

**TOWN OF  
CHESTER, NEW HAMPSHIRE  
ZONING ORDINANCE**

**As Of May 10, 2005**

**TOWN OF CHESTER ZONING ORDINANCE**

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# TOWN OF CHESTER ZONING ORDINANCE

## 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 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.
- 2.4 Building - Any structure that has a roof and is intended to shelter people, animals or chattel.
- 2.5 Building Face or Wall - All window and wall area of a building in one plane or elevation.
- 2.6 Building Height - The vertical distance between ground elevation and the ridge of a roof or center line on a flat roof.
- 2.7 Building Width - The horizontal distance at right angles to the ridge of a roof or center line on a flat roof.
- 2.8 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.
- 2.9 Certified Soils Scientist - A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists.

- 2.10 Changeable Copy Sign - A sign in which the message copy can be changed through use of attached letters and numerals. A changeable copy sign includes a sign which has automatic switching or electronic display.
- 2.11 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.
- 2.12 Common Sign - A common sign identifies a business, a shopping center or similar group of businesses, industries or subdivision.
- 2.13 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.
- 2.14 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.
- 2.15 Dwelling - A building that is designed for or contains one or more dwelling units.
- 2.16 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.
- 2.17 Educational Institution - An elementary or secondary school which meets the criteria of the State Department of Education for compulsory attendance under RSA 186:11, or an institution for post-secondary education approved by the post-secondary commission under RSA 292:8-b et seq.
- 2.18 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.
- 2.19 Flashing Sign - 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.
- 2.20 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.
- 2.21 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.
- 2.22 Frontage - The distance along a lot line dividing a lot from a Town approved road.

- 2.23 Ground Sign - A sign erected on a free-standing frame, mast or pole and not attached to any building.
- 2.24 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.
- 2.25 Kenel - 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.
- 2.26 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.
- 2.27 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.
- 2.28 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.
- 2.29 Movable Sign - Any sign which is not affixed permanently to a building or affixed permanently to a structure which is placed permanently in the ground. Also, any sign which is supported by a chassis.
- 2.30 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.
- 2.31 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.
- 2.32 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.
- 2.33 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.

- 2.34 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.
- 2.35 Setback, front - Shall apply to all structures except driveways.
- 2.36 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.
- 2.37 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.
- 2.38 Sign Advertising - A sign which directs public attention to the goods or services of the advertiser when the goods or services are primarily offered elsewhere than on the premises where the sign is erected.
- 2.39 Sign Area and Size - The size of a sign is the area within a perimeter which forms the outside shape of a sign. The visual message may be placed on both sides of a sign. If a sign consists of more than one module, the total area of all modules shall be construed as 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.
- 2.40 Sign Removal - For the purpose of removal, signs shall also include the sign structure.
- 2.41 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.
- 2.42 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.
- 2.43 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.
- 2.44 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.
- 2.45 Wall Sign - Any sign attached to, painted on or directed against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of the wall.

## 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 5.5 and 5.6.

### 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 (FIRM)  
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 20 percent or more. Leach field beds located on slopes between 15 percent and 20 percent 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.
- 4.3.4.5 Setback From Wells - No new sewage disposal system shall be located within 100 feet of any proposed or existing well.

#### 4.4 Signs

##### 4.4.1 Purpose

The purpose of this section is to provide a reasonable uniformity in the size and treatment of signs used to call attention to the existence of a business. The Town does not desire such signs to detract from the overall rural character of the Town which the Town through its Master Plan wants to maintain. The Town recognizes the need to protect the safety and welfare of the public, as well as the need for adequate business identification in advertising.

#### 4.4.2 District Requirements

- 4.4.2.1 Zone R-1 - Any permitted sign on any one lot shall not exceed 6 square feet in area, the height of which shall not exceed 8 feet from the ground level to the top of the sign or sign structure. No more than one sign of each of the following types may be displayed: historic signs, name of occupant and signs that offer the property for sale or rent. One common sign not exceeding 15 square feet in area, the height of which shall not exceed 10 feet from ground level, shall be permitted for each entrance in a subdivision.

One free-standing identification sign not exceeding 40 square feet shall be allowed, subject to Site Plan Review, on lots 50 acres or more that contain Educational Institutional uses.

- 4.4.2.2 Zone C1 and C2 - In Zones C1 and C2, a permit is required for signs. On any lot there may be no more than one common sign, either ground or wall, identifying a group of businesses. Also permitted on the same lot is one wall sign on the building for each discrete business establishment. The maximum square footage of a common sign, either ground or wall for each lot, shall not exceed the following sizes:

Industrial and Commercial - 15 square feet

- 4.4.2.3 Any application for a site plan review shall include a plan for any proposed signs for individual owners and tenants within the complex. The developer shall designate on the site plan signs for individual owners and tenants. The maximum wall sign area permitted for each business is:

Industrial and Commercial - 15 square feet

- 4.4.2.4 No sign in Zones C1 and C2 shall have a height exceeding 15 feet from ground level to the top of the sign. No sign in Zones C1 and C2 shall be located within 15 feet of any public or abutting right of way.

#### 4.4.3 Sign Regulations

The following regulations shall apply to all signs:

- 4.4.3.1 Signs shall be constructed or maintained in such a way that they do not endanger traffic by obstructing the view of highways, streets or intersections.
- 4.4.3.2 Each sign shall be constructed of durable material and shall be maintained in a high state of repair at all times.
- 4.4.3.3 Only permanent signs to advertise a place of business are permitted except those mentioned in Sub-section 4.4.3.6. The use of movable signs is prohibited.
- 4.4.3.4 No neon, tubular, flashing, internally lighted, revolving or changeable copy signs shall be permitted in any district. Signs may be lighted externally. Such lighting shall be shielded so as not to present a hazard to automotive traffic. Signs shall be lighted only during the hours when the associated establishment is open for business.
- 4.4.3.5 No sign shall project over any street or sidewalk lane.
- 4.4.3.6 Signs offering property for sale or rent are permitted. Temporary signs advertising a town, local or private function including social breakfasts, garage sales, band concerts and the like are permitted. Signs shall be placed not earlier than 4 weeks prior to the event and shall be removed within 7 days of the event. Political signs shall be governed in accordance with RSA 664:17.
- 4.4.3.7 Signs shall only be placed on the lot on which the use of the establishment being advertised by the sign is being conducted. No permanent special attention getting devices such as pennants, strings or flags other than the State or United States flag shall appear on the land or buildings or any premises.
- 4.4.3.8 Off-premises signs are prohibited. Existing off-premises signs cannot be expanded upon.

#### 4.4.4 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. In the Commercial Zone, the Planning Board shall determine the total area of signs for developments having two or more discrete businesses as part of the site plan review. Placement of common signs, total sign area and a plan for appropriate signs for individual owners and tenants shall be marked on the site plan.

#### 4.4.5 Nonconforming Signs

- 4.4.5.1 This regulation shall not be construed to require removal, lowering or other change or alteration of any structure or sign not conforming to this regulation 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 regulation and is diligently completed within one year thereof, provided said nonconforming use was a pre-existing conforming use under the previous Zoning Ordinance provisions of the Town of Chester.
- 4.4.5.2 Any sign which is structurally altered or relocated shall be brought into compliance with all the provisions of this regulation.
- 4.4.5.3 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 regulation, provided further that the dimensions of said sign are not increased.

#### 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 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 Handicapped Parking - The regulations of the Governor's Commission for the Handicapped, New Hampshire Code of Administrative Rules, Part Han 304 VEHICULAR PARKING, shall apply.
- 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 handicapped parking and have the proper permanent sign to mark the handicapped space.
- 4.5.2.6 A minimum of 8 foot wide strips of land shall be provided on at least 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 Manufactured Housing and Travel Trailers

4.6.1 Permanent Residence

Travel trailers 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

Travel trailers 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

Travel trailers 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 live stock 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.

#### 4.9 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 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 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.
- 4.9.2.9 If within one (1) year after a permit has been issued, but has not been implemented, that permit becomes null and void.
- 4.9.2.10 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.
- 4.9.2.11 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 and 7.

#### 4.11 Number of Dwellings Per Lot

Except as provided in Article 6 and 7, 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.

## 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

When a nonconforming undeveloped lot is contiguous to another lot, whether a conforming lot or a nonconforming undeveloped lot, and said lots are owned in common, the lots shall be considered merged. Lots merged for zoning purposes may not be subdivided without the approval of the Planning Board in accordance with the Subdivision Regulations.

#### 5.3 General Residential and Agricultural District (Zone R-1)

##### 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 two-family dwellings.
- 5.3.2.2 Cluster development. (See Article 6)
- 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 of single-family dwellings to accommodate one or more additional units provided that all requirements for the conversion of existing dwellings, Article 9, are also satisfied.
- 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 under Subsection 5.7.7.
- 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 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.

#### 5.3.4 Prohibited Uses

Any use which is not specifically permitted or permitted by special exception in Zone R-1 is prohibited.

- 5.3.4.1 Runways and Heliports - Runways and heliports are specifically prohibited in Zone R-1.

#### 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.

### 5.4 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.

#### 5.4.2 Permitted Uses

- 5.4.2.1 Any use permitted in Zone R-1 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, stationary, 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.

#### 5.5.2 Permitted Uses

##### 5.5.2.1 Agriculture/Forestry

Commercial Greenhouses

Tree Nursery  
Fish Hatchery

5.5.2.2 Recreational Facilities

Indoor commercial Recreation Facilities  
Outdoor commercial Recreation Facilities  
Health/Athletic Clubs

5.5.2.3 Multi-Unit Commercial Service Establishments

Metal Working  
Light Manufacturing  
Machine Shop  
Engine Rebuilding  
Transmission Repair  
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, saw mill and similar uses  
Open storage of lumber and building material

5.5.2.6 Any use permitted in Commercial Zone (C1)

5.5.3 Prohibited Uses

5.5.3.1 Any use permitted in Residential Zone (R1) except for Special Exception Uses defined under Section 5.3.3 and not otherwise defined under Section 5.5.2.

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

5.5.3.3 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)

### 5.6.1 Authority and Purpose

By the authority granted in RSA 674:16, 17, 20 and 21, and in the interest of public health convenience, safety and welfare, the regulations of this district are established to guide the use of areas of flood plain subject to flood water and to encourage the retention of open land, and to constitute a harmonious and appropriate physical development of the Town of Chester as defined from the Town's Master Plan while establishing the eligibility of existing buildings in Chester for the National Flood Insurance Program under Section 1910.3(b) of the Federal Insurance Administration regulations.

The specific intent of this district is to:

- 5.6.1.1 Prevent the development of buildings and uses in areas that are unsatisfactory and hazardous due to the threat of flooding or unsanitary conditions.
- 5.6.1.2 Protection of natural flow and drainage.
- 5.6.1.3 Require that any alteration or reconstruction of existing structures, or any new construction that may be permitted by variance, complies with standards required by the National Flood Insurance Program.

### 5.6.2 District Boundaries

- 5.6.2.1 The Flood Plain Conservation District is herein determined to be those areas of land, including floodways of the Exeter River within the Town of Chester designated as Zone A of the Flood Insurance Rating Map [Preliminary 09/30/02] issued by the Federal Management Agency. In the event an area is incorrectly designated as being in the flood plain then the regulations of this Section shall not apply. However, conversely if an area not so designated as being in the flood plain is in the flood plain then these regulations shall apply. Such evidence may be obtained by adequate on-site determination of actual flood plain elevations conducted by a licensed land surveyor.

### 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 erection of a structure 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) Wild life 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, cat-walks, 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 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 part, the applicant may be required to submit a performance security to the Planning Board in a form acceptable to the Planning 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 - The Town wishes to establish eligibility of existing buildings in Chester for the National Flood Insurance Program under Section 1910.3(b) of the Federal Insurance Administration regulations, but 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 required by the National Flood Insurance Program. 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 - Unless specifically defined below, words or phrases used in Section 5.6.5 shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this document its most reasonable application.

- 5.6.5.3.1 Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.
- 5.6.5.3.2 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.
- 5.6.5.3.3 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.
- 5.6.5.3.4 Flood Plain or flood prone area means any land area susceptible to being inundated by water from any source (see definition of "flood").
- 5.6.5.3.5 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.
- 5.6.5.3.6 Habitable floor means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation or a combination thereof. A floor used only for storage purposes is not a "habitable floor".
- 5.6.5.3.7 Mobile 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 by is not limited to, the definition of "mobile home" as set forth in regulations governing the Mobile Home Safety and Construction Standards Program (24 CFR 3282.7(a)).
- 5.6.5.3.8 Persons include any individuals or group of individuals, corporations, partnership, association or any other entity, including State and local governments and agencies.
- 5.6.5.3.9 Repetitive Loss means flood related damages sustained by a structure on separate occasions during a 10 year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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

5.6.5.3.11 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 mobile home.

5.6.5.3.12 Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored before the damage occurred. The term includes Repetitive Loss. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- 1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or
- 2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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

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 designated responsible person.

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, shall be commenced until a separate permit has been obtained from the designated responsible person for each change.

No mobile home shall be placed on improved or unimproved real estate without first obtaining a separate permit for each mobile home from the designated responsible person.

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 designated responsible person 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, hereinafter referred to as the responsible person, is appointed as the "person" responsible for receiving applications and examining the plans and specifications for the proposed construction or development.

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

5.6.5.6.1 The responsible person 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 responsible person 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 flood prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall;

- i) be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure,
- ii) be constructed with materials and utility equipment resistant to flood damage and
- iii) be constructed by methods and practices that minimize flood damage.

5.6.5.6.3 The responsible person 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 flood prone 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 flood prone 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 responsible person shall require within flood prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood water into the systems.
- 5.6.5.6.5 The responsible person shall require within flood prone 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.
- 5.6.5.6.6 The responsible person 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.
- 5.6.5.6.7 The responsible person shall obtain, and reasonably utilize any base flood elevation data available from a Federal, State or other source, until such other data has been provided by the Administrator, as criteria for requiring that
- i) all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood level and
  - ii) all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or flood proofed to or above the base flood level.
- 5.6.5.6.8 For the purpose of the determination of applicable flood insurance risk premium rates within Zone A on a community's FHB, the responsible person shall

- i) obtain, or require the applicant to furnish, the elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement,
- ii) obtain, or require the applicant to furnish, if the structure has been flood proofed, the elevation (in relation to mean sea level) to which the structure was flood proofed, and
- iii) maintain a record of all such information.

5.6.5.6.9 The responsible person shall notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Insurance Administration.

5.6.5.6.10 The responsible person shall assure that the flood carrying capacity within the altered or relocated portion of any water course is maintained.

5.6.5.6.11 The responsible person shall require that all mobile homes to be placed within Zone A on the Community's FHBM shall be 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 mobile home, with two additional ties per side at intermediate locations and mobile 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 mobile 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 mobile home be similarly anchored.

5.6.5.6.12 The Flood Hazard Boundary Map issued by the Federal Insurance Administration for the community dated February 21, 1975, with Panel Numbers 330182, and any officially published revisions to this map, is adopted as the official map for the enforcement of this document. Zone A on this map delineates the area within which the requirements of this document will be enforced.

## 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.

### 5.7.2 District Boundaries

- 5.7.2.1 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.

- 5.7.2.2 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.
- 5.7.2.3 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.
- 5.7.2.4 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.

### 5.7.3 Permitted Uses

- 5.7.3.1 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 does not involve erection of a structure 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 in 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) Wild life 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.

5.7.3.2 Very Poorly Drained Soils - Permitted uses in areas containing very poorly drained soils, marshes, bogs, open water or major streams are as follows:

- a) Uses specified in Subsection 5.7.3.1 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 5.6.3.2(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 so as 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.

#### 5.7.4 General Provisions

5.7.4.1 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.

5.7.4.2 Lot Size Determinations - Areas designated as having poorly drained soils may be used to fulfill 20 percent 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.

- 5.7.4.3 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).
- 5.7.4.4 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.

#### 5.7.5 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:

- 5.7.5.1 The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.
- 5.7.5.2 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.
- 5.7.5.3 No alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.
- 5.7.5.4 Economic advantage alone is not a reason for the proposed construction.
- 5.7.5.5 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.

- 5.7.5.6 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.

#### 5.7.6 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:

- 5.7.6.1 The dwelling lawfully existed prior to the effective date of this Ordinance; and
- 5.7.6.2 That the proposed construction conforms with all other applicable ordinances and regulations of the Town of Chester.

#### 5.7.7 Special Exception for Nonconforming Lots

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:

- 5.7.7.1 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.
- 5.7.7.2 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.
- 5.7.7.3 Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the exception.
- 5.7.7.4 The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of these provisions.
- 5.7.7.5 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.

- 5.7.7.6 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.
- 5.7.7.7 Special exception for nonconforming lots shall not apply to any development pursuant to Article 6.

## 5.8 Telecommunications Facility District

### 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 owners 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 (125%) percent 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. All decisions shall be rendered in writing, and a Denial shall be in writing and based upon substantial evidence contained in the writing record.

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 insure that 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 5.7.10. 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**

<b>Zone</b>	<b>Minimum Area in Acres</b>	<b>Density (acres/unit)</b>	<b>Minimum Frontage (ft)</b>	<b>Maximum Building Coverage (% area)</b>	<b>Maximum Building Width (ft)</b>	<b>Maximum Height (stories/ft) (see note 1)</b>	<b>Minimum Front Setback (ft)</b>	<b>Minimum Side Setback (ft) ea</b>	<b>Minimum Rear Setback (ft)</b>
<b>Single Family R-1</b>	<b>2</b>	<b>2</b>	<b>290</b>	<b>15</b>	<b>n/a</b>	<b>2.5/33</b>	<b>40</b>	<b>25</b>	<b>25</b>
<b>Two Family R-1</b>	<b>3</b>	<b>1.5</b>	<b>430</b>	<b>15</b>	<b>n/a</b>	<b>2.5/33</b>	<b>40</b>	<b>25</b>	<b>25</b>
<b>C-1</b>	<b>2</b>	<b>-</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>Article 6 Cluster</b>	<b>20</b>	<b>calculate</b>	<b>430</b>	<b>15</b>	<b>n/a</b>	<b>2.5/33</b>	<b>300</b>	<b>75</b>	<b>75</b>
<b>Article 7 Cluster</b>	<b>7</b>	<b>calculate</b>	<b>290</b>	<b>15</b>	<b>n/a</b>	<b>2.5/33</b>	<b>100</b>	<b>50</b>	<b>50</b>

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

**TABLE 2**  
**Setbacks, No Cut and No Clearing Zones**

	<b>Wetlands (ft)</b>	<b>Ponds, Creeks &amp; Streams (ft) (See Note 1)</b>	<b>Exeter River (ft)</b>	<b>Vernal Pools (ft)</b>
<b>Roads (See Note 2)</b>	<b>50</b>	<b>50</b>	<b>100</b>	<b>100</b>
<b>Buildings</b>	<b>75</b>	<b>75</b>	<b>300</b>	<b>100</b>
<b>Septic Systems</b>	<b>75</b>	<b>75</b>	<b>300</b>	<b>100</b>
<b>Wells</b>	<b>25</b>	<b>25</b>	<b>100</b>	<b>25</b>
<b>No Clearing Buffer Zones</b>	<b>25</b>	<b>25</b>	<b>300</b>	<b>50</b>

**(1) Includes seasonal**

**(2) Except in cases where the road crosses the wetlands**

## ARTICLE 6

### CLUSTER DEVELOPMENT

#### 6.1 Purpose

The purpose of this Article is to encourage the preservation of open space, reduce the occurrence of strip development along existing Town approved streets, promote efficient use of land in harmony with its natural features, provide for lower cost housing to meet Town and regional needs, and to protect and promote the safety, health and general welfare of the inhabitants of the Town of Chester.

##### 6.1.1 Procedure

6.1.1.1 The application procedure shall be the same as specified for subdivisions in the Subdivision Regulations. In the course of review of the proposal by the Planning Board, the Planning Board shall hear evidence presented by the applicant and other interested parties and determine whether in its judgment the proposal meets the objectives and purposes set forth above in which event the Planning Board may grant approval to this proposed subject to reasonable conditions and limitations.

##### 6.1.2 Clustered Defined

A number of similar dwellings grouped together in individual clusters of two to six units in relatively close proximity on a large tract of land which preserves accessible open space for the benefit of the unit owners/renters. This refers to the total development as well as the individual clusters within the development.

##### 6.1.3 Permitted Uses

The following uses or housing types shall be permitted in any Cluster.

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

6.1.3.2 Single-family attached dwelling units (two-family dwelling).

6.1.3.3 Accessory uses or buildings.

6.1.3.4 General forestry maintenance activities in the open space.

6.1.3.5 Any use not specifically permitted herein is prohibited.

##### 6.1.4 Mix of Housing Types

The determination of the mix of housing types, number of dwelling units and structures and the number of bedrooms for each dwelling unit shall be determined prior to the final approval and shall be noted on the final plat and in Agreements filed with the final plat.

6.1.5 Minimum Tract Requirement

- 6.1.5.1 Minimum Area - Cluster developments may be permitted on single or adjacent lots or tracts of land under one ownership or brought together under one ownership which has a net tract area as defined in Subsection 6.1.5.3 of not less than 20 acres in the Residential/Agricultural District Zone R-1. For the purpose of this Article, lots or tracts under one ownership or brought together under one ownership shall be considered merged and considered as a single tract, and not subject to further subdivision.
- 6.1.5.2 Minimum Frontage - The minimum frontage for a tract shall be at least 430 feet on an approved Town street. Further provided, however, that any tract having at least 430 feet frontage on any Town approved street shall not be eligible for development under this Section if any portion of the tract is subdivided into four (4) or more individual lots subsequent to the effective date of this Ordinance. These conditions shall be met to ensure that the purposes of encouraging preservation of open space and reduction in occurrence of strip development are satisfied. Clusters shall be designed to avoid the appearance of a strip development.
- 6.1.5.3 Net Tract Area - The net tract area shall mean the total area of the tract or tracts less the area of the tract which are contained in the Flood Plain Conservation District and/or Wetlands Conservation District. Areas in the Wetlands Conservation District designated as having poorly drained soils may be used to fulfill 20 percent of the net tract area, providing that the non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities such as water supply and sewage disposal including primary and secondary leach field locations.

To aid in an understanding of how to calculate Net Tract Area, the following illustrative example is set out below.

Calculation of Net Tract Area

Total Area or Tract	= 80 acres
Area of Tract in Wetlands (Very poorly drained soils, bodies of water), thus	= 8 acres
Net Area	= 72 acres

Area of Tract in Wetlands (Poorly drained soils) = 20 acres

$$20 \text{ acres} / 72 \text{ acres} = 27.8\%$$

Since 20 acres of the remaining 72 acres are poorly drained soils, the poorly drained soils account for 27.8% of the net area. Thus, the net area must be further reduced to arrive at the Net Tract Area so that the poorly drained soils account for not more than 20 per cent of the Net Tract Area.

The net area is reduced to arrive at the Net Tract Area using the formula set forth in this section.

$$\begin{aligned} & \text{Poorly Drained Area} - (0.2 \times \text{Net Area}) = \text{Area Reduction} \\ & \text{Poorly Drained Area} - \text{Area Reduction} = .08 \times \text{Net Area} \\ & \frac{\text{Poorly Drained Area} - \text{Area Reduction}}{\text{Net Area} - \text{Area Reduction}} = .2 \end{aligned}$$

Solving for Area Reduction we get:

---

Net Tract Area then equals:

$$\text{Net Area} - \text{Area Reduction} = \text{Net Tract Area}$$

Thus, the 72 acres must be reduced to  $(72 - 7) = 65$  acres.

In this example, the Net tract Area for density calculation is 65 acres.

## 6.1.6 Densities

6.1.6.1 Number of Units Permitted in a Cluster - The number of units permitted in a Cluster shall be determined by the following method.

- a) The average acreage per unit in the Cluster shall first be determined by multiplying the percentage of units of each housing type by the lot density requirement for the particular housing type from Table 1, and adding together each of these results for each housing type;

- b) The result of (a) will be divided by 100 to arrive at the average acreage per Unit;
- c) The Net Tract Area will then be divided by the average acreage per unit to determine the base number of units allowed in the Cluster.
- d) In no event shall the average acreage per unit be less than 1.5 acres.

Density Calculation

Example: If the developer desires to cluster single-family houses, and the Net Tract Area is 65 acres, the density calculation is as follows:

$$\frac{\text{Net Tract Area}}{\text{Density For Single – Family}} = \frac{65 \text{ Acres}}{2 \text{ Acres/Unit}} = 32 \text{ Units}$$

Example: If the developer desires to cluster two - family houses, and the Net Tract Area is 65 acres, the density calculation is as follows:

$$\frac{\text{Net Tract Area}}{\text{Density For Two - Family}} = \frac{65 \text{ Acres}}{1.5 \text{ Acres / Unit}} = 43 \text{ Units}$$

6.1.7 Bedrooms Permitted

6.1.7.1 The maximum number of bedrooms permitted in the Cluster (not the individual dwelling unit) shall be determined by adding together the products of the number of dwelling units of each housing type times the factors below:

- a) single-family - 3.5 bedrooms / single-family unit
- b) two-family - 2.0 bedrooms / two-family unit

Number of Bedrooms

Example: If a developer desires to cluster 32 single-family units (on a Net Tract Area of 65 acres) the permitted number of bedrooms is determined as follows:

Single-family proposal:  
 32 x 3.5 bedrooms/unit = 112 bedrooms.

Example: If a developer desires to cluster 43 two-Family units on a Net Tract Area of 65 acres, the Permitted number of bedrooms is determined as follows:

Two-family proposal:

43 x 2.0 bedrooms/unit = 86 bedrooms.

- 6.1.7.27 For the purpose of this Ordinance, a bedroom may mean any room other than a kitchen, bathroom, living or small utility room. In the review of the floor plans the Planning Board when appropriate may deem floor space shown on said plan as constituting a number of bedrooms which could be reasonably built in that space as opposed to the number of bedrooms shown. The Planning Board may designate a room not to be a bedroom if it is clear that its use as a bedroom is unlikely in view of the layout and overall character of the Cluster. The number of said bedrooms that shall be permitted in any one of the units proposed shall be fixed by the Planning Board before the approval of the final phase. The number of bedrooms permitted in the Cluster shall be noted on the final plat and in agreements filed with the plat and in recorded deeds.

#### 6.1.8 Additional Requirements

The following requirements in addition to those above are applicable to a Cluster development:

- 6.1.8.1 An internal road collector system shall be built to prevent individual dwellings from feeding traffic directly onto a Town approved street. Each individual cluster shall be serviced by a separate road which feeds into a road collector system.
- 6.1.8.2 All buildings shall be separated by at least 150 feet or alternatively buildings shall be separated by at least 75 feet and have additional suitable fire protection safeguards approved by the Planning Board in concurrence with the Fire Chief and Building Inspector.
- 6.1.8.3 For all development pursuant to this Section, other than an internal street, no improvement including parking lots, tennis courts, pools, etc. shall be closer than 300 feet from the front boundary line or any existing Town approved road. Side and rear setbacks shall be a minimum of 75 feet.
- 6.1.8.4 The total periphery of the proposed tract for the Cluster exclusive of curb cuts shall be buffered. The buffered zone must meet the following requirements:
- a) It shall be a minimum of 50 feet wide;
  - b) It shall be landscaped to diminish effect of lighting, sound and odor upon abutters;

- c) Minimum planting shall be 3 rows of at least 50 percent coniferous trees planted parallel to the lot line. The trees shall have a minimum height of 6 feet and be planted 16 feet on center or closer, staggered to maximum screening effect. Natural growth and natural conditions will be considered to reduce the required minimum plantings. Landscaping of the buffer zone shall be approved by the Planning Board. The buffer zone may be part of the required setback areas in the Cluster.
- d) In a clustered subdivision, the developer will be required to leave intact the existing natural vegetation in the buffer zone. Each unit within the cluster shall contain a deed notification requiring the owner to preserve the buffer.

6.1.8.5 Individual clusters of units shall be defined as a grouping of two or more units and shall not exceed six (6) units. In order to accomplish the purpose and intent of the Cluster, internal buffering between individual clusters shall be required. The internal buffering requirements shall be the same as the buffering requirements in Subsection 6.1.8.4 above. Individual clusters shall be separated by an appropriate distance in addition to any buffer zone, in accordance with the natural features, size and shape of the proposed tract.

6.1.8.6 The phasing of developments shall be governed in accordance with the provisions of Article 8.

6.1.8.7 Only one family in residence shall be permitted per dwelling unit.

#### 6.1.9 Open Space

All areas in the Cluster which are not covered by buildings, septic systems, wells, or paved areas, or surface areas which are not set aside as private yards, patios or gardens for the residents of the Cluster shall be treated as open space. The area of the open space shall be at least 40 percent of the total area of the Cluster tract.

All units shall be located, to the maximum extent possible, in a manner that enables access by all unit owners/renters to open space.

Provisions shall be made for the open space to be held in common equally by all the owners of the Cluster. In those projects where deeded lots are conveyed to unit owners, the deeds shall reflect the unit owners' common ownership of the open space. Such provisions shall further hold that all the open space shall be readily accessible to all residents of the Cluster and that such open space shall be retained in perpetuity for one or more of the following uses: conservation, agricultural, recreation or park. No building or construction whether it is a structure or septic system shall take place in the open space. Harvesting of trees in the open space is permitted if it is done according to good forestry practices. Harvesting specifically excludes clear cutting of forests. The open space area shall be maintained in its natural state and shall not be used by low impact motorized vehicles of any kind.

#### 6.1.10 Architectural Design

As a condition of approval, the applicant must obtain the Planning Board's approval of the external architectural design of the Cluster to ensure that it complies with the goals of harmonious existence within the cluster and, the surrounding neighborhood, and the environment as stated in the paragraph on purpose at Section 6.1 of this Ordinance. The approval of the architectural design shall be part of the final phase approval.

#### 6.1.11 Limitation on Subdivision

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

#### 6.1.12 Sanitary Protection Requirements

The sanitary protection requirements of Section 4.3 shall apply to all Cluster developments. In applying the requirements of Section 4.3, the phrase "Planning Board" shall be substituted for the phrase "Building Inspector."

#### 6.1.13 Professional Services

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

#### 6.1.14 Other Provisions

There shall be no frontage requirements for dwellings within the Cluster other than the safety spacing as mentioned above. Clusters shall be subject to Subdivision Regulations and, where applicable, Site Plan Review Regulations. Where there are differences between the Cluster requirements and the Subdivision Regulations or Site Plan Review Regulations, the requirements for the Cluster shall prevail. All other provisions of this Ordinance shall apply unless specifically modified by Section 6.1.

#### 6.1.15 Condominium Documents

Each cluster 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 Subsection 6.1.9, and to create legal obligations on the part of all owners in the development to share the cost and maintenance, repair and replacement of sewage disposal, water supply, road, drainage, and other such systems in the cluster development.

## ARTICLE 7

### **INCENTIVE SYSTEM FOR LOW-MODERATE INCOME CLUSTER HOUSING**

#### 7.1 Purpose

The purpose of this Ordinance is to create economic incentives for the development of affordable clustered housing units; to promote households within environmentally sound clustered developments; and to enable the Town to better accommodate a fair share of the regions low to moderate income housing needs.

#### 7.2 Authority

This Incentive System for Low-Moderate Income Cluster Housing is adopted under the provisions of RSA 674:21-1(k), as Inclusionary Zoning. The use of other Innovative Land Use Control Measures provided for in RSA 674:21 are hereby authorized as needed to accomplish the purpose of this Ordinance.

Except where explicitly stated otherwise in this Article, Article 6 of this Ordinance and the Chester Subdivision Regulations and Site Plan Regulations shall also govern the design and development of low-moderate income cluster housing.

#### 7.3 Definitions

##### 7.3.1 Affordable Unit - Affordable Unit means:

7.3.1.1 A rented dwelling unit having an annual gross rent which does not exceed 30 percent of:

- a) 40 percent of median area income for very low income households; or
- b) 65 percent of median area income for lower income households.

7.3.1.2 An owner-occupied dwelling unit with a cost of mortgage principal and interest, property taxes, association fees and homeowner's insurance which does not exceed 30 percent of:

- a) 40 percent of median area income for very low income households; or
- b) 65 percent of median area income for lower income households; or
- c) 90 percent of median area income for moderate income households; or

- d) 110 percent of median area income for middle income households.

The calculation of mortgage principal and interest shall be based upon the payment required on a 30-year fixed rate mortgage, assuming a 10 percent down payment and prevailing mortgage interest rates within the area. Other financing terms and conditions may be applied to affordable housing units as provided under various home ownership 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 very low, lower, moderate or middle income households may be eligible where there are firm commitments for such units available to the project, as available to subsequent buyers of resold units.

7.3.2 Cluster

See definition set forth in Section 6.1.2.

7.3.3 Contract Rent

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.

7.3.4 Base Density

Base Density means the average acreage per unit under Article 6.

7.3.5 Density Bonus

Density Bonus means a percentage of increase in density, over base density according to the proportion of very low, low, moderate and middle income affordable units included within a new housing development project, or within substantially rehabilitated housing units.

7.3.6 Gross Rent

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.

7.3.7 Median Area Income

Median Area Income means the median family income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development for counties and metropolitan areas of the State of New Hampshire, applicable to the Town of Chester as updated on an annual basis. Multiples of the median area income define the income range set forth below:

- a) Very Low Income Household: A household whose gross annual income is less than 50 percent of the median area income;
- b) Lower Income Household: A household whose gross annual income is at least 50 percent, but less than 80 percent, of the median area income;
- c) Moderate Income Household: A household whose gross annual income is at least 80 percent, but less than 100 percent, of the median area income.
- d) Middle Income Household: A household whose gross annual income is at least 100 percent, but less than 120 percent, of the median area income.

## 7.4 Applicability

### 7.4.1 Zones

Eligibility for the density bonus under this Article shall be expressly conditioned upon at least 20 percent of the dwelling units shall be maintained as affordable units, as defined herein, and subject to the restrictions of Section 7.6.

Any for rent or for sale development project involving new construction or substantial rehabilitation, and involving the creation of five or more units, may apply for the incentives available under the terms of this Article, provided that the property is located within Zoning District R-1, and be located on an approved street with a pavement width of 17 feet or greater everywhere between the entrance to the project and the nearest Town boundary or state highway.

### 7.4.2 Minimum Tract Area

7.4.2.1 Minimum Area - Cluster developments may be permitted on single or adjacent lots or tracts of land under one ownership or brought together under one ownership which have a Net Tract Area as defined in subsection 6.1.5.3 of not less than 7 acres in the Residential/Agricultural District Zone R-1. For the purpose of this Article, lots or tracts under one ownership or brought together under one ownership shall be merged and considered as a single tract, and not subject to further subdivision.

7.4.2.2 Minimum Frontage - The minimum frontage for a tract shall be at least 290 feet on an approved Town street. Further provided, however, that any tract having at least 290 feet frontage on any Town approved street shall not be eligible for development under this Section if any portion of the tract is subdivided into four (4) or more individual lots subsequent to the effective date of this Ordinance. These conditions shall be met to ensure that the purposes of encouraging preservation of open space and reduction in occurrence of strip development are satisfied.

7.4.2.3 Minimum Setbacks - Minimum setback for the total development shall be 100 feet from an approved street, minimum side setback shall be 50 feet, and minimum rear setback shall be 50 feet. Said setbacks shall remain in its natural vegetative state.

7.4.2.3 Maximum Height - Maximum height shall be 2.5 stories or 33 feet.

7.4.2.5 Maximum Building Coverage - Maximum building coverage of the Net Tract Area shall be 40 percent.

## 7.5 Density Bonuses

A density bonus shall be awarded in proportion to the percentage of very low, lower, moderate and middle income affordable units provided for owner occupancy, and in proportion to the percentage of very low, and lower income units provided for rental occupancy. The Density Bonus shall be proportionally greater for very low income and low income units. The Density Bonus awarded shall be equal to the percent of total units in the development provided within each of the four income ranges for affordable units times the respective multipliers for each income range, but subject to the upper limits on maximum allowable density specified in Subsection 7.6.3 and subject to a maximum Density Bonus in any development of 50 percent. No multi-family development shall have more than a total of 48 dwelling units, including those permitted as a result of density bonuses. The multipliers applied to the income range will be:

<u>Income Group</u>	<u>Owner - Occupied</u>	<u>Rental</u>
Very Low Income	2.50	5.00
Lower Income	2.00	2.50
Moderate Income	1.50	No Bonus
Middle Income	1.25	No Bonus

Base Density - The base density for all calculations shall be the average acreage per unit required under Article 6. This base figure may be used when calculating the Density Bonus in Subsection 7.5.1.

### Density Bonus Calculated

Example: If affordable units represent the percentages of the total units in a development shown in the following table, the density bonus would be calculated by the proportion of the project in the various income groups times the respective multipliers. The sum of these products yields the overall density bonus to be applied to an owner-occupied project at shown below:

<u>Income Group</u>	<u>% of Project</u>	<u>Multiplier</u>	<u>Density Bonus</u>
Very Low	5%	2.50	13%
Lower	5%	2.00	10%
Moderate	5%	1.50	8%
Middle	5%	1.25	6%
Total Units Affordable	20%		37%*

Under this example, if Base Density by right is 1 unit per 1.5 acres, then density permitted with Article 7 bonus would be  $1.37 \times 1 = 1.37$  units per 1.5 acres.

\* (But subject to maximum densities provided in Subsection 7.6.3)

#### 7.5.1 Additional Incentives for Qualified Cluster Development

Provided that at least half of the affordable housing units are for very low or lower income units, the following incentives shall apply.

7.5.1.1 Multi-Family Structures - All dwelling units may be constructed in multi-family structures with up to 12 dwelling units per building and may be grouped in a single group. All buildings shall be spaced a minimum of 50 feet apart. All individual clusters shall be spaced a minimum of 150 feet apart. There shall be no maximum building width restriction on such buildings.

7.5.1.2 Internal Clustering Restrictions -The total number of dwelling units in an individual cluster shall not exceed 24. The total number of dwelling units in a single-family or two-family cluster shall not exceed 8.

7.5.1.3 Buffering - Buffering between individual clusters shall meet the following requirements:

- a) It shall be a minimum of 50 feet wide for multi-family clusters and 75 feet for single-family or two-family, individual clusters, and have additional suitable fire protection safeguards approved by the Planning board in concurrence with the Fire Chief and Building Inspector.
- b) The developer will be required to leave intact the existing natural vegetation in the buffer zone. In the absence of vegetation growth on non-wetland, the developer shall be required to cover the buffer zone with a soil capable of sustaining vegetation and shall plant the zone with an appropriate planting of non-invasive trees, shrubs and grass suitable for the control of erosion and screening between buildings.

#### 7.6 General Requirements for All Projects Applying for Density Bonuses and Incentives

##### 7.6.1 Restrictions on Multi-Family Structures

The project may include multi-family structures only if at least half of the affordable housing units are for very low or lower income units.

##### 7.6.2 Minimum Number of Units

At least 20 percent of the total units in a project must be affordable units as defined in Subsection 7.3.1 for the purpose of calculating density bonuses.

##### 7.6.3 Maximum Density

The maximum density, after application of the density bonus, permitted on any site under this Ordinance shall not exceed the maximum density that would be permitted by on-site well and septic standards of the New Hampshire Water Supply and Pollution Control Division as applied to the site.

7.6.4 Location of Affordable Units

Within a particular site approved under this Ordinance, affordable units may be clustered within a discrete portion of the site, provided that the basic quality of construction and appearance of the structures is the same throughout the development.

7.6.5. Age Restrictions

A developer may not satisfy the affordable unit requirements through development of any age restricted portion of a project, unless the entire development is similarly age restricted to occupancy by persons age 62 and over.

7.6.6 Construction Timetable

During construction of a project approved under the Incentive System of Affordable Housing Ordinance, the developer must maintain at least the proportionate share of affordable units proposed as a percentage of total units during the build-out period.

7.6.7 Non-Expandable Construction

Units constructed under the incentive system for low to moderate income 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. A unit shall not contain any unfinished area, if finished, would cause that unit to exceed the income/resale cap set by the New Hampshire Housing Finance Authority.

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

7.6.8 Option to Purchase

Upon completion, and upon resale or vacancy of affordable 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 affordable units to the New Hampshire Housing Finance Authority or to another low to moderate income program available within the community as approved by the Town of Chester, Planning Board.

7.6.9 Resale Restrictions on Owner-Occupied Affordable Unit

- a) Initial occupancy and resale of owner-occupied affordable units is limited to households with income of the same category in which the affordable unit qualified for the Density Bonus under the definitions of Section 7.3, expressed as a percent of median area income, as updated to the year in which the sale takes place.
- b) The resale price may not exceed the original price multiplied by a factor of 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.
- c) These restrictions and those in Subsection 7.6.6, shall be recorded in deed restrictions on all properties approved as affordable units under this Ordinance, and the restrictions shall be binding upon subsequent owners of the property for a period of 30 years from the date of initial occupancy.

#### 7.6.10 Occupancy Restrictions in Affordable Rental Units

- a) Affordable units which are rented shall be occupied by tenants having incomes within the respective income ranges under which the units qualified for Density Bonuses and as defined in Section 7.3.
- b) Vacancies which occur in affordable 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 60-day good faith effort.
- c) Total gross rent to be charged to subsequent tenants shall not exceed the gross rent at initial occupancy times a factor equal to 1 plus the percentage increase in the median area income, updated to the year in which the subsequent tenant household occupies the unit.
- d) Current Section 8 Utility Allowance Schedules prepared by the New Hampshire Housing Finance Authority may be used a may be used to make appropriate adjustments between gross rent and contract rent.
- e) These restrictions and those of Subsection 7.6.8 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 15 years from the date of initial occupancy.

### 7.7 Administration

#### 7.7.1 Applications

Applications for the Incentive Provisions provided under this Ordinance shall be made to the Planning Board, and shall be part of the submission of an application for Site Plan or subdivision approval.

#### 7.7.2 Planning Board Review

The Planning Board shall hold public hearings in accordance with RSA 676:4 as are necessary to review the applications.

### 7.8 Compliance

#### 7.8.1 Burden of Proof

It is incumbent upon the property owner/developer to show evidence that the proposal qualifies under this Article's Incentive System for Low-Moderate Income Housing.

#### 7.8.2 Verification of Income

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

#### 7.8.3 Certificate of Occupancy

No certificate of occupancy shall be issued to an affordable unit from the Town of Chester without:

- a) Written confirmation of the income eligibility of the tenant or buyer of the affordable unit; and
- b) Confirmation of the rent or price of the affordable units as documented by an executed lease or Purchase and Sale Agreement.

#### 7.8.4 Monitoring

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

#### 7.8.5 Annual Reports

The owner of a project containing affordable units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household incomes of tenants of affordable units have been maintained in accordance with Subsection 7.8.2. 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 affordable 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.

#### 7.9 Calculation of Fair Share Housing

The calculation of fair share 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.

#### 7.10 Termination of Incentive System

For low and moderate income housing, the Incentive System shall remain in effect until the fair share amount of low and moderate income housing units has been approved by the Planning Board.

#### 7.11 Reinstatement of the Incentive System

The fair share accommodation of low and moderate income individuals shall be calculated every ten 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 Incentive System shall be reinstated provided a fair share housing need is calculated.

## 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

### CONVERSION OF EXISTING DWELLINGS

#### 9.1 Purpose

The purpose of these regulations shall be to provide small additional rental units without adding to the number of buildings in the Town of Chester. The addition of one or more dwelling units within an existing large single-family dwelling shall be permitted by special exception in any residential district if the requirements of Section 9.2 and Section 11.4 are satisfied.

#### 9.2 Requirements

##### 9.2.1 Lot Area

The lot area of the existing single-family dwelling shall be at least three (3) acres.

##### 9.2.2 Minimum Floor Area

The minimum floor area of an existing single-family dwelling shall be at least 1,500 square feet.

##### 9.2.3 Minimum Area of New Unit

The new dwelling unit shall be a use incidental to the single-family dwelling and shall occupy at least 600 square feet of the floor area of the single-family dwelling.

##### 9.2.4 Exterior Alterations

No exterior alterations shall be made to the single family dwelling, except necessary safety related exterior alterations.

##### 9.2.5 Residency

Either the new dwelling unit or the single-family dwelling unit shall be occupied by the owner of the property except for bona fide temporary absences.

##### 9.2.6 Sewage Disposal

Applicant for conversion shall demonstrate to the Board of Adjustment by obtaining a new state approval that the existing sewage disposal system shall have the capability to meet the anticipated demand created by the proposed conversion.

## ARTICLE 10

### ADMINISTRATION AND ENFORCEMENT

The Building Regulations 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

##### 10.2.1 Permit Required

No construction, reconstruction, alteration or repair of a building or structure shall be commenced 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 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.

##### 10.2.3 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.

##### 10.2.4 Architecture

The building shall be in conformity with the existing architecture of the community where such has been made a condition of subdivision or cluster approval.

##### 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 \$100.00 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.

#### 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 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:

##### 10.3.1 Data Items

Plans, drawn to a scale showing the actual shape, dimensions and locations of the lot to be used, of existing buildings upon it, alterations proposed for existing buildings and the proposed new buildings, and information as to the existing and intended use of the lot and buildings.

##### 10.3.2

Permit will be made no later than 7 working days after application for permit.

##### 10.3.3

No building permit application will be approved and issued until public notice of the application has been posted at the Town Hall for a period of 7 days.

#### 10.4 Certification of Foundation

A Certification of Foundation is required following the construction of the foundation and before any wood is placed on the foundation.

#### 10.5 Commencement of Construction

Construction must commence within one (1) year after issuance of the building permit. If construction is not commenced within this period of time, the applicant must reapply.

#### 10.6 Construction Completion

Construction must be complete within two (2) years after issuance of the building permit. If construction is not completed within this period of time, the applicant must reapply.

#### 10.7 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.

#### 10.8 Violations

##### 10.8.1 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.

##### 10.8.2 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.

##### 10.8.3 Fines

Violations of this Ordinance are punishable in accordance with RSA 676:17.

## 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 three (3) alternates appointed by the Board of Selectmen in accordance with the provisions of Chapters 673:3(a) and 673:7.

##### 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 appellant 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 thirty (30) days of the receipt of the notice of appeal.
- 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:

- 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 Value of Surrounding Property

No decrease in value of surrounding property would be suffered.

#### 11.3.2 Public Interest

Granting of the variance must not be contrary to the public interest.

#### 11.3.3 Hardship

Denial of the variance would result in unnecessary hard ship to the owners seeking it.

11.3.3.1 The zoning restriction as applied to the Applicant's property interferes with the Applicant's reasonable use of the property, considering the unique setting of the property in its environment.

11.3.3.2 No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property.

11.3.3.3 The variance would not injure the public or private rights of others.

#### 11.3.4 Substantial Justice

By granting the variance justice would be done. By granting the variance justice would be done. By granting the variance justice would be done.

#### 11.3.5 Spirit of the Ordinance

The use must not be contrary to the spirit and intent of the Ordinance.

### 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 5.6.7, and only after a public hearing and upon receipt and due consideration of advice from the Planning Board.

#### 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, side walks 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 one (1) year 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.

#### 11.6 Conditions for Granting an Equitable Waiver

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

Lack of discovery of the violations until after a structure in violation has been substantially completed; or a lot or other division of land has been subdivided by conveyance to a bona fide purchaser of value; and

#### 11.6.2

An honest mistake on the part of the owner, their agent or representative caused by either a good faith error in measurement or calculation made by the owner or their agent or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which the official had authority; and

#### 11.6.3

The physical dimensional violation does not constitute a public or private nuisance; and

#### 11.6.4

The physical or dimensional violation will not diminish the value of other property in the area or adversely affect any present or permissible future uses of the property; and

#### 11.6.5

The cost of correcting the mistake so far outweighs any public benefit to be gained that it would be unfair to require the violation to be corrected.

### 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 (4-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.

#### 13.3 Maximum Sustainable Growth

The Planning Board, after study and review of the Capital Improvements Plan, the Chester Master Plan, and after giving due consideration for regional development needs, has determined that there are currently no circumstances under which the Town of Chester can sustain a rate of growth that increases Chester's housing stock by more than five percent (5%) of the number of units existing in the Town of Chester on January 1, 2003. The Chester Planning Board will review this percentage rate every three (3) years following the adoption of this amendment.

Therefore, not later than March 1 of each year, the Planning Board shall determine Chester's maximum sustainable rate of residential development for the twelve (12) months beginning March 1 of that year. Thus, the maximum annual sustainable rate of growth shall be the highest figure that does not increase Chester's housing stock by more than five percent (5%) of the number of units existing in Chester on January 1 of the preceding year, as determined by the Assessing Department, and also does not exceed more than one of the following three (3) measures:

- Growth was unusually rapid by Chester norms, as defined in Section 13.3.1.
- Growth was unusually rapid by regional norms, as defined in Section 13.3.2.
- Growth that threatens to over-tax the Town's ability to provide services and facilities, as defined in Section 13.3.3.

#### 13.3.1 Unusually Rapid Growth Per Chester Norms

Growth is unusually rapid by Chester norms if for the preceding calendar year the number of dwelling units authorized on building permits exceeded the average of such authorizations over the four years preceding that one.

#### 13.3.2 Unusually Rapid Growth Per Regional Norms

Growth is unusually rapid by regional norms if for the preceding calendar year the percentage increase in housing stock in Chester exceeded by one-third or more 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 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 Service and Facility Strain

Growth threatens to over-tax the Town's ability to provide services and facilities if any one or more of the following are determined by the Planning Board to be true.

- a) 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 rate of the preceding year and facilities development as proposed in the Capital Improvement Program most recently approved by the Planning Board, or

- b) 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
- c) The Capital Improvements Program most recently approved by the Planning Board indicates in one or more of the following six fiscal years the tax rate impact of combined municipal and school capital expenditures will exceed 15% of the total combined municipal and school tax 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 the maximum annual rate of development which could be sustained. 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 annual rate of development. Notice for that hearing shall be published in a newspaper of general circulation and shall be posted at the Town Offices.

##### 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.

#### 13.5 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 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 through March 21 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 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 affordable development: one (1) point. For this purpose, an affordable development is one that qualifies for a density bonus under Article 7. However, the cumulative total of affordable 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 of the Town's fair share of affordable housing units as determined in the then- current estimate of the Southern New Hampshire Planning Commission<sup>1</sup>, 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 through May 21, 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.

#### 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 through December 31. Any certificate for which a building permit is not applied for by December 31 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, 2008 unless re-adopted prior to that date.

## ARTICLE 14

### FAIR SHARE CONTRIBUTION

#### 14.1 Purpose

The purpose of this Ordinance is to ensure that new development subject to either subdivision approval or site plan review 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 674:21(I), (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 a 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 enduring 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 off site 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 and prior to a vote by the Planning Board to approve any subdivision plan or site plan. 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, and 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, 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.

#### 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 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.

## ARTICLE 15

### LIGHTING REQUIREMENTS

#### 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 or 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. Non-conforming 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 non-conforming lighting.

The Applicant shall submit a detailed description of the proposed temporary non-conforming 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

#### 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 public water supply.

#### 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 delineated in RSA 485-C:6.
- 16.3.2 Aquifer - A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.
- 16.3.3 Groundwater - Subsurface water that occurs beneath the water table in soils and geologic formations.
- 16.3.4 Impervious - Not readily permitting the infiltration of water.
- 16.3.5 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.
- 16.3.6 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, and includes garbage dumps and sanitary landfills. 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.
- 16.3.7 Outdoor Storage - Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

- 16.3.8 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 (bg) and RSA 485:I-aXV].
- 16.3.9 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 on line at the Environmental Protection Agency (EPA) website or in the Planning Board Office.
- 16.3.10 Sanitary Protective Radius - The area around a well that must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).
- 16.3.11 Secondary Containment - A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest regulated-substances container that will be stored there.
- 16.3.12 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.
- 16.3.13 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.
- 16.3.14 Surface Water - Streams, lakes, ponds and tidal waters, including marshes, water courses and other bodies of water, natural or artificial.
- 16.3.15 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 15% or more than 10,000 square feet of any lot, whichever is greater, 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.
- 16.6.2 Stormwater management plans prepared pursuant to paragraph A shall demonstrate that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Ws 410.05) at the property boundary;
- 16.6.3 Animal manures, fertilizers, and compost must be stored in accordance with the Town of Chester Livestock Maintenance Requirements [Subsection 4.8.2] and the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August, 1998, and subsequent revisions.
- 16.6.4 All regulated substances stored in containers with a capacity of 5 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.
- 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 275 gallons or more of regulated substances are stored outdoors on any particular property.
- 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 All land cleared and graded for the purpose of establishing lawns must be finish graded with at least 6 inches of good quality loam or topsoil in order to reduce the demand for lawn irrigation.

#### 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 monofill 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 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.

#### 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 15% or 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 The siting or operation of a snow dump from offsite sources.
- 16.9.5 The siting or operation of a commercial car wash. The facility must be designed and operated as a closed-loop system.

#### 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 Env-Ws 421, Best Management Practices Rules. 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.

#### 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 11, shall be subject to inspections under this Section.

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.

#### 16.14 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.