval of a new application shall be required for reinstatement of the Special Exception or Variance use.

### **11.5 - Expiration of Special Exception and Variance**

After a permit has been authorized by the Board of Adjustment as a result of a request for a Special Exception or Variance, and if such permit has not been implemented within two (2) years of the date of such authorization, then such authorization shall become null and void and no permit shall be issued thereafter. The Board of Adjustment, at the Applicant's request, may grant a single, twelve (12) month extension. No variance or special exception shall expire within six (6) months of the resolution of a planning board application filed in reliance upon the variance or special exception. *(5/13/2014)* Variances and special exceptions approved before August 19, 2013 shall be null and void unless exercised by April 1, 2023 or as further extended by the Zoning Board of Adjustment for good cause. *(3/10/2020)*

### **11.6 - Conditions for Granting an Equitable Waiver of Dimensional Requirements** *(5/14/2019)*

When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement the Zoning Board of Adjustment may grant an equitable waiver if each of the following five findings as required by RSA 674:33-a are proven to the satisfaction of the Board.

11.6.1 - When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance, the ZBA shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the four following findings:

11.6.1.a - That 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;

11.6.1.b - That the violation was not an outcome of ignorance of the law or ordinance, 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 measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

11.6.1.c - That the physical or dimensional 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

11.6.1.d - That 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.

11.6.2 - In lieu of the findings required by the board under subparagraphs 11.6.1.a and 11.6.1.b, the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

11.6.3 - Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

11.6.4 - Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

### **11.7 - Motion for a Rehearing of Board of Adjustment Decision**

Any person or persons jointly or separately aggrieved by a decision of the Board of Adjustment shall have the right to file a Motion for a Rehearing of that decision within thirty (30) days in accordance with the provisions of RSA 677:1 through 677:14. This action must be taken before an Appeal to the Superior Court from a decision of the Board of Adjustment can be taken.

### **11.8 - Appeal from Order of the Board of Adjustment**

Any person or persons jointly or separately aggrieved by decision of the Board of Adjustment shall have the right to appeal that decision in accordance with the provisions of RSA 677:1 through 677:14. Before an aggrieved person(s) can appeal a decision of the Board of Adjustment to the Superior Court, they must first Motion for a Rehearing of the Board of Adjustment.

### **11.9 – Rules of Procedure**

The Board of Adjustment shall adopt and promulgate rules of procedure for the guidance of all persons having business before the Board of Adjustment. Said rules shall not be inconsistent with the provisions of the Statutes of the State of New Hampshire or with the provisions of this Ordinance.

### **11.10 - Fees**

The Board of Adjustment is further authorized to adopt fee schedules in connection with applications to the Board of Adjustment.

## **Article 12 – Miscellaneous Provisions**

### **12.1 - Existing Ordinances**

All existing Zoning Ordinances or parts thereof are repealed upon passage of this Ordinance.

### **12.2 - Severability**

If any section, subsection, sentence, clause, phrase or other part of this Ordinance if for any reason is held by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

### **12.3 - Governmental Services**

No provisions of this Ordinance shall be interpreted as preventing the Town of Chester from providing for or performing any existing or necessary governmental, educational, or protective service.

### **12.4 - Interpretation**

In their interpretation or application, the provisions of this Ordinance shall be held as the minimum requirements adopted for the promotion of the public health, morals, safety, or general welfare. Whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rule, regulation or ordinance, the more restrictive or that imposing the higher standard shall govern.

### **12.5 - Short Title**

This Ordinance shall be known and may be cited as the "Town of Chester Zoning Ordinance of 1986."

### **12.6 - Effective Date**

This Ordinance shall take effect immediately upon enactment by the Town of Chester.

## **Article 13 – Growth Management**

### **13.1 - Authority and Purpose**

This Article is enacted pursuant to RSA 674:21 and 674:22 to manage growth consistent with the capacity of the Town to provide for it, evidenced in the Town's capital improvements plan, and consistent with the Chester Master Plan, while reflecting consideration of regional development needs.

### **13.2 - Applicability**

This Ordinance shall apply to all residential development in the Town of Chester.

The following shall be exempted from the procedural requirements and permit timing limitations of Section 13.

13.2.1 - Development in a subdivision exempt from these provisions by virtue of RSA 674:39 (5-year exemption of subdivisions) or development with respect to which an impact fee has been paid or assessed pursuant to Article 14 as part of the approval for its development.

13.2.2 - Development of a project that is for ten or more dwelling units, all of which are to be reserved for a period of no less than thirty (30) years for occupancy by households at least one member of which is ages 55 years or older and no members under the age of 19 years, provided that the owner of record shall enter an agreement, to be filed in the Rockingham County Registry of Deeds, certifying that the project will be so restricted.

13.2.3 - Non-residential development, or expansion, alteration, renovation, relocation or replacement of existing dwelling units.

13.2.4 - Development of a project that is requesting the twenty-five percent (25%) Workforce Housing unit count bonus (see Section 6.9 – Incentive, Subsection 6.9.2). (5/11/2010)

### **13.3 - Maximum Sustainable Growth**

Not later than March 1<sup>st</sup> of each year, the Planning Board shall determine Chester's maximum sustainable rate of residential development (also referred to herein as "sustainable rate of growth") for the next twelve months beginning March 1<sup>st</sup> of the current year. The Planning Board has studied and reviewed the Town's capital improvement plan, the Chester Master Plan, the development needs of the region, and the most recent Population and Dwelling Projections done by Southern NH Planning Commission for the years 2005-2040. The Planning Board has determined that the maximum potential growth, which the Town can annually sustain, is a three percent (3%) increase in housing stock over the course of a calendar year. The Chester Planning Board shall review this determination every year. As set forth in the paragraph below, there are certain factors, which cause the maximum sustainable rate of growth to be adjusted downward from three percent (3%). (5/11/2010)

The maximum annual sustainable rate of growth shall be the highest figure that does not exceed a three percent (3%) increase in Chester's housing stock over the current calendar year as of January 1<sup>st</sup>, and also does not exceed more than one of the following three measures:

13.3.1 - One and one-quarter (1.25) times the average growth in housing stock in Chester over the previous four years;

13.3.2 - One and one-quarter (1.25) times the percentage increase in the housing stock total for the abutting towns of Auburn, Candia, Raymond, Fremont, Sandown and Derry. Percentage increase in housing stock for abutting towns shall be calculated as the number of housing units authorized on building permits during the prior year divided by the total of dwelling units at the beginning of that year. The total of dwelling units at the beginning of the year shall be calculated as the most recent available decennial Census housing count of total dwelling units plus the total of units authorized subsequent to the beginning of that decennial year.

13.3.3 - Growth in housing stock must not threaten to over-tax the Town's ability to provide services and facilities, as defined in Section 13.3.4.

The Planning Board shall also examine the number of pending Building Permits for additional housing units in existence, and the number of housing units in pending subdivision applications, and compare that potential for additional housing units to the maximum sustainable growth rate as determined above; if the Planning Board determines that the sustainable growth rate as determined above will likely be exceeded in the next twelve (12) month period because of this potential, the number of Building Permits for such housing units shall be limited to the sustainable growth rate according to the provisions of Sections 13.6 and 13.7. Public Notice of such finding shall be made according to the provisions of section 13.4.

13.3.4 - Service and Facility Strain - Growth shall be deemed to threaten to over-tax the Town's ability to provide services and facilities if the Chester Planning Board determines that one or more of the following conditions exists:

13.3.4.1 - Based upon documentation provided by the Chester School Board, it is likely that the number of pupils enrolled in the Chester School System will exceed the stated capacity of the Chester School system in one or more years of the current Capital Improvement Program, given continuation of residential development at the anticipated rate, and facilities development as proposed in the Capital Improvement Program most recently approved by the Planning Board, or:

13.3.4.2 - Based upon careful studies and consultation with the agencies involved, it is likely that the Town's capacity to service growth with public facilities other than schools, as planned in the six-year Capital Improvement Program most recently approved by the Planning Board, together with facilities anticipated to be provided by developers and others, would be exceeded if given continuation of residential development at the rate of the preceding year, or

13.3.4.3 - The Capital Improvements Program most recently approved by the Planning Board indicates in one or more of the following six (6) fiscal years the tax rate impact of combined municipal and school capital expenditures will exceed fifteen percent (15%) of the total combined municipal and school tax rate.

If the board determines that one or more of the above conditions exist, the maximum number of Building Permits for additional housing units shall be limited to the highest number deemed to not over-tax the Town's ability to provide services and facilities, and not to exceed the other factors referenced in Section 13.3 which under no circumstances shall exceed the three percent (3%) maximum sustainable growth rate.

#### **13.4 - Planning Board Monitoring and Notification**

It shall be the responsibility of the Planning Board to monitor growth in the Town and region, assembling as soon as practicable following the end of the calendar year such information as is necessary for making the determination of Chester's maximum sustainable growth rate, and whether or not it is likely to be exceeded in the next twelve (12) month period. The Planning Board shall also monitor the progress of the Town in providing services and facilities on the schedules called for in the Capital Improvement Program.

##### **13.4.1 - Hearing**

The Planning Board shall hold a public hearing to seek input from the public prior to making a final determination of the Maximum Sustainable Growth Rate and the likelihood of it being exceeded. Notice for that hearing shall be published in a newspaper of general circulation and shall be posted in two locations in accord with NH RSA 675:7.

##### **13.4.2 - Guidance**

Determination of the maximum sustainable annual rate of development shall be made in accordance with the grounds specified in Section 13.3.

##### **13.4.3 - Notification**

The Planning Board shall notify the Selectmen, the Building Inspector, the Town Clerk, and the general public of its determination of the maximum sustainable annual rate of development by posting a notice to that effect in the Town Offices and publishing notice in a newspaper of general circulation in the area. That determination shall apply for a period of one year from the date of notice to the Town Clerk unless, prior to that time, the Planning Board, acting as provided by Section 13.4 has determined and posted notification that its determination has been revised based upon new information or events. That revised determination shall be in effect until the Board subsequently makes a further revision whether in its annual determination or at another time.

##### **13.4.4 – Reporting**

The Planning Board shall report its finding on maximum sustainable growth and progress on the plan to provide services and facilities called for in the capital improvements program in the Town's annual report. (5/11/2010)

#### **13.5 - Relationship to Phasing of Developments**

Both the Phasing requirements of Article 8 and the Permit Allocation requirements of Article 13 must be met for a building permit to be granted. Satisfying either the phasing of Article 8 or the allocation of Article 13, but not both, is insufficient to allow granting of a permit.

#### **13.6 - Limiting the Issuance of Permits**

13.6.1 - Notice Contents - The Planning Board's notice of the maximum sustainable annual rate of development shall include notice of the rate at which allocation certificates will be allocated during said period.

13.6.2 - Annual Rates of Development and Certificate Granting - The annual rate at which allocation certificates will be granted shall be as follows, except that in no event shall the authorized rate of granting allocation certificates be lower than twenty-four (24) certificates per year:

- a) the maximum sustainable annual rate of development, minus
- b) the Planning Board's estimate of the number of dwelling units exempted under Section 13.2 likely to be granted building permits within the year, plus
- c) the number of allocation certificates issued but not utilized and therefore lapsed in the preceding year, plus
- d) the number of dwelling units lost through permits authorizing demolition, conversion to non-residential use, or merger of units; plus
- e) the number of dwelling units authorized on building permits that lapsed without use during the preceding year.

### **13.7 - Procedures for Permit Limitations**

#### 13.7.1 - Process

Building permits shall be allocated according to the following procedure:

- a) Except for development exempted under Section 13.2, no building permit may be issued without an allocation certificate issued by the Planning Board. For purposes of this section, each proposed dwelling unit, regardless of whether in manufactured housing, single-family dwelling, two-family dwelling or multifamily dwelling, shall require a separate allocation certificate.
- b) Application for an allocation certificate shall be made to the Planning Board on a form prepared by the Board, which will initially receive applications only from January 2<sup>nd</sup> through March 21<sup>st</sup> of each year.
- c) Prior to April 1, allocation certificates shall be issued according to the following system:
  - 1) First priority shall be given to dwelling units applied for by applicants who have not received an allocation certificate or a building permit for a dwelling unit during the preceding twenty-four months, provided that no more than thirty percent (30%) of the available certificates may be allocated on this basis, and no more than one certificate may be allocated on this basis per subdivision.
  - 2) Priority levels for remaining applicants shall be based upon the point system specified in Section 13.7 2.



3) When the number of allocation requests at a given priority-level exceeds the number of available allocation certificates, the certificates shall be allocated proportionately among those with applications of that priority, based upon the number of units in the development, or should proportionate allocation be impossible, by date of application.

#### 13.7.2 - Priority Points

For purposes of determining priority in the system of certificate allocation, development shall be awarded points according to the following:

- a) For development authorized under Article 6 Cluster Development: one (1) point;
- b) For development proposing to preclude dwelling structures within two hundred (200) feet of a street other than one created by that development: one (1) point;
- c) For a proposed workforce development: one (1) point. For this purpose, a workforce development<sup>@</sup> is one that qualifies for a density bonus under Article 7. However, the cumulative total of workforce dwelling units in projects approved by the Planning Board on the basis of such priority point in any one year in which phasing and permit limitations are in effect shall not exceed one-sixth (1/6) of the Town's fair share' of workforce housing units as determined in the then-current estimate of the Southern New Hampshire Planning Commission, and further provided that the cumulative total of all dwelling units in projects approved on the basis of this priority point in any one year shall not exceed twenty-four (24) dwelling units.
- d) For a dwelling on a parcel or a set of contiguous lots committed through a Conservation Restriction or other means enforceable by the Town that reduces the potential for new dwelling units on the combined premises below the number of single-family dwellings otherwise permissible: one (1) point for each potential dwelling unit so precluded and not credited for a point for another unit.
- e) For each year that development on a lot has been delayed by denial of a certificate: one (1) point.

#### 13.7.3 - Second and Third Rounds

If by April 1, allocation certificates have not been issued for all available building permits for the year, a second allocation process using the procedure set forth in Section 13.7.1 and 13.7.2 shall take place. The Planning Board shall receive applications for the second round from May 1<sup>st</sup> through May 21<sup>st</sup>, and allocation certificates shall be issued prior to June 1. If necessary, a third allocation process shall be held with applications received from August 1 through August 21 and certificates issued by September 1<sup>st</sup>.

#### 13.7.4 - Building Permit Application

The owners of the lots awarded allocation certificates for a given period may apply for building permits from the Building Department at any point from April 1<sup>st</sup> through December 31<sup>st</sup>. Any certificate for which a building permit is not applied for by December 31<sup>st</sup> shall lapse.

#### 13.7.5 - Lapses

Building permits that are not used within one year of issuance shall lapse. Lapsed allocation certificates and building permits may not be renewed. As provided at Section 13.7.2, the number of allocation certificates available for the following year shall be increased by, among other things, the number that lapsed in the preceding year and by the number of dwelling units authorized on building permits that lapsed in the preceding year.

#### 13.7.6 - Certificate Transfers

The Planning Board may authorize transfer of an allocation certificate between proposed housing units only if the transfer does not reduce priority standing under Section 13.7 and is to a unit within the same development; and may authorize transfer of an allocation certificate between successive owners of the same unit provided that the change of ownership does not reduce priority standing under Section 13.7.2.

### **13.8 - Relationship to Other Requirements**

Nothing in Article 13 shall be construed to authorize or require issuance of a building permit that is not eligible for issuance under any other provision of law.

### **13.9 - Sunset**

Article 13 shall expire on January 1<sup>st</sup>, 2017 unless re-adopted prior to that date.

**Article 14 – Fair Share Contribution**  
(5/9/2017)

**14.1 - Purpose**

The purpose of this Ordinance is to ensure that new development, including subdivision, building construction and other land use change, bear its fair share of any needs occasioned by that development for the construction or improvement of those capital facilities owned or operated by the Town of Chester, including and limited to the following:

- water treatment and distribution facilities;
- wastewater treatment and disposal facilities;
- sanitary sewers;
- storm water, 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; and
- public recreational facilities (not including public open space).

In addition, the purpose of this ordinance is to ensure that new development in the Town of Chester bear its fair share of any needs occasioned by that development for an increase in the Town of Chester's proportional share of capital facilities of any cooperative or regional school district of which the Town becomes a member, as well as any increase in the Town of Chester's proportional share of any of the above-recited capital facilities in which the Town participates on a regional or cooperative basis.

**14.2 - Authority**

This Fair Share Contribution Ordinance is authorized under NH RSA 674:211 (m) as an impact fee ordinance and is adopted in accord with the provisions of NH RSA 674:21, NH RSA 674:16, and NH RSA 675:1, II. As used in this Ordinance, the words fair share contribution shall mean an impact fee. This Ordinance shall be administered by the Planning Board for the Town of Chester.

**14.3 - Capital Improvements Program Required**

The Town of Chester has adopted a Capital Improvements Program in accord with NH RSA 674:5-7. In the event the Town fails to maintain a Capital Improvements Program, or the Town allows its Capital Improvements Program to lapse, this Ordinance shall be suspended until such time as the Town readopts a Capital Improvements Program.

**14.4 - Standards for Determining the Fair Share Contribution**

The administration of the innovative provisions of this Ordinance is vested in the Planning Board. The Planning Board shall be responsible for determining the impact of development on the Town's capital facilities and the fair share contribution that should be assessed as an impact

fee against new development on a per dwelling unit basis for residential development and on a per building basis for all other development. There shall be a rational nexus between the fair share contribution amount determined by the Planning Board and the capital facilities needs created by the development. In determining the fair share contribution, the Planning Board shall adhere to the following standards:

14.4.1 - The fair share contribution shall be limited to assessing the impact of the development on those capital facilities listed in Section 14.1 and all such capital facilities identified in NH RSA 674:21, as amended from time to time.

14.4.2 - The Planning Board shall review each of the capital facilities listed in Section 14.1 and shall determine whether the construction of the development will render the existing capital facility deficient.

14.4.3 - If the Planning Board determines that the development will render an existing capital facility deficient, the Board shall determine the cost of improving the capital facility to eliminate the deficiency.

14.4.4 - In those cases where the development is not the sole cause of a deficiency in a capital facility, but rather a contributing cause, the Planning Board shall determine that portion of the total cost of improvements to the capital facility which are attributable to the proposed development.

14.4.5 - In determining the impact of the development and the fair share contribution, the Planning Board shall consider the unique characteristics of the development, as they relate to capital facilities including, but not limited to the following:

- 1) The location;
- 2) The proposed use; and
- 3) The intensity of the use.

The Planning Board may use these factors to either increase or decrease a fair share contribution.

14.4.6 - The applicant shall be permitted to present evidence to the Planning Board on the question of the development's impact on the Town's capital facilities, and the appropriate fair share contribution.

14.4.7 - The Planning Board may require that the applicant file an impact statement under Section 3.11 of the Subdivision Regulations, or a Traffic Impact Analysis under Section 7.8 of the Site Plan Regulations and may consider the same in determining a fair share contribution. The Planning Board may retain a consultant or the Town Engineer to review such statements, studies and analysis.

14.4.8 - The Planning Board may consult with the Town Engineer, the School Board, Town Departments, the Selectmen, the Town Road Agent and any other public agency or office as to a development's impact on capital facilities.

14.4.9 - The Planning Board shall consider current construction cost information for capital facilities and shall review such information on an annual basis.

14.4.10 - The Planning Board shall consider those Capital Improvements scheduled to be made by the Town during the course of the development for which there has been an appropriation, and shall limit the fair share contribution for those Capital Improvements scheduled to be made by the Town to that sum which reflects any disproportionate benefit inuring to the development.

14.4.11 - The Planning Board shall consider the extent to which phasing under Article 8 may affect the impact of a development on the Town's capital facilities and may exercise its discretion to adjust the fair share contribution accordingly.

14.4.12 - The Planning Board shall consider the extent to which offsite improvements made by the applicant will reduce or eliminate the deficiency in capital facilities and shall adjust any fair share contribution accordingly.

14.4.13 - The upgrading of existing capital facilities and infrastructures, the need for which is not created by new development, shall not be considered as a factor in determining the fair share contribution amount.

The Planning Board may delegate consideration of the above-referenced criteria to the Town Engineer or such other consultants as it deems appropriate and may consider the written recommendation of the Town Engineer or consultants as to the fair share determination amount arising from consideration of the criteria in this section 14.4, but the Planning Board shall be responsible for approving any such recommendation.

#### **14.5 - Assessment of the Fair Share Contribution and Notice to the Applicant**

The amount of any fair share contribution shall be determined and assessed prior to the issuance of any building permit if Planning Board approval is not required. If Planning Board approval is required, the amount of any fair share contribution shall be determined and assessed prior to a vote to approve any subdivision plan or site plan. If Planning Board approval is not required, the applicant shall be informed of the amount of the fair share contribution at the time an application for a building permit is filed with the Town. If Planning Board approval is required, the applicant shall be informed of the amount of the fair share contribution prior to the close of the public hearing on the subdivision or site plan application. Applicants shall be afforded an opportunity to present evidence as to why the Board has not properly determined the fair share contribution amount. The Board may consider such additional evidence and may modify its fair share determination when deemed appropriate by the Board to do such.

#### **14.6 - Additional Assessments**

Payment of the fair share contribution amount shall not be construed as restricting either the Town or the Planning Board from requiring other lawful payments to be made by applicant, including, but not limited to, such other payments as are required by the subdivision or site plan regulations.

#### **14.7 - Off-Site Improvements**

This Ordinance shall not limit the authority of the Planning Board to require the installation or construction of off-site improvements as a condition of either subdivision or site plan approval. This Ordinance shall not affect the existing authority of the Planning Board over subdivision or site plan review.

#### **14.8 - Collection of Fair Share Contribution Amounts**

Fair share contribution amounts shall normally be collected as a condition for the issuance of a certificate of occupancy for a dwelling unit or building. The Planning Board may, where it deems appropriate, establish an alternate schedule of payment, provided that schedule is also acceptable to the applicant. During the interim period between assessment and collection, the Planning Board may require the applicant to post a bond issued by an insurance company licensed to do business in New Hampshire so as to guarantee future payment of the assessed fair share contribution.

Where off-site improvements are to be constructed simultaneously with a project's development, and the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the fair share contribution to the issuance of a building permit.

#### **14.9 - Application for a Waiver from the Fair Share Contribution Requirement**

The applicant may apply for a waiver from the fair share contribution requirement of this Article 14. The application must be in writing, shall be submitted as part of the initial application for either subdivision or site plan approval, or when an application for a building permit is filed if no Planning Board approval is required, and shall set forth with particularity evidence as to why the development should not be subject to a fair share contribution. The evidence shall specifically address the criteria set forth in Section 14.4 with an explanation as to why those criteria, as applied to the development, do not justify imposing a fair share contribution.

The Planning Board shall grant a waiver as to this Ordinance when it determines that the development will not require the construction or improvement of any capital facilities. The Planning Board shall also grant a waiver when the applicant has agreed to construct or install off-site improvements that fully mitigate the adverse impact on the Town's capital facilities, has agreed to post the required security for the improvements, and construction of the off-site improvements has been made a condition of either subdivision or site plan approval. A waiver need only be applied for in those cases where the applicant contends that he/she/it should be exempt from the fair share contribution requirement. A waiver need not be requested in order for the applicant to present evidence that the fair share contribution should be reduced.

An applicant seeking approval for the construction of elderly housing may petition the Planning Board for a waiver of the school impact fee imposed pursuant to this article when the proposed new development qualifies as elderly housing, and which can be reasonably expected not to require additional educational facilities. For purposes of this section, "elderly housing" is housing: (1) provided by any state or federal program specifically designed and operated to assist elderly persons as defined in the state or federal program; (2) intended for, and solely occupied by, persons 62 years of age or older; or (3) intended and operated for occupancy by at least one person at least 55 years or older per unit. When determining whether housing qualifies as housing for persons 55 years or older, the Planning Board shall consider those factors and criteria established by the New Hampshire Commission for Human Rights as set forth in RSA 354-A:15, as it may be amended.

#### **14.10 - Administration of, and accounting for, Fair Share Contributions**

All fair share contributions shall be accounted for separately, and shall be segregated from the Town's general fund. All funds collected shall be properly identified and promptly deposited in

individual, interest bearing, public capital facilities Fair Share Contribution accounts for each of the capital facilities listed in Section 14.1 for which fees are assessed.

The Town Treasurer shall have custody of all Fair Share Contribution accounts, shall record all fees paid by date of payment and name of person making payment, and shall maintain an updated list record of current ownership, tax map and lot number of properties for which fair share contributions have been paid under this Ordinance. Applicants and their successors shall promptly notify the Town Treasurer of any change in ownership.

At the end of each fiscal year the Town Treasurer shall make a report to the Planning Board and the Board of Selectmen, giving a particular account of all capital facilities fair share contribution transactions during the year.

#### **14.11 - Limitations on Expenditures of Fair Share Contributions**

Funds shall only be paid out from the Public Capital Facilities Fair Share Contribution accounts upon written instructions by the Planning Board. Funds withdrawn from the Public Capital Facilities Fair Share Contribution Accounts shall be used solely for the purpose of acquiring, constructing, upgrading, renovating, redesigning, expanding or equipping those capital facilities for which the fair share contribution was paid or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet. Funds may, where appropriate, be used to pay debt service for capital facilities improvement projects.

Those Town Departments making improvements to capital facilities as well as the School District shall report annually to the Planning Board, Board of Selectmen and the Town Treasurer as to any capital facilities projects which are necessitated by development.

#### **14.12 - Refund of Unencumbered Funds**

The current owner of record of property for which a fair share contribution has been collected shall be entitled to a refund of that fee, plus accrued interest where:

14.12.1 - The fair share contribution amount has not been encumbered or otherwise legally bound to be spent for the purpose for which it was collected within six (6) years from the date of the final payment of the fair share contribution for the development; or

14.12.2 - The calculation of the fair share contribution amount was predicated upon the Town bearing some portion of the capital improvement costs, and the Town failed to appropriate its share of the capital improvement costs within six (6) years from the date of the final payment of the fair share contribution for the development.

#### **14.13 - Relationship to Article 13, Growth Management Ordinance**

Any subdivision or site plan for which a fair share contribution has been paid or assessed under this Ordinance as part of the approval for the development shall not be subject to the Growth Management Ordinance set forth in Article 13, unless a Court determines that the fair share contribution was not lawfully assessed, a Court determines that Article 13 is invalid, or the applicant fails to pay the fair share contribution assessed.

During any time that the issuance of building permits is subject to the limitations of a growth management ordinance, the Planning Board shall suspend assessment of a fair share contribution under Article 14. An applicant shall not be permitted to avoid the provisions of a growth management ordinance by offering to pay a fair share contribution under Article 14. Upon a vote by the Planning Board to lift the limitations of a growth management ordinance, the provisions and requirements of Article 14 shall be automatically reinstated.

**14.14 - Premature and Scattered Development**

Nothing in this Ordinance shall be construed so as to limit the authority of the Planning Board to prohibit development which is premature or scattered or which otherwise violates the Ordinances or Regulations of the Town of Chester.

**14.15 - Right of Appeal**

Any decision made by the Planning Board under this Fair Share Contribution Ordinance may be appealed in accord with NH RSA 677:15.

**14.16 - Effective Date**

This Article shall become effective, as of the date of its adoption.

**Table of Current Impact Fees**

(See Zoning Appendices A thru F for the individual impact fee reports & methodologies.)



<b>Impact Fee Type</b>	<b>Adoption Date</b>	<b>Single-Family Detached</b>	<b>Duplex (2 Units)</b>	<b>Multi-Family (3+ Units)</b>	<b>Condo / Townhouse</b>	<b>Mobile Home</b>	<b>Apartment in Mixed-Use Building</b>	<b>Non-Residential</b>
Traffic	10/26/16	\$2,730	\$2,730	\$1,881	\$1,670	\$1,425	\$1,915	See Schedule
Recreation	9/28/16	\$1,001	\$701	\$631	\$150	\$631	\$831	See Schedule
Police	9/28/16	\$415	\$465	\$270	\$360	\$270	\$570	See Schedule
Fire	9/28/16	\$441	\$460	\$267	\$356	\$267	\$564	See Schedule
Municipal	10/26/16	\$695	\$778	\$452	\$602	\$452	\$954	See Schedule
Library	9/28/16	\$503	\$573	\$299	\$425	\$299	\$721	NA
School	9/7/16	\$1,142	\$1,098	\$1,369	\$693	\$1,536	\$1,643	See Schedule
<b>Total Current Fees:</b>		<b>\$6,927</b>	<b>\$6,805</b>	<b>\$5,169</b>	<b>\$4,256</b>	<b>\$4,880</b>	<b>\$7,198</b>	See Schedule

## **Article 15 – Lighting Requirements**

(5/14/2002)

### **15.1 – Purpose**

This Article is intended to: reduce the problems created by improperly designed and installed outdoor lighting; eliminate problems of glare, minimize light trespass, help reduce the energy and financial costs of outdoor lighting; limit the area that certain kinds of outdoor lighting fixtures can illuminate; require the use of high-efficiency lamps in public areas, and limit the total allowable illumination of lots located in the Town of Chester.

All public and private outdoor lighting installed in the Town of Chester shall be in conformance with the requirements as specified below.

### **15.2 - Definitions**

15.2.1 - Direct Light - Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

15.2.2 - Fixture - The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

15.2.3 - Flood or Spotlight - Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

15.2.4 - Glare - Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see and, in extreme cases, causing momentary blindness.

15.2.5 - Height of Luminaire - The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

15.2.6 - IESNA - Illuminating Engineering Society of North America.

15.2.7 - Indirect Light - Direct light that has been reflected or has scattered off of other surfaces.

15.2.8 - Lamp - The component of a luminaire that produces the actual light.

15.2.9 - Light Trespass - The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

15.2.10 - Lumen - A unit of luminous flux. One foot-candle is one lumen per square foot. For the purposes of this Ordinance, the lumen-output values shall be the INITIAL lumen output rating of a lamp.

15.2.11 - Luminaire - This is a complete lighting system and includes a lamp or lamps and a fixture.

15.2.12 - Outdoor Lighting - The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

15.2.13 - Temporary Outdoor Lighting - The specific illumination of an outside area or object by any manmade device located outdoors that produces light by any means for a period of less than 7 days with at least 180 days passing before being used again.

### **15.3 - Luminaire Design Factors**

15.3.1 - Any luminaire with a lamp or lamps rated at a total of MORE than 1,800 lumens and all flood or spot luminaires with a lamp or lamps rated at a total of MORE than 900 lumens shall not emit any direct light above a horizontal plane through the lowest direct-light-emitting part of the luminaire.

15.3.2 - Any luminaire with a lamp or lamps rated at a total of MORE than 1,800 lumens and all flood or spot luminaires with a lamp or lamps rated at a total of MORE than 900 lumens shall be mounted at a height equal to or less than the value  $3 + (D/3)$ , where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire may not exceed 25 feet.

15.3.3 - Any luminaire used to illuminate a public area such as a street or walkway will utilize any energy efficient lamp such as low-pressure sodium lamp, high-pressure sodium lamp or metal halide lamp. Mercury vapor lamps shall not be used due to their inefficiency and high operating costs.

Luminaires used in public areas such as roadway lighting shall be designed to provide the minimum illumination recommended by IESNA in the most current edition of the IESNA Lighting Handbook.

### **15.4 - Exceptions**

15.4.1 - Any luminaire with a lamp or lamps rated at a total of 1,800 lumens or LESS, and all flood or spot luminaires with a lamp or lamps rated at 900 lumens or LESS, may be used without restriction to light distribution or mounting height, except that if any spot of flood luminaire rated 900 lumens or LESS is aimed, directed or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land or to create glare perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions.

15.4.2 - Luminaires used for public-roadway illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property.

15.4.3 - All temporary emergency lighting need by the Police or Fire Department or other emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this Article.

15.4.4 - All hazard warning luminaires required by Federal regulatory agencies are exempt from the requirements of this Article, except that all luminaires used must be red and must be shown to be as close as possible to the federally required minimum lumen output requirement for the specific task.

15.4.5 - Luminaires used primarily for signal illumination may be mounted at any height to a maximum of 25 feet, regardless of lumen rating.

### **15.5 - Temporary Outdoor Lighting**

15.5.1 - Any temporary outdoor lighting that conforms to the requirements of this Article shall be allowed. Nonconforming temporary outdoor lighting may be permitted by the Planning Board after considering:

- a) - The public and/or private benefits that will result from the temporary lighting;
- b) - Any annoyance or safety problems that may result from the use of the temporary lighting; and
- c) - The duration of the temporary nonconforming lighting.

The Applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the Planning Board, who shall consider the request at a duly called meeting. Prior notice of the meeting of the Planning Board shall be given to the Applicant. The Planning Board shall render its decision on the temporary lighting request within two weeks of the date of the meeting. A failure by the Planning Board to act on a request within the time allowed shall constitute an approval of the request.

### **15.6 - Authorization for Installation of Public Area and Roadway Lighting**

15.6.1 - Installation of any new public area and roadway lighting fixtures other than for traffic control shall be specifically approved by the Chester Planning Board.

15.6.2 - All requests for new public area and roadway lighting fixtures shall be made in writing to the Chester Planning Board.

15.6.3 - Before any proposal for new public roadway lighting luminaires shall be decided, the Planning Board shall hold a public hearing to describe the proposal and to provide an opportunity for public comment. Notice of the hearing shall be printed in a newspaper of general circulation not less than two (2) week prior to the date of the hearing and shall be posted for a period of at least two (2) week before the meeting.

## **Article 16 – Groundwater Protection**

*(5/11/2004)*

### **16.1 - Authority**

The Town of Chester hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II and RSA 674:21,I,(j) relative to innovative land use controls.

### **16.2 – Purpose**

The Town of Chester views existing and potential groundwater supply areas and surface waters as being a finite resource within the Town of Chester. These resources are needed for both present and/or future public water supply within the Town. The purpose of this Ordinance is accomplished by regulating those land uses that could contribute pollutants to the Town's present and/or future drinking water resources and to protect surface waters that are fed by groundwater. *(5/11/2010 & 5/14/2013)*

### **16.3 - Definitions**

16.3.1 - Ambient Groundwater Quality Standards - Maximum concentration levels for regulated contaminants in groundwater which result from human operations or activities, as authorized under RSA 485-C:6. *(5/14/2013)*

16.3.2 - Aquifer - A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

16.3.3 - Closed Loop System – Water treatment where water is recycled through a purification system that filters out particles that settle into a sedimentation tank that is periodically pumped out. *(5/14/2013)*

16.3.4 - Groundwater - Subsurface water that occurs beneath the water table in soils and geologic formations.

16.3.5 - Impervious - Not readily permitting the infiltration of water.

16.3.6 - Impervious Surface - A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt; earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.

16.3.7 - Junkyard - An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk (ex. such as scrap metal, used appliances), or for the maintenance or operation of an automotive recycling yard. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126. *(5/14/2013)*

16.3.8 - Loam - See NH Department of Transportation Section 641.

16.3.9 - Outdoor Storage - Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

16.3.10 - Public Water System - A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year [New Hampshire Administration Rule Env-Ws 302.02 and RSA 485:1-aXV].

16.3.11 - Regulated Substance - Petroleum, petroleum products and substances Listed under 40 CFR 302.4, 7-1-90 Edition, or current edition [US Code of Federal Regulations], excluding the following substances: ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate and propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure. Copies of 40 CFR 302.4, 7-1-90 Edition, or current edition, are available online at the Environmental Protection Agency (EPA) website or in the Planning Board Office.

16.3.12 - Sanitary Protective Radius - The area around a well that must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems) and Env- Ws 372.13 (for other public water systems). (5/14/2013)

16.3.13 - Secondary Containment - A structure such as a berm or dike with an impervious surface which is adequate to hold at least one hundred and ten percent (110%) of the volume of the largest regulated-substances container that will be stored there.

16.3.14 - Snow Dump - For the purposes of this ordinance, a location where snow which is cleared from roadways and/or motor vehicle parking areas is placed for disposal.

16.3.15 - Stratified-drift Aquifer - A geologic formation of predominantly well sorted sediment deposited by or in bodies of glacial melt water, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

16.3.16 - Surface Water - Streams, lakes, ponds, and tidal waters, including marshes, water courses and other bodies of water, natural or artificial.

16.3.17 - Top Soil – See Loam

16.3.18 - 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 Definitions]

#### **16.4 - Groundwater Protection District**

The Groundwater Protection District is an overlay district that is superimposed over the existing underlying zoning of the entire Town of Chester.

#### **16.5 - Applicability**

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under Section 16.11 of this Ordinance.

## **16.6 - Performance Standards**

The following performance standards are in addition to the regulations set forth in the balance of this Ordinance and apply to all uses in the Groundwater Protection District unless exempt under Section 16.11:

16.6.1 - For any use that will render impervious more than fifteen percent (15%) or more than ten thousand (10,000) square feet of any lot, whichever is greater (In performing this calculation asphalt is to be counted as an impervious surface.), a Stormwater management plan shall be prepared in a manner consistent with Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 and Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996. The Planning Board shall determine whether or not the Stormwater Management Plan is consistent with the above referenced standards and may reject any Management Plan, which fails to conform with the standards. (5/11/2010)

16.6.2 - Demonstrate that Stormwater runoff receives proper treatment through Stormwater practices designed to remove contaminants generated by the intended use; (5/14/2013)

16.6.3 - Animal manures, fertilizers, and compost must be stored in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, July 2008, and subsequent revisions. (5/14/2013)

16.6.4 - All regulated substances stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains. (5/14/2013)

16.6.5 - Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door(s) and/or gate(s) which are locked when authorized personnel are not present and must be inspected weekly by the facility owner.

16.6.6 - Outdoor storage areas for regulated substances must be protected from exposure to precipitation and must be located at least 75 feet from surface water or storm drains, wetlands, private wells and outside the sanitary protective radius of wells used by public water systems.

16.6.7 - Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of five gallons or more of regulated substances are stored outdoors on any particular property. All secondary containment areas must be covered to protect the storage container(s) and prevent the accumulation of precipitation. (5/14/2013)

16.6.8 - Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.

16.6.9.a - All land cleared and graded for establishing lawns must be finish graded with at least four inches of good quality loam or topsoil to reduce the demand for lawn irrigation.

16.6.9.b - All land cleared and graded for the construction of residential or commercial

structures must be properly stabilized via the establishment of lawns and/or other proper erosion control measures prior to the issuance of certificates of occupancy. (5/14/2019)

16.6.10 - Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the seasonal high-water table. (5/14/2013)

### **16.7 - Permitted Uses**

All uses permitted by right, special exception or variance in the underlying district shall be permitted in the Groundwater Protection District unless identified in Section 16.8 as a Prohibited Uses or 16.9 as a Conditional Use. All Permitted Uses must comply with the Performance Standards set forth in Section 16.6 unless specifically exempted under Section 16.11. Exemptions.

### **16.8 - Prohibited Uses**

The following uses are prohibited in the Groundwater Protection District.

16.8.1 - The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A.

16.8.2 - The siting or operation of a solid waste landfill.

16.8.3 - The siting or operation of a wastewater or septage lagoon.

16.8.4 - The siting or operation of a sludge mono-fill or sludge composting facility.

16.8.5 - The storage of regulated substances, unless in a free-standing container within a building, or above ground with secondary containment adequate to contain one hundred and ten percent (110%) of the container's total storage capacity.

16.8.6 - The storage of commercial fertilizers, unless such storage is within a structure designed to prevent the generation and escape of runoff or leachate.

16.8.7 - The siting or operation of junkyards, unless such facility is certified by the NH DES as a Green Yards under the Phase II: Compliance Assurance and Certification component of the NH DES Green Yards Program. (5/11/2010)

16.8.8 - The outdoor storage of road salt or other deicing chemical in bulk. (5/14/2013)

### **16.9 - Conditional Uses**

The issuance of a Conditional Use Permit is subject to Site Plan Approval by the Planning Board. The Planning Board may grant a Conditional Use Permit for a use that is otherwise permitted within the underlying district, if the permitted use is or is involved in one or more of the following:

16.9.1 - Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate plan is in place to prevent, contain, and minimize releases from catastrophic events such as spills or fires which may cause large releases of regulated substances.



16.9.2 - Any use that will render impervious more than fifteen percent (15%) or ten thousand (10,000) square feet of any lot, whichever is greater. In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use and will be in compliance with the Performance Standards as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards. The amount of this bond shall be in addition to any other bond required by the Board under either the subdivision or site plan regulations.

16.9.3 - The siting or operation of a commercial composting facility.

16.9.4 - *(Removed 5/14/2013)*

16.9.5 - The siting or operation of a commercial car wash. The facility must be designed and operated as a closed-loop system. (e.g. no discharge to the ground, surface water or ground water) *(5/14/2013)*

16.9.6 - *(5/11/2010) (Removed 5/14/2013)*

16.9.7 - *(5/11/2010) (Removed 5/14/2013)*

## **16.10 - Existing Nonconforming Uses**

Existing nonconforming uses may continue without expanding or changing to another nonconforming use, but must be in compliance with all applicable state and federal requirements, including New Hampshire Administrative Rule Env Ws 421, Best Management Practices for Groundwater Protection. However, under no circumstances will a nonconforming use be permitted when a continuance of that use presents a risk to public health and/or safety. *(5/14/2013)*

## **16.11 - Exemptions**

The following uses are exempt from the provisions of this Article. This exemption shall not excuse compliance with all other applicable local, state, and federal requirements:

16.11.1 - Any private residence is exempt from all Performance Standards except for Section 16.6.1, .2, .3.

16.11.2 - Any business or facility where regulated substances are stored in containers with a capacity of five (5) gallons or less is exempt from Performance Standard 16.6.5.

16.11.3 - 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 Performance Standard 16.6.5.

16.11.4 - 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 Performance Standards 16.6.5 through 16.6.8.

16.11.5 - Storage and use of office supplies is exempt from Performance Standards 16.6.5 through 16.6.8.

16.11.6 - Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards 16.6.5 through 16.6.8.

16.11.7 - The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this Ordinance.

16.11.8 - Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Performance Standards 16.6.5 through 16.6.8.

16.11.9 - Underground storage tank systems and above ground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section 13 of this ordinance.

#### **16.12 - Relationship between State and Local Requirements**

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

#### **16.13 - Maintenance and Inspection**

16.13.1 - Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Code Enforcement Officer at reasonable times with prior notice to the landowner.

16.13.2 - All properties within the Groundwater Protection District known to the Code Enforcement Officer as using or storing regulated substances in containers with a capacity of 10 gallons or more except for facilities where all regulated substances storage is exempt from this Ordinance under Section 16.11, shall be subject to inspections under this Section. *(5/14/2013)*

16.13.3 - The Planning Board may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Planning Board as provided for in RSA 41-9:a.

16.3.4 - 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 Rockingham County. The description so prepared shall comply with requirements of RSA 478:4-a. *(5/11/2010)*

#### **16.14 - Enforcement Procedures and Penalties**

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

**16.15 - Saving Clause**

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

**16.16 - Effective Date**

This ordinance shall be effective upon adoption by the municipal legislative body. (5/11/2004)

## **Article 17 – Small Wind Energy Systems**

(5/11/2010)

### **17.1 - Purpose**

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

### **17.2 - Definitions**

17.2.1 - Meteorological Tower (met 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. For the purpose of this ordinance, met towers shall refer only to those whose purpose is to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

17.2.2 - Modification – Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

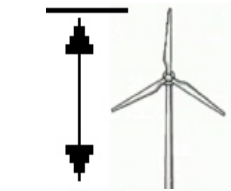
17.2.3 - Net Metering – The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

17.2.4 - Power Grid – The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

17.2.5 - Shadow Flicker – The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

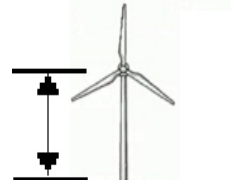
17.2.6 - Small Wind Energy System – A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

17.2.7 - System Height – the vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



17.2.8 - Tower – the monopole, guyed monopole or lattice structure that supports a wind generator.

17.2.9 - Tower Height – The height above grade of the fixed portion of the tower, excluding the wind generator.



17.2.10 - Wind Generator – The blades and associated mechanical and electrical conversions components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

### **17.3 - Procedure for Review**

#### 17.3.1 - Building Permit

Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.

#### 17.3.2 - Application

Applications submitted to the building inspector shall contain a site plan with the following information:

- a) Property lines and physical dimensions of the applicant's property.
- b) Location, dimensions, and types of existing major structures on the property.
- c) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
- d) Tower foundation blueprints or drawings.
- e) Tower blueprints and drawings.
- f) Setback requirements as outlined in this ordinance.
- g) The right-of-way of any public road that is contiguous with the property.
- h) Any overhead utility lines.
- i) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
- j) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
- k) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
- l) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.

m) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.

n) List of abutters to the applicant's property.

**17.3.3 - Abutter and Regional Notification**

In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The cost of abutter notification required by RSA 674:66 shall be borne by the applicant. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57,IV.

**17.3.4 - Board of Selectmen**

The Building Inspector shall provide a copy of an application for a building permit to construct a small wind energy system to the Board of Selectmen, in accordance with RSA 674:66,I (c).

**17.4 - Standards**

The building inspector shall evaluate the application for compliance with the following standards:

**17.4.1 – Setbacks**

The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

a) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

b) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

<b>Table 17.4.1 - Minimum Setback Requirements</b>			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

**17.4.2 – Tower**

The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.

#### 17.4.3 - Sound Level

The small wind energy system shall not exceed 60 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.

#### 17.4.4 - 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 on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

#### 17.4.5 – Signs

All signs, including flags, streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

#### 17.4.6 - Code Compliance

The small wind energy system shall comply with all applicable section of the New Hampshire State Building Code.

#### 17.4.7 – Aviation

The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including, but not limited to, 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations including, but not limited to, RSA 422-b and RSA 424.

#### 17.4.8 - Visual Impacts

It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts without restricting the owner's access to the optimal wind resources on the property.

- a) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
- b) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include, but are not limited to, white, off-white and gray.

c) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

#### 17.4.9 - Approved Wind Generators

The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or be on a similar list approved by the State of New Hampshire, if available.

#### 17.4.10 - Utility Connection

If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.

#### 17.4.11 – Access

The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

#### 17.4.12 – 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.

### **17.5 – Abandonment**

At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U. S. mail of the proposed date of abandonment or discontinuation of operations.

Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. “Physically remove” shall include, but not be limited to:

- a) Removal of the wind generator and tower and related above-grade structures.
- b) Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out of service for a continuous 12-month period. After the 12 months of



inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.

If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

#### **17.6 - Violation**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

#### **17.7 - Penalties**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by RSA 676 and this Ordinance.