

<b>CHAPTER 15</b>	<b>PLANNING AND ZONING</b>	<b>4</b>
1.01	AUTHORITY	4
1.02	PURPOSE	4
1.03	INTENT	4
<b>SECTION 2 GENERAL PROVISIONS</b>		<b>5</b>
2.01	JURISDICTION	5
2.02	COMPLIANCE	5
2.03	ZONING PERMIT REQUIREMENTS	6
2.04	USES NOT REQUIRING A ZONING PERMIT	7
2.05	OCCUPANCY PERMIT REQUIRED	7
2.06	SITE RESTRICTIONS	8
2.07	USE RESTRICTIONS	25
<b>2.08</b>	<b>PRINCIPLES AND STANDARDS FOR THE AESTHETIC EVALUATION OF SITE AND BUILDING PROJECTS</b>	<b>29</b>
2.09	REDUCTION OR JOINT USE	44
<b>SECTION 3 ZONING DISTRICTS</b>		<b>45</b>
3.01	ESTABLISHMENT	45
3.02	ZONING MAP	45
3.03	R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT	45
3.04	R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT	46
3.05	R-3 ONE AND TWO-FAMILY RESIDENTIAL DISTRICT	47
3.06	R-4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT	47
3.07	B-1 CENTRAL BUSINESS DISTRICT	47
3.075	B-2 LIMITED BUSINESS DISTRICT	49
3.076	B-3 GENERAL BUSINESS DISTRICT	50
3.077	B-4 HIGHWAY BUSINESS DISTRICT	52
3.078	<i>B-5 Mixed Use Business District</i>	53
3.08	M-1 LIMITED INDUSTRIAL DISTRICT	54
3.09	P-1 PARK DISTRICT	55
3.10	F-1 FLOODWAY DISTRICT	55
3.11	FFO FLOOD FRINGE OVERLAY DISTRICT	56
3.12	SHORELAND-WETLAND ZONING DISTRICT	56
3.13	PUD PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT	64
3.14	HPO HISTORIC PRESERVATION OVERLAY DISTRICT	67
<b>SECTION 4 SUMMARY OF AREA YARD &amp; HEIGHT REQUIREMENTS TABLE</b>		<b>69</b>
<b>SECTION 5 CONDITIONAL USES</b>		<b>70</b>
5.01	PERMITS	70
5.02	APPLICATION	70
5.03	REVIEW AND APPROVAL	71
5.04	PUBLIC AND SEMIPUBLIC USES	71
5.05	RESIDENTIAL USES	71
5.06	COMMERCIAL USES	72
5.07	INDUSTRIAL USES	72
5.08	RECREATIONAL USES	72
5.09	FLOODPLAIN USES	73
<b>SECTION 6 TRAFFIC, PARKING AND ACCESS</b>		<b>75</b>
6.01	TRAFFIC VISIBILITY	75
6.02	LOADING REQUIREMENTS	75
6.03	PARKING REQUIREMENTS	75
6.04	DRIVEWAYS	78
6.05	HIGHWAY ACCESS	80
<b>SECTION 7 SIGNS</b>		<b>81</b>
7.01	PERMIT REQUIRED	81
7.02	SIGNS PERMITTED IN RESIDENTIAL AREAS	81
7.03	SIGNS PERMITTED IN BUSINESS AND INDUSTRIAL AREAS	81
7.04	PROHIBITED SIGNS	82
7.05	INTERFERENCE WITH TRAFFIC	82
7.06	SIGN MAINTENANCE	82
7.07	SIGNS ILLUMINATED BY SPOTLIGHTS	82
7.08	EXISTING SIGNS	82
7.09	BONDS	82

7.10	<u>TEMPORARY POLITICAL SIGNS</u> .....	82
SECTION 7.5	<u>TOWER BROADCAST FACILITIES</u> .....	83
DIVISION 1.	<u>GENERALLY</u> .....	83
Sec. 7.5.01.	<u>Intent</u> .....	83
Sec. 7.5.02.	<u>Affected facilities: Definition</u> .....	83
Sec. 7.5.03.	<u>Existing tower facilities</u> .....	83
Sec. 7.5.04.	<u>Prohibition</u> .....	83
Sec. 7.5.05.	<u>Location</u> .....	83
Sec. 7.5.06.	<u>Submittal requirements</u> .....	83
Sec. 7.5.07.	<u>Maximum height</u> .....	84
Sec. 7.5.08.	<u>Requirements</u> .....	84
Sec. 7.5.09.	<u>Technical review</u> .....	85
Sec. 7.5.10.	<u>Abandonment</u> .....	85
Sec. 7.5.11.	<u>Security for removal</u> .....	85
Sec. 7.5.12.	<u>Use of existing structures</u> .....	85
Sec. 7.5.13.	<u>Co-location</u> .....	86
Sec. 7.5.14.	<u>Continued compliance</u> .....	86
Sec. 7.5.15.	<u>Indemnification</u> .....	86
DIVISION 2.	<u>SITE STANDARDS</u> .....	86
7.5.16.	<u>Purpose</u> .....	86
Sec. 7.5.17.	<u>Site size and tower setbacks</u> .....	86
Sec. 7.5.18	<u>Guy setback</u> .....	87
Sec. 7.5.19.	<u>Setbacks for accessory uses</u> .....	87
Sec. 7.5.20.	<u>Tower appearance and illumination</u> .....	87
Sec. 7.5.21.	<u>Landscaping</u> .....	87
Sec. 7.5.22.	<u>Site development, roads and parking</u> .....	88
SECTION 8	<u>MODIFICATIONS</u> .....	88
8.01	<u>HEIGHT</u> .....	88
8.02	<u>YARDS</u> .....	88
8.03	<u>AVERAGE SETBACK</u> .....	89
8.04	<u>CORNER LOTS</u> .....	89
8.05	<u>EXISTING SUBSTANDARD LOTS</u> .....	89
SECTION 9	<u>ARCHITECTURAL CONTROL</u> .....	90
9.01	<u>COMPLIANCE</u> .....	90
9.02	<u>PRINCIPLES</u> .....	90
9.03	<u>ADMINISTRATION</u> .....	90
9.04	<u>REVIEW AND FINDINGS</u> .....	90
9.05	<u>APPEALS</u> .....	90
SECTION 10	<u>NONCONFORMING USES, STRUCTURES AND LOTS</u> .....	91
10.01	<u>EXISTING NONCONFORMING USES</u> .....	91
10.02	<u>ABOLISHMENT OR REPLACEMENT</u> .....	91
10.03	<u>EXISTING NONCONFORMING STRUCTURES</u> .....	91
10.04	<u>CHANGES AND SUBSTITUTIONS</u> .....	91
10.05	<u>NONCONFORMING CHARACTERISTICS OF RESIDENTIAL STRUCTURES</u> .....	91
10.06	<u>FLOODLAND NONCONFORMING USES</u> .....	92
SECTION 11	<u>ZONING BOARD OF APPEALS</u> .....	93
11.01	<u>ESTABLISHMENT</u> .....	93
11.02	<u>MEMBERSHIP</u> .....	93
11.03	<u>ORGANIZATION</u> .....	93
11.04	<u>POWERS</u> .....	93
11.05	<u>APPEALS AND APPLICATIONS</u> .....	94
11.06	<u>HEARINGS</u> .....	94
11.07	<u>FINDINGS</u> .....	94
11.08	<u>DECISION</u> .....	95
11.09	<u>NOTICE TO DNR</u> .....	95
11.10	<u>REVIEW BY COURT OF RECORD</u> .....	95
SECTION 12	<u>CHANGES AND AMENDMENTS</u> .....	96
12.01	<u>AUTHORITY</u> .....	96
12.02	<u>INITIATION</u> .....	96
12.03	<u>PETITIONS</u> .....	96
12.04	<u>RECOMMENDATIONS</u> .....	96
12.05	<u>HEARINGS</u> .....	96

<u>12.06</u>	<u>VILLAGE BOARD'S ACTION.</u>	96
<u>12.07</u>	<u>FLOODLAND DISTRICT BOUNDARY CHANGES LIMITED.</u>	96
<u>12.08</u>	<u>PROTEST.</u>	97
<u>SECTION 13</u>	<u>PLAN COMMISSION APPROVAL.</u>	98
<u>13.01</u>	<u>BUILDING SITE AND OPERATIONAL PLANS.</u>	98
<u>13.02</u>	<u>USE BY RIGHT.</u>	98
<u>13.03</u>	<u>ACCEPTABILITY CRITERIA.</u>	98
<u>13.04</u>	<u>FORM OF SUBMITAL.</u>	98
<u>SECTION 14</u>	<u>PERFORMANCE STANDARDS.</u>	100
<u>14.01</u>	<u>COMPLIANCE.</u>	100
<u>14.02</u>	<u>AIR POLLUTION.</u>	100
<u>14.03</u>	<u>FIRE AND EXPLOSIVE HAZARDS.</u>	100
<u>14.04</u>	<u>GLARE AND HEAT.</u>	100
<u>14.05</u>	<u>WATER QUALITY PROTECTION.</u>	100
<u>14.06</u>	<u>NOISE.</u>	100
<u>15.01</u>	<u>FEES.</u>	102
<u>15.02</u>	<u>DOUBLE FEE.</u>	102
<u>15.03</u>	<u>ENFORCEMENT AND PENALTIES.</u>	102
<u>SECTION 16</u>	<u>NOTIFICATION - PUBLIC HEARINGS.</u>	103
<u>SECTION 17</u>	<u>DEFINITIONS.</u>	104
<u>17.01</u>	<u>GENERAL DEFINITIONS.</u>	104
<u>SECTION 18</u>	<u>LEGAL STATUS PROVISIONS.</u>	111
<u>18.01</u>	<u>ABROGATION AND GREATER RESTRICTIONS.</u>	111
<u>18.02</u>	<u>INTERPRETATION.</u>	111
<u>18.03</u>	<u>SEVERABILITY.</u>	111
<u>18.04</u>	<u>REPEAL.</u>	111
<u>18.05</u>	<u>WARNING AND DISCLAIMER OF LIABILITY.</u>	111
<u>18.06</u>	<u>EFFECTIVE DATE.</u>	111

## **Chapter 15 PLANNING AND ZONING**

### **1.01 AUTHORITY**

These regulations are adopted under the authority granted by Section 61.35, 62.23(7), and 87.30 of the Wisconsin Statutes. Therefore, the Village Board of Rochester, Wisconsin do ordain as follows:

### **1.02 PURPOSE**

The purpose of this Ordinance is to promote the comfort, health, safety, morals, prosperity, aesthetics, and general welfare of the Village of Rochester.

### **1.03 INTENT**

It is the general intent of this Ordinance to regulate and restrict the use of all structures, lands, and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to: lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic, and other dangers; provide adequate light, air, sanitation and drainage; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; preserve and promote the beauty of the community; and implement those municipal, watershed, county and regional comprehensive plans or components of such plans adopted by the Village of Rochester. In addition, the floodland zoning regulations set forth in this Ordinance have been adopted to prevent and control erosion, sedimentation, and other pollution of surface waters; to further the maintenance of safe and healthful water conditions and prevent flood damage to persons and property; and to minimize expenditures for flood relief and flood control projects. To this end, it is further intended to provide for the administration and enforcement of this Ordinance and to provide penalties for its violation.

### **1.04 PERMIT FEES**

All persons, firms, partnerships, corporations, limited liability companies or other entities performing work which by this Ordinance requires the issuance of a permit, or review or action by the Village, shall pay a fee to the Clerk-Treasurer in an amount determined by the Village Board and set forth in the Fee Schedule. Fees shall be charged for the following under either this Chapter or Chapter 11, Building Code:

- (1) Building Permit.
- (2) Occupancy Permit
- (3) Sign Permit
- (4) Conditional Use Petition.
- (5) Variance or Appeal Petition.
- (6) Amendment to Zoning Ordinance (Map or Text).

## **SECTION 2 GENERAL PROVISIONS**

### **2.01 JURISDICTION.**

The jurisdiction of this Ordinance shall include all lands and waters within the corporate limits of the Village of Rochester, Wisconsin.

### **2.02 COMPLIANCE.**

- a.) No structure, land, or water shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered except in conformity with the regulations herein specified for the district in which it is located.
- b.) **Building and Zoning Permits.** No building or structure shall hereafter be erected or structurally altered until a Building Permit is issued in accordance with the Building Code of the Village of Rochester, and no building or structure shall hereafter be erected, structurally altered or used, and no land may hereafter be used, until a Zoning Permit for such use in compliance with the provisions of this Chapter is issued. Compliance with the provisions of this Chapter regulating the use of the land, location of all buildings, setback lines, and all other zoning requirements as herein prescribed for each district in the Village of Rochester shall be evidenced by the issuance of a Zoning Permit, except for gardening accessory to a principal use.
- c.) **The Duty of the Zoning Administrator** shall be to administer this Ordinance and to issue all permits required by this Ordinance. The Zoning Administrator shall maintain records of all permits issued and shall record the lowest and first floor elevations of any structure erected, placed, or structurally altered in a floodland district. In addition, the Zoning Administrator shall determine to his satisfaction that all permit applicants in the floodland districts have secured all necessary permits from those agencies required to issue permits by Federal and State law. The Zoning Administrator shall not issue a permit to alter or relocate a water course until the floodland district boundary change has been applied for and granted in accordance with the requirements in Section 12 of this Ordinance. The Zoning Administrator shall investigate all complaints, give notice of violations, issue orders to comply with the zoning ordinance, and assist the Village Attorney in the prosecution of ordinance violators. The Zoning Administrator and his duly appointed deputies may enter at any reasonable time onto any public or private lands or water to make a zoning inspection while in the performance of his duties. It shall be the duty of the Zoning Administrator, with the aid of the Village Police Department and Building Inspector, to enforce the provisions of the Ordinance. The Zoning Administrator shall keep a record of all permits and certificates issued by him, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in any land or building. The Zoning Administrator shall also keep a record of all nonconforming uses, indicating any extension or changes thereof, with the dates of such changes or extensions. The Zoning Administrator shall keep the official records of all water surface profiles, flood plain zoning maps, flood plain zoning ordinances, nonconforming uses and changes thereto, permit applications, permits, appeals, variances and amendments related to floodplain zoning ordinances.
- d.) The Zoning Administrator shall, prior to issuance of any permit affecting usage of areas within the floodland district, give notice of such permit applications to all adjacent or otherwise affected municipalities, and allow such notified municipalities opportunity to respond with a statement of position on such application, and shall consider any such responses in determining issuance of any such permit.
- e.) **Certificate of Compliance.** Upon written request from the owner, the Zoning Administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption of this Ordinance, certifying, after inspection, the extent and kind of use made of the building or premises and whether or not such use conforms to the provisions of the Ordinance.

## 2.03 ZONING PERMIT REQUIREMENTS.

- a.) Each principal and accessory structure shall require the issuance of a Building Permit pursuant to Chapter 11 and a Zoning Permit. An application for a Zoning Permit shall be made to the Zoning Administrator and shall include the following:
- (1) Names and Addresses of the applicant, owner of the site, architect, professional engineer, or contractor.
  - (2) Description of the Subject Site by lot, block, and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure; number of families or employees; and the zoning district within which the subject site lies.
  - (3) Plat of Survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing the location, boundaries, dimensions, elevations, uses and size of the following: subject site; existing and proposed structures; accessory buildings; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevations, and use of any abutting lands and their structures within forty (40) feet of the subject site. All elevations on plats of surveys shall be in mean sea level datum as provided by the Racine County Mapping and Monumentation Program, using the National Geodetic Datum of 1929.
  - (4) In Any Case, no permit for excavation, or erection of any building or part of a building or for repairs to or alterations of a building shall be issued until after a statement of its intended use has been filed by the applicant.
  - (5) Continuance of Existing Uses. Nothing in the Ordinance shall prevent the continuance of the present occupancy or lawful use of any existing building, except as may be necessary for the safety of life and property.
  - (6) Minimum Utility Connections. Electricity, and where available, public sanitary sewerage and water supply connections are required for all structures used or intended to be used for human habitation or occupancy.
  - (7) Additional Information as may be required by the Village Plan Commission, Village Engineer, or Zoning Administrator.
- b.) A Zoning Permit shall be granted or denied in writing by the Zoning Administrator within 30 business days of receipt of all forms, fees, plans and documents required to process the application, and completion of any other Village prerequisite permitting requirements. Refusal to issue a Zoning Permit shall be given in writing, with the reasons for such refusal. The Permit shall expire within six (6) months unless substantial work has commenced.
- c.) Construction sites. The property owners and the prime contractors in charge of any construction site shall maintain the construction site in such a manner that litter will be prevented from being carried from the premises by the elements. All litter from construction activities or any related activities shall be picked up at the end of each work day and placed in containers which will prevent litter from being carried away from the premises by the elements.
- (1) For major construction projects i.e. roof replacement, siding replacement, major modification as determined by the building inspector and including, but not limited to, razing or new construction there shall be a dumpster, size to be determined by building inspector, on site to place all debris and litter in.
  - (2) Noise from Remodeling, Repair, Construction, Excavation or Demolition. It is unlawful and shall be considered a nuisance for any person to engage in the construction, including excavation and demolition, alteration, remodeling or repair of any building or structure; the construction of any roadway or other public improvements; or the operation or startup of any pile driver, power shovel, backhoe, bulldozer, pneumatic hammer, derrick, steam or electric hoist, or other construction machinery, the noise of which can be heard beyond the property lines, or the vibration of which can be felt beyond the property lines, other than between the hours of seven a.m. and seven p.m., Monday through Friday, or between the hours of eight a.m. and five p.m. on Saturdays without the

approval of the Village board. No such work is permitted on Sundays and the following national holiday: Christmas, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day. However, this subsection does not preclude individual homeowners from doing work on building and structures located on the property on which they reside during daylight hours. In the case of urgent necessity in the interest of public health and safety, the chairperson of the Village Street Committee or Village President can give written approval for such work. Such approval may be granted for a period not to exceed three days or less while the emergency continues and which may be renewed for periods of three days or less while the emergency continues. If the chairperson of the street committee or village president should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building, or the excavation of streets and highways within the hours of six p.m. and seven a.m., and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of seven p.m. and seven a.m., upon application being made at the time the permit for the work is awarded or during the progress of the work.

## **2.04 USES NOT REQUIRING A ZONING PERMIT.**

No Zoning Permit shall be required in any of the following instances: for repairs or improvements to an existing building not involving an increase in the floor area of the structure, except in compliance with Section 9 of this Chapter; provided, however, that any work not requiring a permit shall comply with the applicable setback, yard, height and other requirements of this Chapter. No permit shall be required for the necessary and customary construction, reconstruction or maintenance of overground or underground public utility service lines and mechanical appurtenances; except in compliance with floodland districts. See also section 3.14.

## **2.05 OCCUPANCY PERMIT REQUIRED.**

- a.) All of the following restrictions must be complied to before an occupancy permit is issued:
  - (1.) All debris on road surface must be properly disposed of during construction.
  - (2.) All pavement or road surfaces which are damaged during construction must be repaired at owner expense.
  - (3.) Where street lights are not available, owners must install a decorated photo cell operated light, either next to the curb and gutter (Fox Knoll) or not more than 20 feet nor less than ten feet from the lot line (Weber Estates). (Must be 100 minimum to 150 maximum wattage, incandescent light or equivalent.
  - (4.) All exteriors must be completed within one year of issuance of a building permit.
- b.) No vacant land shall be occupied or used; and no building hereafter erected, altered or moved shall be occupied; and no nonconforming use shall be renewed, changed or extended until an occupancy permit shall have been issued by the Zoning Administrator in accordance with the Building Code and Zoning Ordinance of the Village of Rochester. Such permit shall show that the building or premises or part thereof is in compliance with the provisions of this Ordinance. This section shall also apply in cases where the use of any building or premises is changed by owner or occupant, or for renewing, changing or extending any nonconforming use. No structure within the floodland districts hereafter erected, altered or moved shall be occupied until the applicant submits to the Zoning Administrator a certification by a registered professional engineer or land surveyor that the floodplain regulations set forth in this Ordinance have been fully complied with. Such certification shall include the lowest and first floor elevation of any structure erected on the site.
- c.) Application for an Occupancy Permit shall be made in the same manner as for a building permit pursuant to Section 2.03 of this Ordinance, except no fee is required.
- d.) Existing Uses. Upon written request from the owner, the Zoning Administrator shall issue an occupancy permit for any building or premises existing at the time of the adoption of this Ordinance, certifying, after inspection, the extent and kind of use made of the building or premises and whether or not such use conforms to the provisions of this Ordinance.
- e.) Existing Permits Issued. Nothing herein contained shall require any change in the plans, construction, size or designated use of any building or part thereof for which a building permit was issued before the effective date of this Ordinance, the construction of which was started within six (6) months from the date of such permit.

- f.) Any owner or occupant failing to obey restrictions or regulations will not receive an occupancy permit, and/or will be subject to a penalty as provided in Chapter 18 of this Municipal Code.

## **2.06 SITE RESTRICTIONS.**

- a.) No land shall be used or structure erected where the land is unsuitable for such use of structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. Such determination shall be made by the Village Board, and the Zoning Administrator shall be responsible for making the Village Board aware of such unsuitable conditions that come to his attention. The Village Board in applying the provisions of this section, shall in writing recite the particular facts upon which it bases its conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he so desires. Thereafter the Village Board may affirm, modify, or withdraw its determination of unsuitability.
- b.) All Lots shall abut upon a public street, and each lot shall have a minimum frontage of thirty (30) feet.
- c.) All Principal and Accessory Structures shall be located on a lot; and only one principal structure shall be located, erected, or moved onto a lot. All residential structures shall be attached to a permanent foundation, and shall meet the minimum area requirements for the use of the dwelling, as set forth in sections 3.03 to 3.06.
- d.) No Building Permit shall be issued for a lot which abuts a public street dedicated to only a portion of its platted width.
- e.) Lots Abutting More Restrictive district boundaries shall provide side and rear yards not less than those required in the more restrictive abutting district.

## **f.) POST-CONSTRUCTION STORM WATER MANAGEMENT.**

### **f.01 AUTHORITY.**

- (1) This ordinance is adopted by the Village Board under the authority granted by s. 61.354, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 61.35, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 61.354, W is. Stats., s. 61.35, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Village Board hereby designates the Zoning Administrator and/or Village Engineer to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:

- (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, W is. Stats.
- (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

### **f.02 FINDINGS OF FACT.**

The Village Board finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.

- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- (3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.
- (7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

f.03 PURPOSE AND INTENT.

(1) PURPOSE. The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:

- (a) Further the maintenance of safe and healthful conditions.
- (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
- (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.

(2) INTENT. It is the intent of the Village Board that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The Village Board recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the Village Board, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

f.04 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) Where not otherwise limited by law, this ordinance applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this paragraph, unless the site is otherwise exempt under paragraph (b).

- 1. A post construction site that had 5 or more acres of land disturbing construction activity.
- 2. A post-development construction site that had one or more acres of land disturbing construction activity after March 10, 2003.

(b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance.

- 1. A redevelopment post-construction site with no increase in impervious area.

2. A post-construction site with less than 10% connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
3. Nonpoint discharges from agricultural facilities and practices.
4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
6. Underground utility construction such as water, sewer and fiberoptic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

(c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to post-construction sites of any size that, in the opinion of the zoning administrator, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(2) JURISDICTION. This ordinance applies to post construction sites within the boundaries and jurisdiction of the Village of Rochester.

(3) EXCLUSIONS. This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

#### f.05 DEFINITIONS.

- (1) "Administering authority" means a governmental employee, or a regional planning commission empowered under s. 61.354, Wis. Stats., that is designated by the Village Board to administer this ordinance.
- (2) "Agricultural facilities and practices" has the meaning given in s. 281.16, Wis. Stats.
- (3) "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical.
- (4) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.
- (5) "Business day" means a day the office of the zoning administrator is routinely and customarily open for business.
- (6) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
- (7) "Combined sewer system" means a system for conveying both sanitary sewage and storm water runoff.
- (8) "Connected imperviousness" means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.
- (9) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (10) "Development" means residential, commercial, industrial or institutional land uses and associated roads.
- (11) "Division of land" means the creation from one parcel of [number] or more parcels or building sites of [number] or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5 year period.
- (12) "Effective infiltration area" means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

- (13) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
- (14) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
- (15) "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
- (16) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.
- (17) "Financial guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the zoning administrator by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.
- (18) "Governing body" means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.
- (19) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious.
- (20) "In-fill area" means an undeveloped area of land located within existing development.
- (21) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (22) "Infiltration system" means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.
- (23) "Karst feature" means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.
- (24) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (25) "Maintenance agreement" means a legal document that provides for long-term maintenance of storm water management practices.
- (26) "MEP" or "maximum extent practicable" means a level of implementing best management practices in order to achieve a performance standard specified in this ordinance which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.
- (27) "New development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (28) "Off-site" means located outside the property boundary described in the permit application.
- (29) "On-site" means located within the property boundary described in the permit application.
- (30) "Ordinary high-water mark" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.
- (31) "Outstanding resource waters" means waters listed in s. NR 102.10, Wis. Adm. Code.
- (32) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.

- (33) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (34) "Permit" means a written authorization made by the zoning administrator to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (35) "Permit administration fee" means a sum of money paid to the zoning administrator by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (36) "Pervious surface" means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.
- (37) "Pollutant" has the meaning given in s. 283.01(13), Wis. Stats.
- (38) "Pollution" has the meaning given in s. 281.01(10), Wis. Stats.
- (39) "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (40) "Pre-development condition" means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (41) "Preventive action limit" has the meaning given in s. NR 140.05(17), Wis. Adm. Code.
- (42) "Redevelopment" means areas where development is replacing older development.
- (43) "Responsible party" means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction storm water BMPs.
- (44) "Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (45) "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:
- Is designed or used for collecting water or conveying runoff.
  - Is not part of a combined sewer system.
  - Is not draining to a storm water treatment device or system.
  - Discharges directly or indirectly to waters of the state.
- (46) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.
- (47) "Stop work order" means an order issued by the zoning administrator which requires that all construction activity on the site be stopped.
- (48) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.
- (49) "Storm water management system plan" is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (50) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

(51) "Top of the channel" means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

(52) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

(53) "Type II distribution" means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973". The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

(54) "Waters of the state" has the meaning given in s. 281.01 (18), Wis. Stats.

#### **f.06 TECHNICAL STANDARDS.**

The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of storm water practices needed to meet the water quality standards of this ordinance:

(1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.

(2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the zoning administrator.

(3) In this ordinance, the following year and location has been selected as average annual rainfall: Milwaukee, 1969 (Mar. 28-Dec. 6).

#### **f.07 PERFORMANCE STANDARDS.**

(1) **RESPONSIBLE PARTY.** The responsible party shall implement a post-construction storm water management plan that incorporates the requirements of this section.

(2) **PLAN.** A written storm water management plan in accordance with S.09 shall be developed and implemented for each post-construction site.

(3) **REQUIREMENTS.** The plan required under sub. (2) shall include the following:

(a.) **SURFACE FLOW.** Natural swales and depressional storage areas shall be incorporated into stormwater facility design wherever practical. Swales and ditches, together with any underground storm sewer system, shall provide an adequate outfall for runoff from the 100-year frequency 24-hour duration storm. In areas where swales/ ditches can not be provided, the underground storm sewer system shall be designed for the 100-storm condition. The developer shall submit to the Village design computation for the 100-year overland flow routes.

(b.) **STORM SEWER.** Where required by the Zoning Administrator or Village Engineer, storm sewers may be constructed to drain the development and any contiguous drainage areas. The developer shall submit to the Village two (2) copies of the storm sewer design computation, including pipe design, inlet spacing, inlet capacity and hydraulic grade line.

(c.) **STORMWATER DETENTION.** Stormwater detention is subject to review by the Zoning Administrator and Village Engineer. Detention basins shall have a high water level based on a 100-year design. The basin berm shall have one (1) foot of freeboard above the 100-year high water level. The detention basin shall have an outlet based on the 100-year recurrence interval of the land in its natural pre-development state. Detention to be provided shall be for the entire site in its natural state, and off-site tributary flows shall be bypassed either through or around the detention facility. The stormwater detention facility shall be constructed and functioning prior to general site construction activities. Existing mapped wetlands, as determined by the Village, may not be used to provide the required stormwater detention volume unless authorized by the Wisconsin Department of Natural Resources, the U.S. Army Corps of Engineers and the Village Engineer.

(d.) TOTAL SUSPENDED SOLIDS. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:

1. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subdivision.
2. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subdivision.
3. For in-fill development under 5 acres that occurs within 10 years after the effective date of this rule, (INSERT DATE), by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subdivision.
4. For in-fill development that occurs 10 or more years after the effective date of this rule, (INSERT DATE), by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subdivision.
5. Notwithstanding subsds. 1. to 4., if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

(e) PEAK DISCHARGE.

1. By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions for the 2-year, 24-hour design storm and the 100-year, 24-hour design storm applicable to the post-construction site. For large tributary areas a critical duration analysis may be required. Pre-development conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Hydrologic Soil Group	A	B	C	C
Runoff Curve Number	56	70	79	83

2. This subsection of the ordinance does not apply to any of the following:
  - a. A post-construction site where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving water by more than 0.01 of a foot for the 2-year, 24-hour storm event.
  - b. A redevelopment post-construction site.
  - c. An in-fill development area less than 5 acres.

(f) INFILTRATION. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subsds. 5. through 8.

- (1) For residential developments one of the following shall be met:

a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

b. Infiltrate 25% of the post-development runoff from the 2 year -24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

(2) For non-residential development, including commercial, industrial and institutional development, one of the following shall be met:

a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

b. Infiltrate 10% of the runoff from the 2 year - 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(3.) Pre-development condition shall be the same as in par. (b).

(4.) Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 8. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

(5.) Exclusions. The runoff from the following areas are prohibited from meeting the requirements of this paragraph:

a. Areas associated with tier 1 industrial facilities identified in s. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.

b. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2)(b), Wis. Adm. Code.

c. Fueling and vehicle maintenance areas.

d. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

e. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subd. 5.e. does not prohibit infiltration of roof runoff.

f. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

g. Areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in s. NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

h. Areas where contaminants of concern, as defined in s. NR 720.03(2), Wis. Adm. Code are present in the soil through which infiltration will occur.

i. Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5-foot soil layer with 10% fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subd. 5.i. does not prohibit infiltration of roof runoff.

(6.) Exemptions. The following are not required to meet the requirements of this paragraph:

- a. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
- b. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.
- c. Redevelopment post-construction sites.
- d. In-fill development areas less than 5 acres.
- e. Infiltration areas during periods when the soil on the site is frozen.
- f. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

(7.) Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this paragraph.

(8.) a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

b. Notwithstanding subd. par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(d) PROTECTIVE AREAS.

1. "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

a. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in s. NR 103.04, 75 feet.

b. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

c. For lakes, 50 feet.

d. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

e. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

f. In subd. 1.a., d. and e., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

g. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

2. This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.

3. The following requirements shall be met:

a. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.

b. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

c. Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

4. This paragraph does not apply to:

a. Redevelopment post-construction sites.

b. In-fill development areas less than 5 acres.

c. Structures that cross or access surface waters such as boat landings, bridges and culverts.

d. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.

e. Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(e) **FUELING AND VEHICLE MAINTENANCE AREAS.** Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

(f) **SWALE TREATMENT FOR TRANSPORTATION FACILITIES.**

1. **Applicability.** Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

a. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

b. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

2. Exemptions. The zoning administrator may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2500 and where the initial surface water of the state that the runoff directly enters is any of the following:

- a. An outstanding resource water.
- b. An exceptional resource water.
- c. Waters listed in s. 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
- d. Waters where targeted performance standards are developed under s. NR 151.004, Wis. Adm. Code, to meet water quality standards.

(4) GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORM WATER MANAGEMENT MEASURES. The following considerations shall be observed in managing runoff:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- (b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (c) Specific design standards for detention pond design.
- (d) Specific design criteria.

(5) LOCATION AND REGIONAL TREATMENT OPTION.

- (a) The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.
- (b) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this ordinance. Post-construction BMPs may be located in nonnavigable surface waters.
- (c) Except as allowed under par. (d), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.
- (d) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this ordinance if:
  - 1. The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Wis. Stats., permit; and
  - 2. The BMP is designed to provide runoff treatment from future upland development.
- (e) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.
  - 1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
  - 2. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as ch. NR 103, Wis. Adm. Code and ch. 30, Wis. Stats.
- (f) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.
- (g) The zoning administrator may approve off-site management measures provided that all of the following conditions are met:
  - 1. The zoning administrator determines that the post-construction runoff is covered by a storm water management system plan that is approved by the Village of Rochester and that contains management requirements consistent with the purpose and intent of this ordinance.
  - 2. The off-site facility meets all of the following conditions:
    - a. The facility is in place.
    - b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
    - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (h) Where a regional treatment option exists such that the zoning administrator exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the zoning administrator. In determining the fee for post-construction runoff, the zoning administrator shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

(6) ALTERNATE REQUIREMENTS. The zoning administrator may establish storm water management requirements more stringent than those set forth in this section if the zoning administrator determines that an added level of protection is needed to protect sensitive resources.

**f.08 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.**

- (1) PERMIT REQUIRED. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the zoning administrator prior to commencing the proposed activity.
- (2) PERMIT APPLICATION AND FEES. Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the zoning administrator a permit application made on a form provided by the zoning administrator for that purpose.
  - (a) Unless otherwise excepted by this ordinance, a permit application must be accompanied by a storm water management plan, erosion control plan, storm-water calculations, a maintenance agreement and a non-refundable permit administration fee.
  - (b) The storm water management plan shall be prepared to meet the requirements of SS.07 and 09, the maintenance agreement shall be prepared to meet the requirements of S.10, the financial guarantee shall meet the requirements of S.11, and fees shall be those established by the Village Board as set forth in S.12.
- (3) REVIEW AND APPROVAL OF PERMIT APPLICATION. The zoning administrator shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
  - (a) Within 30 business days of the receipt of a complete permit application, including all items as required by sub. (2), the zoning administrator shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
  - (b) If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the zoning administrator shall issue the permit.
  - (c) If the storm water permit application, plan or maintenance agreement is disapproved, the zoning administrator shall detail in writing the reasons for disapproval.
  - (d) The zoning administrator may request additional information from the applicant. If additional information is submitted, the zoning administrator shall have 20 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
  - (e) Failure by the zoning administrator to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) PERMIT REQUIREMENTS. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The zoning administrator may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the zoning administrator to suspend or revoke this permit may be appealed in accordance with S.14.
  - (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
  - (b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
  - (c) The responsible party shall notify the zoning administrator at least 5 business days before commencing any work in conjunction with the storm water management plan, and within 5 business days upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the zoning administrator so that practice installations can be inspected during construction.

(d) Practice installations required as part of this ordinance shall be certified "as built" by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the zoning administrator or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The zoning administrator or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

(e) The responsible party shall notify the zoning administrator of any significant modifications it intends to make to an approved storm water management plan. The zoning administrator may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.

(f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the Village Board, or are transferred to subsequent private owners as specified in the approved maintenance agreement.

(g) The responsible party authorizes the zoning administrator to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under S.11.

(h) If so directed by the zoning administrator, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.

(i) The responsible party shall permit property access to the zoning administrator or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.

(j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the zoning administrator may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

(k) The responsible party is subject to the enforcement actions and penalties detailed in f.13, if the responsible party fails to comply with the terms of this permit.

(5) **PERMIT CONDITIONS.** Permits issued under this subsection may include conditions established by zoning administrator in addition to the requirements needed to meet the performance standards in f.07 or a financial guarantee as provided for in S.11.

(6) **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date the zoning administrator notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d).

#### **f.09 STORM WATER MANAGEMENT PLAN.**

(1) **PLAN REQUIREMENTS.** The storm water management plan required under S.08 (2) shall contain at a minimum the following information:

(a) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.

(b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

(c) Pre-development site conditions, including:

1. One or more site maps at a scale of not less than 1 inch equals 50 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 2 feet; topography and drainage network including contiguous properties extending at least 50-feet beyond the site boundary to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all storm water conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis. Adm. Code.
  2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- (d) Post-development site conditions, including:
1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
  2. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.
  3. One or more site maps at a scale of not less than 1 inch equals 50 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed 2 feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyance sections; location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
  4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
  5. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.
- (e) A description and installation schedule for the storm water management practices needed to meet the performance standards in f.07.
- (f) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.
- (g) Cost estimates for the construction, operation, and maintenance of each storm water management practice.
- (h) Other information requested in writing by the zoning administrator to determine compliance of the proposed storm water management measures with the provisions of this ordinance.

(i) All site investigations, plans, designs, computations, and drawings shall be certified by a [licensed professional engineer] to be prepared in accordance with accepted engineering practice and requirements of this ordinance.

(2) ALTERNATE REQUIREMENTS. The zoning administrator may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under F.07 (5).

#### **f.10 MAINTENANCE AGREEMENT.**

(1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement required under F.08 (2) for storm water management practices shall be an agreement between the zoning administrator and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.

(2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by f.09(1)(f):

(a) Identification of the storm water facilities and designation of the drainage area served by the facilities.

(b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under F.08 (2).

(c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under F.08 (2).

(d) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in par. (b).

(e) Authorization for the zoning administrator to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

(f) A requirement on the zoning administrator to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.

(g) Agreement that the party designated under par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the zoning administrator of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the zoning administrator.

(h) Authorization of the zoning administrator to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The zoning administrator shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of ch. 66, Wis. Stats.

#### **f.11 FINANCIAL GUARANTEE.**

(1) ESTABLISHMENT OF THE GUARANTEE. The zoning administrator may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the zoning administrator. The financial guarantee shall be in an amount determined by the zoning administrator to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the zoning administrator the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the zoning administrator that the requirements of this ordinance have not been met.

(2) **CONDITIONS FOR RELEASE.** Conditions for the release of the financial guarantee are as follows:

(a) The zoning administrator shall release the portion of the financial guarantee established under this section, less any costs incurred by the zoning administrator to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The zoning administrator may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

(b) The zoning administrator shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the zoning administrator, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

#### **f.12 FEE SCHEDULE.**

The fees referred to in other sections of this ordinance shall be established by the zoning administrator and may from time to time be modified by resolution. A schedule of the fees established by the zoning administrator shall be available for review in the Village Clerk's office.

#### **f.13 ENFORCEMENT.**

(1) Any land disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.

(2) The zoning administrator shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.

(3) Upon receipt of written notification from the zoning administrator under sub. (2), the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the zoning administrator in the notice.

(4) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the zoning administrator may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the zoning administrator plus interest and legal costs shall be billed to the responsible party.

(5) The zoning administrator is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the village attorney to obtain a cease and desist order in any court with jurisdiction.

(6) The zoning administrator may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.

(7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the zoning administrator or by a court with jurisdiction.

(8) The zoning administrator is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the village attorney for the commencement of further legal proceedings in any court with jurisdiction.

(9) Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than fifty dollars or more than two hundred dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

(10) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

(11) When the zoning administrator determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the zoning administrator or a party designated by the zoning administrator may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The zoning administrator shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to F.11 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

#### **f.14 APPEALS.**

(1) **BOARD OF APPEALS.** The zoning board of appeals, created pursuant to Chapter 15 section 11 of the Village of Rochester ordinances pursuant to s. 61.354(4)(b), Wis. Stats, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the zoning administrator in administering this ordinance. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.

(2) **WHO MAY APPEAL.** Appeals to the board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the Village of Rochester affected by any decision of the zoning administrator.

#### **f.15 SEVERABILITY.**

If any section, clause, provision or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

### **2.07 USE RESTRICTIONS.**

The following use restrictions and regulations shall apply:

- a. **Principal Uses.** Only those principal uses and structures specified for a district, their essential services, uses required by State law, and the following uses shall be permitted in that district.
- b. **Accessory uses, buildings and structures** are permitted in any district, but not until the principle structure on the lot is present or under construction. Accessory uses, buildings and/or structures shall not involve the conduct of any business, trade or industry unless the use, building and/or structure is related to an allowed professional home office as described in Section 17 of this Chapter. Accessory buildings and structures may be used for storage, parking facilities, gardening, private swimming pools, and private emergency shelters, and must be directly related to the principal use. Outdoor storage is not an authorized accessory use, except storage of registered vehicles (see section 8.04(1) of this Municipal Code).
- c. **Accessory buildings and structures** are limited as set forth herein, and may modify the yard requirements, as follows:
  1. **Number of Accessory Buildings Limited.** No more than two accessory buildings that are not part of the principal structure may be located on any building site. If two accessory buildings are present, the size of at least one of the structures is limited to no more than 200 square feet.
  2. **Accessory Structures, Including Buildings.**
    - A. A detached accessory structure 150 square feet or less in area may be located in a side yard or rear yard provided that the structure is at least ten feet from the principal structure, is at least three feet from any lot line, is not intended for human habitation or animal shelter, and is not greater than fifteen feet in height. The five foot setback requirement of Section 8.02.f. of this Chapter does not apply to any accessory structure which is 150 square feet or less in area.
    - B. A detached accessory structure greater than 150 square feet but no greater than 720 square feet in area may be located in a side yard or rear yard provided that the structure is at least ten feet from the principal structure, at least four feet from the lot line, is not intended for human habitation or animal

shelter, and is not greater than fifteen feet in height. The five foot setback requirement of Section 8.02.f. of this Chapter does not apply to any detached accessory structure which is greater than 150 square feet and no greater than 720 square feet in area.

- C. A detached accessory structure greater than 720 square feet, but no greater than 1,200 square feet in area may be located in a side yard or rear yard provided that the structure is at least ten feet from the principal structure, is at least ten feet from any lot line, is not intended for human habitation or animal shelter, and is not greater than fifteen feet in height.
  - D. No detached accessory structure greater than 720 square feet may be located in the following zoning districts: R-1 "Single Family Residential", R-2 "Single Family Residential", R-3 "One and Two Family Residential", and R-4 "Multiple Family Residential".
  - E. A detached garage of masonry construction which is greater than 150 square feet but no greater than 720 square feet in area shall not be located less than five feet from any residential building. A detached garage of masonry construction which does not fall within these size parameters shall be governed by all of the other provisions set forth in this Section.
  - F. Accessory structures, including buildings, on lots and parcels within the shoreland district shall not extend into the required shore yard unless otherwise specifically permitted by this Municipal Code.
  - G. Surrounding Area. No building permit shall be issued for any accessory structure, including buildings, if the plan, general design and architecture do not substantially conform to the plan, general design and architecture of the surrounding area.
- d. Conditional Uses and their accessory uses are considered as special uses requiring review, public hearing, and approval by the Village Board in accordance with Section 5 of this Ordinance.
  - e. Shoreyard Uses. The shoreyard is defined in Section 17 of this Ordinance. Boathouses, accessory to residential uses may be located within the shoreyard, but shall not exceed one (1) per shoreyard lot; shall not exceed fifteen (15) feet in height above the ordinary high water mark; shall not exceed two hundred and fifty (250) square feet in horizontal area covered; and shall not be closer than fifteen (15) feet to any side lot line. In no case, however, shall boathouses be allowed to project beyond the shoreline.
  - f. Unclassified or Unspecified Uses may be permitted by the Zoning Board of Appeals after the Village Plan Commission had made a review and recommendation provided that such uses are similar in character to the principal uses permitted in the district.
  - g. Temporary Uses, such as real estate sales field offices or shelters for materials and equipment being used in the construction of a permanent structure, may be permitted by the Village Plan Commission.
  - h. Livestock Prohibited. No livestock, sheep, poultry, or swine shall be kept, raised or bred in any district.
  - i. Mobile Homes, including travel trailers and recreational vehicles intended for residential occupancy, shall not be permitted in any zoning district. Storage and parking of mobile homes, as defined in Section 17 of this Ordinance, is not permitted in any district unless the mobile home is contained in an enclosed structure.
  - j. Adult Oriented Entertainment Businesses.
    - (1) Purpose. The purpose of this Section is to control through zoning regulations certain adult oriented entertainment uses that have a direct and detrimental effect on the character of the Village's residential neighborhoods and commercial areas. These regulations are enacted because there is convincing documented evidence, made available to the Village Board, that:
      - (a) The location, siting, design, construction and use of adult oriented entertainment businesses can have adverse impacts on the surrounding area, whether residential or commercial; and
      - (b) Adult oriented entertainment businesses can exert a dehumanizing influence on persons attending places of worship, children attending licensed daycare homes, persons using public parks, and children and other persons attending public schools; and

- (c) Adult oriented entertainment businesses can contribute to an increase in criminal activity in the area where such businesses are located, taxing local law enforcement services; and
  - (d) Adult oriented entertainment businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the value of the residential housing in the area in which such businesses are located; and
  - (e) The concentration of adult oriented entertainment businesses in one area can have a substantially detrimental effect on the area in which such businesses are concentrated and on the overall quality of urban life. A cycle of decay can result from the influx and concentration of sexually-oriented businesses. The presence of such businesses is perceived by others as an indication that the area is deteriorating and the result can be devastating as other businesses and residences move out of the vicinity. Declining real estate values, which can result from the concentration of such business, erode the Village's tax base; and
  - (f) The Village is authorized to enact zoning regulations to promote the public health, safety and general welfare of the citizens of the Village of Rochester as provided under Section 62.23, Wis. Stats.
- (2) Section Not a Limitation on Constitutionally Protected Speech. This section shall not impose a limitation on the content of any communication materials, including sexually oriented materials as protected by the First Amendment. This section is enacted to address the secondary effects of adult oriented entertainment businesses. It shall not be applicable to theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music, and dramatic performances of serious artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances.
- (3) Intent. To accommodate the needs of residents and businesses while protecting health, safety and welfare, to minimize adverse visual effects of adult oriented entertainment businesses through careful design and siting standards and to minimize the detrimental effect sexually-oriented businesses have on adjacent land uses, the Village Board recognizes that it has a great interest in the present and future character of the Village's residential and commercial neighborhoods and adopts the land use regulations set forth herein.
- (4) Definitions.
- (a) **Adult Oriented Entertainment Business.** An adult use only bookstore, adult theater, adult massage parlor, adult sauna, adult entertainment center, adult cabaret, adult health/sport club, adult steam room/bathhouse facility, or any other business whose primary business activity is characterized by emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse as defined herein.
  - (b) **Nudity.** The showing of the human male or female genitals or pubic area with less than a fully opaque covering or the depiction of covered male genitals in a discernibly turgid state and/or the appearance of bare buttocks, anus, or female breast.
  - (c) **Sexual Conduct.** Acts of masturbation, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks, or, if such person be a female, her breast.
  - (d) **Sexual Excitement.** The condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (5) **Applicability.** The provisions of this Section of the Zoning Code shall apply to all existing and future adult-entertainment oriented businesses. However, any such existing business that does not meet the zoning district restrictions or the distance limitations, may continue its existence as a non-conforming use; provided, however, that no such business may be enlarged or increased in size. If such business is discontinued for a period of 180 days or more it shall lose its status as a legal non-conforming use.
- (6) **General Requirements.**

- (a) Zoning District. An adult oriented entertainment business as defined in this Section may be operated or maintained only within the M- 1 Manufacturing District provided that it is located on a minor or major arterial road and subject to the distance limitations noted below.
  - (b) Distance Limitations. No adult oriented entertainment business as defined in this Section shall:
    - 1) be operated or maintained within 1000 feet of the boundary of any Residentially Zoned (R) District.
    - 2) be operated or maintained within 1000 feet of a church, park, recreational site, licensed daycare facility, public library, public or private educational facility which serves persons age seventeen (17) or younger, elementary school, high school, place of worship, or elderly housing facility;
    - 3) be operated or maintained so that there are more than two (2) such businesses within 2500 feet as measured by the radius from each business;
  - (c) Distance limitations set forth herein shall be measured in a straight line from the main public entrances of said premises or from the lot lines of properties in Residentially Zoned (R) Districts.
- (7) Same Use Restrictions. No adult oriented business shall be located in the same building or upon the same property as another such use.
- (8) Sign Limitations. Notwithstanding any other provision of this code, an adult oriented entertainment business shall not be permitted more than one (1) sign advertising its business within the Village, which shall be an on-premise or building sign only. All such signs shall meet the following criteria:
- (a) A sign shall have no merchandise or pictures of the products or entertainment on the premises displayed in window areas or any area where it can be viewed from the sidewalk in front of the building.
  - (b) No sign shall be placed in any window. A one square foot sign may be placed on the door to state hours of operation and admittance to adults only.
  - (c) No sign shall contain any flashing lights, moving elements, or mechanically changing messages.
  - (d) No sign shall contain any depiction of the human form or any part thereof nor shall it contain sexually explicit language such as "nude dancing" or "Girls, Girls, Girls," etc.
  - (e) No sexually-oriented business may have any off-premise sign within the Village;
  - (f) In order to allow currently operating adult oriented entertainment businesses to recover their financial investment in current signage, any currently operating adult oriented entertainment business shall bring its signage into conformity with the provisions of this paragraph within one year from the date of passage of this ordinance.
- (9) Operating Standards. All such adult oriented entertainment businesses shall operate in accordance with the following:
- (a) No employee shall solicit business outside the building in which the business is located;
  - (b) No male or female person, while on the premises, shall expose to public view his or her genitals, pubic area, anus, or anal cleft. Full nudity is prohibited;
  - (c) No person on the premises shall engage in sexual conduct, sadomasochistic abuse or in any way fondle their genitals;
  - (d) Nudity is prohibited for any employee of an adult oriented business where such person is in direct, personal contact with another person.

- (10) Building's Exterior Appearance. The building's exterior shall meet the following criteria:
- (a) colors to be earth or neutral tones with primary accent colors to be within the same color family;
  - (b) stripes and geometric patterns are prohibited;
  - (c) a color scheme which is directly inherent to a unique recognized architectural style but not otherwise compliant with this section may be reviewed and approved by the Village Board;
  - (d) the exterior shall be adequately maintained in good condition.
- (11) If any section, subsection, sentence, clause or phrase of this section is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof.

## **2.08 PRINCIPLES AND STANDARDS FOR THE AESTHETIC EVALUATION OF SITE AND BUILDING PROJECTS.**

### **a.) Introduction and Intent.**

The process of private building and development in a community may be simple or complex depending upon the size of the project, the number of participants, the ease of communication among the various private and public parties involved, and the content and clarity of the public rules and regulations. While the community representatives can not usually directly affect either the project size or the number of project participants; they can have a direct effect on the content and clarity of rules and regulations as well as the communication, and indeed, interpretation of any such rules and regulations.

Like inhabitants of most developing communities, Rochester officials and citizens have legitimate concerns about both the future character of the community and the integrity of existing (and even historic) development. One such concern is in regard to land uses or the mix of land uses, both existing and planned. Another concern is the financial capability of development (developers) to provide the required and promised improvements and the financial capability of the community to provide the necessary and requested services. A third major concern, importantly, is in regard to the visual impact or image of the community by people both living within or only traveling through the Village. The intent and purpose of this sub-section is to provide principles and standards for use by both the potential developer and Village officials in the preparation and review of site and building plans proposed within the Village with emphasis on, and the primary objective of, heightening the visual character of the sites and buildings proposed and, thereby, the entire community. It is understood that such visual enhancement is also expected to be maintained over time and not be only an initial accomplishment to be forgotten.

The proponents of any single or multiple use development (other than single and two-family single lot development) proposed to be undertaken within the Village of Rochester, must, pursuant to subsection 13, present a site and building plan to the Plan Commission for review and approval. Such approval must be tendered prior to receipt by the builder/developer of a permit to commence building or site development activity. The intent of this zoning Ordinance is twofold: - to provide a systematic, equal basis for review and discussion of projects; and, to provide general guidelines to be used in the review of a development or building project. In this regard the "principles", as stated in sub-section 13.04, are not true principles, but rather, general standards.

In order to identify specific standards for the visible elements of site, and building design which embody the general desires of the community, a set of agreed upon principles have been established which form the foundation for the standards which will follow.

### **b.) Site Planning and Design Principles**

It must be noted that a principle is a truth or tenet--a statement of fact as it relates to a particular topic--in this case, site planning and design.

Following is a list of principles which should be utilized by everyone concerned in any Site Planning and Design Projects in the Village of Rochester:

- (1) The development or building site must be viewed as only one element of the total developed and undeveloped environment in the vicinity of the site. Therefore, attention must be given to how the site and the development on the site will ultimately fit into the total environment.
- (2) Site planning and design is the process by which site features and uses on the site are made to be compatible, functional and visually pleasing.
- (3) All elements and aspects of the site, both natural and man-made, are important to the aesthetic character of the site.
- (4) Adjacent or contiguous uses or facilities may have a major effect on the site or site uses.
- (5) Major changes in land forms on the site, which thereby change the character and/or physical capabilities of the site are not, generally, conducive to good site development unless such changes are well planned and are necessary, as an example; a quarry, to final development.
- (6) The specific location of site access is critical to both the future use of the site and the safety and convenience of persons traveling on adjacent public ways.
- (7) Site grading, landscaping, paving, fencing, lighting, signage, and other site enhancement are an integral part of any building and development project.

c.) Building, Design, Layout and Construction Principles

Following is a list of principles which should be utilized by everyone concerned in any Building, Design, Layout and Construction project in the Village of Rochester.

- (1) No side or facade of a building or structure is exempt from public view and, consequently, all sides or facades should be visually pleasing and architecturally and aesthetically compatible.
- (2) The shape, size, dimension, architectural style, facade material, texture and color, building landscaping, building signage, and the setting of the building within its immediate environment are all elements of the building structure design addressed by the designer, both individually and in concert.
- (3) Each color, texture or material of which the exterior of a building is composed may, individually, present a visual statement to the viewer and, therefore, in order not to present a conflicting or complex visual statement, the arrangement and mix of colors, textures and materials should be carefully considered and the number of such elements minimized.
- (4) Some building materials present a visual statement of strength and permanence to the immediate environment and to the community and should be encouraged, while other materials which make a building or structure appear temporary should be avoided.
- (5) Individual buildings may be attractive but when duplicated or triplicated on the same or adjacent parcels or on the same horizontal plane may detract from the visual character of the overall development.
- (6) Some use elements of a building structure, such as outside mechanical equipment, loading docks and areas, trash storage areas, and raw material storage areas are not, usually, attractive and often detract from the visual appearance of the building unless careful attention is given to placement, construction, structural and/or landscape screening of such areas.
- (7) Building landscaping, that is landscaping which is or appears to be an integral part of the building facade design, must be carefully planned and the appropriate plant materials used so as not to detract from the architecture of the building.
- (8) Building signage, that is signage which is or appears to be an integral part of the building facade design, must be carefully planned and the appropriate sign materials, sign lighting and color used so as not to detract from the architecture of the building or be disruptive.

d. Site Planning and Design Standards.

A standard (or criteria) is either a quantitative or qualitative model or value level by or against which all related actions or activities are measured. In this regard a standard is sometimes referred to as a "yardstick". Moreover, quantitative standards are those which, when applied, will reveal a quantitative difference or similarity between the standard and the action or activity being measured by the standard. For example; the action related to a site planning standard that states that, "No man-made slope or disturbed natural slope shall be greater than 3:1, when 3 is the horizontal measurement", can be measured quantitatively to determine if, indeed, the standard has been met.

A qualitative standard, on the other hand, is a standard which, when applied, involves a judgment, usually subjective, that the action or activity has met or can meet the stated standard. For example; a site planning standard that states that "All parking areas shall be screened in a visually pleasing manner to soften the visual presentation of parked cars and asphalt", requires that the person(s) making the determination as to whether or not the standard is met actually looks at the screening structure, device or plant materials and makes a qualitative judgment. If it can be concluded that the materials, device or structure as designed or constructed are individually or collectively visually pleasing, there should be no problem making such a judgment. If, however, the materials are different in character the judgment is usually more difficult. Even the arrangement of individually pleasing materials may not be pleasing. Whenever possible we try to avoid purely qualitative standards.

Following are both quantitative and qualitative standards related to site development which will be used by the Plan Commission in the review of every site plan or development:

(1.) Size, Visual and Aesthetic Characteristics.

(a.) Size, Facades and Exterior Walls including Sides and Backs

Intent: Size should be limited to what is appropriate for rural development. Facades should be articulated to reduce the massive scale and the uniform, impersonal appearances of large retail buildings and provide visual interest that will be consistent with the community's identity, character, and scale. The intent is to encourage a more human scale that residents of Rochester will be able to identify with their community. The resulting scale will ensure a greater likelihood of reuse of structure by subsequent tenants.

Standard: Building size shall not exceed 15,000 square feet. Anything larger shall require "conditional use" approval. Developments with a facade over 100 feet in linear length shall incorporate wall projections or recesses with a minimum of 3 foot depth and a minimum of 20 contiguous feet within each 100 feet of facade length and shall extend over 20 percent of the facade. Developments shall use animating features such as arcades, display windows, entry areas, or awnings along at least 60 percent of the façade.

(b.) Detail Features

Intent: Buildings shall have architectural features and patterns that provide visual interests, at the scale of the pedestrian, reduce massive aesthetic effect, and recognize local character. The elements in the follow standard shall be integral parts of the building fabric, and not superficially applied trim or graphics, or paint.

Standard: Building facades shall include a repeating pattern that shall include no less than three of the elements listed below:

- Color change
- Texture change
- Material module change
- Expression of architectural or structural bay through a change in plane no less than 12 inches in width, such as an offset, reveal, or projecting rib.

(c.) Roofs

Intent: Variations in rooflines should be used to add interest to, and reduce the massive scale of a large building. Roof features shall complement the character of adjoining neighborhoods.

Standard: Rooflines shall be varied with a change in height every 100 linear feet in the building length. Parapets, mansard roofs, gable roofs, hip roofs, or dormers shall be used to conceal flat roofs and roof top equipment from public view. Alternating lengths and designs may be acceptable and can be addressed during the preliminary development plan.

(d.) Materials and color

Intent: Exterior building materials and colors comprise a significant part of the visual impact of a building. Therefore, they shall be aesthetically pleasing and compatible with materials and colors used in adjoining neighborhoods.

Standard: Predominant exterior building materials shall be of high quality. These include, without limitation:

- Brick
- Wood
- Sandstone
- Tinted, textured, concrete masonry units.

Facade colors shall be low reflective, subtle, neutral, or earth tone colors. The use of high intensity colors, metallic colors, black or fluorescent colors is prohibited.

Building trim and accent areas may feature bright colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accents.

Predominant exterior building materials as well as accents shall not include the following:

- Smooth-faced concrete block
- Tilt-up concrete panels
- Pre-fabricated steel panels

(2) Open Space Requirements and Site Landscaping

(a.) Open Space Requirements.

- 1) 40 Percent of land to remain in open space.

Intent: Significant existing vegetation within all setbacks shall be preserved (i.e. wetlands, prairie, vegetation, woodlands). Significant existing vegetation within the building area of any commercial lot shall be preserved through innovative site design.

Standard: Preservation of significant existing vegetation through careful site design is desired. The preserved areas are considered part of the 40% open space.

(b.) Site Landscaping.

- 1.) Landscaping Required. Landscaping is required in bufferyards, in off-street parking areas, and in building foundation planting areas (foundation planting areas are those areas located within ten feet of principal and accessory structures). The area and/or length of each, as required herein, must be measured in order to determine the minimum amount of landscaping required.
- 2.) Exemptions and Modifications. All developments shall meet the provisions of this Section except as specifically exempted below:
  - a.) Residential development on existing lots of record as of the date of the adoption of this Ordinance.
  - b.) Additions to existing buildings where the total floor area is not increased more than ten (10) percent of the existing total floor area.
  - c.) Additions to buildings which increase their overall building area from ten (10) to fifty (50) percent shall conform to the landscaping standards specified in this Section to the maximum extent achievable. All off-street parking areas

and bufferyards shall conform to the applicable landscaping requirements of this Section. If insufficient dimensions exist on-site, in order to achieve a sufficient level of landscaping, the standards may be reduced by up to thirty (30) percent by the Plan Commission.

- d.) Floodplain, Floodway, Floodlands, and Wetland Areas. Areas located within floodplains, floodways, floodlands, and wetlands are exempt from the landscaping requirements set forth in this Section.
- (c.) Bufferyards to Ameliorate Nuisances Between Certain Adjacent Zoning Districts.  

A bufferyard is a combination of a setback and a visual buffer or barrier, and is a yard or area together with the planting and/or landscape structure required thereon. The amount of land, the type of planting, and the amount of planting specified for each bufferyard requirement of this Ordinance are designed to ameliorate nuisances between certain adjacent zoning districts.
- (d.) Bufferyards Required to Separate Different Zoning Districts. Bufferyards shall be required to separate different zoning districts from each other. Bufferyards function to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights, signs, and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, or danger from fires or explosions.
- (e.) Standard Plant Units. All landscaping requirements of this Section are stated in terms of the number of standard plant units required. This Section defines the standard plant unit and its alternatives. All required landscaping shall conform to one (1) or more of the plant unit alternatives of this Section. The following Table 2.08(1) specifies the plant unit alternatives. The five alternative plant mixes are interchangeable. Where a year-round screen is required, alternative Unit A is preferred and may be required by the Plan Commission.

**Table 2.08 (1) “PLANT UNIT TYPE ALTERNATIVES”**

ALTERNATIVE PLANT UNIT TYPE	TYPES OF PLANTS REQUIRED	MINIMUM SIZE OF PLANTS	MINIMUM QUANTITY OF PLANTS REQUIRED
TYPE A	Canopy/Shade Trees	3-inch caliper 12 feet tall	1
	Single Stem:		
	Multi-stem Clump:		
	Ornamental Trees	1.5 inch caliper	2
	Shrubs	2 feet tall	8
TYPE B*	Canopy/Shade Trees	3-inch caliper 12 feet tall	1
	Single Stem:		
	Multi-stem Clump:		
	Ornamental Trees	1.5 inch caliper	1
	Evergreen Trees	6 feet tall	1
	Shrubs	2 feet tall	6
TYPE C*	Canopy/Shade Trees	3-inch caliper 12 feet tall	1
	Single Stem:		
	Multi-stem Clump:		
	Evergreen Trees	6 feet tall	2
	Shrubs	2 feet tall	5
TYPE D*	Evergreen Trees	6 feet tall	3
	Evergreen Shrubs	2 feet tall	14
TYPE E	Canopy/Shade Trees	3-inch caliper 12 feet tall	2
	Single Stem:		
	Shrubs	2 feet tall	10

\*Note: Not to be used in off-street parking areas.

- (f.) Credit for Existing Plant Materials. Credit for existing plant material will be allowed to offset required plant unit landscaping in the bufferyards and parking lots as follows:

- 1.) Bufferyards. Existing canopy trees six (6) feet in height or more shall be counted on an individual basis towards the planting requirements, all other components of a plant unit are required including all ornamental trees, evergreen trees, and shrubs.
  - 2.) Parking Lots. Any existing canopy trees six (6) feet in height or more, and located within parking lot areas, shall be subtracted from the required amount of parking lot landscaping on a tree-by-tree basis.
- (g.) General Landscaping Requirements.
- 1.) Physical Containment of Landscaped Areas. All landscaped areas located within or adjacent to a parking area, or adjacent to a public street or sidewalk, shall be designed to contain landscape materials and to prevent vehicular encroachment (i.e., through the use of continuous concrete curbing, railroad ties, headers, or depressed construction).
  - 2.) Artificial Landscape Materials. Artificial trees, shrubs, turf, or plants shall not be permitted as landscaping.
  - 3.) Groundcover. The use of landscape fabrics under all areas landscaped with non-living materials, except those areas set aside for stormwater retention/detention, is recommended to prevent weed growth.
  - 4.) Location. New vegetation shall be selected, planted, and maintained so that at maturity it will not interfere with utility lines, snow storage areas, vehicular parking, pedestrian circulation, traffic sight visibility at driveways and street intersections, and will not cause damage or upheaval of sidewalks and pavement
  - 5.) Installation.
    - a.) Timing of Installation. Landscaping shall be installed in accordance with the approved landscape plan prior to issuance of an Occupancy Permit The Village of Rochester will have the right to refuse approval of any project not meeting the provisions of this Section.
    - b.) Financial Surety Required. If approved landscaping cannot be installed prior to the issuance of an Occupancy Permit, an Occupancy Permit may be issued by the Village of Rochester if the applicant provides a form of surety acceptable by the Village Attorney which meets the total estimated costs of the approved landscaping improvements. The application shall be accompanied by a complete estimate of the total cost of the approved landscaping. All landscape materials shall be guaranteed by the applicant, or applicant's contractor, for two (2) years.
    - c.) Return of Financial Surety. When it is determined by the Zoning Administrator that the landscaping has been installed in accordance with the approved plans, the Village of Rochester shall return the financial surety to the applicant
  - 6.) Maintenance
    - a.) Responsibility for Maintenance.
      1. Maintenance of all landscaping shall be the responsibility of the property owner or homeowners' association (as applicable) and shall consist of regular watering, pruning, mowing, fertilizing, and the removal and replacement of irrigation systems and architectural features.
      2. The owner or liable entity in control of any private premises shall at all times maintain the premises free of litter and weeds.

- b.) Landscape Phasing. Future building pads within a phased development shall be maintained in a dust-free condition vegetated with ground cover.
  - c.) Plant Replacement. Any plant materials included in an approved landscaping plan that do not survive a plant establishment period of two (2) years after installation shall be replaced with plant material(s) of the same or like species of equal size within the next planting season, but in any event, within six (6) months of the plant's demise. Said replacement shall be made by the property owner or, in the case of landscape plant materials located within a landscape easement under the control of a homeowners' association, the homeowners' association shall be responsible for said replacement
- (h.) General Bufferyard Requirements.
- 1.) Basis of Standards. Bufferyard standards are based on a required relative bufferyard intensity value. A variety of combinations of bufferyard width, planting intensity, and structural options (i.e., fences and earthen berms) may be selected from Table 2.08(1) to reach the required bufferyard intensity value.
  - 2.) Location of Bufferyards. Bufferyards shall be located along the outer perimeter of a lot or parcel, and shall extend to the lot or parcel boundary line. Bufferyards shall not be located on any portion of an existing or dedicated public or private street or right-of-way.
  - 3.) Bufferyard Plant Material Groupings. Required bufferyard plantings may be planted in natural-appearing groupings along the total length of the bufferyard and need not be spaced uniformly along said total bufferyard length.
  - 4.) Plant Materials.
    - a.) For each bufferyard listed, a specific combination of deciduous canopy, shade, and ornamental trees; evergreen trees; and shrubs is required as indicated in Table 2.08 (1).
    - b.) All bufferyard areas shall be seeded with lawn or native groundcover unless such vegetation is already fully established.
    - c.) The exact placement of required plants and structures shall be the decision of the property developer.
  - 5.) Fences. Fences used to achieve the required bufferyard intensity factor shall be constructed of rock, masonry or wood. Chain link fences and chain link with slats shall be prohibited from being used to achieve required bufferyard intensity factors. All fences used shall also meet the requirements for the construction of fences in Section 8.02.
  - 6.) Height of Required Vegetation. Height of vegetation selected for required bufferyards shall be measured from the highest finished adjacent grade of the element to be screened.
  - 7.) Berming. Earthen berms shall be designed to transition to existing surrounding grades, not to exceed a slope ratio of two to one (2:1) and shall be covered with plant material, groundcover, or partially rip-rapped to prevent erosion. Berms with vegetative cover shall be designed to retain irrigation water rather than encourage run off. All earthen berms shall be safely designed in order to accommodate mowing when needed.
  - 8.) Calculation of Bufferyard Requirements.
    - a.) Bufferyard requirements are calculated using the standards listed in this Section for bufferyards.

- b.) Bufferyard standards listed in this Section are to be calculated for every one hundred (100) linear feet of peripheral lot line boundary and/or street frontage present on a given lot.
- c.) In instances where the zoning district boundary and/or street frontage is less than one hundred (100) feet, the required bufferyard planting shall be one (1) plant unit (See Table 2.08(1)).
- d.) Procedures for Determining Minimum Required Bufferyards. To determine the type of bufferyard required on a parcel, between two (2) parcels or lots, or between a parcel or lot and a street, the following procedures shall be used:
  - 1. Identify whether any portion or property line of the parcel or lot coincides with a zoning district boundary. If it does, determine the abutting zoning districts on both sides of the property line.
  - 2. Refer to Table 2.08 (2) to determine the required bufferyard intensity factor needed to be achieved between the two (2) zoning districts.
  - 3. Based upon the bufferyard intensity factor required, refer to the applicable Table 2.08(3) to 2.08(7) to select the minimum number of plant materials (per 100 feet of bufferyard length), the bufferyard width, and required structure type combination by selecting the desired alternative bufferyard type.
  - 4. Calculate the actual number of plants required by selecting the minimum number of plant materials (per 100 feet of bufferyard length) from the alternatives indicated in the applicable Table 2.08(3) to 2.08(7) and multiply by the hundreds of feet of bufferyard to be planted.
- 9.) Limitations on Bufferyard Use. A bufferyard may be used for passive recreation. It may contain pedestrian or bike trails provided that
  - a.) No plant material is eliminated;
  - b.) The total width of the bufferyard is maintained; and
  - c.) All other regulations of this Ordinance are met. In no event, however, shall swimming pools, decks, drives, curbing, stormwater detention/retention ponds, tennis courts, sports fields, golf courses, parking lots, or other similar uses (as determined by the Plan Commission) be permitted in bufferyards.
- 10.) Table of Required Bufferyards Between Zoning Districts. The minimum required bufferyard intensity factor for bufferyards between zoning districts set forth in Table 2.08(2) refers to the bufferyard width and plant unit standards set forth in Tables 2.08(3) through 2.08(7) of this Section. Bufferyards are required between adjacent zoning districts.

**Table 2.08 (2) MINIMUM REQUIRED BUFFERYARD INTENSITY FACTOR LEVELS OF BUFFERYARDS BETWEEN ZONING DISTRICTS**

	R-1	R-2	R-3	R-4	B-1	B-2	B-3	B-4	B-5	M-1	P-1	FF O	HPO	PUD
R-1	0													
R-2	0	0												
R-3	1	1	0											
R-4	2	2	1	0										
B-1	2	2	2	2	0									
B-2	2	2	2	2	0	0								
B-3	2	2	2	2	2	2	0							
B-4	2	2	2	2	2	2	2	0						
B-5	2	2	2	2	2	2	2	2	0					
M-1	3	3	3	2	2	2	2	2	2	0				
P-1	3	3	3	3	3	3	3	3	3	2	0			
FFO	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)			
HP O	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)

**KEY AND NOTES**

(a) As determined by the underlying zoning district(s).

0 = No bufferyard is required. All applicable zoning district setbacks are required.

1 = Bufferyard Intensity Factor 1 (See Table 2.08 (3))

2 = Bufferyard Intensity Factor 2 (See Table 2.08 (4))

3 = Bufferyard Intensity Factor 3 (See Table 2.08 (5))

4 = Bufferyard Intensity Factor 4 (See Table 2.08 (6))

5 = Bufferyard Intensity Factor 5 (See Table 2.08 (7))

- 11.) Minimum Required Bufferyard Width and Plant Material Standards. The following Tables 2.08(3) through 2.08(7) set forth the minimum bufferyard width and plant material standards required for achieving required bufferyard intensity levels. Tables 2.08(3) through 2.08(7) are designed so as to allow for choice from a variety of alternative bufferyard widths and general landscape plant material types in order to meet the required bufferyard intensity levels required elsewhere in this Section.

**Table 2.08(3) BUFFERYARD INTENSITY FACTOR 1:  
ALTERNATIVE PLANT MATERIAL STANDARDS**

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 1	Canopy/Shade Trees	0.0	5	Minimum 5-foot tall solid fence
	Ornamental Trees	0.0		
	Shrubs	5.6		
Type 1A	Canopy/Shade Trees	.7	5	None
	Ornamental Trees	1.4		
	Shrubs	5.6		
Type 1B*	Canopy/Shade Trees	.6	10	None
	Ornamental Trees	.6		
	Evergreen Trees	.6		
	Shrubs	3.6		
Type 1C*	Canopy/Shade Trees	.5	15	None
	Evergreen Trees	.9		
	Shrubs	2.3		
Type 1D*	Evergreen Trees	1.1	20	None
	Evergreen Shrubs	4.9		
Type 1E	Canopy Trees	.5	25	None
	Shrubs	2.5		

\*Note: Not to be used in off-street parking areas.

(a) See Table 2.08(1) for minimum required plant material sizes.

**TABLE 2.08(4) BUFFERYARD INTENSITY FACTOR 2: ALTERNATIVE PLANT MATERIALS STANDARDS**

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 2	Canopy/Shade Trees	0.4	10	Minimum 6-foot tall solid fence
	Ornamental Trees	0.9		
	Shrubs	3.4		
Type 2A	Canopy/Shade Trees	1.7	15	2-foot berm
	Ornamental Trees	3.4		
	Shrubs	13.6		
Type 2B*	Canopy/Shade Trees	2.3	20	None
	Ornamental Trees	2.3		
	Evergreen Trees	2.3		
	Shrubs	13.5		
Type2C*	Canopy/Shade Trees	2.1	25	None
	Evergreen Trees	4.2		
	Shrubs	10.5		
Type 2D*	Evergreen Trees	5.9	30	None
	Evergreen Shrubs	27.3		
Type 2E	Canopy Trees	2.2	30	3-foot berm
	Shrubs	11.0		

\* Note: Not to be used in off-street parking areas

(a) See Table 2.08(1) for minimum required plant material sizes.

Table 2.08(5) BUFFERYARD INTENSITY FACTOR 3: ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 3	Canopy/Shade Trees	2.3	15	Minimum 6-foot tall solid fence
	Ornamental Trees	4.6		
	Shrubs	12.4		
Type 3A	Canopy/Shade Trees	2.3	20	3-foot berm
	Ornamental Trees	4.6		
	Shrubs	18.4		
Type 3B*	Canopy/Shade Trees	3.4	20	None
	Ornamental Trees	3.4		
	Evergreen Trees	3.4		
	Shrubs	20.4		
Type 3C*	Canopy/Shade Trees	3.2	25	None
	Evergreen Trees	6.4		
	Shrubs	16.0		
Type 3D*	Evergreen Trees	9.2	30	None
	Evergreen Shrubs	42.7		
Type 3E	Canopy Trees	5.8	35	None
	Shrubs	29.0		

\* Note: Not to be used in off-street parking areas.

(a) See Table 2.08(1) for minimum required plant sizes

Table 2.08(6) BUFFERYARD INTENSITY FACTOR 4: ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 4	Canopy/Shade Trees	3.0	20	Minimum 6-foot tall solid fence
	Ornamental Trees	6.0		
	Shrubs	24.0		
Type 4A	Canopy/Shade Trees	3.0	25	4-foot berm
	Ornamental Trees	6.0		
	Shrubs	24.0		
Type 4B*	Canopy/Shade Trees	3.7	25	2-foot berm
	Ornamental Trees	3.7		
	Evergreen Trees	3.7		
	Shrubs	22.2		
Type 4C*	Canopy/Shade Trees	4.3	30	None
	Evergreen Trees	8.5		
	Shrubs	21.3		
Type 4D*	Evergreen Trees	12.3	35	None
	Evergreen Shrubs	57.4		
Type 4E	Canopy Trees	7.9	40	None
	Shrubs	39.5		

\* Note: Not to be used in off-street parking areas.

(a) See Table 2.08(1) for minimum required plant sizes

Table 2.08(7) BUFFERYARD INTENSITY FACTOR 5: ALTERNATIVE PLANT MATERIAL STANDARDS

BUFFERYARD ALTERNATIVES	TYPE OF PLANTS REQUIRED (a)	MINIMUM QUANTITY OF EACH PLANT TYPE REQUIRED PER 100 FEET OF BUFFERYARD LENGTH	MINIMUM REQUIRED BUFFERYARD WIDTH (feet)	MINIMUM STRUCTURE TYPE (if required)
Type 5	Canopy/Shade Trees	4.1	20	Minimum 6-foot tall solid fence
	Ornamental Trees	8.2		
	Shrubs	32.8		
Type 5A	Canopy/Shade Trees	4.1	25	4-foot berm
	Ornamental Trees	8.2		
	Shrubs	32.8		
Type 5B*	Canopy/Shade Trees	4.8	30	2-foot berm
	Ornamental Trees	4.8		
	Evergreen Trees	4.8		
	Shrubs	28.5		
Type 5C*	Canopy/Shade Trees	5.3	35	None
	Evergreen Trees	10.6		
	Shrubs	26.5		
Type 5D*	Evergreen Trees	15.6	40	None
	Evergreen Shrubs	72.8		
Type 4E	Canopy Trees	9.0	40	None
	Shrubs	5.0?		

\* Note: Not to be used in off-street parking areas.

(a) See Table 2.08(1) for minimum required plant sizes

12.) Minimum Plant Material Standards. All new landscape plant material shall meet those standards set forth under the requirements of Section 2.08(d)(2)(d) of this ordinance.

(3) Parking area requirements:

Number of spaces required for use, relation to building and road, and landscaping can be found in Section 6.0 "Parking, Traffic and Access" of this Chapter.

Intent: Parking areas should provide safe, convenient, and efficient access for vehicles and pedestrians. They should be distributed around large buildings in order to shorten the distance to other buildings and public sidewalks; and to reduce the overall scale of paved surfaces.

Standard: No more than 60 percent of the off-street parking area for the entire property shall be located between the front facade of the principal building(s) and the primary abutting street unless the principal building(s) and/or parking lots are screened from view by outlot development (such as restaurants) and additional tree plantings and/or berms approved by the Plan Commission. Green islands shall be located between double loaded parking bands. A double loaded parking band is a 19 foot wide parking stall, 22 foot wide travel aisle, and 19 foot wide parking stall.

(4) Sign Requirements.

Sign size, spacing and design requirements can be found in Section 7.0 of this Chapter.

(a.) Intent: It is the intent of this ordinance to insure that signs compliment both the natural environment around them and the architecture of the buildings associated with the signs. It is the intent of this ordinance that signs convey information clearly without being distracting.

(b.) Standard:

Type of signs:

Allowed:

Monument-The design of freestanding signs should recognize that they are part of the landscape. These signs use low mounting walls, masonry bases, shrubs, and ground cover, and seasonal plantings to integrate them with their sites.

Wall-Wall signs shall complement the architecture of the building. They shall not extend above the roofline.

(c.) Not allowed:

- Roof
- Pole
- Projecting

(d.) Location of Signs. All signs shall be located on the premise of the business. Off premises advertising signs shall not be allowed.

(e.) Size of Signs.

Monument:

- Maximum height of 6 feet
- Maximum width of 10 feet

(f.) Lighting of Signs.

Lighting of signs shall be permitted. Lighting of signs shall incorporate cutoff lighting where illumination source shall not be visible from the viewing highway, or from neighboring homes and businesses.

(g.) Animation of Signs.

No signs using animated or flashing messages shall be allowed.

## (5) Pedestrian Flows

INTENT: Pedestrian accessibility opens auto-oriented developments to the neighborhood, thereby reducing traffic impacts and enabling the development to project a friendlier, more inviting image. This section sets forth standards for public sidewalks and internal pedestrian circulation systems that can provide user-friendly pedestrian access as well as pedestrian safety, shelter, and convenience within the center grounds.

(a.) How people get from one building to another on foot.

Standard: Sidewalks shall be provided along the full length of the building along any facade featuring a customer entrance, and along any facade abutting public parking areas.

(b.) How people from neighboring areas get to store on foot.

Standard: Continuous internal pedestrian walkways shall be provided from the public sidewalk or right-of-way to the pedestrian entrances of all principal buildings on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points pursuant to Chapter 6,

subsection 6.11 of the Village of Rochester code; subject to review by Village of Rochester Plan Commission.

(6.) Outdoor Lighting

(a.) INTENT: All exterior lighting shall be unobtrusive, harmonious with the local area and constructed or located so that only the area intended is safely illuminated and off-site glare is fully controlled. Non-residential sites shall have a Lighting Plan approved by the Village of Rochester Plan Commission.

(b.) Standard: Lighting of the site shall be of a type, design, color and height to blend with the site and landscaping.

Lighting of the site shall be of a design and height and shall be located so as to illuminate only the site and not be a beacon of distraction or potential hazard to traffic or to people working or living in the vicinity of the site.

(7.) Noise Abatement

Refer to Section 14 "Performance Standards".

(8.) Location and Design of Loading facilities and Waste Storage.

(a.) Intent: Loading areas and outdoor storage areas exert visual and noise impacts on surrounding neighborhoods. These areas, when visible from adjoining properties and/or public streets, should be screened, recessed or enclosed. While screens and recesses can effectively mitigate these impacts, the selection of inappropriate screening materials can exacerbate the problem.

(b.) Standard:

1.) Visibility - Areas for outdoor storage, truck parking, trash collection or compaction, loading, or other such uses shall not be visible from roadways and neighboring properties.

2.) Location - No areas for outdoor storage, trash collection or compaction, loading, or other such uses shall be located within 20 feet of any public street, public sidewalk, or internal pedestrian way.

3.) Visual and acoustic impact - Loading docks, truck parking, outdoor storage, utility meters, HVAC equipment, trash dumpsters, trash compaction, and other service functions shall be incorporated into the overall design of the building and the landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets, and no attention is attracted to the functions by the use of screening materials that are different from or inferior to the principal materials of the building and landscape.

4.) Non-enclosed and seasonal - Non-enclosed areas for the storage and sale of seasonal inventory shall be permanently defined and screened with walls and/or fences. Materials, colors, and designs of screening walls and/or fences and the cover shall conform to those used as predominant materials and colors of the building. If such areas are to be covered, then the covering shall conform to those used as predominant materials and colors on the buildings.

## 2.09 REDUCTION OR JOINT USE

No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this Ordinance. No part of any lot, yard, parking area, or other space required for a structure or use shall be used for any other structure or use.

## **SECTION 3 ZONING DISTRICTS**

### **3.01 ESTABLISHMENT**

For the purpose of this Ordinance, the Village of Rochester is hereby divided into thirteen (13) basic districts and three (3) overlay districts designated as follows:

R-1	Single-Family Residential District
R-2	Single-Family Residential District
R-3	Two-Family Residential District
R-4	Multiple-Family Residential District
B-1	General Business District
B-2	Limited Business District
B-3	General Business District
B-4	Highway Business District
B-5	Mixed Use Business District
M-1	Limited Industrial District
P-1	Park District
F-1	Floodway District
SW	Shoreland-Wetland Zoning District
FFO	Flood Fringe Overlay District
PUD	Planned Unit Development Overlay District
HPO	Historic Preservation Overlay District

Boundaries of These Districts are established as shown on the map entitled "Zoning Map - Village of Rochester, Wisconsin," as established and updated pursuant to Section 3.02 of this Chapter. Such boundaries shall be construed to follow: corporate limits, U.S. Public Land Survey lines; lot or property lines; centerlines of streets, highways, alleys, easements and railroad or utility right-of-way or such lines extended, unless otherwise noted on the Zoning Map. The boundaries of the F-1 Floodway District shall be determined by use of the scale contained on the Zoning Map. The boundaries of the FFO Flood Fringe Overlay District shall be determined by the floodplain limits as shown on the Zoning Map. Where a conflict exists between the floodplain limits as shown on the map and actual field conditions, the elevations from the 100 year recurrence interval flood profile under floodway conditions shall be the governing factor in locating the regulatory floodplain limits. Zoning district boundaries shall run to the centerline of all navigable streams in the Village. The Zoning Map - Village of Rochester is based on engineering information contained in the Flood Insurance Study and its corresponding Floodway-Flood Boundary Maps and profiles dated January 2, 1981, being the best available engineering data upon which to base such Zoning Map, with the exception of: Godfrey's Addition, Lot 1, Block 1 and Lot 10, Block 26, Excluding the North 20 feet, Original Plat: where a portion of the parcel has been effectively rezoned from Floodway to Flood Fringe Overlay District based on the Hydraulic Report submitted by Ruekert/Mielke Engineering dated January 20, 2000.

Vacation of public streets and alleys shall cause the land vacated to be automatically placed in the same district as the abutting side to which the vacated land reverts.

Annexations to or consolidations with the Village subsequent to the effective date of this Ordinance shall be placed in the R-1 Residential District. Annexations or consolidations in the floodplain shall be placed in the F-1 Floodway District only to the extent that they meet the definition of floodways contained in this Ordinance.

### **3.02 ZONING MAP**

A certified copy of the Zoning Map shall be adopted and approved with the text as part of this Ordinance and shall bear upon its face the attestation of the Village President and Village Clerk and shall be available to the public in the office of the Village Clerk.

Changes, thereafter, to the general zoning districts shall not be effective until entered and attested on the certified copy. Changes in the floodland districts shall not be effective until approved by the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA).

### **3.03 R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT**

The R-1 residential district is intended to provide for high quality single-family residential development, their accessory uses and essential services, at a maximum density of 3.6 units per acre, with provisions of municipal sanitary sewer facilities.

Conditional Uses: See Section 5.04.

Lot	Width	Minimum 90 feet
	Area	Minimum 12,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum 1,200 square feet without garage for one (1) story, 1700 square feet for two (2) story.
Yard (Setbacks)	Street	Minimum 40 ft. from property line.
	Side	Minimum 8 ft. one side with a minimum total of 20 ft.
	Rear	Minimum 25 ft. or 20% of total lot depth, whichever is greater.

### 3.04 R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT

The R-2 residential district is intended to provide for high quality single-family residential development their accessory uses and essential services, at a maximum density of 4.6 units per acre, with provisions of municipal sanitary sewer facilities.

Conditional Uses: See Section 5.04.

Lot	Width	Minimum 66 feet
	Area	Minimum 10,000 sq. ft.
Building	Height	Maximum 35 ft.
	Area	Minimum 1,200 sq. ft. without garage for 1 story, and 1,700 sq. ft for multi-story single.
Yard (Setbacks)	Street	Minimum 25 ft. from property line
	Side	Minimum 8 ft. one side with a minimum total of 20 ft.
	Rear	Minimum 25 ft. or 20% of total lot depth, whichever is greater.

### 3.05 R-3 ONE AND TWO-FAMILY RESIDENTIAL DISTRICT

The R-3 residential district is intended to provide for high quality one and two family residential development, their accessory uses and essential services at a maximum density of 7.3 units per acre, with provisions of municipal sanitary sewer facilities.

Conditional Uses: See Section 5.04.

Lot	Width	Minimum 66 feet - one family Minimum 100 feet - two family
	Area	Minimum 10,000 sq. ft. for single family and 6,000 sq. ft per unit for a two family.
Building	Height	Maximum 35 ft.
	Area	Minimum 1,200 sq. ft. without garage for 1 story, and 1,700 sq. ft for multi-story single family houses and 1,800 sq. ft. without garage for two-family
Yard (Setbacks)	Street	Minimum 25 ft. from property line.
	Side	Minimum 8 ft. one side with a minimum total of 20 ft.
	Rear	Minimum 25 ft. or 20% of total lot depth, whichever is greater.

### 3.06 R-4 MULTIPLE-FAMILY RESIDENTIAL DISTRICT

The R-4 residential district is intended to provide for high quality multiple family residential development, their accessory uses and essential services, at a maximum density of 10.9 units per acre, with provisions of municipal sanitary sewer facilities. Subject to Village Plan Commission approval of building site and operational plans. (See Section 13)

Conditional Uses: See Sections 5.04 and 5.05.

Lot	Width	Minimum 120 feet.
	Area	Minimum 18,000 sq. ft. with a minimum of 4,500 sq. ft. per one bedroom unit; and 6,000 sq. ft. per two bedroom and three bedroom unit.
Building	Height	Maximum 35 ft.
	Area	750 sq. ft. each for 1 bedroom unit and 900 sq. ft. for 2 or 3 bedroom units.
Yard (Setbacks)	Street	Minimum 40 ft. from property line.
	Side	Minimum 40 feet from each side.
	Rear	Minimum 40 ft. or 20% of total lot depth, whichever is greater.

### 3.07 B-1 CENTRAL BUSINESS DISTRICT

The B-1 business district is intended to provide for the orderly continuation of the traditional central business district. The business activities are of a general nature and have been characterized by on-street parking and structures that abut the street right-of-way. While continuing those existing business at their present level of service, new business structures located in the B-1 business district should be required to provide for off-street parking and loading. Certain permitted uses listed under the following sections may also require a conditional use public hearing because of their particular characteristics. These uses may also be subject to Village Plan Commission approval of building site and operational plans. (See Sections 5.03, 5.06, and 13)

Permitted Uses, to include any of the following:

Animal hospital or veterinary clinic, provided that no service, including the boarding of animals, is offered outside of an enclosed building.

Antique or collector store

Appliance store

Bakeries

Banks, Savings and Loan Associations, and other financial and lending institutions

Barbershops

Bars, taverns and cocktail lounges

Beauty shops

Bookstores

Camera and photographic supply stores

Caterers

Churches

Clinics, medical or dental

Clothing and clothing repair or alteration stores

Clubs, fraternities and meeting halls (private)

Computer Stores

Confectioneries

Delicatessens

Department stores

Drugstores

Dry cleaners with no on-site cleaning facilities

Fish markets

Florists

Fruit stores

Furniture stores

Gift stores, card stores

Grocery stores

Hardware stores

Heating supply stores

Hobby and craft shops

Hotels, motels, bed and breakfast facilities

Jewelry stores

Liquor stores, packaged beverage stores

Meat markets

Movie rental stores

Municipal buildings

Music stores

Newspaper and magazine stores

Newspaper offices and press rooms

Office supply stores

Optical stores

Paint, glass and wallpaper stores

Pet shops

Plumbing supply stores

Professional offices, business offices

Public utility offices

Radio and television stores

Restaurants (sit-down, without drive-through service)

Second-hand stores

Self-service laundromats

Shoe stores and leather goods stores

Soda fountains, ice cream stores  
Sporting goods stores  
Stationery stores  
Supermarkets  
Tobacco stores  
Variety stores  
Vegetable stores

Accessory Uses:

Garages for storage of vehicles in conjunction with the operation of a permitted use.  
Off-street parking areas, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is parked entirely inside of a building, for more than two hours.

Conditional Uses (See Section 5.0 for review requirements):

Uses as set forth in sections 5.04 and 5.06, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours, unless otherwise allowed by the Plan Commission.

Lot	Width	Minimum 66 feet
	Area	Minimum 10,000 sq. ft.
Building	Height	Maximum 45 feet.
Yard (Setbacks)	Street	Minimum 25 ft.
	Side	Minimum 6 feet
	Rear	Minimum 25 feet

**3.075 B-2 LIMITED BUSINESS DISTRICT.**

**Statement of Intent.** The B-2 Business District is intended to provide for individual or limited office, professional, and special service uses where the activity would be compatible with other neighborhood uses and not exhibit the intense activity of other business districts.

**Special Regulations.** To encourage a business use environment that is compatible with the residential character of the Village, building permits for permitted uses in B-2 Limited Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to Section 2 of this Chapter.

**Permitted Uses---**to include any of the following:  
(See Section 13 for review requirements).

Professional and business offices.  
Bakeries  
Banks, lending institutions and savings and loan associations  
Barber shops  
Beauty shops  
Caterers  
Churches  
Clinics  
Furniture and upholstery repair  
Municipal buildings

**Accessory Uses:**

Garages for storage of vehicles in conjunction with the operation of a permitted use.

Off street parking areas, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Conditional Uses---to include any of the following:  
(See Section 5.0 for review requirements).

Animal hospital or veterinary clinic, provided that no service, including the boarding of animals, is offered outside of an enclosed building.

Automotive repair and upholstery, provided that that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Child care centers, provided that any outside play area is surrounded by a security fence not exceeding a height of six feet and set back at least five feet from any street right-of-way line with landscaping provided between the fence and the street right-of-way line; that no play area shall consist of entirely a hard surface.

Hobby use, as that term is defined by the Internal Revenue Service, provided that sales made from the site shall be limited to those occasional sales as allowed during the conditional use permitting process.

Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases. Provided further that that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours

Storage / Warehouse, provided that storage of hazardous materials, including but not limited to explosive, flammable or combustible solid, liquid or gas, radioactive material, etiological (disease causing) agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance or any solid, liquid or gas having a deleterious effect on the environment shall not be allowed. Provided further that that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Vehicle Sales, Service and /or Repair Structures, provided that that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Other conditional uses as set forth in Section 5.04, provided that that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Lot	Width	Minimum 66 feet
	Area	Minimum 10,000 sq. ft.
Building	Height	Maximum 35 feet
Yard (Setbacks)	Street	Minimum 25 ft.
	Side	Minimum 6 feet
	Rear	Minimum 25 feet

### 3.076 B-3 GENERAL BUSINESS DISTRICT

Statement of Intent. This district is intended to provide for the orderly and attractive grouping at appropriate locations of commercial activities of a more general retail and wholesale nature, and of the office and service facilities serving a larger community trade area. The size and location of such districts shall be based upon relationship of the community need and economy. No such district should be less than 300,000 square feet in area.

Special Regulations. To encourage a business use environment that is compatible with the residential character of the Village, building permits for permitted uses in B-3 General Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to Section 2 of this Chapter.

Permitted Uses:

Those Permitted Uses set forth under Section 3.07 for the B-1 Central Business District  
Business Offices

Furniture and Upholstery Repair, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

General Merchandising

Transportation Terminals, not including Trucking

Wholesale Establishments

Accessory Uses:

Garages for storage of vehicles in conjunction with the operation of a permitted use.

Off-street parking areas, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is parked entirely inside of a building, for more than two hours.

Conditional Uses (See Section 5.0 for review requirements):

Uses as set forth in sections 5.04 and 5.06, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours, unless otherwise allowed by the Plan Commission.

Child care centers, provided that any outside play area is surrounded by a security fence not exceeding a height of six feet and set back at least five feet from any street right-of-way line with landscaping provided between the fence and the street right-of-way line; and that no play area shall consist of entirely a hard surface.

Experimental, testing and research laboratories.

General warehousing.

Hobby Use, as that term is defined by the Internal Revenue Service, provided that sales made from the site shall be limited to those occasional sales as allowed during the conditional use permitting process.

Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases. Provided further that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Lumber and building supply yards.

Printing and publishing houses and related activities.

Storage / Warehouse, provided that storage of hazardous materials, including but not limited to explosive, flammable or combustible solid, liquid or gas, radioactive material, etiological (disease causing) agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance, or any solid, liquid or gas having a deleterious effect on the environment shall not be allowed. Provided further that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Service and sales establishments for automobiles, including body repair shops and used car lots but not including the storage of junked or wrecked automobiles and/or parts.

Lot	Width	Minimum 120 feet
	Area	Minimum 30,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,000 square feet
Yard (Setbacks)	Street	Minimum 40 ft.
	Side	Minimum 10 feet, or equal to the required sideyard in the adjacent district, whichever is greater
	Rear	Minimum 25 feet

### 3.077 B-4 Highway Business District

Statement of Intent. The B-4 Business District is intended to provide the orderly and attractive grouping at appropriate locations along principal highway routes of those businesses and customer service establishments which are logically related to and dependent upon highway traffic or which are specifically designed to serve the needs of such traffic.

Special Regulations. To encourage a business use environment that is compatible with the residential character of the Village, Building /Zoning permits for permitted uses in B-4 Highway Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to Section 2 of this Chapter.

Permitted Uses (see section 13 for review requirements) :

Those Permitted Uses set forth under Section 3.076 for the B-3 General Business District

Lumber and Building Supply Stores

Drive-in or drive-through restaurants or other establishments providing service to customers without the necessity of entering the building

Fast food stores and restaurants

Fuel service stations, provided that all islands and pumps shall meet the setback and yard requirements set forth herein

Transit bus service

Accessory Uses:

Garages for storage of licensed vehicles in conjunction with the operation of the business or for occupants of the business.

Off-street parking areas.

Conditional Uses (See Section 5.0 for review requirements):

Uses as set forth in sections 5.04 and 5.06, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours, unless otherwise allowed by the Plan Commission.

Child care centers, provided that any outside play area is surrounded by a security fence not exceeding a height of six feet and set back at least five feet from any street right-of-way line with landscaping provided between the fence and the street right-of-way line; and that no play area shall consist of entirely a hard surface.

Experimental, testing and research laboratories.

General warehousing.

Hobby Use, as that term is defined by the Internal Revenue Service, provided that sales made from the site shall be limited to those occasional sales as allowed during the conditional use permitting process.

Light manufacturing, of a limited nature and size, that is found by the Plan Commission not to be detrimental to the neighborhood and will not emit noise, smoke, dust, dirt, odorous or noxious gases. Provided further that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Printing and publishing houses and related activities.

Storage / Warehouse, provided that storage of hazardous materials, including but not limited to explosive, flammable or combustible solid, liquid or gas, radioactive material, etiological (disease causing) agents, or any solid, liquid or gas creating a hazard, potential hazard, or public nuisance, or any solid, liquid or gas having a deleterious effect on the environment shall not be allowed. Provided further that no truck with more than six wheels may be parked on the property, unless the vehicle is entirely inside of a building, for more than two hours.

Lot	Width	Minimum 120 feet
	Area	Minimum 30,000 sq. ft.
Building	Height	Maximum 35 feet
	Area	Minimum 1,000 square feet
Yard (Setbacks)	Street	Minimum 55 ft.
	Side	Minimum 30 feet, or equal to the required sideyard in the adjacent district, whichever is greater
	Rear	Minimum 30 feet

**3.078 B-5 Mixed Use Business District**

Statement of Intent. The B-5 Business District is intended to provide for the orderly and attractive grouping of buildings which encompass more than one type of non-industrial business use which are compatible from a traffic, density and general use standpoint.

**Special Regulations.**

1. To encourage a business use environment that is compatible with the residential character of the Village, building permits for conditional uses in B-5 Mixed Use Business District shall not be issued without prior review by and approval of the Village Plan Commission. Said review and approval shall be concerned with adjacent uses, need for public or private water supply and sanitary sewage disposal facilities, general layout, building site and operation plans, ingress, egress, parking, loading and unloading, screening and landscape plans pursuant to Section 2 of this Chapter.

2. If the development is proposed to be completed in phases or divided into saleable parcels, the owner/developer of each phase or separate parcel will be required to submit, and receive approval of a detailed site and operations plan as set forth in Section 5 of this Chapter.

3. Any division of the overall development parcel shall be accomplished in accordance with Chapter 16 of the Village of Rochester Municipal Code and review and approval of the Plan Commission per the Design Standards specified in Section 2.08 of this Chapter.

Permitted Uses:

Those Permitted Uses set forth under Section 3.077 for the B-4 Highway Business District

Accessory Uses:

Garages for storage of vehicles in conjunction with the operation of a permitted use.  
Off-street parking areas, provided that no truck with more than six wheels may be parked on the property, unless the vehicle is parked entirely inside of a building, for more than two hours.

Conditional Uses (See Section 5.0 for review requirements):

Uses as set forth in sections 5.04 and 5.06.

The conditional uses set forth in section 3.077, B-4 Highway Business District

Any retail, service or office use that is similar to or compatible with a Permitted Use listed above as determined by the Plan Commission

Lot	Width	Minimum 200 feet
	Area	Minimum 87,120 sq. ft. (2 acres)
Building	Height	Maximum 35 feet
	Area	Minimum 1,000 square feet
Yard (Setbacks)	Street	Minimum 55 ft.
	Side	Minimum 30 feet
	Rear	Minimum 30 feet

Parking and Loading Space

Off street parking and loading space adequate to meet the initial and projected needs of the principal use shall be provided for the individual lot development within the park. See Parking Area Requirements per Section 6 of this Chapter.

No loading or unloading will be allowed on the streets or access ways within the parcel or on adjacent streets, roads or highways.

**3.08 M-1 LIMITED INDUSTRIAL DISTRICT**

The M-1 Industrial District is intended to accommodate processing, assembling and manufacturing ventures in the more congested industrial areas of the Village and permit limited expansion and improvements of such activities in a manner that is not incompatible with surrounding land uses.

Conditional uses. (See Sections 2.07(j), 5.04 and 5.07)

Any of the following listed uses:

Adult Oriented Entertainment Business, Bakeries (wholesale), cosmetic manufacturing, distributors, electrical appliances manufacturing, electrical devices manufacturing, food processing except cabbage, farm machinery sales and repair, food locker plants, fueling stations and restaurants oriented toward industrial district users, glass manufacturing, green houses (wholesale), instrument manufacturing, jewelry manufacturing, leather fabrication, not including tanning, laboratories, machine shops, manufacture and bottling of non-alcoholic beverages, painting, printing and publishing, tobacco and toiletries, storage and sale of machinery and equipment, warehousing, wholesaling, packaging and packing of confections, pharmaceuticals processing, packaging and assembly of products made from fur.

Lot	Width	Minimum 120 feet
	Area	Minimum 18,000 sq. ft.
Building	Height	Maximum 35 feet
Yard (Setbacks)	Street	Minimum 25 ft.
	Side	Minimum 20 feet with no buildings, structure, stockpile or equipment storage being located within 50 feet of any residential district property line.
	Rear	Minimum 25 feet with no building, structure, stockpile or equipment storage being located within 50 feet of any residential district property line.

### 3.09 P-1 PARK DISTRICT

The P-1 Park District is intended to provide for areas where the open space and recreational needs, both public and private, of the citizens of the Village of Rochester can be met without undue disturbance of natural resources and adjacent uses.

All uses shall be subject to Village Plan Commission approval of building, site and operational plans.

#### Permitted Uses:

Boat rental and boat access sites, fairgrounds, golf courses, hiking and nature trails, neighborhood tot lots, outdoor skating rinks, parks and playgrounds, picnicking areas, playfields or athletic fields, sledding, skiing or tobogganing, tennis courts, buildings accessory to the permitted uses.

Conditional Uses: See Section 5.08.

Lot	Width	No minimum feet
	Area	No minimum square feet
Building	Height	Maximum 45 feet
Yard (Setbacks)	Street	Minimum 40 feet
	Side	Minimum 40 feet, total 80 feet
	Rear	Minimum 40 feet

### 3.10 F-1 FLOODWAY DISTRICT

a. The F-1 Floodway District is intended to be used to protect people and property from flood damage by prohibiting the development and/or erection of structures that would impede the flow of water during periodic flooding. Permitting use of the floodway would increase damages in the broader floodplain by increasing flood stages. In delineating the F-1 District, the effects of development within the associated flood fringe shall be computed utilizing the equal degree of encroachment principle. No increase in flood stage shall be permitted to exceed 1.0 feet. Flood stage increases exceeding 0.1 feet (3 centimeters) in height shall not be permitted unless the Village of Rochester has made appropriate legal arrangements with all affected units of government and all property owners affected by the stage increase, and until all such affected units of government have amended their water surface profiles, and floodland zoning maps to reflect the increased flood elevations.

#### b. Permitted Uses:

- (1.) Drainage facilities, floodwater overflows, navigational structures, stream bank protection.
- (2.) Any of the following uses provided that they are permitted uses in the district immediately adjacent to the floodway; and further provided that such use shall not involve the erecting or placing of a structure:

Horticulture, open parking and loading areas, open markets, open recreational uses, such as parks, sports fields, beaches, bathing, hunting, fishing, rinks, golf courses, and driving ranges, outdoor plant nurseries, utilities, viticulture, wildcrop harvesting, wildcrop preserves. It is the responsibility of the applicant to secure all other necessary permits from all appropriate Federal, State, and local agencies, including those required under Section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

c. **Dumping and Filling Prohibited:**

Lands lying within the floodway district shall not be used for dumping or be filled, except as authorized to permit establishment of approved bulkhead lines or to accommodate bridge approaches. Normal earth grading activities to permit utilization of the lands for open space, outdoor recreation, yard, parking, and similar uses are permitted.

d. **Dangerous Materials Storage Prohibited:** Lands lying within the floodway district shall not be used for the storage of materials that are buoyant, flammable, explosive, or injurious to human, animal, or plant life.

e. **Incompatible Use Prohibited:**

Lands lying within the floodway district shall not be used for any solid waste disposal site, on-site soil absorption sanitary sewerage system site, or the construction of any well which is used to obtain water for ultimate human consumption.

3.11 **FFO FLOOD FRINGE OVERLAY DISTRICT**

a.) The FFO Flood Fringe Overlay District is intended to provide for an encourage the most appropriate use of land and water in areas subject to periodic flooding and to minimize flood damage to people and property.

b.) **Permitted Uses:**

Any use of land, except structures, that is permitted in the underlying basic use district. Examples of such use would be croplands in an agricultural district; required yards in a residential district; or parking or loading areas in a commercial or industrial district, provided that inundation depths for parking and loading areas do not exceed two feet or that such areas are not subjected to flood velocities greater than four feet per second upon the occurrence of a 100-year recurrence interval flood. No developments in the flood fringe areas shall materially affect the storage capacity of flood plains, based upon an equal degree of hydrologic encroachment (volume of the storage area which is lost). For the purpose of this subsection, "materially" is defined as any increase in discharge of the regional flood which causes a rise in the water surface profile of 0.1 foot. Such developments may be permitted only if amendments are made to this ordinance pursuant to Section 12.0 herein; provided further that the total cumulative allowable increase in height of the regional flood for any given reach of a stream shall not exceed one foot.

c.) **Conditional Uses:** See Section 5.09

3.12 **SHORELAND-WETLAND ZONING DISTRICT**

a. **Compliance:**

The use of wetlands and the alteration of wetlands within the shoreland area of the municipality shall be in full compliance with the terms of this ordinance and other explicable local, state or federal regulations. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this ordinance.

b. **Abrogation and Greater Restrictions:**

This ordinance supercedes all the provisions of any municipal zoning ordinance enacted under sections 61.35, 62.23 or 87.30, Wis. Stats., which relate to floodplains and shoreland-wetlands, except that where another municipal zoning ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

c. Interpretation.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wis. Stat. Where a provision of this ordinance is required by a standard in chapter NR 117, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the chapter NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

d. Shoreland-Wetland Zoning Maps.

The following maps are hereby adopted and made part of this ordinance and are on file in the office of the municipal Clerk:

- (1.) Wisconsin Wetland Inventory maps stamped "Final" on July 27, 1988.
- (2.) Floodplain Zoning maps titled Flood Insurance Rate Map dated January 2, 1981.
- (3.) Zoning maps titled Village of Rochester Zoning Map dated August 31, 1979 (revised February 1993 and June 2000).

e. District Boundaries.

- (1.) The shoreland-wetland zoning district includes all wetlands in the municipality which are five acres or more and are shown on the final Wetland Inventory Map that has been adopted and made a part of this ordinance and which are:

Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance.

Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance. Floodplain zoning maps adopted in sections 3.091 and 3.02 shall be used to determine the extent of floodplain areas.

- (2.) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary high-water mark. When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official zoning maps and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary as mapped, is in error. If Department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors or acknowledge exempted wetlands designated, the zoning administrator shall be responsible for initiating a map amendment within a reasonable period.

- (3.) Filled Wetlands.

Wetlands which are filled prior to 7-26-88, the date on which the municipality received final wetland inventory maps, in a manner which affects their wetland characteristics to the extent that the area can no longer be defined as wetland, are not subject to this ordinance.

(4.) Wetlands Landward of a Bulkhead Line.

Wetlands located between the original ordinary high water mark and a bulkhead line established prior to May 7, 1982 under s.30.11 Stats. are not subject to this ordinance.

(5.) Permitted Uses.

The following uses are permitted subject to the provisions of chapters 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:

(a.) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:

- 1.) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;
- 2.) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
- 3.) The practice of silviculture, including the planting, thinning and harvesting of timber;
- 4.) The pasturing of livestock;
- 5.) The cultivation of agricultural crops; and
- 6.) The construction and maintenance of duck blinds.

(b.) Uses which do not require the issuance of a zoning permit and which may involve wetland alterations only to the extent specifically provided below:

- 1.) The practice of silviculture, including limited temporary water level stabilization measures which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities, if not corrected;
- 2.) The cultivation of cranberries, including limited wetland alterations necessary for the purpose of growing and harvesting cranberries;
- 3.) The maintenance and repair of existing drainage systems to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredged spoil, provided that the filling is otherwise permissible and that dredged spoil is placed on existing spoil banks where possible;
- 4.) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;
- 5.) The construction and maintenance of piers, docks, walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such construction and maintenance;
- 6.) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district provided that such installation or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the shoreland-wetland listed in this ordinance; and
- 7.) The maintenance, repair, replacement and reconstruction of existing highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

(c.) Uses which are allowed upon the issuance of a zoning permit and which may include wetland alterations only to the extent specifically provided below:

- 1.) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to provide access to uses permitted under this ordinance, provided that:
  - a.) The road cannot, as a practical matter, be located outside the wetland;
  - b.) The road is designed and constructed to minimize adverse impacts upon the natural functions of the wetland listed in this ordinance;
  - c.) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;
  - d.) Road construction activities are carried out in the immediate area of the roadbed only; and
  - e.) Any wetland alteration must be necessary for the construction or maintenance of the road.
- 2.) The construction and maintenance of nonresidential buildings provided that:
  - a.) The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;
  - b.) The building cannot, as a practical matter, be located outside the wetland;
  - c.) The building does not exceed 500 square feet in floor area; and
  - d.) Only limited filling and excavating necessary to provide structural support for the building is allowed.
- 3.) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:
  - a.) Any private development allowed under this paragraph shall 130 used exclusively for the permitted purpose;
  - b.) Any limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches or the construction of park shelters or similar structures is allowed;
  - c.) The construction and maintenance of roads necessary for the uses permitted under this paragraph are allowed only where such construction and maintenance meets the criteria in this ordinance; and
  - d.) Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms and wildlife preserves shall be for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- 4.) The construction and maintenance of electric and telephone transmission lines, water and gas distribution lines and sewage collection lines and related facilities and the construction and maintenance of railroad lines provided that:
  - a.) The utility transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;

- b.) Only limited filling or excavating necessary for such construction or maintenance is allowed; and
- c.) Such construction or maintenance is done in a manner designed to minimize adverse impacts upon the natural functions of the wetland listed in this ordinance.

(6.) Prohibited Uses.

Any use not listed in above section of this ordinance is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with previous section of this ordinance.

The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary high-water mark of any navigable waters are prohibited.

(7.) Nonconforming Structures and Uses.

- (a.) The lawful use of a building, structure or property which existed at the time of this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of the ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

For Villages.

The shoreland-wetland provisions of this ordinance authorized by s. 61.351, Wis. Stats., shall not limit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure or of any environmental control facility related to such a structure in existence on the effective date of the shoreland-wetland provisions. All other modifications to nonconforming structures are subject to s. 62.23(7)(h) Wis. Stats., which limits total lifetime structural repairs and alterations to 50% of current fair market value.

- (b.) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this ordinance.

Any legal nonconforming use of property which does not involve the use of a structure and which existed at the time of the adoption or subsequent amendment of this ordinance adopted under sections 61.351 Wis., Stats., may be continued although such use does not conform with the provisions of this ordinance. However, such non-conforming use may not be extended.

The maintenance and repair of nonconforming boathouses which are located below the ordinary high-water mark of any navigable waters shall comply with the requirements of section 30.121, Wis. Stats.

Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

(8.) Administrative Provisions.

- (a.) Zoning Administrator.

The zoning administrator shall, have the following duties and powers:

- 1.) Advising applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.
- 2.) Issue permits and inspect properties for compliance with this ordinance.
- 3.) Keep records of all permits issued, inspections made, work approved and other official actions.

- 4.) Have access to any structure or premises between the hours of 8:00 a.m. and 6 p.m. for the purpose of performing these duties.
- 5.) Submit copies of decisions on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments within 10 days after they are granted or denied, to the appropriate district office of the Department.
- 6.) Investigate and report violations of this ordinance to the appropriate municipal planning agency and the district attorney, corporation counsel or municipal attorney.

(b.) Building Permits.

See Section 2.03 of this ordinance.

(c.) Site Development Plan.

The site development plan shall be submitted as a part of the permit application and shall contain the following information drawn to scale:

- 1.) Dimensions and area of the lot,
- 2.) Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;
- 3.) Description of any existing or proposed on-site sewage systems or private water supply systems;
- 4.) Location of the ordinary high-mark of any abutting navigable waterways;
- 5.) Boundaries of all wetlands;
- 6.) Existing and proposed topographic and drainage features and vegetative cover;
- 7.) Location of floodplain and floodway limits on the property as determined from floodplain zoning maps;
- 8.) Location of existing or future access roads; and
- 9.) Specifications and dimensions for areas of proposed wetland alteration.

(d.) Recording.

Where a building permit is approved, an appropriate record shall be made by the zoning administrator of the land use and structures permitted.

(e.) Amending Shoreland-Wetland Zoning Regulations.

- 1.) The municipal governing body may alter, supplement or change the district boundaries and the regulations contained in this ordinance in accordance with the requirements of section 62.23(7)(d)2., Wis. Stats., NR 117, Wis. Adm. Code, and the following:

A copy of each proposed text or map amendment shall be submitted to the appropriate district office of the Department within 5 days of the submission of the proposed amendment to the municipal planning agency;

All proposed text and map amendments to the shoreland-wetland zoning regulations shall be referred to the municipal planning agency, and a public hearing shall be held after Class II notice as required by section 62.23(7)(d)2., Wis. Stats. The appropriate district office of the Department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

- 2.) In order to insure that this ordinance will remain consistent with the shoreland protection objectives of section 281.31, Wis. Stats., the municipal governing body may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed zoning may result in a significant adverse impact upon any of the following wetland functions:
  - a.) Storm and flood water storage capacity;
  - b.) Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
  - c.) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
  - d.) Shoreline protection against erosion;
  - e.) Fish spawning, breeding, nursery or feeding grounds;
  - f.) Wildlife habitat; or
  - g.) Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species. Where the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in this ordinance, the Department shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.

(3.) The appropriate district office of the Department shall be provided with:

- a.) A copy of the recommendation and report, if any, of the municipal planning agency on a proposed text or map amendment, within 10 days after the submission of those recommendations to the municipal governing body.
- b.) Written notice of the action on the proposed text or map amendment within 10 days after the action is taken.
- c.) If the Department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in this ordinance, that proposed amendment, if approved by the municipal governing body, shall not become effective until more than 30 days have elapsed since written notice of the municipal approval was mailed to the Department, as required by this ordinance. If within the 30 day period, the Department notifies the municipality that the Department intends to adopt a superceding shoreland-wetland zoning ordinance for the municipality as provided by sections 62.231(6) and 61.351(6), Wis. Stats., the proposed amendment shall not become effective until the ordinance adoption procedure under 62.231(6) or 61.351. (6), Wis. Stats., is completed or otherwise terminated.

(9.) Definitions.

- (a.) For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified, shall be measured horizontally.
- (b.) The following terms used in this ordinance mean:
  - 1.) "Boathouse" as defined in section 30.01(1d) Wis. Stats., means a permanent structure used for the storage of watercraft and associated materials and includes all

structures which are totally enclosed, have roofs or walls or any combination of structural parts.

- 2.) "Class 2 public notice" means publication of a public hearing notice under chapter 985, Wis. Stats., in a newspaper of circulation in the affected area. Publication is required on two consecutive weeks, the last at least seven days prior to the hearing.
- 3.) "Conditional use" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Board of Appeals or, where appropriate, the planning agency designated by the municipal governing body.
- 4.) "Department" means the Wisconsin Department of Natural Resources.
- 5.) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.
- 6.) "Drainage system" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.
- 7.) "Environmental control facility" means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.
- 8.) "Fixed Houseboat" as defined in section 30.01 (1r), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary high-water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.
- 9.) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under section 281.31(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under sections 61.351 or 62.221, Wis. Stats., and Department of Natural Resources, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if;
  - a.) Such lands are not adjacent to a natural navigable stream or river;
  - b.) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
  - c.) Such lands are maintained in nonstructural agricultural use.

Wisconsin Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis (*Muench v. Public Service Commission*, 261 Wis. 492 (1952) and *DeGaynor and Co., Inc. v. Department of Natural Resources*, 70 Wis. 2d 936 (1975)). For example, a stream which is navigable by skiff or canoe during normal spring high water is navigable, in fact, under the laws of this state though it may be dry during other seasons.

- 10.) "Planning agency" means the municipal plan commission created under section 62.23(1), Wis. Stats., a board of public land commissioners or a committee of the municipality's governing body which acts on matters pertaining to planning and zoning.
- 11.) "Shoreland-wetland district" means the zoning district, created in this shoreland-wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this ordinance.
- 12.) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters; 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- 13.) "Unnecessary hardship" means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
- 14.) "Variance" means an authorization granted by the Board of Appeals to construct or alter a building or structure in a manner that deviates from the dimensional standards of this ordinance.
- 15.) "Wetlands" means those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.
- 16.) "Wetland alteration" means any filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

### 3.13 PUD PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT

#### a. Intent.

The planned unit development overlay district (hereinafter referred to as PUD) is established to provide a voluntary regulatory framework designed to encourage and promote improved environmental and aesthetic design in the Village by allowing for greater freedom, imagination and flexibility in the development of land while insuring substantial compliance with the Village zoning ordinance and the general plan for community development. A PUD provides for the superimposing of an approved plan for development on property already designated as a basic zoning district identified in the zoning ordinance. PUD districts are approved specifically for the development being proposed. If the development is not implemented within twenty-four months of approval of the specific implementation plan, the property shall revert to its original zoning. The amount of implementation progress required to prevent reversion to the original zoning shall be included as part of the specific implementation plan approval. Some specific purposes of developments in the PUD are:

- (1.) Residential Planned Developments. To offer recreational opportunities close to home, to enhance the appearance of neighborhoods by conservation of streams and local spots of natural beauty, to add to the sense of spaciousness through the preservation of natural spaces, to counteract the effects of urban monotony and congestion in the streets, to encourage cooperative relationships between neighbors and participation by all age groups in the use and care of local open space tracts in new residential subdivisions, to promote harmonious architecture between adjacent dwellings or institutional buildings, and to encourage the placement of structures in proper relationship to the natural characteristics of the site.
- (2.) Business or Commercial Planned Development. To promote the Cooperative development of business or commercial centers each with adequate off-street parking, to control access points on thoroughfares, to separate pedestrians and automobile traffic, to aid in stabilizing property values, to develop centers of size and location compatible with marked potential green spaces and to

encourage harmonious architecture between adjacent commercial structures and between home and commercial structures.

- (3.) Industrial Planned Development. To promote the establishment of industrial parks, to permit groups of industrial buildings with integrated design and coordinated physical plan, to encourage recreational facilities with industrial areas with landscaped green spaces.

b. Principal Uses.

Principal uses are as follows: Other than the existing use, no use shall be permitted in the planned unit development district except in conformity with an approved recorded specific implementation plan adopted pursuant to the provisions hereinafter set forth.

c. Minimum Area For PUD District.

Each planned unit development district shall have an area of at least one and one half acres.

d. Lot size. floor area ratio, open space, signs and off-street parking.

In the planned unit development district there shall be no predetermined specific lot area, lot width, height, floor area ratio, yard, usable open space, sign and off-street parking requirements. Such requirements which are made a part of an approved recorded requirements which are made a part of an approved recorded specific implementation plan agreed upon by the owner and the Village shall be construed with the recorded plan itself, as a part of this subchapter.

e. Criteria for approval.

As a basis for determining the acceptability of a planned unit development district application, the following criteria shall be applied with specific consideration as to whether or not it is consistent with the spirit and intent of this subchapter and has the potential for producing significant community benefits in terms of environmental and aesthetic design.

- (1.) Character and intensity of Land Use. In a planned unit development district the uses and their intensity, appearance and arrangement shall be of a visual and operation character which:
  - (a.) Are compatible with the physical nature of the site of area:
  - (b.) Would produce an attractive environment of sustained aesthetic desirability, economic stability and functional practicality compatible with the general development plan;
  - (c.) Would not adversely affect the anticipated provision for school or other municipal service unless jointly resolved; and
  - (d.) Would not create a traffic or parking demand incompatible with existing or proposed facilities.
- (2.) Economic Impact. A planned unit development shall not adversely affect the economic prosperity of the Village or of surrounding properties.
- (3.) Preservation and Maintenance of Open Space. In a planned unit development district adequate provisions of the improvement and continuing preservation and maintenance of attractive open space shall be made.
- (4.) Implementation Schedule. A PUD shall include suitable assurances that each phase could be completed in a manner which would not result in an adverse effect upon the community as a result of termination at any point in the community as a result of termination at any point in the development. The implementation schedule shall designate to what extent the development shall be implemented within a twenty-four month period of time of approval of the implementation plan for the property not to revert back to its original zoning.

f. Procedure for rezoning as a planned unit development.

The procedure for rezoning to a planned unit development district shall be as required for any other zoning district change in this subchapter, except that in addition thereto the rezoning may only be considered in conjunction with a development plan, and shall be subject to the following additional requirements:

- (1.) General Development Plan. The proponent of the zoning change shall file the following with the plan commission:
  - (a.) A statement describing the general character of the intended development:
  - (b.) An accurate map of the project area including its relationship to surrounding properties and existing topography and key features;
  - (c.) A plan of the proposed project showing sufficient detail to make the possible evaluation of the criteria for approval as set forth in Section 15-3.13.(e)and
  - (d.) When requested, a general outline of intended organizational structure related to property owner's association deed restrictions and private provision of common services, together with such other additional relevant information as may be required by the planning commission.
- (2.) Referral and Hearing.
  - (a.) Within sixty days after completion of the filing of the petition for approval for a general development plan, the planning commission shall forward the petition to the Village Board with recommendations that the plan is to be approved as submitted, approved with modifications or conditions or disapproved.
  - (b.) Upon receipt of the recommendations, the Village Board shall determine whether or not to initiate a proposed zoning change to establish the proposed planned unit development district and to schedule the required public hearing, as required in Section 15-12.05 of the general zoning code. If the Board fails to initiate such a change within sixty days, the petitioner may file a petition directly with the Village clerk as provided by section 15-3.13(e);
  - (c.) Approval of the rezoning and related general development plan shall establish the basic right of use for the area when in conformity with the plan as approved, but such plan shall be conditioned upon approval of a specific implementation plan, and shall not make permissible any of the uses as proposed until a specific implementation plan is submitted and approved for all or a portion of the general development plan. If the approved general development plan is not recorded as approved within twelve months of the date of approval by the Village Board the approval shall be null and void and a new petition and approval process shall be required to obtain general development plan approval.
- g. Procedure for approval of specific implementation plan. The specific implementation plan shall be submitted to the plan commission.
  - (1.) Required information. The implementation plan submitted shall include the following detailed construction and engineering plans and related detailed documents and schedules and in addition thereto all other information deemed relevant by the planning commission, except when specific documents are waived by such commission:
    - (a.) An accurate map of the area covered by the plan including the relationship to the total general development plan;
    - (b.) The pattern of public and private roads driveways, walkways, and parking facilities;
    - (c.) Detailed lot layout and subdivision plat where required;
    - (d.) The arrangement of building groups, other than single-family residences, and their architecture character;
    - (e.) Sanitary sewer and water mains;
    - (f.) Grading plan and storm drainage system;

- (g.) The location and treatment of open space areas and recreational or other specific amenities:
  - (h.) The location and description of any areas to be dedicated to the public:
  - (i.) Landscape plan and plant list;
  - (j.) Proof of financing capability;
  - (k.) Analysis of economic impact upon the community;
  - (l.) A construction schedule indicating the approximate dates when construction of the project can be expected to begin and be completed. The construction schedule shall include a statement as to what extent the project plan will be implemented within twenty four months of the time of the approval of the specific implementation plan.
  - (m.) Agreements, bylaws, provisions or covenants which govern the organizational structure, use, maintenance and continued protection of the development and any of its common services, common open areas or other facilities.
- (2.) Procedure for Approving Specific Implementation Plan.
- (a.) Following a review of the specific implementation plan, the planning commission shall recommend to the Village Board that it be approved as submitted, approved with modifications or conditions, or disapproved. The planning commission or village board may require any reasonable condition or design which will promote proper development or benefit to the community.
  - (b.) Upon receipt of the plan commission recommendation, the Board may approve the plan and authorize the development to proceed accordingly: or disapprove the plan and send it back with specific objections to such commission for further negotiation with the developer.
  - (c.) In the event of approval of the specific implementation plan, the building, site and operational plans for the development, as approved, as well as all other commitments and contractual agreements with the Village shall be recorded by the developer within twelve months of the date of approval by the Village Board in the Racine County register of deeds office. This recording shall be accomplished prior to the issuance of any building permit. If the specific implementation plan is not recorded as approved within twelve months of the date of approval by the Village Board the approval shall be null and void, and a new petition and approval process shall be required to obtain specific implementation plan approval.
  - (d.) Any subsequent change or addition to the plan or use shall first be submitted for approval to the planning commission and if, in the opinion of such commission, the change or addition constitutes a substantial alteration of the original plan, the procedure provided for in Section 15-3.13f. shall be required.

### 3.14 HPO HISTORIC PRESERVATION OVERLAY DISTRICT

- a. Intent. The HPO Historic Preservation Overlay District is intended to provide for the protection and preservation of those structures and areas whose architectural, archeological or historic interests are valuable contributions to the character and charm of the Village or areas of the Village and to the Village's cultural, social, economic, political and architectural history or heritage. Such structures and areas are hereby deemed to represent a community asset justifying the public regulation of such structures and areas to ensure their preservation. The intent of this district is to safeguard the Village's historic and cultural heritage, as embodied and reflected in such structures or areas, stabilize and improve property values, foster civic pride, enhance the visual and aesthetic character of the Village, and protect and enhance the Village's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.
- b. District Standards and Uses. District standards shall conform to those required in the underlying basic zoning district. See also subsection d. of this section. Permitted, accessory, and conditional uses shall be as allowed in the underlying basic zoning district.

c. Designation / Creation of Historic Preservation Overlay District.

- (1.) The Historic Preservation Committee shall select geographically defined areas within the Village of Rochester to be designated Historic Preservation Overlay Districts pursuant to Chapter 21, section 21.06 of this Municipal Code. If a petition for rezoning to an HPO District is received from a source other than the Historic Preservation Committee, it shall be referred to the Committee for its review and recommendation.
- (2.) The Village Board may designate an area an HPO District upon recommendation by the Plan Commission and the Historic Preservation Committee. The public hearing to be held pursuant to Chapter 21, section 21.06, subsection 2.)b.)1 shall be held jointly by the Plan Commission and the Historic Preservation Committee, and notice of the hearing shall conform to the requirements of both Chapter 21 and the notice required in this Chapter.
- (3.) The criteria for rezoning to an HPO District shall be based upon the requirements found in Chapter 21, section 21.04.

d. Limitation on Structural or Appearance Changes.

- (1.) Certificate of Appropriateness Required. There shall be no alterations in the architectural appearance of any structure within an HPO District without the approval of plans for such alterations by the Historic Preservation Committee and the Committee's grant of a Certificate of Appropriateness pursuant to Chapter 21 of this Municipal Code. For purposes of this section, alterations shall include any exterior color change, addition to, or demolition of any part or all of the exterior of a structure.
- (2.) Repairs, Destruction and Reconstruction. Notwithstanding the provisions of Section 10 of this Chapter as to non-conforming structures, total lifetime structural repairs, restoration, or alterations of a preservation structure may exceed fifty (50) percent of the Village's equalized value of the structure if the Historic Preservation Committee determines that the structure will be repaired, restored, or altered in a way that maintains the character of the structure and the character of the HPO District without significant alteration or change in such character. No person in charge of an historic structure or improvement in an HPO District shall demolish such a structure or improvement without a Certificate of Appropriateness for the demolition.
- (3.) Notwithstanding the provisions of Section 10 of this Chapter as to non-conforming structures, the Historic Preservation Committee may grant a Certificate of Appropriateness for, and may recommend to the Plan Commission, that all or part of a structure which has been destroyed or altered over the course of time may be rebuilt or reconstructed to the structure's original footprint, inclusive of uncovered porches, if such reconstruction or restoration is in keeping with the historic significance of the structure and area, regardless of current setback, side yard and rear yard requirements, so long as no safety issues (such as vision clearance triangles) are implicated. An example of such a recommendation would be the restoration of a porch to its original length and width, as proven by photographic or other documented evidence, if such porch was removed in a remodeling of the structure. The Plan Commission may approve such restoration or reconstruction, and such approval shall not be considered a variance or waiver but shall rather be considered to meet the appropriate standards of the HPO District.
- (4.) In the case of the destruction of a structure in the HPO District, the Plan Commission may determine upon recommendation from the Historic Preservation Committee that a replacement structure may be constructed in a manner that, while not identical to the original structure, maintains the historic character of the destroyed structure.

**SECTION 4 SUMMARY OF AREA YARD & HEIGHT REQUIREMENTS TABLE**

District	Minimum Lot Size			Minimum Setback Requirements				
	Total Area (Square Feet)	Area Per Family (Square Feet)	Lot Width At Building Line (Feet)	Minimum Streetyard Setback (Feet) (*a)	Minimum Side Yard (Feet)	Side Yard Total (Feet)	Minimum Rear Yard (Feet)	Maximum Height (Feet)
R-1	12,000	12,000	90	40	8	20	25 (*b)	35
R-2	10,000	10,000	66	25	8	20	25 (*b)	35
R-3	10,000 (1 Fam.) 12,000 (2 Fam.)	10,000 (1 Fam.) 6,000 (2 Fam.)	66 (1 Fam.) 100 (2 Fam.)	25	8	20	25 (*b)	35
R-4	18,000	4,500 (1 BR) 6,000 (2 & 3 BR)	120	40	40	80	40 (*b)	35
Residential Accessory Uses:				Same as District	5	5	5 (*d)	15
B-1	10,000	~	66	25	6	~	25	45
B-2	10,000	-	66	25	6	-	25	35
B-3	30,000	-	120	40	10 (*e)		25	35
B-4	30,000	-	120	55	30 (*e)		30	35
B-5	87,120	-	200	55	30		30	35
M-1	18,000	~	120	25	20 (*c)	40 (*c)	25 (*c)	35
P-1	~	~	~	40	40	80	40	45
F-1	~	~	~	~	~	~	~	~
FFO	~	~	~	Same as Underlying District			~	~
HPO	"	"	"	Same as Underlying District			"	"

\*a.) Street yard setback shall be averaged with abutting primary structures, but not to be less than fifteen feet (See 8.03).

\*b.) or 20 percent of total lot depth, whichever is greater.

\*c.) With no building structure, stockpile or equipment storage being located within 50' of any residential district property line.

\*d.) See 2.07c.

\*e.) or sideyard in adjacent district, whichever is greater

## SECTION 5    CONDITIONAL USES

### 5.01    PERMITS

The Village Plan Commission may authorize the zoning administrator to issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this Ordinance and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community.

### 5.02    APPLICATION

Applications for conditional use permits shall be made to the zoning administrator and shall include the following:

- 1.)    A site plan of the property accurately dimensioned showing the location of all existing and proposed structures and use area.
- 2.)    Name of project
- 3.)    Owner's and/or developer's name and address.
- 4.)    Architect and/or engineer's name and address.
- 5.)    Date of plan submittal.
- 6.)    Existing topography shown at a contour interval not less than two (2) feet, (or where not readily available elevations at appropriate locations).
- 7.)    Proposed changes in topography.
- 8.)    The characteristics of soils related to contemplated uses.
- 9.)    The type, size, location and dimensions of all structures including fences and walls.
- 10.)   Location and number of parking, loading and storage areas.
- 11.)   Primary building materials used in construction of all structures.
- 12.)   Height of building(s).
- 13.)   Location and size of existing and proposed sanitary sewers, septic tanks and disposal fields, holding tanks, storm sewers and water mains.
- 14.)   Location of proposed solid waste (refuse) storage area.
- 15.)   Location of pedestrian sidewalks and walkways.
- 16.)   Existing and proposed public right-of-way widths.
- 17.)   Location, type, height and intensity of proposed lighting.
- 18.)   Location of existing trees and extent, and type of proposed plantings including type and extent of erosion control.
- 19.)   A graphic delineation of any planned development staging.
- 20.)   Architectural plans, elevations, and perspective drawings and sketches illustrating the design and character of proposed structures.
- 21.)   Any other site or use information, such as 100 year internal flood lines, which will assist the Plan Commission in making a determination and recommendation on the proposal.

In addition, operations plan data to be submitted with all plan review applications shall include at least the following:

- 1.) Specific use of site and building(s).
- 2.) Hours of operations.
- 3.) Number of full and part time employees.
- 4.) Estimate of daily truck and auto trips to the site.
- 5.) Type of materials and equipment to be stored on site.
- 6.) Method of handling solid and liquid waste disposal.
- 7.) Method of exterior maintenance (site and buildings).
- 8.) Method of site and building security other than local police.
- 9.) Copies of all special use permits issued by state or county agencies.
- 10.) Any other information which will assist the Plan Commission in making a determination and recommendation of the proposal.

### 5.03 REVIEW AND APPROVAL.

The Village Plan Commission shall review the site, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, waste disposal, water supply systems, and the effect of the proposed use, structure, operation, and improvement upon flood damage protection, water quality, shoreland cover, natural beauty, and wildlife habitat. Conditions, such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, location, size and number of signs, water supply and waste disposal system, higher performance standards, street dedication, certified survey maps, floodproofing, ground cover, diversions, silting basins, terraces, stream bank protection, planting screens, operational control hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or additional parking may be required by the Village Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Ordinance and the State Water Resources Act of 1965, and to meet the provisions of State's FloodPlain, and Shoreland Management Programs. Compliance with all other provisions of this Ordinance, such as lot width, and area yards, height, parking, loading, traffic, highway access, aesthetic evaluation and performance standards shall be required of all conditional uses.

Variances shall only be granted as provided in Section 11 of this Ordinance.

### 5.04 PUBLIC AND SEMIPUBLIC USES.

The following public and semipublic uses shall be conditional uses and may be permitted as specified.

Governmental and Cultural Uses, such as fire and police stations, community centers, libraries, public emergency shelters, and museums, in all residential, business and industrial districts.

Utilities in all districts provided all principal structures and uses are not less than fifty (50) feet from any residential district lot line.

Public, Parochial, and Private Elementary and secondary schools and churches in all residential district provided the lot area is not less than two (2) acres and all principal structures and uses are not less than fifty (50) feet from any lot line.

Colleges; Universities; Hospitals: in the Multi-Family Residential District provided all principal structures and uses are not less than forty (40) feet from any lot line in the residential district.

### 5.05 RESIDENTIAL USES.

The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified:

Rest Homes; nursing homes, homes for the aged, clinics, and children's nurseries in the multi-family residential district provided all principal structures and uses are not less than fifty (50) feet from any lot line.

#### 5.06 COMMERCIAL USES.

The following commercial uses shall be conditional uses and may be permitted as specified:

Funeral Homes in the B-1, B-2, B-3, B-4 and B-5 Business District provided all principal structures and uses are not less than twenty-five (25) feet from any lot line.

Motor vehicle sales and service, body shops, trailer sales, rentals, and service, and tractor and other farm implement sales and service, including vehicle washing facilities, and public parking lots in the B-1, B-3, B-4 and B-5 Districts, but not including the storage of junked or wrecked automobiles and/or parts, provided all parking of vehicles (including vehicles with more than six wheels) is specifically addressed in the permitting process.

Residential Quarters for the owner, proprietor, commercial tenant or rental apartments on a non-ground floor level shall be deemed a conditional use and shall be subject to Village Plan Commission approval of building, site and operational plans. (See Section 5.03 and 13)

Commercial Recreational Facilities, such as bowling alleys, gymnasiums, lodges, miniature golf, pool and billiard halls, indoor skating rinks, and indoor theaters are conditional uses and may be permitted in the B-1, B-2, B-3, B-4 and B-5 Business Districts.

#### 5.07 INDUSTRIAL USES.

a. All structures and improvements for principal uses subject to the following general provisions:

- (1.) No merchandise shall be handled for sale or service rendered on the premises except such as are incidental or accessory to the principal permissible use of the premises, except for sales or service to industrial customers.
- (2.) All operations and activities of all uses within this district shall be conducted wholly inside a building or buildings.
- (3.) No continuous or intermittent noise from operations greater than the volume and range of noise emanating from vehicular traffic or its equivalent in noise shall be detectable at the boundary line of any residence district.
- (4.) No toxic matter, noxious matter, smoke or gas, and no odorous or particulate matter detectable beyond the lot lines shall be emitted.
- (5.) No vibrations shall be detectable beyond the lot lines.
- (6.) No glare or heat shall be detectable beyond the lot lines.
- (7.) Exterior lighting fixtures shall be shaded wherever necessary to avoid casting direct light upon any residence district or into public streets or parks.

b. The storage or use of chemicals either solid, liquid or gas, shall be subject to the following conditions:

- (1.) The storage, utilization, or manufacturing of materials or products ranging from incombustible to moderate burning is permitted.
- (2.) The storage, utilization or manufacturing of materials, or products ranging from free to active burning is permitted provided the following condition is met: Said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible exterior walls and protected throughout by an automatic fire extinguishing system.
- (3.) The manufacture of flammable materials which produce explosive vapors or gases is prohibited.

#### 5.08 RECREATIONAL USES.

The following public and semipublic recreational facilities shall be conditional uses in the P-1 Park District and may be permitted as specified: Archery ranges, bathhouses, beaches, campgrounds, conservatories, driving ranges, gymnasiums, music halls, museums, riding academies, sportsman's clubs, stadiums, swimming pools, and zoological and botanical gardens, provided that the lot area is not less than one (1) acre and all structures are not less than forty (40) feet from any lot line.

#### 5.09 FLOODPLAIN USES.

The following uses are conditional uses and may be permitted as specified:

Structures Related to Open Spaces Uses in the F-1 Floodway District may be permitted for the following uses provided that the applicant shall show that such use or improvement will not impede drainage, will not cause ponding, will not obstruct the floodway, will not increase flood flow velocities, will not increase the flood stage, and will not retard the movement of floodwaters:

- a.) Navigational Structures;
- b.) Public water measuring and control facilities;
- c.) Bridges and approaches;
- d.) Marinas;
- e.) Utilities;
- f.) Parking lots and loading areas accessory to permitted uses in adjacent districts, not including new or used vehicle sales or storage areas;
- g.) Filling as authorized by the Wisconsin Department of Natural Resources to permit the establishment of approved bulkhead lines.

Provided any such structures as above set forth is permitted in the underlying basic use district, and provided such structures;

- i.) are not designed for human habitation,
- ii.) have a low flood damage potential,
- iii.) are to be constructed and placed on the building site so as to offer minimum obstruction to the flow of flood waters. Whenever possible, structures will be constructed with the longitudinal axis parallel to the direction of flow of flood waters, and will be placed with their longitudinal axis approximately on the same line as those of adjoining structures,
- iv.) are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river, and
- v.) have all service facilities, such as electrical and heating equipment at or above the flood protection elevation for the particular level and area.

Floodproofing measures such as the following shall be designed consistent with the flood protection elevation for the particular area as described herein, to withstand the flood velocities, forces and other factors associated with the flood protection elevation. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the flood proofing measures are adequately designed to protect to the flood protection elevation for the particular area. All floodproofing shall provide anchorage to resist flotation and lateral movement.

Other floodproofing measures may include:

- a.) Installation of watertight doors, bulkheads, and shutters.
- b.) Reinforcement of walls and floors to resist pressures.

- c.) Use of paints, membranes, or mortars to reduce seepage of water through walls. The provisions above listed shall insure that structural walls are watertight, which shall be the minimum standard for certification pursuant hereto.
- d.) Addition of mass or weight to structures to prevent floatation.
- e.) Placement of essential utilities above the flood protection elevation.
- f.) Pumping facilities and/or subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures and to lower water levels in structures.
- g.) Construction of water supply and waste treatment systems to prevent the entrance of flood waters.
- h.) Construction to resist rupture or collapse caused by water pressure or floating debris.
- i.) Cutoff valves or sewer lines or the elimination of gravity flow basement drains.

Navigational and drainage aids such as channels, channel markers, buoys, and other such devices are permitted, provided that prior to any alteration or relocation of a watercourse the Village of Rochester shall notify adjacent communities, the Department of Natural Resources, and FEMA, and require the applicant to secure necessary permits. The flood carrying capacity within the altered or relocated portion of any watercourse shall be maintained.

Residential Structures in the FFO Flood Fringe District provided that the structure is permitted in the underlying basic use district, and provided that such flood fringe areas shall be filled to an elevation at least two (2) feet above the elevation of the 100-year recurrence interval flood. Such fill shall extend for a least fifteen (15) feet beyond the limits of the structure placed thereon and shall be contiguous to lands outside the floodplain. The finished surface of the lowest floor, (including the basement floor) shall be constructed, or placed at an elevation that is at least two (2) feet above the elevation of the 100-year recurrence interval flood. Residential structures placed on fill may be removed from the Flood Fringe Overlay District provided that the fill is contiguous to lands lying outside of the floodplain, and further provided that the property owner, or his agent, has complied with all the requirements for amending the zoning map as set forth in Section 12 of this Ordinance.

Commercial, Industrial and other Nonresidential Structures in the FFO Flood Fringe Overlay District provided that the structure is permitted in the underlying district and provided that the fill requirements for residential structures in the FFO districts are complied with. However, when the intent and purpose of this Ordinance cannot be fulfilled by filling the flood fringe due to existing and committed development, and when the Village Plan Commission has made a finding to this effect, all new structures and all additions to existing structures in the Flood Fringe Overlay District shall be floodproofed to a point two (2) feet above the elevation of the 100-year recurrence interval Flood. Certification of floodproofing shall be made to the zoning administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the 100-year recurrence interval flood level for the particular stream reach.

Filling to remove lands from the FFO Flood Fringe Overlay District provided that such fill shall be to an elevation at least two (2) feet above the elevation of the 100-year recurrence interval flood and further provided that such lands are contiguous to lands lying outside of the floodplain. No such Flood Fringe Overlay District shall be removed from the Village of Rochester Zoning Map until the filling is complete and until the property owner, or his agent, has complied with all the requirements for amending the zoning map as set forth in Section 12 of this Ordinance.

Maintenance and Drainageways. No filling or development in the FFO Flood Fringe Overlay District shall adversely affect the channels, floodways, or shorelands of any tributary of the Fox River, drainage ditches, or other lands lying outside of the floodplain.

Notice to DNR. The Village Plan Commission shall transmit a copy of each application for a conditional floodplain use to the Wisconsin Department of Natural Resources (DNR) for review and comment. Final action on the application shall not be taken for thirty (30) days or until the DNR has made their recommendations, whichever comes first. A copy of all decisions related to conditional uses in floodplain districts shall be transmitted to the DNR within ten (10) days of the effective date of such decision.

## SECTION 6 TRAFFIC, PARKING AND ACCESS

### 6.01 TRAFFIC VISIBILITY.

No obstructions, such as structures, parking, or vegetation, shall be permitted in any district between the heights of two and one-half (2 1/2) feet and ten (10) feet above the plane through the mean curb-grades within the triangular space formed by any two existing or proposed intersecting street or alley right-of-way lines and a line joining points on such lines located a minimum of fifteen (15) feet from their intersection.

In the Case of Arterial Streets intersecting with other arterial streets or railways, the corner cutoff distances establishing the triangular vision clearance space shall be increased to thirty (30) feet.

### 6.02 LOADING REQUIREMENTS.

On every lot on which a business, trade or industrial use is hereafter established, space with access to a public street or alley shall be provided as indicated below for the loading and unloading of vehicles off the public right-of-way.

- a. B-1 through B-5 Districts (Business): one (1) space at least 10 x 25 feet for each 5,000 sq. ft. of floor space or part thereof.
- b. M-1 (Industrial): one (1) space of at least 10 x 50 feet for each 10,000 sq. ft. of floor area or part thereof.

### 6.03 PARKING REQUIREMENTS.

In all districts and in connection with every use, there shall be provided at the time any use or building is erected, enlarged, or extended, increased off-street parking stalls for all vehicles in accordance with the following:

- a. Adequate access to a public street shall be provided for each parking space, and driveways shall be at least twelve (12) feet wide for one and two family dwellings, and a minimum of twenty-four (24) feet for all other uses. The minimum width for all other uses may be reduced to fourteen (14) feet where the drive is to accommodate one-way exit vehicle flow only.
- b. Each required off-street parking space shall open directly onto an aisle or driveway that is wide enough to provide safe and efficient means of vehicular access to the parking space.
- c. The size of each parking space shall be not less than one hundred and eighty (180) square feet nor less than nine (9) feet in width, exclusive of the space required for ingress and egress.
- d. The location of the required parking shall be on the same lot as the principal use or not over four hundred (400) feet from the principal use. No parking stall or driveway except in residential districts shall be closer than twenty-five (25) feet to a residential district lot line or a street line opposite a residential district
- e. Minimum Required Parking Lot Setbacks, Landscaping, and Plans.
  - (1.) Minimum Required Setback for Off-Street Parking Areas Abutting a Public Street Right-of-Way Line: No off-street parking area shall be closer than eight (8) feet from a public street right-of-way line. The area between the parking lot and the adjacent street right-of-way shall consist of landscaping meeting the requirements of this Ordinance.
  - (2.) Minimum Required Setbacks for Off-Street Parking Areas. Except in cases where greater restrictions apply, as set forth in Paragraph c. below, no off-street parking area or associated driveway serving more than five (5) vehicles shall be closer than eight (8) feet to a side or rear lot line of an abutting lot or parcel. The area between the parking lot and the lot or parcel line shall consist of landscaping meeting the requirements of this Ordinance.
  - (3.) Minimum Required Setbacks for Off-Street Parking Areas Abutting Residential Districts. No off-street parking area or associated driveway serving more than five (5) vehicles shall be closer than ten (10) feet to a side or rear lot line of an abutting Residential District. The area between the parking lot and the lot or parcel line shall be screened from such district by a solid wall, solid fence, and/or coniferous plantings of an equivalent solid visual density or other effective means deemed adequate by the Plan Commission and shall be built and maintained at a minimum height of six (6) feet.

- (4.) Minimum Distance of Truck Parking from Any Residential Zoning District. No truck parking of Class 7 trucks (26,001 to 33,000 lbs., GVW) or greater shall be allowed within one hundred and fifty (150) feet of any residential zoning district.
- (5.) Minimum Required Landscaped Area and Landscaping Within Off-Street Parking Lots. All public off-street parking areas which serve ten (10) vehicles or more and are created, redesigned, and/or rebuilt subsequent to the adoption of this Ordinance, shall be provided with evenly dispersed landscape areas within the interior of such off-street parking areas.

The landscaped area shall total not less than five (5) percent of the surfaced area (inclusive of both parking stalls and associated drives). Perimeter landscaped areas adjacent to the off-street parking lot shall not be included in the aforementioned required five (5) percent. The minimum size of each such required landscape area in the off-street parking lot shall not be less than one hundred (100) square feet in area nor not less than nine (9) feet in width or length. Canopy trees shall be provided at the rate of one (1) tree for each fifteen (15) off-street parking spaces (or fraction thereof) within the interior of the off-street parking area. The preservation of existing canopy trees in the parking area may be included in the calculation of the required minimum landscape area.

- (6.) Minimum Landscaping Requirements to be Met. All landscape plant materials required by this Ordinance shall meet the following minimum requirements.
  - (a.) General Plant Material Standards. All new landscape plant material shall be grown in a nursery located in plant hardiness zone 4 and shall conform to the applicable requirements as specified in the current edition of American Standard for Nursery Stock as approved by the American National Standards Institute, Inc. and sponsored by the American Nursery and Landscape Association. Botanical plant names shall be in accordance with the current edition of New Pronouncing Dictionary of Plant Names prepared by the American Joint Committee on Horticultural Nomenclature.
  - (b.) Plant Material Minimum Size Standards. All required new landscape plant material shall be, at the time of installation, those minimum sizes as set forth in Table 6.1.

**Table 6.1**  
**MINIMUM SIZE STANDARDS FOR REQUIRED PLANT MATERIALS**

Plant Material Type	Minimum Required Size of Plants
Canopy Trees:	
Single Stem:	3-inch caliper
Multi-stem Clump:	12 feet tall
Coniferous Trees	6-feet tall
Ornamental Trees	1.5 inch caliper
Shrubs	2 feet tall

- (c.) Off-Street Parking Area Surfacing. All open, off-street parking and loading spaces in all zoning districts except residential districts shall be improved with pavement of either asphalt or concrete. Storm water drainage facilities shall be as required and approved by the Village Engineer.
- (d.) Concrete Curb and Gutter Required for All Off-Street Parking Areas and Associated Drives. Concrete curb and gutter shall be required for all off-street parking areas serving more than ten (10) vehicles in all zoning districts except R-1, R-2, R-3, R-4 and P-1 Districts. This requirement shall also apply to the expansion of any existing off-street parking lot where the number of off-street parking spaces is increased by twenty (20) spaces or more.
- (e.) Permanent Marking of Off-Street Parking Stalls. All off-street parking areas serving five (5) or more vehicles shall have all parking stalls permanently marked by painted lines or other approved material and said marking shall be maintained so as to be legible at all times.
- (f.) Parking Spaces for Use by Persons with Disabilities. All open, off-street parking areas shall provide parking spaces for persons with disabilities meeting all applicable "Americans with Disabilities Act (ADA) Guidelines for Buildings and Facilities" as documented in the Federal Register. Vol. 56, No. 144, July 26, 1991 as amended. Unless conflicting with the above

specified "Americans with Disabilities Act (ADA) Guidelines for Buildings and Facilities" requirements as amended, the following standards are applicable:

- 1.) Minimum Required Number of Accessible Off-Street Parking Spaces for Use by Persons with Disabilities. The following Table 6.2 shall apply:

**Table 6.2**

**“MINIMUM REQUIRED NUMBER OF ACCESSIBLE OFF-STREET PARKING SPACES  
FOR PERSONS WITH DISABILITIES”**  
ADA Standards for Accessible Design 4.12(5)

Total Number of Off-Street Parking Spaces in Parking Lot or Area	Minimum Required Number of Accessible Off-Street Parking Spaces (60" & 96" aisles)	Van-Accessible Parking Spaces with min. 96" wide access aisle	Accessible Parking Spaces with min. 60" wide access aisle
	Column "A"		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	5
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1,000	2 percent of total parking provided in each lot	1/8 of Column "A"*	7/8 of Column "A"***
1,001 and over	20 plus 1 for each 100 over 1,000	1/8 of Column "A"*	7/8 of Column "A"***
*one out of every 8 accessible spaces		**7 out of every 8 accessible parking spaces	

The minimum required number of accessible off-street parking spaces for use by persons with disabilities shall be considered as a part of the total off-street parking spaces required.

- 2.) Minimum Dimensions for Off-Street Parking Spaces Provided for Use by Persons with Disabilities. The minimum dimensions for all parking spaces provided for use by persons with disabilities shall be fourteen (14) feet wide by twenty feet (20) feet long for automobiles and seventeen (17) feet wide by twenty (20) feet long for vans. The minimum access aisles for such spaces shall be 60 inches for automobile spaces and 96 inches for van spaces.
- 3.) Distance to Facility Entrances for the Location of Off-Street Parking for Persons with Disabilities. Off-street parking spaces provided for the use of persons with disabilities shall be located as close as possible to an entrance which allows such persons to enter and leave the parking area without assistance.
- 4.) Signage of Off-Street Parking Spaces Serving Persons with Disabilities. All parking spaces provided for the use of disabled persons shall be marked by a sign which includes the international symbol for barrier-free environments and a statement informing the public that the parking space is reserved for use by disabled persons. Such signs shall comply with the requirements of the aforementioned "Americans with Disabilities Act (ADA) Guidelines for Buildings and Facilities" as amended and with Sections 346.50, 346.503, and 346.505 of the Wisconsin Statutes as amended.

- g. Minimum Number of Off-Street Parking Spaces required:

**Table 6.3 NUMBER OF PARKING STALLS**

<i>Use</i>	<i>Minimum Parking Required</i>
Single-family, two-family, multi-family dwellings	2 spaces for each dwelling unit
Motels, hotels, lodging, and boarding houses	1 space for each guest room plus 1 space for each 2 employees
Hospitals and dormitories	1 space for each 2 beds plus 1 space for each 2 employees
Sanitariums, institutions, rest and nursing homes	1 space for each 5 beds, plus 1 space for each 2 employees
Medical and dental clinics	5 spaces for each doctor
Churches, theaters, auditoriums, community centers, vocational and night schools, and other places of public assembly	1 space for each 4 seats
Colleges, secondary, and elementary schools	1 space for each 2 employees plus 1 space for each 10 students of 16 years of age or more
Restaurants, bars, places of entertainment, repair shops, retail and service stores	1 space for each 150 square feet of floor area and 1 space for each 2 employees
Manufacturing and processing plants, laboratories and warehouses	1 space for each 3 employees
Financial institutions, business, government, and professional offices	1 space for each 300 square feet of floor area and 1 space for each 2 employees
Funeral Homes	1 space for each 4 seats
Bowling alleys	5 spaces for each alley
Lodges and clubs	1 space for each 5 members
Automotive repair garages	1 space for each regular employee plus 1 space for each 250 square feet of floor area used for repair work
Gasoline filling stations	3 spaces for each grease rack or similar facility plus 1 space for each attendant
Uses not listed	In the case of structures or uses not mentioned, the provision for a use which is similar shall apply.
--Combinations of any of the above uses shall provide the total of the number of stalls required for each individual use.	

- h. Employee Parking. Parking spaces required on an employee basis, as set forth in Table 6.3 shall be based on the average number of employees on duty or residing, or both, on the premises at any one time.
- i. Minimum Width of Off-Street Parking Rows and Aisles. The design of all off street parking regulated by this Ordinance shall be in conformance with the requirements set forth in Table 6.4.

**Table 6.4 MINIMUM WIDTH OF OFF-STREET PARKING ROWS AND AISLES**

<i>Type of Row</i>	<i>Parallel Spaces</i>	<i>45 Degree Angle Spaces</i>	<i>60 Degree Angle Spaces</i>	<i>90 Degree Angle Spaces</i>
Single Row & Aisle	20 ft.	35 ft.	40 ft.	45 ft.
Double Row & Aisle	28 ft.	60 ft.	62 ft.	65 ft.

**6.04 DRIVEWAYS .**

- a. Definition. For the purpose of this section, a driveway shall be defined as a private road, drive or roadway giving access from a public way, road or highway to abutting grounds.
- b. Application and Permit. No driveway shall be constructed or installed by a landowner or his agent without first filing an application with the Building Inspector/Zoning Administrator for the Village and receiving a permit therefore. Each application must receive the approval of the Building Inspector/Zoning Administrator before the permit can be issued by him. The Building Inspector/Zoning Administrator shall approve the location and construction of the driveway and may direct and order grading, soil stabilization measures and/or the installation and construction of any culvert necessary for proper drainage as a condition to issuing said permit. Any driveway or installation without said

permit being first obtained, or contrary to the orders and directions of the Building Inspector/Zoning Administrator, shall constitute a violation of this Chapter and the Municipal Code.

c. All driveways installed, altered, changed, replaced or extended after the effective date of this Ordinance shall meet the following requirements:

1. No driveway culvert shall be constructed and/or installed unless the same shall contain Apron End Walls to provide adequate safety and drainage to the satisfaction of the Building Inspector.
2. All residential lots hereafter constructed shall, at the time of said construction, have installed thereon, at the owner's or builder's expense, a hard-surfaced, dustproof, paved driveway meeting the standards and specifications as herein provided within twelve (12) months of occupancy.
3. The driveway shall extend from the curb or, in the absence of a curb, from the street surface to a hard-surfaced, dustproof, paved off-street parking area or garage. The off-street parking area and/or garage combined shall be adequate to park the required number of vehicles, consistent with Ch. 15, s. 6.3, behind the setback line for the zoning in which the construction takes place.

(a.) Driveways and off-street parking area specifications.

Driveways and off-street parking areas shall be hard-surfaced, with dustproof paving and constructed to meet the following specifications, except as provided in Ch. 15, s. 6.04(c).(4), and the requirements of the village engineer as to finish, slope and strength. Expansion joints shall be located as required.

(1) Driveways.

(a) On street right-of-way, two (2) inches of asphalt surface course over eight (8) inches of compacted granular base.

(b) On private property, six (6) inches of portland cement concrete on a two (2) inch compacted granular base, or two (2) inches of asphalt surface course on a six (6) inch compacted granular base; or brick pavers over an eight (8) inch compacted granular base and one (1) inch screed layer play sand. Four (4) inch thickness of portland cement concrete will be allowed if reinforced with either fibermesh or woven wire mesh.

(2) Off-street parking.

(a) On street right-of-way, six (6) inches of asphalt (four (4) inch binder course, two (2) inch surface course) on a compacted four (4) inch granular base.

(b) On private property, six (6) inches of portland cement reinforced concrete on a four (4) inch compacted granular base, or three (3) inches of asphalt (one and one-half (1 %) inch binder course, one and one-half (1 %) inch surface course), on a six (6) inch compacted granular base.

4. For all houses existing prior to the effective date of this ordinance, that have existing driveways, a hard-surfaced drive shall not be required for modifications to the driveway, with the exception that if the width of the approach is widened, then a hard-surfaced drive, consistent with this section, shall be required from the road to the property line.

5. (a.) On existing single-family residences located on interior lots where the side yard is not adequate to permit access to an off-street parking area located in back of the building setback line, such parking area adequate to park one or two automobiles may be constructed in front of the building setback line, if approved by the building inspector.

(b.) On existing single-family residences located on corner lots where the side yard or back yard is not adequate to permit access to an off-street parking area located in back of the building setback line, such parking area adequate to park one or two automobiles may be constructed in front of the building setback line at a place farthest from the intersection of the streets, if approved by the building inspector.

6. Islands between driveway openings shall be provided with a minimum of six (6) feet between all driveways and three (3) feet at all lot lines. The area between the lot line and adjacent driveway shall be a landscaped area.

7. With respect to each lot in single-family districts R-1 to R-3 inclusive only one driveway shall be permitted to exit/enter said lot from each street that directly abuts such lot on the front, rear and each side; and any driveway exiting/entering said lot from more than one street will connect with the driveway or driveways exiting/entering from any other street or streets. This provision shall only apply to driveways constructed after the effective date of this provision.

8. Openings for vehicular ingress and egress in all zoning districts, except the M-1 General Manufacturing District, shall not exceed 30 feet at the street line and 35 feet at the roadway. Openings for vehicular ingress and egress in the M-1 General Manufacturing District shall not exceed 30 feet at the street line and, at the roadway, shall not exceed the width determined by the Village Engineer.

9. Vehicular Entrances and Exits to drive-in theaters, banks and restaurants; motels; funeral homes; vehicular sales, service, washing and repair stations; or garages shall be not less than 200 feet from any pedestrian entrance or exit to a school, college, university, church, hospital, park, playground, library, public emergency shelter, or other place of public assembly.

10. The Building Inspector/Zoning Administrator may revoke any driveway permit issued hereunder by written notice at any time that he shall find that the provisions of this Chapter or any laws, orders, plans and specifications are not being complied with.

d. In the event any such driveway construction or installation is undertaken in conjunction and contemporaneous with any other construction on the same premises requiring a building permit hereunder, a separate driveway permit shall not be required; however, the approval of the Building Inspector/Zoning Administrator as set forth in Section 6.04(b) above must be obtained as a condition to the issuance of said other permit.

#### 6.05 HIGHWAY ACCESS

- a. No direct private access shall be permitted to the existing or proposed rights-of-way of expressways, nor to any controlled access arterial street without permission of the highway agency that has access control jurisdiction. No direct public or private access shall be permitted to the existing or proposed rights-of-way of the following:
- (1.) Freeways. Interstate Highways, and their interchanges or turning lanes nor to intersecting or interchanging streets within 1,500 feet of the most remote end of the taper of the turning lanes.
  - (2.) Arterial Streets intersecting another arterial street within 100 feet of the intersection of the right-of-way lines.
- b. Access Barriers, such as curbing, fencing, ditching, landscaping, or other topographic barriers, shall be erected to prevent unauthorized vehicular ingress or egress to the above specified streets or highways.
- c. Temporary Access to the above rights-of-way may be granted by the Village Board after review and recommendation by the highway agencies having jurisdiction. Such access permit shall be temporary, revocable, and subject to any conditions required and shall be issued for a period not to exceed 12 months.

## SECTION 7 SIGNS.

### 7.01 PERMIT REQUIRED.

No sign shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered without a permit being issued, except those signs excepted below, without being in conformity with the provisions of this Ordinance.

### 7.02 SIGNS PERMITTED IN RESIDENTIAL AREAS.

All signs are prohibited in residential districts except the following:

- a. Signs Over Show Windows or Doors of a nonconforming business establishment announcing without display or elaboration only the name and occupation of the proprietor and not to exceed two (2) feet in height and ten (10) feet in length. (Permit Required)
- b. Real Estate Signs are not to exceed eight (8) square feet in area which advertise the sale, rental, or lease of the premises upon which said signs are temporarily located. (No Permit Required)
- c. Names, Occupation, and Warning Signs not to exceed two (2) feet square located on the premises. (No Permit Required)
- d. Bulletin Boards for public, charitable or religious institutions not to exceed twenty -four (24) square feet in area located on the premises. (No Permit Required)
- e. Memorial Signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against a structure. (No Permit Required)
- f. Official Signs, such as traffic control, parking restrictions, information, and notices. (No Permit Required)

### 7.03 SIGNS PERMITTED IN BUSINESS AND INDUSTRIAL AREAS.

- a. Signs are permitted in all business and industrial districts subject to the following restrictions, and to payment of permit fees as specified under Section 7.01.
  - (1.) Wall Signs placed against the exterior walls of buildings shall not extend outside of a building's wall surface, shall not exceed five hundred (500) square feet in area for any one premises, and shall not exceed twenty (20) feet in height above the mean centerline street grade.
  - (2.) Monument Signs shall not exceed six (6) feet in height above the mean centerline street grade, shall have a minimum fifteen (15) feet street yard setback and shall meet all other yard requirements for the district in which it is located, and shall not exceed sixty (60) square feet on one side nor one hundred and twenty (120) square feet on all sides for any one premises.
    - (a.) Required Landscaping at Base of Monument Sign. All monument signs shall provide a landscaped area with appropriate natural plant material groundcover and other landscape plantings located at the base of said monumental sign equal in area to the area of the face of the sign.
    - (b.) When earthen berms are used as part of said landscaping, the earthen berms shall maintain a side slope of three to one (3:1) with a maximum berm height of three (3) feet above the surrounding grade. When earthen berms are used, earthen berms shall count towards the maximum permissible sign height.
  - (3.) On-Site Directional Ground Signs. On-site directional signage may be allowed giving directions to areas such as employee or visitor parking and shipping or loading zones. The maximum size of directional ground signs shall not exceed three (3) square feet in area on each side. Maximum height shall be forty-eight (48) inches.
  - (4.) Window Signs shall be placed only on the inside of commercial buildings and shall not exceed twenty-five (25) percent of the glass area of the pane upon which the sign is displayed.

b. Combinations of any of the above signs shall meet all the requirements for the individual sign.

#### 7.04 PROHIBITED SIGNS.

Specifically prohibited signs include projecting signs, billboards, pole signs, roof signs, pylon signs, flashing or moving signs or beacons, bench signs, trailer signs, banner signs on poles or buildings, vehicle signs, balloons, inflatable advertising devices, inflatable signs and pennants. No sign shall contain, include or be illuminated by any flashing light, or moving part or be illuminated by other than white lights or be composed of any animated part. Colored coverings are not permitted.

#### 7.05 INTERFERENCE WITH TRAFFIC.

Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs, signals, or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape, and no sign shall be attached to a standpipe or fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.

#### 7.06 SIGN MAINTENANCE.

The owner of any sign shall keep it in good maintenance and repair which includes restoring, repainting, or replacement of a worn or damaged legally existing sign to its original condition; and shall maintain the premises on which the sign is erected in a clean, sanitary, and inoffensive condition, free and clear of obnoxious substances, rubbish and weeds.

#### 7.07 SIGNS ILLUMINATED BY SPOTLIGHTS.

If any signs are illuminated by spotlights specifically directed at it, the spotlights are to be fully shielded so that they are not visible from public streets or adjoining property.

#### 7.08 EXISTING SIGNS.

Signs lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the use, size, or location does not conform with the provisions of this Ordinance. However, it shall be deemed a nonconforming use or structure; and the provisions of Section 10 of this Ordinance shall apply.

#### 7.09 BONDS.

Every applicant for a permit for an exterior sign shall, before the permit is granted, execute a surety bond in a sum to be fixed by the Village Board and it shall be of a form and type approved by the Village Attorney indemnifying the municipality against all loss, cost, damages or expense incurred or sustained by or recovered against the municipality by reason of the erection, construction, or maintenance of such sign.

A liability insurance policy issued by an insurance company authorized to do business in the State of Wisconsin, and conforming to the requirements of this section, may be permitted by the Village Attorney in lieu of a bond. Should the applicant elect to submit a certificate of liability insurance, the Village of Rochester shall be named as an additional insured for the erection, construction, or maintenance of such sign.

#### 7.10 TEMPORARY POLITICAL SIGNS.

Temporary Political Signs shall be permitted in all districts provided such signs are located not less than 15 feet from edge's of public rights-of-way, and 300 feet from any intersection. Such signs shall not be larger than nine (9) square feet, and are to be removed within three (3) days after the election for which the signs are posted. (No Permit Required)

## SECTION 7.5 TOWER BROADCAST FACILITIES

### DIVISION 1. Generally.

#### Sec. 7.5.01. Intent.

It is intended that conditional use permits shall be issued under this section to accommodate the expansion of wireless communication technology while minimizing the number of towers and the visual/aesthetic/land use impacts of those towers.

#### Sec. 7.5.02. Affected facilities: Definition.

(a) The following facilities are subject to the regulations and site development standards set forth in this article:

- (1) Towers, masts, poles or other supporting buildings or structures fifty (50) feet or more in height that are used to elevate an antenna or which act as an antenna, and which are intended for transmitting or receiving radio frequency waves. Height shall be measured as the vertical distance between the highest point of the antenna or tower, whichever is higher, and the ground directly below this point. ("tower facility" or "tower")
- (2) Accessory uses such as manned or unmanned equipment or buildings typically at the base of the tower.

(b) Amateur and citizen band towers and antennas where the "tower facility," as defined in sec. 7.5.02(a)(1) is fifty (50) feet or more in height are exempt from the provisions of this article except for the following:

- (1) The installation or construction of such a tower shall require site plan review and approval in accordance with the procedure set forth in ch. 15, sec. 5.03. The committee may request a public hearing following site review if it is determined that such a hearing is in the public interest.
- (2) Such "tower" shall be considered an accessory structure and permitted in the side yard or rear yard only. A minimum ten-foot side yard and rear yard setback shall be maintained.

#### Sec. 7.5.03. Existing tower facilities.

Any addition or change to an existing tower facility shall be in compliance with requirements for tower appearances and landscaping as set forth in this article. Existing tower facilities shall be exempt from the requirements concerning site size, setbacks and parking.

#### Sec. 7.5.04. Prohibition.

No installation or construction of a tower facility, or change in an existing tower facility, is permitted, except as provided in ch. 15, sec. 7.5.12 and sec. 7.5.13, without conditional use approval or amendment under chapter 15, sec. 5, and a zoning permit. The types of changes that would require conditional use approval under section 5 include, but are not limited to, such things as an increase in the number of towers at a site, an increase in a tower's height, a change in the type or style of tower (i.e., guyed vs. self-supporting or lattice vs. monopole), a change in the type or location of any guy wires, a change in the location of a tower, or a proposed change in the size of the tower site. Changes such as an alteration to the size of an existing service building or installation under ch. 15, sec. 7.5.12 and sec. 7.5.13 may be dealt with through the site and operational plan review process and a zoning permit.

#### Sec. 7.5.05. Location.

Tower facilities shall not be located in any residential zoning district, shoreland/wetland or floodplain.

#### Sec. 7.5.06. Submittal requirements.

In addition to the requirements found in ch. 15, sec. 5.02, the applicant must supply the following:

- (1) A description of the telecommunications services that the applicant offers or provides.
- (2) Name, address and telephone numbers of all proposed occupants of the tower. A letter indicating the proposed occupant's commitment to place an antenna on the tower and an indication of the firmness of the commitment. The letter shall also indicate the type of service that occupant provides. The applicant shall also provide documentation showing a particularized need for each occupant to locate its antenna at the particular height indicated.
- (3) If the applicant does not own the site or the tower, the applicant shall provide a lease agreement or binding lease memorandum which shows on its face: (1) that it does not preclude the site owner from entering into leases on

the site with other provider(s), (2) that it does not preclude the tower owner from entering into leases on the tower with other provider(s), and (3) the legal description and amount of property leased, and (4) in the event of abandonment, the village reserves the right to remove the tower at the property owner's expense.

(4) An analysis of the alternatives which identifies the reasonable, technically feasible, alternative locations and/or facilities that could provide the proposed telecommunication service. The intention of the alternatives analysis is to present alternative strategies that could minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the village. This analysis shall address the potential for co-location and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for the selection of the proposed site in view of the relative merits of any of the feasible alternatives. A pre-application meeting between the applicant and the planning and development department shall be required. At such meeting the applicant and staff will locate all known alternative structures, and, at a minimum, five (5) alternative sites to analyze. This requirement shall not limit the committee's power to require other sites be analyzed.

(5) A tabular and map inventory of all the applicant's and occupant's existing towers and antennas that are located within the village (defined to include all incorporated and unincorporated areas) and one thousand five hundred (1,500) feet of the village's border. The inventory shall specify the location, height, type, and design of each of the applicant's existing towers and the antennas located on such towers. The inventory shall also specify whether such towers are currently in operation and indicate the ability of the existing towers to accommodate additional co-location antennas.

(6) A report by a structural engineer licensed by the State of Wisconsin certifying the structural design and its ability to accommodate additional antennas.

(7) Evidence that the applicant has informed local airport owners and operators about any permit application for structures above two hundred (200) feet tall or within a three-mile radius of any existing public or private airport including all landing strips.

(8) Such other information as the committee or zoning administrator may reasonably require.

Sec. 7.5.07. Maximum height.

Towers shall not exceed in height the distance from the nearest lot line, provided, however, that if any tower is located within three (3) miles of the boundary line of an airport and landing strips, said height shall not exceed the height limitations of the underlying district without prior proof of written notification of the public hearing to the owner of the said airport or landing strip, and prior written approval from the F.A.A. and Wisconsin Bureau of Aeronautics, if applicable. If the applicant presents to the committee a report by a structural engineer licensed by the State of Wisconsin certifying the fall-down radius of the proposed tower to be less than its height, the allowed set back shall be that certified distance.

Sec. 7.5.08. Requirements.

No conditional use permit for the placement or construction of a tower shall be issued unless the applicant presents to the committee credible evidence establishing to a reasonable degree of certainty the following:

- (1) Existing tower or structure is not available. This shall be proven by showing:
  - a. No existing tower or structure is located within the area in which the applicant's equipment must be located;
  - b. No existing tower or structure located within the area in which the applicant's equipment must be located is of sufficient height to meet the applicant's requirements and the deficiency in height cannot be remedied at a reasonable cost;
  - c. No existing tower or structure within the area in which the applicant's equipment must be located has sufficient strength to support the applicant's equipment and the deficiency in structural strength cannot be remedied at a reasonable cost;
  - d. The applicant's equipment would cause electromagnetic interference with equipment on the existing tower(s) within the area in which the applicant's equipment must be located, or the equipment on the existing tower(s) would cause interference with the applicant's equipment and the interference, from whatever source, cannot be eliminated at a reasonable cost;

- e. The fees, costs or contractual provisions required by an owner in order to co-locate on an existing tower or structure are unreasonable relative to industry norms; or
- f. The applicant demonstrates that there are other factors that render existing towers or structures unsuitable or unavailable and establishes that the public interest is best served by the placement and construction of the new communication tower.

(2) An alternative site, as required to be analyzed under ch. 15, sec. 7.5.06(4) is not reasonably available to place the proposed tower.

(3) The absolute need for the particular height of the proposed tower. Any proposal for a tower by an applicant to build a tower on speculation and seek tenants among telecommunication carriers shall include documentation of the commitments made by those carriers to co-locate at what particular height and the absolute need for such height.

(4) The proposed tower is camouflaged to the greatest extent possible in that the tower is designed to include, where appropriate, the use of compatible building materials and colors, screening, landscaping and placement within trees.

(5) The proposed tower shall accommodate other users in that any proposed tower shall be designed, structurally, electrically and in all respects to accommodate co-location of both the applicant's antenna(s) and comparable antenna(s) for at least two (2) additional users. Towers shall be designed to allow for future rearrangement of antennas upon the tower, to accept antennas mounted at varying heights, and to accommodate supporting buildings and equipment.

Sec. 7.5.09. Technical review.

In the event the committee determines that it is necessary to consult with a third party in considering a permit, all reasonable costs and expenses associated with such consultation shall be borne by the applicant. Failure to pay such costs and expenses or provide information requested by the committee shall be grounds for denial or revocation of a conditional use permit. The applicant may provide to the committee the names of consultants which the applicant believes are qualified to assist in resolving the issues before the committee.

Sec. 7.5.10. Abandonment.

(a) Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned. In such circumstances, the owner of such antenna or tower or owner(s) of the property where the tower or antenna is located shall remove said antenna and/or tower including all supporting equipment, buildings, and foundations to a depth of five (5) feet, and shall restore the location to its natural condition (except that any landscaping and grading may remain in the after-condition as determined by the zoning administrator) within ninety (90) days of receipt of notice from the zoning administrator. If removal and restoration to the satisfaction of the zoning administrator does not occur within the said ninety (90) days, the zoning administrator may remove and salvage said antenna/tower and all supporting equipment and buildings, and restore the site at the antenna/tower owner's or property owner's expense.

(b) The applicant shall submit a copy of a signed agreement, which may be the lease agreement, between the property owner and the owner of the tower, antenna(s) and supporting equipment and building(s) detailing requirements for abandonment and subsequent removal based on the provisions of ch. 15, sec. 7.5.10(a). Said agreement shall also identify that the agreement shall be binding on future property owner(s) and future owner(s) of the tower, antenna and all supporting equipment and building(s).

(c) The tower and foundation shall be recorded in the register of deed's office and a copy of the deed shall be filed with the planning and development department.

Sec. 7.5.11. Security for removal.

The applicant shall provide to the village, prior to the issuance of the conditional use permit, a performance bond in the amount of twenty thousand dollars (\$20,000.00) to guarantee that the tower and all supporting equipment, buildings and foundations will be removed when no longer in operation. The village must be named as obligee in the bond, and it must approve the bonding company. The face of the bond must reflect that the village will be given notice if the bonding company cancels the bond. If, prior to the removal of the tower, tower removal rates exceed twenty thousand dollars (\$20,000.00), the committee reserves the right to require a corresponding increase in the bond amount.

Sec. 7.5.12. Use of existing structures.

A tower or antenna may locate on an alternative support structure such as clock towers, steeples, silos, light poles, buildings, water towers or similar structures provided that the placement of antenna shall not extend more than twenty (20) feet above the top of the structure and shall not extend more than six (6) feet from the structure. Towers located on roofs shall not occupy more than fifty (50) percent of the roof surface of a building and shall be secured from the remaining area to prevent unauthorized access. The towers and antenna(s) shall be painted or otherwise treated to match the exterior of the structure. Such installation shall not require a conditional use permit but shall require site plan approval.

Sec. 7.5.13. Co-location.

(a) A conditional use permit shall not be required for co-location on an existing tower permitted under this article, provided the co-located antenna array or equipment does not significantly alter the structural integrity of the tower, and is fully in compliance with all conditions contained in the original conditional use permit. The holder of a permit for any tower on which co-location occurs shall within thirty (30) days of such co-location provide to the zoning administrator written notification of the identity of the co-locator and the nature of the equipment installed. Within thirty (30) days of the date on which any co-located use ceases, the permit holder shall provide the zoning administrator with written notice of the cessation of such use.

(b) The holder of a permit for a tower shall allow co-location for at least two (2) additional users and shall make access to the tower for the additional users economically feasible. If additional user(s) demonstrate that the holder of a tower permit has made access to such towers economically unfeasible, then the permit shall become null and void.

Sec. 7.5.14. Continued compliance.

Upon written inquiry by the committee, the permit holder under this section shall have the burden of presenting credible evidence establishing to a reasonable degree of certainty the continued compliance with all conditions placed upon the conditional use permit. Failure to establish compliance with all conditions placed upon the conditional use permit shall be grounds for the revocation of the permit. All reasonable costs and expenses associated with such consultation shall be borne by the holder of the permit. Failure to pay such costs and expenses or provide information requested by the committee shall be grounds for revocation of the permit. The holder of the permit may provide to the committee the names of consultants which the permit holder believes are qualified to assist in resolving the issues before the committee.

Sec. 7.5.15. Indemnification.

The village does not warrant any tower against design or structural failure. The village does not certify that the design is adequate for any tower and the village hereby accepts no liability through the issuance of a conditional use permit or zoning permit. By acceptance of a conditional use permit, or by issuance of a zoning permit, under this article, the applicant agrees to indemnify the village against each and every claim, demand, or cause of action that may arise or be made against the village by reason or in any way arising out of any defect or imperfection in the tower and/or antenna, or any failure to repair the same, and also against every claim, demand, or cause of action against the village by reason of any liability that is or may be imposed on the village, on account of any such defect, imperfection, or any failure to repair the same.

## **DIVISION 2. SITE STANDARDS**

### 7.5.16. Purpose.

These standards are to ensure site construction and development in a manner which will result in an appearance compatible with permitted uses in the zoning district and to protect adjacent property from safety hazards such as tower failure or falling ice.

### Sec. 7.5.17. Site size and tower setbacks.

(a) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line. Such setback shall be sufficient to:

- (1) Provide for an adequate vegetative, topographic or other buffer, as provided in this section.
- (2) Preserve the privacy of adjoining properties.
- (3) Protect adjoining properties from the potential impact of tower failure and falling ice by being large enough in area to accommodate such failure and falling ice on the site.
- (4) Conform to the minimum shore yard setbacks.

(b) Setbacks shall not be less than the height of the tower above grade between the base of the tower and any property line. If the applicant presents to the committee a report by a structural engineer licensed by the State of Wisconsin certifying the fall-down radius of the proposed tower to be less than its height, the allowed set back shall be that certified distance.

(c) When more than one (1) tower is placed on a site, all setback, design and landscape requirements shall be met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of each tower on the site will not lead to multiple failures in the event that one (1) fails.

Sec. 7.5.18 Guy setback.

(a) For a guyed structure, the site shall be of a size and shape sufficient to provide an adequate setback from a guy anchor to any property line abutting a residential district, public property or public street. Such setback shall be adequate to provide a vegetative, topographic or other buffer sufficient to obscure view of the anchor from adjoining properties.

(b) A site with a guyed structure shall provide:

(1) A setback of at least twenty-five (25) feet between a guy anchor and any property line abutting a residential district, public property or street; and

(2) A setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not a public property or street, nor in a residential district.

(c) A guy anchor may be located on an adjoining property when:

(1) Written authorization from the adjoining property owner is provided at the time of application for conditional use approval; and

(2) The guy anchor meets the requirements of subsection (b), above, as to all other adjoining property lines.

(d) Guy anchors may be located within required landscape areas.

Sec. 7.5.19. Setbacks for accessory uses.

Setbacks for all accessory structures and uses shall be at least as great as the required yards of the underlying zone for accessory structures. Accessory structures shall be limited to (fifteen) 15 feet in height.

Sec. 7.5.20. Tower appearance and illumination.

(a) For towers not regulated by the Wisconsin Division of Aeronautics or the Federal Aviation Administration, a surface paint or finish shall be used that reduces the visibility of the tower.

(b) Towers shall not be illuminated except as required by the Wisconsin Division of Aeronautics or the Federal Aviation Administration.

(c) Facility structures and equipment, including supporting structures, shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts.

Sec. 7.5.21. Landscaping.

Landscaping of the leased site, which abuts or is visible from streets, residences, public parks or areas with access to the general public other than the owner of the adjoining property, in order to mitigate the aesthetic and visual impacts of the tower, shall be required, at a minimum, as follows:

(1) For towers two hundred (200) feet in height or less, a buffer area no less than twenty-five (25) feet wide shall be provided on all sides of the facility. At least one (1) row of evergreen shrubs shall be spaced not more than five (5) feet apart. Shrubs should be of a variety which can be expected to grow to form a continuous hedge at least five (5) feet in height within two (2) years of planting. At least one (1) row of evergreen trees or shrubs, not less than four (4) feet high at the time of planting, and spaced not more than fifteen (15) feet apart, shall also be planted. Trees and shrubs in the vicinity of guy wires shall [be] of a type that would not exceed twenty (20) feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the guy anchor from the transmission building or security facilities and staff.

(2) For towers more than two hundred (200) feet in height, a buffer area of not less than forty (40) feet wide shall be provided on all sides of the facility with at least one (1) row of evergreen shrubs spaced not more than five (5) feet apart, which will grow to form a contiguous hedge at least five (5) feet in height within two (2) years of planting. In addition, one (1) row of deciduous trees, not less than one and one-half (1 1/2) inch caliper measured three (3) feet from the ground at the time of planting and spaced not more than twenty (20) feet apart, and at least one (1) row of evergreen trees not less than four (4) feet at the time of planting and spaced not more than fifteen (15) feet apart, shall also be planted. Trees and shrubs in the vicinity of guy wires shall be of a type that does not exceed twenty (20) feet in mature height or does not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff.

(3) The committee may allow use of an alternate plan or require a more restrictive plan providing for landscape and screening, including plantings, fences, walls and other features. The plan shall accomplish the same degree of screening for the tower(s) and accessory uses achieved in subsections (1) and (2) above, except when lesser requirements are desirable for security purposes and for continued operation of existing agricultural or forest uses, including produce farms, nurseries, and tree farms.

(4) Native vegetation and natural land forms on the site shall be preserved to the greatest practical extent. The site plan shall show any existing native vegetation to be removed and shall indicate the type and location of native vegetation to be replanted.

Sec. 7.5.22. Site development, roads and parking.

(a) A minimum of one (1) parking space shall be provided on each site. On sites with personnel routinely in attendance, additional parking spaces may be required by the planning and development committee.

(b) All sites must be served by a minimum thirty-foot wide easement with a turnaround. The committee may modify the easement and turnaround requirement. All sites shall use existing access points and roads whenever possible.

## SECTION 8 MODIFICATIONS.

### 8.01 HEIGHT.

The district height limitations stipulated elsewhere in this Ordinance may be exceeded, but such modification shall be in accord with the following:

- a. Architectural Projections, such as spires, belfries, cupolas, domes, flues and chimneys, are exempt from the height limitations of this Ordinance.
- b. Special Structures, such as radio, and television receiving antennas, fire towers and substations, are exempt from the height limitations of this Ordinance.
- c. Essential Services, utilities, water towers, electric power and communication transmission lines are exempt from the height limitations of this Ordinance.

### 8.02 YARDS.

The yard requirements stipulated elsewhere in this Ordinance may be modified as follows:

- a. Uncovered Stairs, landings, and fire escapes may project into any yard but not to exceed five (5) feet, not closer than three (3) feet to any lot line, and may project into a required court not more than 3 1/2 feet, provided light and ventilation are not obstructed.
- b. Architectural Projections, such as chimneys, flues, sills, eaves, belt courses, and ornaments, may project into any required yard; but such projection shall not exceed three (3) feet.
- c. Residential Fences, Hedges, and Walls are permitted on the property lines of residential districts, but shall not in any case exceed a height of six (6) feet; four (4) feet in the street yards; and shall not be closer than two (2) feet to any public right-of-way.
- d. Retaining walls may be permitted anywhere in a yard provided, however, that no individual wall shall exceed six (6) feet in height, and a terrace of at least three (3) feet in width shall be provided between any series of such walls and provided further that along a street frontage no such wall shall be closer than three (3) feet to the base setback line.

- e. Security Fences are permitted on the property lines in all districts except residential districts but shall not exceed ten (10) feet in height and shall be of an open type similar to woven wire or wrought iron fencing.
- f. Accessory Uses and detached accessory structures are permitted in the side and rear yard only; they shall not be closer than ten (10) feet to the principal structure, shall not exceed fifteen (15) feet in height, shall not occupy more than twenty (20) percent of the rear yard area, and shall not be closer than five (5) feet to any lot line nor ten (10) feet to any alley line.
- g. Accessory structures other than buildings, *i.e.*, windmills, play structures, flag poles, and similar structures, shall not exceed in height their distance from the nearest lot line, provided, however, that if any structure under this definition is located within three (3) miles of the boundary line of an airport and landing strips, said height shall not exceed the limitations of the underlying district without written consent of the owner of said airport or landing strip, and prior written approval from the F.A.A. and Wisconsin Bureau of Aeronautics, if applicable. If the applicant presents to the Planning Committee a report by a structural engineer licensed by the State of Wisconsin certifying the fall-down radius of the proposed structure to be less than its height, the allowed setback shall be that certified distance.
- f. Essential Services, utilities, electric power and communication transmission lines are exempt from the yard and distance requirements of this Ordinance.

#### 8.03 AVERAGE SETBACK.

The required setbacks for new residential structures or additions to existing residential structures may be decreased in any residential district to the average of the existing setbacks of the abutting structures on each side but in no case may be less than fifteen (15) feet.

#### 8.04 CORNER LOTS.

A lot abutting two or more streets at their intersections provided that the corner of such intersections shall have an angle of 135 degrees or less, measured on the lot side. There shall be two street yards, one side yard and one rear yard of such lots.

#### 8.05 EXISTING SUBSTANDARD LOTS.

- a. A lot which does not contain sufficient area to conform to the dimensional requirements of this Ordinance but which is at least fifty (50) feet wide and 7,200 square feet in area may be used as a single-family building site provided that the use is permitted in the zoning district, providing the lot is of record in the County Register Of Deed's Office prior to the effective date of this Ordinance, and provided that the lot is in separate ownership from abutting lands. A building Permit for the improvement of a lot with less dimensions and requisites than those stated above shall be issued only after a variance by the Zoning board of Appeals. If two or more substandard lots with continuous frontage have the same ownership as of the effective date of this Ordinance, the lots involved shall be considered to be an individual parcel for the purpose of this Ordinance.
- b. Substandard lots shall be required to meet the setbacks and other yard requirements of this Ordinance. For the purposes of this section, lots and property shall be considered in the same ownership when owned by: the same individual or corporation; an individual and another in joint tenancy, or as tenants in common, and either of said joint or common tenants owns other abutting lots individually or as joint tenants or tenants in common with another; an individual and other abutting lots are owned by his spouse, parents, grandparents, children, grandchildren, or the spouse of any child or grandchild, or a brother or sister or spouse of a brother or sister of such person; and when any of said lots are owned by an individual and other abutting lots are owned by a corporation in which said individual is an officer or director or controlling stockholder.

## SECTION 9 ARCHITECTURAL CONTROL.

### 9.01 COMPLIANCE.

For the purpose of promoting compatible development, aesthetics, stability of property values, and to prevent impairment or depreciation of property values in the Village of Rochester, no structure shall here-after be erected, moved, reconstructed, extended, enlarged, or have its exterior altered or changed in such a manner as to violate the principles set forth in Section 9.02 of this Ordinance.

### 9.02 PRINCIPLES

To implement and define criteria for the purposes set forth in Section 9.01, the following principles are established:

- a. No building or sign shall be permitted, the design or exterior appearance of which is of such unorthodox or abnormal character in relation to its surroundings as to be unsightly or offensive to generally accepted taste and community standards.
- b. No building or sign shall be permitted the design or exterior appearance of which is so identical with those adjoining as to create excessive monotony or drabness.
- c. No building or sign shall be permitted where any exposed facade is not constructed or faced with a finished material which is aesthetically compatible with the other facades and presents an attractive appearance to the public and to surrounding properties
- d. No building or sign shall be permitted to be sited on the property in a manner which would unnecessarily destroy or substantially damage the natural beauty of the area, particularly insofar as it would adversely affect values incident to ownership of land in that area; or which would unnecessarily have an adverse affect on the beauty and general enjoyment of existing structures on adjoining properties.

### 9.03 ADMINISTRATION.

The Zoning Administrator shall require that each building permit application in any district be accompanied by plans showing the exterior elevations of all existing and proposed structures on the property; a description of the proposed materials to be used; and proposed floor elevations of all structures. The Zoning Administrator shall transmit all building permit applications and their accompanying plans to the Village Plan Commission for their review and determination, with the exception that structures reviewed previously via site plan or developer's agreement; and permits that do not affect the exterior structure may be excluded. See also Section 2.08.

### 9.04 REVIEW AND FINDINGS.

The Plan Commission shall review the referred plans at a subsequent meeting; but not more than thirty (30) days after the original application for a building permit. The Plan Commission shall not approve any building plans unless they find beyond a reasonable doubt after viewing the application that the structure, as planned, will not violate the principles set forth in Section 2.08 and 9.02 of this Ordinance.

### 9.05 APPEALS.

Any person or persons aggrieved by any decisions of the Plan Commission related to architectural control may appeal the decision to the Zoning Board of Appeals. Such appeal shall be filed with the Village Clerk within thirty (30) days after filing of the decision with the Zoning Administrator.

## SECTION 10 NONCONFORMING USES, STRUCTURES AND LOTS.

### 10.01 EXISTING NONCONFORMING USES.

- a. The lawful nonconforming use of a structure, land or water existing at the time of the adoption or amendment of this Ordinance may be continued although the use does not conform with the provisions of this Ordinance, however,
  - (1.) Only That Portion of the land or water in actual use may be so continued and the structure may not be extended, enlarged, reconstructed, substituted, moved, or structurally altered except when required to do so by law or order or so as to comply with the provisions of this Ordinance.
  - (2.) Total Lifetime Structural Repairs or alterations shall not exceed fifty (50) percent of the Village's equalized value of the structure unless it is permanently changed to conform to the use provision of this Ordinance.
  - (3.) Substitution of New Equipment may be permitted by the Zoning Board of Appeals if such equipment will reduce the incompatibility of the nonconforming use with the neighboring uses.
- b. For the purpose of this Ordinance, a nonconforming use shall begin as of the time it was made nonconforming by the terms of a preceding Ordinance, of this Ordinance or of an amendment to this Ordinance.

### 10.02 ABOLISHMENT OR REPLACEMENT.

- a. If such non-conforming use is discontinued or terminated for a period of twelve (12) months, any future use of the structure, land, or water shall conform to the provisions of this Ordinance. When a non-conforming use or structure is damaged by fire, explosion, flood, a public enemy, or other calamity, to the extent of more than fifty (50) percent of its equalized assessed value , it shall not be restored except so as to comply with the use provisions of this Ordinance.
- b. A Current File of all non-conforming uses shall be maintained by the Zoning Administrator listing the following: owner's name and address; use of the structure, land, or water; and the accumulated value of any permitted repairs since its becoming a non-conforming use.

### 10.03 EXISTING NONCONFORMING STRUCTURES.

The lawful non-conforming structure existing at the time of the adoption or amendment of this Ordinance may be continued although its size or location does not conform with the lot width, lot area, yard, height, parking and loading, and access provisions of this Ordinance; however, it shall not be extended, enlarged, reconstructed, moved, or structurally altered except when required to do so by law or order or so as to comply with the provision of this Ordinance.

### 10.04 CHANGES AND SUBSTITUTIONS.

Once a nonconforming use or structure has been changed to conform, it shall not revert back to a nonconforming use or structure. Once the Zoning Board of Appeals has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Zoning Board of Appeals.

### 10.05 NONCONFORMING CHARACTERISTICS OF RESIDENTIAL STRUCTURES.

Residential structures which encroach upon setback and other yard requirements, but which met setback and yard requirements at the time of construction, may be structurally altered provided that they do not create a greater degree of encroachment.

#### 10.06 FLOODLAND NONCONFORMING USES.

Floodland nonconforming uses structurally repaired or altered under the nonconforming use provision of this code shall provide for flood-proofing to those portions of the structures involved in such repair or alteration. Certification of flood-proofing shall be made to the Zoning Administrator and shall consist of a plan or document certified by a registered professional engineer that the flood-proofing measures are consistent with the flood velocities, forces, depths, and other factors associated with 100-year recurrence interval flood, and no structural repairs, modifications, or additions to a structure which exceed over the life of a structure, 50% of its present equalized value, shall be allowed unless the entire structure is permanently changes to a conforming use.

The floodproofing of alterations and/or additions shall be in compliance with new development requirements as set forth fully in Sections 3.10 and 3.11 of this Chapter.

## SECTION 11 ZONING BOARD OF APPEALS.

### 11.01 ESTABLISHMENT.

There is hereby established a Zoning Board of Appeals for the Village of Rochester for the purpose of hearing appeals and applications, and granting variances and exception to the provisions of this Zoning Ordinance.

### 11.02 MEMBERSHIP.

The Zoning Board of Appeals shall consist of five (5) members appointed by the Village President and confirmed by the Village Board. The members shall serve for such compensation, if any, as may be fixed by the Village Board. Removal shall be by a two-thirds (2/3) vote of the Village Board and after public hearing.

- a. Terms shall be for staggered three-year periods; those first appointed, one (1) shall serve for one (1) year, two (2) for two (2) years, and two (2) for three (3) years.
- b. Chairman shall be designated by the Village President.
- c. Pursuant to Wis. Stats. 62.23(7)(e)2, the Village President shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the Village President shall designate one of the alternate members as 1<sup>st</sup> alternate and the other as 2<sup>nd</sup> alternate. The 1<sup>st</sup> alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2<sup>nd</sup> alternate shall so act only when the 1<sup>st</sup> alternate so refuses or is absent or when more than one member of the board so refuses or is absent.
- d. A Secretary and other employees may be employed by the Zoning Board of Appeals.
- e. The Zoning Administrator shall attend all meetings for the purpose of providing technical assistance.
- f. Official Oaths shall be taken by all members in accordance with Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointment.
- g. Vacancies shall be filled for the unexpired term of all members, including alternate members, in the same manner as appointments for a full term.

### 11.03 ORGANIZATION.

The Zoning Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of this Ordinance.

- a. Meetings shall be held at the call of the chairman and shall be open to the public.
- b. Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be public record.
- c. The Board of Appeals may take action if a quorum is present, by a majority vote of the members present, to correct an error; grant a variance; make an interpretation; and permit a utility, temporary, unclassified, or substituted use.

### 11.04 POWERS.

- a. The Zoning Board of Appeals shall have the following powers:
  - (1.) Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator.
  - (2.) Variances. To hear and grant appeals for variances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this Ordinance shall be observed and the public safety, welfare, and justice secured. The Zoning Board of Appeals may authorize upon appeal

variances where special conditions, such as terrain cover or nearby existing or potential land or water uses prevent applicant from meeting the provisions of this Ordinance.

- (3.) Interpretations and Boundary Lines. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Village Plan Commission has made a review and recommendation.
- (4.) Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Village Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
- (5.) Unclassified Uses. To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district and the Village Plan Commission has made a review and recommendation.
- (6.) Temporary Uses. To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature do not involve the erection of a substantial structure, and are compatible with the neighboring uses and the Village Plan Commission has made a review and recommendation. The permit shall be temporary, revocable, subject to any conditions required by the Zoning Board of Appeals, and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Ordinance shall be required.
- (7.) Permits. The Board may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issue of a permit.

b. Assistance. The Board may request assistance from other Village officers, departments, commissions, and boards.

c. Oaths. The chairman may administer oaths and compel the attendance of witnesses.

#### 11.05 APPEALS AND APPLICATIONS.

Appeals from the decision of the Zoning Administrator concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by any officer, department, board, or bureau of the Village. Such appeals shall be filed with the secretary within thirty (30) days after the date of written notice of the decision or order of the Zoning Administrator. Applications may be made by the owner or lessee of the structure, land, or water to be affected at any time and shall be filed with the secretary. Such appeals and applications shall include the following:

- a. Name and Address of the appellant or applicant and all abutting and opposite property owners of record.
- b. Plat of Survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing all of the information required under Section 2.03 for a Building Permit.
- c. Additional Information required by the Village Plan Commission, Village Engineer, Zoning Board of Appeals, or Zoning Administrator.

#### 11.06 HEARINGS.

The Zoning Board of Appeals shall fix a reasonable time and place for the required public hearing, and shall give notice as specified in Section 16 of this Ordinance. At the hearing the appellant or applicant may appear in person, by agent, or by attorney. Failure to appear may result in a decision based upon the available information.

#### 11.07 FINDINGS.

- a. No variance to the provisions of this Ordinance shall be granted by the Board unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.
  - (1.) Preservation of Intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the

effect of permitting a use in any district that is not a stated permitted use, accessory use, or conditional use in that particular district.

- (2.) Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties of uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.
- (3.) Economic Hardship and Self-Imposed Hardship Not Grounds for Variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
- (4.) Absence of Detriment. No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.
- (5.) Additional Requirements in Floodland Districts. No variance shall be granted where:
  - (a.) Filling and development contrary to the purpose and intent of the F-I Floodway District would result.
  - (b.) A change in the boundaries of the F-1 Floodway District would result.
  - (c.) No variance shall have the effect of permitting any use where prohibited by the district, floodland or shoreland regulations; nor of permitting standards lower than those required by the Wisconsin Statutes, the Wisconsin Administrative Code or the State Dept. of Natural Resources; nor of permitting the elevation of any building lying on floodlands to be lower than that specified in this Ordinance.
  - (d.) The Board shall notify applicants receiving a variance hereunder, that they may experience increased flood insurance premiums as a result of the granting of such variances.

#### 11.08 DECISION.

The Zoning Board of Appeals shall decide all appeals and applications within thirty (30) days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Administrator, and the Village Plan Commission. Conditions may be placed upon any building permit ordered or authorized by this Board. Variances, Substitutions, or Use Permits granted by the Board shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

#### 11.09 NOTICE TO DNR.

The Zoning Board of Appeals shall transmit a copy of each application for a variance to floodland regulations to the Wis. Dept. of Natural Resources (DNR) for review and comment. Final action on the application shall not be taken for thirty (30) days or until the DNR has made their recommendations, whichever comes first. A copy of all decisions relating to variances to floodland regulations shall be transmitted to the DNR within ten (10) days of the effective date of such decision.

#### 11.10 REVIEW BY COURT OF RECORD.

Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Zoning Board of Appeals.

## SECTION 12 CHANGES AND AMENDMENTS.

### 12.01 AUTHORITY.

Whenever the public necessity, convenience, general welfare or good zoning practice require, the Village Board of Trustees may, by ordinance, change the district boundaries or amend, change or supplement the regulations established by this Ordinance or amendments thereto.

Such Change or Amendment shall be subject to the review and recommendation of the Village Plan Commission.

### 12.02 INITIATION.

A change or amendment may be initiated by the Village Board, Village Plan Commission, Village Historic Preservation Committee, or by a petition of one or more of the owners or lessees of property within the area proposed to be changed. The petitioner shall pay the fee required in section 15.01 of this Chapter prior to any publication or hearing thereon, and no part thereof shall be returned to the applicant regardless of the disposition of the petition.

### 12.03 PETITIONS.

Petitions for any change to the district boundaries or amendments to the regulations shall be filed with the Village Clerk, describe the premises to be rezoned or the regulations to be amended, list the reasons justifying the petition, specify the proposed use and have attached the following:

- a. Plot Plan drawn to scale showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of all properties within two hundred (200) feet of the area proposed to be rezoned.
- b. Owner's Names and Addresses of all properties lying within two hundred (200) feet of the area proposed to be rezoned.
- c. Additional Information required by the Village Plan Commission or Village Board.

### 12.04 RECOMMENDATIONS.

The Village Plan Commission shall review all proposed changes and amendments within the corporate limits and shall recommend that the petition be granted as requested, modified, or denied. The recommendation shall be made at a meeting subsequent to the meeting at which the petition is first submitted, and shall be made in writing to the Village Board.

### 12.05 HEARINGS.

The Village Board shall hold a public hearing upon each recommendation, and shall give notice as specified in Section 16 of the Ordinance.

### 12.06 VILLAGE BOARD'S ACTION.

Following such hearing and after careful consideration of the Village Plan Commission's recommendation, the Village Board shall vote on the proposed change or amendment.

### 12.07 FLOODLAND DISTRICT BOUNDARY CHANGES LIMITED.

The Village Board shall not permit changes to the floodland district boundaries that are inconsistent with the purpose and intent of this Ordinance; or in conflict with the applicable rules and regulations of the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency.

Changes in the Floodway District shall not be permitted where the change will increase the flood stage elevation in excess of 1.0 feet. Flood stage increases exceeding 0.1 feet (3 centimeters) in height shall not be permitted unless the petitioner had made appropriate legal arrangements with all affected units of government and all property owners affected by the stage increase. Petitions for Floodway District changes shall show the affect of the change within the associated flood fringe utilizing the equal degree of encroachment principle, and shall provide adjusted water surface profiles and adjusted floodland limits to reflect increased flood elevations.

Removal of Land from the Floodland Districts shall not be permitted unless the land has been filled to an elevation at least two (2) feet above the elevation of the 100-year recurrence interval flood and further provided that such lands are contiguous to lands lying outside of the floodlands.

Notice to DNR and FEMA. A copy of all notices for amendments or rezoning in the floodland districts shall be transmitted to the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency. Amendments to the floodland district boundaries or regulations shall not become effective until approved by the DNR and FEMA. In the case of floodland district boundary changes, an official letter of map amendment from FEMA shall also be required.

#### 12.08 PROTEST.

In the event of a protest against such district change or amendment to the regulations of this Ordinance, duly signed and acknowledged by the owners of twenty (20) percent or more of the areas of the land included in such proposed change, or by the owners of twenty (20) percent or more of the land immediately adjacent extending one hundred (100) feet from the street frontage of such opposite land such changes or amendments shall not become effective except by the favorable vote of two-thirds (2/3) of the full Village Board membership. Notices of such tentative recommendations or proposed changes in the regulations may contain the street names and house or lot numbers for purposes of identification if the commission or board so determines.

## SECTION 13 PLAN COMMISSION APPROVAL

### 13.01 BUILDING SITE AND OPERATIONAL PLANS

Where required: In the case of certain uses, as determined by the Zoning Administrator, the character of which could have substantial adverse impact on surrounding property values or public highway facilities by reason of the arrangement of structures and related uses on the land including the total appearance of said arrangement or by arrangement of access from public streets to off-street parking and loading facilities, or where specifically directed in this ordinance, it will be required as a qualifying condition to their permissibility to submit for approval by the Plan Commission their proposed building site and operational plans.

### 13.02 USE BY RIGHT.

Use by Right Not Infringed: Such required approval shall be limited solely to reasonable compliance with design, locational and operational requirements and shall not involve the basic permissibility of the use where such use is permitted as a "permitted use".

### 13.03 ACCEPTABILITY CRITERIA.

In determining the acceptability of the building, site or operational plans, the Plan Commission shall take into consideration the following factors as well as any others it deems related:

- a. The general design and appearance of any structures in terms of generally accepted standards of good taste, particularly in terms of the relationship and effect upon surrounding properties and compliance with Section 2 of this Chapter.
- b. The relationship of structures and uses to each other and to the site, with particular consideration of traffic flow, access, screening of parking and storage areas and general appearance.
- c. The character of the operation in terms of its impact upon traffic facilities, sewage disposal, water supply and environmental character with particular consideration of the control of any possible noise, dust, odor or other undesirable operating characteristic, including compliance with the Performance Standards of Section 14.

### 13.04 FORM OF SUBMITTAL.

- a. Before issuing an Occupancy and Building Permit, the Zoning Administrator shall submit the necessary building, site and operational plans to the Plan Commission for its consideration. Such plans shall be in reasonable detail to enable the Commission to properly evaluate them, and shall specifically include the following:
  - (1.) A site plan of the property accurately dimensioned showing the location of all existing and proposed structures and use area.
  - (2.) Name of project
  - (3.) Owner's and/or developer's name and address.
  - (4.) Architect and/or engineer's name and address.
  - (5.) Date of plan submittal.
  - (6.) Existing topography shown at a contour interval not less than two (2)feet, (or where not readily available elevations at appropriate locations).
  - (7.) Proposed changes in topography.
  - (8.) The characteristics of soils related to contemplated uses.
  - (9.) The type, size, location and dimensions of all structures including fences and walls.
  - (10.) Location and number of parking, loading and storage areas.

- (11.) Primary building materials used in construction of all structures.
- (12.) Height of building(s).
- (13.) Location and size of existing and proposed sanitary sewers, septic tanks and disposal fields, holding tanks, storm sewers and water mains.
- (14.) Location of proposed solid waste (refuse) storage area.
- (15.) Location of pedestrian sidewalks and walkways.
- (16.) Existing and proposed public right-of-way widths.
- (17.) Location, type, height and intensity of proposed lighting.
- (18.) Location of existing trees, and extent and type of proposed plantings including type and extent of erosion control.
- (19.) A graphic delineation of any planned development staging.
- (20.) Architectural plans, elevations, and perspective drawings and sketches illustrating the design and character of proposed structures.
- (21.) Any other site or use information, such as 100 year interval flood lines, which will assist the Plan Commission in making a determination and recommendation on the proposal.

b. In addition, operations plan data to be submitted with all plan review applications shall include at least the following:

- (1.) Specific use of site and building(s).
- (2.) Hours of operations.
- (3.) Number of full and part time employees.
- (4.) Estimate of daily truck and auto trips to the site.
- (5.) Type of materials and equipment to be stored on site.
- (6.) Method of handling solid and liquid waste disposal.
- (7.) Method of exterior maintenance (site and buildings).
- (8.) Method of site and building security other than local police.
- (9.) Copies of all special use permits issued by state or county agencies.
- (10.) Any other information which will assist the Plan Commission in making a determination and recommendation of the proposal.

SECTION 14 PERFORMANCE STANDARDS.

14.01 COMPLIANCE.

The performance standards enumerated below are designated to limit, restrict and prohibit the effects of uses permitted by this Ordinance outside their premises. The use of all structures, lands, air and water shall hereafter, in addition to complying with the use, site and sanitary regulations contained in this Ordinance, shall comply with the following performance standards.

14.02 AIR POLLUTION.

No activity shall be permitted which emits air pollutants in excess of the standards permitted by Federal, State and County laws, regulations and ordinances.

14.03 FIRE AND EXPLOSIVE HAZARDS.

All activities involving the manufacturing, utilization, processing or storage of inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with fire-fighting and fire-suppression equipment and devices that are standard in the industry. All materials that range from active to intense burning shall be manufactured, utilized, processed, and stored only in compliance with State of Wisconsin administrative code standards.

14.04 GLARE AND HEAT.

No activity shall emit glare or heat that is visible or measurable outside the premises, except activities in the industrial district which may emit sky reflected glare which shall not be visible at ground level outside the premises.

14.05 WATER QUALITY PROTECTION.

No activity shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might run off, seep, percolate or wash into surface or subsurface waters so as to contaminate, pollute or harm such waters or cause nuisances such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness or be harmful to human, animal, plant or aquatic life. In addition, no activity shall withdraw water or discharge any liquid, gaseous, or solid materials so as to exceed or contribute toward the exceeding of the standards set forth in the Wisconsin Administrative Code.

14.06 NOISE.

- a. No activity in an M-1 Industrial District shall produce a sound level outside the property boundary that exceeds the following sound level measured by a sound level meter and associated octave band filter:

<b>Octave Band Frequency (Cycles per second)</b>	<b>Sound Level Decibels</b>
0 to <75	79
75 to <150	74
150 to <300	66
300 to <600	59
600 to <1200	53
1200 to <2400	47
2400 to <4800	41
4800 and above	39

b. No other activity in any other district shall produce a sound level outside its premises that exceeds the following:

<b><i>Octave Band Frequency (Cycles per second)</i></b>	<b><i>Sound Level Decibels</i></b>
0 to <75	72
75 to <150	67
150 to <300	59
300 to <600	52
600 to <1200	46
1200 to <2400	40
2400 to <4800	34
4800 and above	32

c. All noise shall be so muffled or otherwise controlled as not to become objectionable due to intermittence, duration, beat frequency, impulse character, periodic character or shrillness.

14.07 ODORS.

No activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful outside their premises.

14.08 RADIOACTIVITY AND ELECTRICAL DISTURBANCES.

No activity shall emit radioactivity or electrical disturbances outside its premises that are dangerous or adversely affect the use of neighboring premises including radio and television receiver operation.

14.09 VIBRATION.

No activity in any district shall emit vibrations which are discernible without instruments outside its premises. No activity in any district shall emit vibrations which exceed the following displacement measured with a three-component measuring system:

<b><i>Frequency (Cycles per second)</i></b>	<b><i>Outside the Premises</i></b>
0 to <10	.0020
10 to <20	.0010
20 to <30	.0006
30 to <40	.0004
40 to <50	.0003
50 & over	.0002

## SECTION 15 FEES AND PENALTIES.

### 15.01 FEES.

All persons, firms or corporations performing work which by this Ordinance requires the issuance of a permit shall pay a fee for such permit to the Village Treasurer to help defray the cost of administration, investigation, advertising, and processing of permits and variance. Fees, at rates determined by the Village Board from time to time, by simple majority vote, will be charged for the following:

- 1.) Building Permit.
- 2.) Occupancy Permit.
- 3.) Sign Permit
- 4.) Conditional Use Petition.
- 5.) Variance or Appeal Petition.
- 6.) Amendment to Zoning Ordinance (Map or Text)
- 7.) Site and Operational Plan Review
- 8.) Annexation Petitions
- 9.) Extraterritorial Plat Review
- 10.) Land Disturbance Permit
- 11.) Driveway Permit
- 12.) Zoning Permit

### 15.02 DOUBLE FEE.

A double fee shall be charged by the Zoning Administrator if work is started before a permit is applied for and issued. Such double fee shall not release the applicant from full compliance with this Ordinance nor from prosecution for violation of this Ordinance.

### 15.03 ENFORCEMENT AND PENALTIES.

Any building or structure hereinafter erected, moved, placed, or structurally altered or any use hereinafter established in violation of the provisions of this Ordinance by any person, firm, association, corporation (including building contractors or his or their agent) shall be deemed an unlawful structure or use. In case of any violation, the Village Board, Village Plan Commission, the Zoning Administrator or any property owner who would be specifically damaged by such violation may institute an action to enjoin, remove or vacate any use, erection, moving, alteration, or placement of any building or use in violation of this Ordinance.

Every structure, fill or development placed or maintained on floodlands in violation of this Ordinance is a public nuisance; and the creation thereof may be enjoined and maintenance thereof may be abated by an action instituted by the Village or any citizen who lives in or within 500 feet of the floodland.

Any person, firm, or corporation who fails to comply with the provisions of this Ordinance or any order of the Zoning Administrator issued in accordance with this Ordinance or resists enforcement shall, upon conviction thereof, forfeit not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00) and costs of prosecution for each violation and in default of payment of such forfeiture and costs shall be imprisoned in the County Jail until payment thereof, but not exceeding thirty (30) days. Each day a violation exists or continues shall constitute a separate offense. Any person, firm or corporation who places or maintains any structure, fill, or development on any floodland in violation of this Ordinance may be fined not more than Fifty Dollars (\$50.00) for each offense. Each day a violation exists or continues shall constitute a separate offense.

SECTION 16 NOTIFICATION - PUBLIC HEARINGS.

Notice of any public hearing which the Village Board, Village Plan Commission, or Zoning Board of Appeals is required to hold under the terms of this Ordinance shall specify the date, time and place of said hearing and shall state the matter to be considered at said hearing.

Fourteen days (14) prior to initial review of a conditional use, zoning change, or land division by the Plan Commission, the Clerk shall send a written notice to property owners adjoining the subject property, advising the meeting date where the proposal will be considered.

At least fourteen days (14) prior to Plan Commission review, the applicant shall post a sign(s), clearly visible from each adjoining road, advising of pending conditional use, zoning change, or land division review. The sign shall be provided by the Village and shall be returned by the applicant no later than 2 days after the review. Improper posting may result in the Plan Commission delaying consideration until a later meeting.

## SECTION 17 DEFINITIONS.

### 17.01 GENERAL DEFINITIONS.

For the purpose of this Ordinance, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meaning or are intended to be interpreted to have a specific meaning. Words used in the present tense in this Ordinance include the future. The word "person" includes a firm, association, partnership, trust, company, or corporation as well as an individual. The word "shall" is mandatory, the word "should" is advisory, and the word "may" is permissive. Any words not defined in this Article shall be presumed to have their customary dictionary definitions, or as defined by statute or in state and village building codes.

#### SPECIFIC WORDS AND PHRASES

##### A-zones

Those areas shown on a community's "Official Flood Plain Zoning Map" which would be inundated by the "base flood" or "regional flood" as defined herein. These areas may be numbered AO, A1 to A30, A99 or be unnumbered A zones. The A zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

##### Accessory Use, Building or Structure

A use, building or structure which:

- Is or will be subordinate to and serves a principal use, building or structure;
- Is or will be subordinate in area, extent, or purpose to the principal use, building or structure served;
- Contributes to the comfort, convenience or necessity or occupants of the principal use, building or structure; and
- Is or will be located on the same zoning lot as the principal use, building or structure.

An automobile, trailer or other vehicle or part thereof, or other building used as a temporary or permanent dwelling or lodging place shall not be considered an accessory building or use.

##### Alley

A special public right-of-way affording only secondary access to abutting properties.

##### Automobile Wrecking Yard

Any premises on which more than one automotive vehicle, not in running or operating condition, is stored in the open.

##### Base Flood

A flood having a one percent chance of being equaled or exceeded in any given year.

##### Basement

A story partly or wholly underground. The height of a basement shall be the vertical distance between the surface of the basement floor and the floor next above it.

##### Boarders

Any unrelated other than the owner persons living within a single household unit paying compensation for such service.

##### Boardinghouse

A building other than a hotel or restaurant where meals or lodging are regularly furnished by pre-arrangement for compensation for four (4) or more persons not members of a family, but not exceeding twelve (12) persons and not open to transient customers.

##### Building

Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery, or materials.

##### Building Area

The total living areas bounded by the exterior walls of a building at the floor levels, but not including unfinished basement, utility rooms, garages, porches, breezeways, or unfinished attics.

### Building Height

The vertical distance measured from the mean elevation of the finished lot grade along the street yard face of the structure to the highest point of flat roofs; to the mean height level between the eaves and ridges of gable, gambrel, hip and pitch roofs; or to the deck line of mansard roofs.

### Bulkhead Line

A geographic line established along a reach of any navigable waters by a municipal ordinance approved by the State Department of Natural Resources, pursuant to Section 30.11 of the Wisconsin Statutes, and which allows complete filling on the landward side except where such filling is prohibited by the floodway provisions of this Ordinance.

### Channel

Those floodlands normally occupied by a stream, lake bed, or other body of water under average annual high water flow conditions while confined within generally well-established banks.

### Development

Any man-made change to improved or unimproved real estate, including but not limited to construction of or additions or substantial improvements to buildings, or other structures, or accessory uses, the placement of mobile homes, mining, dredging, filling, grading, paving, excavation or drilling operations, or deposition of materials.

### District, Basic

A part or parts of the Village for which the regulations of this Ordinance governing the use and location of land and buildings are uniform.

### District, Overlay

Overlay districts provide for the possibility of super-imposing certain additional requirements upon a basic zoning district without disturbing the requirements of the basic district. In the instance of conflicting requirements, the more strict of the conflicting requirements shall apply.

### Dwelling

A detached building designed or used exclusively as a residence or living place, but does not include boarding or lodging houses, motels, hotels, tents, cabins, or mobile homes.

### Dwelling, Single-Family

A detached building designed for and occupied exclusively by one family.

### Dwelling, Two-Family

A detached building containing two separate dwelling units, designed for and/or occupied by not more than two families.

### Dwelling, Multiple-Family

A residential building containing three (3) or more separate dwelling units designed for and/or occupied by three (3) or more families, with the number of families in residence not to exceed the number of dwelling units provided.

### Essential Services

Services provided by public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, storm water drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings.

### Encroachment

An encroachment is any fill, structure, building, accessory use, or use or development in the floodway.

### Encroachment / Floodway Lines

Encroachment lines are limits of obstruction to flood flows, these lines are on both sides of and generally parallel to the stream. The lines are established by assuming that the area landward (outside) of the encroachment lines will be ultimately developed in such a way that it will not be available to convey flood flows.

### Equal Degree of Hydraulic Encroachment

The effect of any encroachment into the floodway must be computed by assuming an equal degree of hydraulic encroachment on the other side of a river or stream for a significant hydraulic reach. This computation assures that property owners up, down or across the river or stream will have the same rights of hydraulic encroachment.

Encroachments are analyzed on the basis of the effect upon hydraulic conveyance, not upon the distance the encroachment extends into the floodway.

#### Family

One or more persons occupying the premises and living together as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house, club fraternity or hotel.

#### Flood

A temporary rise in stream flow or stage that results in water overtopping its banks and inundating areas adjacent to the channel.

#### Flood Plain

The land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe.

#### Flood Fringe

Those floodlands, outside the floodway, subject to inundation by the 100-year recurrence interval flood. For the purpose of this Ordinance, the flood fringe includes the Floodplain Fringe Overlay District.

#### Floodproofing

Any combination of structural provisions, changes or adjustments to properties and structures subject to flooding, primarily for the purpose of reducing or eliminating flood damage to properties, water and sanitary facilities, structures and contents of buildings in the flood hazard areas.

#### Flood Plain Study Map

Same as Official flood plain zoning map defined below.

#### Floodway

The floodway is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry and discharge the floodwaters or floodflows associated with the regional or 100-year occurrence interval flood.

#### Floodprofile

A graph showing the relationship of the floodwater surface elevation of a flood event of a specified recurrence interval to the stream bed and other significant natural and man-made features along a stream.

#### Flood Protection Elevation

The flood protection elevation shall correspond to a point two (2) feet of freeboard above the water surface profile associated with the regional flood and the official floodway lines. Also see Freeboard.

#### Freeboard

Freeboard is a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggradation of the river or stream bed.

#### Frontage

The dimension of a lot abutting a public street measured along the street right-of-way line. For lots abutting a lake or stream, the smallest dimension measured along the shoreline.

#### Garage, Private

A structure primarily intended for and used for the enclosed storage or shelter of the private motor vehicles of the families resident upon the premises.

#### Garage, Public or Commercial

Any garage other than a private garage.

#### Household Occupation

Any occupation for gain or support conducted entirely within buildings by resident occupants which is customarily incidental to the principal use of the premises, does not exceed twenty-five percent of the area of any floor, uses only household equipment, and no stock in trade is kept or sold except that made on the premises. A household occupation includes uses such as babysitting, millinery, dressmaking, canning, laundering, and crafts, but does not include the display of any goods nor such occupations as barbering, beauty shops, dance schools, real estate brokerage, or photographic studios.

#### Hotel

A building in which lodging, with or without meals, is offered to transient guests for compensation and in which there are more than five sleeping rooms, with no cooking facilities in any room or apartment.

#### Junk or Salvage Yard

An area consisting of buildings, structures or premises where junk waste, discarded or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards, house wrecking and structural steel materials and equipment yards, but not including the purchase or storage of used furniture and household equipment or used cars in operable condition.

#### Kennel

A place of confinement of three (3) or more domestic house pets for purposes of raising, breeding or boarding.

#### Loading Space

An off-street space or berth on the same lot with a building, or contiguous to a group of buildings and abutting on or affording direct access to a public street or alley, for the temporary parking of commercial vehicle while loading or unloading cargo.

#### Lot

A parcel of land having frontage on a public street, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area, and other open space provisions of this Ordinance, provided that no such parcel shall be bisected by a public street, and shall not include any portion of a public right-of-way. No lands dedicated to the public or reserved for easements greater than twenty (20) feet or for roadway purposes shall be included in the computation of lot size for the purposes of this Ordinance.

#### Lot, Corner

A lot abutting two or more streets at their intersection provided that the corner of such intersection shall have an angle of 135 degrees or less, measured on the lot side.

#### Lot, Double Frontage

A parcel of land, other than a corner lot, with frontage on more than one street or with frontage on a street and a navigable body of water. Double frontage lots, located between two (2) streets for the purpose of this Ordinance, shall be deemed to have two street yards and no rear yard and double frontage lots located between a street and a navigable body of water, for the purpose of this Ordinance, shall be deemed to have a street yard and a shore yard and no rear yard.

#### Lot Lines and Area

The peripheral boundaries of a parcel of land and the total area lying within such boundaries.

#### Lot Width

The width of a parcel of land measured at the required minimum street yard setback line.

#### Motel

A series of attached, semi-attached, or detached sleeping units for the accommodation of transient guests.

#### Mobile Home

A structure transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For the purpose of this Ordinance, it does include recreational vehicles or travel trailers.

#### Nonconforming Structure

An existing lawful structure or building which is not in conformity with the provisions of this Ordinance for the area which it occupies.

#### Nonconforming Use

An existing lawful use of a structure, building or accessory use which is not in conformity with the provisions of this Ordinance for the area which it occupies.

#### Official Floodplain Zoning Map

That map, adopted and made apart of this Ordinance, which has been approved by the Department of Natural Resources and the Federal Emergency Management Agency.

#### Official Letter of Map Amendment

Official notification from the FEMA that the Flood Hazard Boundary Maps of Flood Insurance Study Map has been amended.

#### Ordinary Highwater Mark

Is the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic.

#### Parking Lot

A structure or premises containing ten (10) or more parking spaces open to the public. Such spaces may be for rent or a fee.

#### Parties in Interest

Includes all abutting property owners, all property owners within one hundred (100) feet, and all property owners of opposite frontages.

#### Professional Home Offices

Residence offices of clergymen, doctors, dentists, architects, landscape architects, professional engineers, registered land surveyors, lawyers, real estate agents, accountants, artists, teachers, authors, musicians, or other recognized professions used to conduct their professions where the office does not exceed twenty-five (25) percent of the area of only one floor of the residence and only one nonresident person is employed.

### Reach (Hydraulic)

A hydraulic reach along a river or stream is that portion of the river or stream extending from one significant change in the hydraulic character of the river or stream to the next significant change. These changes are usually associated with breaks in the slope of the water surface profile, and may be caused by bridges, dams, expansion and contraction of the water flow, and changes in stream bed slope or vegetation.

### Regional Flood

The regional flood is a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every 100 years; this means that in any given year there is a one percent chance that the regional flood may occur or be exceeded. During the typical 30-year mortgage period, the regional flood has a 26 percent chance of occurrence.

### Signs

Any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trade marks by which anything is made known and which are used to advertise or promote an individual firm, association, corporation, profession, business, commodity or product and which is visible from any public street or highway.

### Signs (Temporary)

Any sign which pertains to auctions, bazaars, festivals, or other similar events or to any aspect of a political campaign.

### Shorelines

The intersection of the land surfaces abutting lakes, ponds, streams, flowages, and wetlands with the ordinary high-water elevation.

### Shore Yard

A yard extending across the full width or depth of a lot, the depth of which shall be the minimum horizontal distance between a line intersecting both side lot lines at the same angle and containing the point of the highwater elevation of a pond, stream, lake or wetland nearest the principal structure and a line parallel thereto containing the point of the principal structure nearest the ordinary highwater line.

### Storage Capacity of a Flood Plain

The volume of space above an area of flood plain land that can be occupied by floodwater of a given stage at a given time, regardless of whether the water is moving.

### Street

A public right-of-way sixty-six (66) feet wide providing primary access to abutting properties.

### Structural Alterations

Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams, or girders.

### Structure

Anything constructed or erected, the use of which requires a permanent location on the ground or attachment to something having a permanent location on the ground.

### Structure (Principal)

A structure used or intended to be used for the principal use as permitted on such lot by the regulations of the district in which it is located.

### Structure (Temporary)

A movable structure not designed for human occupancy nor for the protection of goods or chattels and not forming an enclosure.

### Substantial Improvement

Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the present equalized assessment value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. The term does not 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 or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historical

places. Ordinary maintenance does not include structural repairs, modifications or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other non-structural component.

#### Utilities

Public and private facilities such as water wells, water and sewage pumping stations, water storage tanks, power and communication transmission lines, electrical, power substations, static transformer stations, telephone and telegraph exchanges, microwave radio relays, and gas regulations stations but not including sewage disposal plants, municipal incinerators, warehouses, ships, and storage yards.

#### Yard

An open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

#### Yard (Rear)

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearest point of the principal structure. This yard shall be opposite the street yard or one of the street yards on a corner lot.

#### Yard (Street)

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two such yards.

#### Yard (Side)

A yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal street.

#### Zoning Administrator

A person recommended by the Village Plan Commission and appointed by the Village Board of Trustees to administer and enforce this Ordinance. Reference to the Zoning Administrator shall be construed to include duly appointed Deputy Administrators.

## SECTION 18 LEGAL STATUS PROVISIONS.

### 18.01 ABROGATION AND GREATER RESTRICTIONS.

It is not intended by this Ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to laws. However, wherever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

### 18.02 INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Village and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

### 18.03 SEVERABILITY.

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

### 18.04 REPEAL.

All other ordinances or parts of ordinances of the Village inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are hereby repealed.

### 18.05 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection provided by this Ordinance is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. On rare occasions, larger floods may occur or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings restricted by debris.

Therefore, this section does not imply that areas outside of the delineated floodplain or land uses permitted within the floodplain will be totally free from flooding and associated flood damages. Nor shall this Section create a liability on the part of or a cause of action against the Village of Rochester or any office or employee thereof for any flood damages that may result from reliance on this Ordinance.

### 18.06 EFFECTIVE DATE.

This Ordinance shall be in full force and effect within the corporate limits of the Village of Rochester, Wisconsin, after its passages, publication and/or posting as provided by law.