

## Section VIII: Agricultural-Residential District

### A. Location

The location and boundaries of the zoning districts are hereby established as shown on a map titled "Zoning Map of the Town of Rochester, Massachusetts" dated November 16, 1998, as amended, and is hereby declared to be part of this By-law.

*(Amended: Articles II & III, November 16, 1999 Special Town Meeting)*

### B. Lot Dimensions

1. Any dwelling hereafter erected, altered, or placed shall be located on lot with frontage on an approved or accepted street. Said lot shall not have less than the minimum requirements set forth in the table below, and no more than one dwelling shall be built upon any such lot. No existing lot shall be changed as to the size or shape so as to result in the violation of the requirements set forth below:

<u>Min. Lot Area Sq. Ft.</u>	<u>Min. Lot Frontage In Ft.</u>	<u>Min. Front Side, Rear Yards in Ft.</u>	<u>Max. Struct. Cover % Lot Area</u>	<u>Structure Height Feet</u>	<u>*Min. Buildable Area in Square Feet</u>
87,120	225	40	20	35	45,000

*(Amended: Article X, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXII, October 24, 2005 Special Town Meeting)*

*(Amended: Re-codified, November 27, 2000 Special Town Meeting)*

*(Amended: Article VI, October 27, 1997 Special Town Meeting)*

*(Amended: Article XXVII, May 17, 1995 Reconvened Annual Town Meeting)*

The shape of the lot must be capable of containing a rectangle with a width of at least one hundred feet (100) at the street-side, and parallel with the street on which frontage is measured, or, if a curve as in a cul-de-sac, parallel to a tangent to the curve with orientation such that the width-line is at right angles to the radius and with a length sufficient that the area of the rectangle contains no less than 50 percent (50%) of the minimum lot size requirements. It must be possible to draw a straight line from this rectangle to the frontage. At no point between the required frontage and the aforementioned rectangle shall the lot width be less than 50 feet.

*(Amended: Article XXII, May 18, 2009 Annual Town Meeting)*

*(Amended: Article XX, June 7, 2004 Annual Town Meeting)*

*(Amended: Article XXV, June 4, 2001 Annual Town Meeting)*

*(Amended: Re-codified, Article IV, November 27, 2000 Special Town Meeting)*

2. Minimum connected upland Buildable area in square feet: 45,000 of which a minimum contiguous 20,000 square feet is within the Structure Placement Area.

*(Amended: Article XXII June 7, 2004 Annual Town Meeting)*

*(Amended: Article XXIV June 4, 2001 Annual Town Meeting)*

*(Amended: Article IV, November 27, 2000 Special Town Meeting)*

### VIII.B.

3. A lot or parcel of land having an area or a frontage of lesser amounts than required by this table may be considered as coming within the area and frontage requirements of this section, provided such lot or parcel of land was shown on a plan described in a deed duly recorded or registered at the time of the adoption of this bylaw, and did not at the time of such adoption or later adjoin other land of the same owner available for the use in connection with such lot or parcel as stated in Section VI, Chapter 40A.

*(Amended: Re-codified, Article IV, November 27, 2000 Special Town Meeting)*

4. Any lot lawfully laid out on a plan endorsed with the words "approval under the subdivision control law not required"; or words of similar import, pursuant to Massachusetts General Laws, Chapter 41, Section 81P, which complies at the time of such recording or endorsement, whichever is earlier, with the minimum area, frontage, width, and depth requirements, of the protective bylaw then in effect, was held in common ownership with that of adjoining land located in the same residential district, and further provided, at the time of building, such lot is in a district zoned for residential use, and conforms except as to area, frontage, width and depth requirements with the applicable provisions of the protective by-law then effect, may be built upon for residential use for a period of five years from the date of such recording or endorsement.

*(Amended: Article XXVII, June 4, 2001 Annual Town Meeting)*

*(Amended: Re-codified, Article IV, November 27, 2000 Special Town Meeting)*

5. The limitation on height of a structure shall not apply in any district to chimneys, ventilators, spires, antennas used exclusively for on-site applications, or purely ornamental features of a structure, provided such features are in no way used as living space. The provisions of this section shall apply solely to features attached to the primary structure.

*(Amended: Article XX, June 4, 2007 Annual Town Meeting)*

*(Amended: Re-codified, Article IV, November 27, 2000 Special Town Meeting)*

6. In order to provide Rochester landowners of sizeable acreage and limited frontage with some opportunity to realize at least some development value without the time and expense of initiating a Definitive Subdivision proposal, the Rochester Zoning By-law provides the options of a Back Lot Division by Special Permit: a parcel with no other contiguous land in common ownership may be divided into two or more lots, one of which has less than the normally required frontage on a public way existing at the time of the Special Permit request, and a single-family dwelling may be built on the reduced frontage lot, provided that such division is authorized on a Special Permit granted by the Planning Board. Such a

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division may be authorized if meeting each of the following, but not otherwise:

*(Amended: Re-codified: Article II, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXVI, June 4, 2007 Annual Town Meeting)*

*(Amended: Article XXI, June 9, 2003 Annual Town Meeting)*

*(Amended: Article XX, June 4, 2001 Annual Town Meeting)*

*(Amended: Article IV, November 27, 2000 Special Town Meeting)*

- a. The applicant shall demonstrate that an additional lot is achievable under Rochester Zoning By-Laws for conventional subdivisions as specified in Section VIII.B and the Rules & Regulations governing subdivisions.

*(Amended: Article II, October 29, 2007 Special Town Meeting)*

- b. The lot having reduced frontage must have frontage of at least 35 feet.

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- c. The lot having reduced frontage must contain at least twice as much lot area as otherwise required, without counting any portion of its access strip (the portion of the lot between the street and the point where lot width equals 100 feet or more).

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- d. The lot having reduced frontage must be capable of containing a square with sides equal to the normally required lot frontage. The access strip shall be configured with a minimum 35-foot width throughout such that a straight line may extend from the frontage to this square.

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- e. All other requirements specified in Section VIII.B. must be met.

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- f. No lot having less frontage than normally required shall be approved by the Planning Board if it abuts another such lot which is or was in the same ownership either at the time of application or at any time within the five years preceding that time, or if the proposed lot has less than normally required frontage on a road created by a subdivision within the five (5) years preceding the proposal.

*(Amended: Re-codified, Article II October 29, 2007 Special Town Meeting)*

*(Amended: Article XXI, June 9, 2003 Annual Town Meeting)*

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- g. Egress from the created lots must involve no greater hazard owing to grade and visibility limitations than would be normal for a standard lot in the same vicinity.

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- h. Reduction of privacy, damage to the natural environment, and difficulties of utility provision must be no greater than would be expected for standard land division at that location.

*(Amended: Re-codified, Article II October 29, 2007 Special Town Meeting)*

- i. The proposal must be determined by the Planning Board to not circumvent the intent of the Rochester Zoning By-laws.

*(Amended: Article II, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXI, June 9, 2003 Annual Town Meeting)*

- j. Such lots shall not be further divided.

*(Amended: Article II, October 29, 2007 Special Town Meeting)*

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- k. Any reduced frontage lot created under these provisions shall be shown and identified on a plan endorsed by the Planning Board as "Lot\_\_\_ approved for reduced frontage and shall not be further subdivided."

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

- l. Such Back lots shall have underground utilities.

*(Amended: Re-codified, Article II, October 29, 2007 Special Town Meeting)*

*(Amended: Article XVIII, October 24, 2005 Special Town Meeting)*

- m. The Planning Board may promulgate Rules and Regulations governing Back Lot Special Permits from time to time as it judges appropriate.

*(Amended: Article XVIII, October 24, 2005 Special Town meeting)*

### C. Permitted Uses

1. Single family dwelling
2. Accessory structures

No accessory structure other than roadside stand shall be located within the front yard area. No accessory structure shall be located in any side yard area nearer to the side lot line than forty feet, or in the rear yard area nearer to the rear lot line than forty feet, or nearer to another principle or accessory structure than ten feet. Height shall not exceed the height of the principal structure except where

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permitted below:

*(Amended: Article XXI, June 4, 2007 Annual Town Meeting)*

- a. Garage not to exceed ground floor area of one thousand (1,000) square feet.

*(Amended: Article XXII, June 5, 2000 Annual Town Meeting)*

*(Amended: Article XXV, May 17, 1995 Reconvened Annual Town Meeting)*

- b. Minor farm structures used to house animals not to exceed six hundred seventy-five (675) square feet of floor area.

*(Amended: Article XXIII, June 5, 2000 Annual Town Meeting)*

*(Amended: Article XXV, May 17, 1995 Reconvened Annual Town Meeting)*

- c. Guesthouse not to exceed total floor area of three hundred square feet.

- d. Accessory structure not to exceed ground floor area of one thousand (1,000) square feet.

*(Amended: Article XXIV, June 5, 2000 Annual Town meeting)*

1. Accessory structures under one hundred fifty square feet, ground floor area, in rear yard only and not to be used to house animals may be set back from property line ten feet.

*(Amended: Article XXV, May 17, 1995 Reconvened Annual Town Meeting)*

2. Accessory structure one hundred fifty square feet or more ground floor area, shall not be located in front yard area and must meet 40 feet setback from all other lines.

*(Amended: Article XXV, May 17, 1995 Reconvened Annual Town Meeting)*

- e. Roadside stand to be located not less than fifteen feet from street line and forty feet from side lot line and not to exceed eighty square feet floor area.
- f. For purposes of calculating "ground floor area" under subsections a, b, and d above, "ground floor area" shall refer to the total area of the lot covered by the accessory building, including those areas within the horizontal projections of the roof or floor area above the building's ground floor area above the building's ground floor.

*(Amended: Article XXV, May 17, 1995 Reconvened Annual Town Meeting)*

### VIII.C.

3. A major farm structure shall have a minimum setback of one hundred feet from any street line and all lot lines.
4. Religious, educational or municipal use except cemeteries
5. Uses incidental to residential use on the same premises are limited to the following:
  - a. Use of a room or rooms in a dwelling for home occupations conducted by the resident occupant only; such as dressmaking, home cooking, millinery, provided that there not be compensated employment of more than one employee, exclusive of family members living on the premises.
  - b. Use of the premises or structure thereon in connection with his trade conducted primarily away from his home by a resident tradesman such as carpenter, electrician, painter, plumber, mason, furnace repairman; provided that there not be compensated employment of more than one employee, exclusive of family members living on the premises.
  - c. Use of premises in professional occupation such as physician, dentist, hairdresser, barber, attorney, draftsman, engineer, accountant and real estate; provided that there not be compensated employment of more than one employee, exclusive of family members living on the premises
  - d. Display of one sign pertaining to the use of the premises with a total area of not more than nine square feet. The sign shall be limited to the identification of premises, their occupants or users, or the business conducted therein. Flashing or rotating lights shall not be permitted.

*(Amended: Article XIX, October 24, 2005 Special Town Meeting)*

6. Farm or nursery, including the display and sale of stock.
7. Raising of not more than four hogs or pigs for personal use provided the penned area and all structures are not in the front yard area and setback one hundred feet from all property and street lines.
8. Raising of not more than ten rabbits for personal use provided the hutch is not in the front yard area and is setback forty feet from all property and street lines.
9. Storing of one unoccupied trailer in an accessory building or storing of one unoccupied trailer on a lot, not in the front yard area and

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conforming with all other lot setback dimensions.

10. Private swimming pools twenty-four inches deep or more and having a surface area of two hundred fifty square feet or more shall be required to have an enclosure not less than forty-eight inches above ground. The construction of the fence shall be as to prohibit the passage of a sphere larger than four inches through any opening or under the fence and able to withstand a horizontal load of two hundred pounds.

11. Use of a trailer for a period not to exceed twelve months as a temporary replacement for a dwelling destroyed by fire or natural causes.

*(Amended: Article VI, November 27, 2000 Special Town Meeting)*

*(Amended: Article XVI, February 25, 2002 Special Town meeting)*

12. Occupancy of a recreational vehicle on a lot shall require a permit from the building inspector.

*(Amended: Article XVI, February 25, 2002 Special Town Meeting)*

13. Transportation trailers and boats are not to be stored in the front yard area and conforming with all other lot setback dimensions.

14. Antennas, towers, windmills shall not be located in front yard area and setback from all property lines equal to or greater than the height of the structure plus twenty feet.

15. Flagpoles shall be setback from all property lines equal to or greater than the height of the pole.

16. Upon issuance of a permit by the building inspector, use and occupancy of a temporary trailer for a period of one year or a period ending thirty days following completion of the construction of a permanent dwelling on the premises, whichever first occurs.

### **D. Uses Permitted by Special Permit**

1. Use of the premises or structure therein in connection with a trade by a resident requiring employment of more than one employee.

2. Renting of rooms or furnishing of board for not more than four persons in a single-family dwelling unit.

3. Display of a sign pertaining to the use of the premises with a total area in excess of nine square feet. The sign shall be limited to the identification of premises, their occupants or users, or the business conducted therein. Flashing or rotating lights shall not be permitted.

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4. Commercial raising of hogs, pigs or fur-bearing animals, however, only if such activity is carried out five hundred feet or more from any lot line or street line.

4. Personal wireless service facilities in accordance with Section XX.

*(Amended: Article V, November 27, 2000 Special Town Meeting  
(Amended: Article XVI, February 25, 2002 Special Town Meeting)*

5. Use of a temporary trailer beyond one year, provided that application for the special permit is made at least thirty days prior to the expiration of the temporary trailer permit authorized by the building inspector under Section VIII. C.11.
6. Where the intended or proposed use for a parcel in any zoning district is not specifically allowed by special permit or by variance herein, the board of appeals may grant a special permit or use variance for said intent or purpose, subject to a public hearing at which it has been shown that the proposed use is in harmony with the general purpose or intent of the bylaws.

Within ten days of receipt of the application for such a special permit, the Board of Appeals shall transmit one copy of the application to each of the following: Conservation Commission, Planning Board, Board of Health, Highway Surveyor, Chief of Police, Fire Chief and Building Commissioner and Industrial Development Commission.

*(Amended: Article XXVII, October 24, 2005 Special Town Meeting)  
(Amended: Article XIX, June 3, 2002 Annual Town Meeting)*

7. Private club, hospitals, sanitariums, convalescent homes, motel, hotel, restaurant, cemetery.
8. Any place of business such as a golf course, bowling alleys, office building, junkyard, bank, newspaper, repair shop, gas station or building for public utilities, etc., and a setback of at least eighty feet from all lot lines and any street lines on all structures.
9. Multifamily Dwelling
  - a) Conversion of a single-family dwelling to a two-family dwelling, provided that the single family dwelling was occupied for at least five years prior to date of application.
  - b) One structure consisting of a two-family dwelling unit hereafter erected shall have a minimum lot size of one hundred five thousand square feet with a minimum frontage of three hundred feet.

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- c) One structure consisting of three-family dwelling unit hereafter erected shall have a minimum lot size of one hundred forty-five thousand square feet with a minimum frontage of three hundred seventy-five feet.
  - d) One structure consisting of four-family dwelling until hereafter erected shall have a minimum lot size of one hundred eighty-five thousand square feet with a minimum frontage of four hundred fifty feet.
  - e) Not more than one multifamily dwelling shall be constructed on a lot.
  - f) Parking spaces and screening shall be determined by the Board of Appeals.
  - g) Hereafter a multifamily dwelling shall not have more than four dwelling units.
10. No structure or accessory structure shall be constructed or allowed with a height greater than thirty-five (35) feet without a Special Permit from the Zoning Board of Appeals. Such Special Permit shall not exempt structure from the requirements of Section VIII (C) (14). This provision shall not apply to those features exempt pursuant to Section VIII (B)(5).

*(Amended: Article XIX, June 4, 2007 Annual Town Meeting)*  
*(Amended: Article XIII: May 19, 1997, Special Town Meeting)*

11. *(Deleted: Article XVI, February 25, 2002 Special Town Meeting)*

12. Flexible Development  
*(Amended: Article VI, November 27, 2000 Special Town Meeting)*  
*(Adopted: Article I, October 27, 1997 Special Town Meeting)*

a. Purposes

The purposes of Flexible Development provisions, in addition to the general purpose of the Zoning Bylaw are these:

- 1. To allow for flexibility and creativity in the design of developments.
- 2. To encourage the permanent preservation of natural and cultural resources, including open space, agricultural and forestry land, water bodies and wetlands, other natural resources, and historical and archeological resources.

**VIII.D.12.a.**

3. To reflect Rochester's traditional rural character.
4. To protect scenic vistas as seen from Rochester's roadways and To preserve the integrity of other places.
5. To facilitate the economical and efficient construction and maintenance of streets, utilities and public services.
6. To protect existing and potential public water supplies, and the capacity and safety of the street network.
7. To encourage a non-sprawling and efficient form of development that conforms to topography and other natural and cultural features
8. To minimize the total amount of disturbance of existing terrain.
9. To preserve agricultural open space and farmland features of the area.
10. To preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails
11. To further the goals and policies of the *Rochester Master Plan*.

**b. Decision Basis**

Plans are to be approved for Flexible Development provided that the Planning Board determines that they comply with the following requirements and, in so doing, better serve Town interests that would be expected from a conventional plan at the full density conventionally allowed. To facilitate that superior performance, these provisions allow flexibility in type of development, lot size and configuration, and the means of providing for open space, if it is to be included.

These provisions are not intended as a means of obliging density reduction below that otherwise allowed, or to impose limitations on the rate of development, although an applicant may elect to propose densities lower than allowed or constraints on build-out rate as part of the chosen approach.

**c. Applicability and Procedures**

1. The provisions of this Section are applicable to all Major Residential Developments, regardless of size or district. In addition, developments other than Major Residential

VIII.12.c.1.

Developments may, at the applicant's option, seek approval under these provisions. A single MRD plan may include land in more than one ownership and may include non-contiguous parcels, whether or not in the same ownership. If the plan involves more than one ownership, each owner of land included in the plan shall be a party to the application and upon plan approval, subject to its provisions.

2. The use of Flexible Development lots shall be limited to residential use, plus those specified in Section VIII.C.5.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

3. Applicants are encouraged to contact the Planning Board, Board of Health and Conservation prior to application for a special permit to discuss the applicant's plan. Applicants are also strongly encouraged to submit at least one Sketch Concept Plan for review by the Planning Board, preferable several to facilitate selection of a basic conceptual approach. Another of the purposes of this review is to determine the number of lots possible in the Flexible Development. For this reason, it is strongly recommended that a copy of the existing conditions plan required at item subsection c.4.e of this Section VIII.D.12 below be submitted at this stage.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)*

4. Applicants for a special permit for Flexible Development shall submit the following, except for any submittals that the Planning Board has determined to not be germane, and has so documented prior to the public hearing:
  - a. the form of organization proposed to own and maintain any protected open space;
  - b. the substance of covenants to be imposed upon use of land;
  - c. a development schedule,
  - d. a Flexible Resource Development Plan showing the location and boundaries of the site, proposed land and building uses, lot lines, location of open space, proposed location and width of streets and ways, parking, landscaping, existing vegetation to be retained, water supply or approximate location of wells and sewage systems, anticipated sightings of residences, drainage,

VIII.D.12.c.4.d.

proposed easements and methods of sewage disposal. This plan shall be prepared and stamped by a team that includes a Registered Professional Engineer, Professional Land Surveyor, and a Registered Landscape Architect.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- e. An accompanying Existing Conditions Plan depicting existing topography, wetlands, waterbodies and the 100 year floodplain, all existing rights of way, easements, and existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, cart paths, and resources of historic or archeological importance.
- f. A Site Analysis showing locations of soil test pits and percolation tests, with supporting documentation on test results;
- g. A landscape plan as described at Section VIII.D.12.e.2.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)*

- h. A statement indicating the proposed principal uses to be allowed, and their extent; and a statement of the proposed use and ownership of any protected open space proposed.
- i. A natural and wildlife resources inventory approved by vote of the Conservation Commission.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- j. An historical and archeological resources inventory approved by vote of the Historical Commission.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- k. If a shared sewage system is proposed, a system design approved by the Board of Health shall be submitted. If proposed, such sewage system shall be positioned on a segregated separate lot with maintenance access suitable to the Planning Board and Board of Health. This separate lot shall not be designated nor considered to be Open Space.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- l. A plan describing how the open space will be maintained in

VIII.D.12.c.4.I.

perpetuity to the satisfaction of the Planning Board.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- m. Conventional Subdivision Plan (CSP) complying with Section VIII.D.12.1.a and showing the maximum number of lots that could be deemed buildable upon the site under a conventional subdivision process according to reasonable application of the Rochester Zoning By-Laws and the Rules and Regulations Governing the Subdivision of Land in the Town of Rochester and all other applicable state and local rules and regulations. At a minimum, the CSP shall show lot configuration, street layout, setbacks, topography, wetland resource areas, and general location of stormwater management structures and on-site disposal facilities.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- n. A compliance narrative with documentation to address subsections D through K of this by-law.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

5. Upon receipt of the application by the Planning Board, the Planning Board shall give one copy to the Conservation Commission, one copy to the Board of Health and one copy to the Housing Opportunity Partnership, each of whom shall provide written comment to the Planning Board within 45 days. If no written comment is received within that time period, it will be considered approved by the respective Board. The Planning Board shall also give one copy to the Fire and Police Department to ensure that the proposal addresses adequate emergency vehicle access to all lots. If necessary to ensure compliance with this section, the Planning Board in consultation with the Board of Health, may require further engineering or environmental analysis to be conducted at the expense of the applicant.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

d. Density and Dimensional Standards

1. The maximum number of allowable building lots for single family dwellings shall be determined as follows:
  - a. The maximum number of dwelling lots in a Flexible Development, hereinafter, "Basic Maximum Number", shall be derived from and delineated on a Conventional

VIII.D.12.d.1.a.

Subdivision Plan (CSP) as required in Section VIII.D.12.D.12.C.4.m. herein. The applicant shall have the burden of proof with regard to this maximum number of dwelling lots. The Planning Board may request further information for determination of this maximum including but not limited to an approved wetland and resource delineation (including an Abbreviated Notice of Resource Area Delineation) and soil and percolation tests allowing Board of Health confirmation of compliance

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)*

- b. All wetlands shall be defined under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, MGL Ch. 131, Section 40.
- c. The maximum number of dwelling units shall equal the “Basic Maximum Number” of single family lots permitted per Section VIII.D.12.D.1.a., increased by bonus lots as specified in Section VIII.D.12.H., all as limited by Open Space non-wetland area as specified in Section VIII.D.12.G.2.”

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)*

- 2. Provided that all requirements for sewage system can be met, the required individual building lot size for flexible development may be 0.5 times the size of a lot as required at Section VIII.B. A smaller lot may be authorized upon demonstration by the applicant that all applicable standards of zoning (other than lot area and frontage), health and environmental regulations can be met on each such lot proposed, and that the smaller size serves the purposes of this Section.

Each lot, except for Open Space, must meet the requirements of Section VIII.B.2. for minimum contiguous square feet of Buildable Area within the Structure Placement Area. Minimum connected upland Buildable Area for the entire lot shall bear the same relationship to total lot dimensions as the ratio of the requirements of Section VIII.B.2. bears to the Lot Dimensions specified in Section VIII.B.1.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

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3. Each lot shall have sufficient frontage to provide adequate access as intended under the Subdivision Control Law, Section 81K-81GG, Chapter 41, MGL.
4. The following buffers between designated natural or cultural resources and any buildings or parking shall be observed unless, in granting the Major Residential Development special permit, the Planning Board determines that either such buffering is inappropriate, as in the case of proposing an architecturally compatible building in the vicinity of an historic structure, or that meeting these resource buffers would leave otherwise developable property without economically beneficial use, and that the relief granted is the minimum necessary to allow economic use.
  - a. 200 feet from natural wetlands, water bodies, public waters supply wellheads, or vernal pools, and 100 feet from agricultural activities, with at least half of that buffer containing trees and other uncultivated vegetation, in each case at locations as documented in inventory materials approved or amended and approved by vote of the Conservation Commission.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*  
*(Amended: Article VI, November 27, 2000 Special Town Meeting)*

- b. 100 feet from historic structures, archeological sites, or Indian burial grounds and 50 feet each side of corridors of ascertainable Indian trails, in each case where those locations are documented in inventory materials approved or amended and approved by vote of the Rochester Historical Commission.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*  
*(Amended: Article VI, November 27, 2000 Special Town Meeting)*

5. At other locations, the requirements for front, side, and rear yards shall be 0.5 times the yards required under conventional Rochester zoning in Section VIII, except that the conventional yard requirements shall apply for all yards abutting the perimeter of the development.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

6. Every special permit for flexible development shall include a condition that each recorded plan of lots created pursuant to the special permit shall have endorsed upon it a statement that the plan is based upon a special permit for flexible development and that no lot shown thereon may be further divided to increase the

VIII.D.12.d.6.

number of building lots, and shall contain a reference to the flexible special permit and where it is recorded.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*  
*(Amended: Article XXVII, October 24, 2005 Special Town Meeting)*

7. No more than one dwelling may be located on a building lot.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

e. Landscape Design

1. General Approach.

Elements such as any protected open space areas, street trees, stream buffer areas, other buffers, cul-de-sac planting areas, and outstanding specimen trees or tree groupings shall be used as part of the integrated conceptual design uniting the various elements of the site and preserving and enhancing its natural and scenic resource elements.

2. Landscape Plan.

A Comprehensive Landscape plan prepared and stamped by a registered Landscape Architect shall be submitted at the same scale as the development plan, existing conditions plan, and site analysis plan, identifying all areas of retained vegetation, proposed plantings, proposed restrictions upon vegetation alteration, and other elements of the conceptual design.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

3. Requirements

- a. Existing trees and indigenous vegetation shall be retained to the extent reasonably feasible, except where the Board concurs that removal is preferable for opening vistas from public roads, control of invasive growth, or other benefits.
- b. Protected areas and resources shall be linked in continuous patterns to the extent reasonable feasible. The linking shall include continuity of vegetation and availability for human access.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

- c. Protection for trees and tree groupings to be retained shall include avoidance of grade change within the drip line, careful marking to avoid accidental damage, and location of materials and soil deposits distant from those trees.

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### f. Additional Site Design Standards

1. Wherever it is feasible, all buildings shall be located away from agricultural soils that are classified by the U.S. Conservation Service as prime farmland and placed on soils least suitable for production of crops and livestock. This provision does not apply to the location of on-site sewage systems, which must be placed on soils meeting Title 5 of the Massachusetts Environmental Code and local Board of Health regulations.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

2. The layout and construction of utilities, drainage systems, and roads shall be designed to have the least possible impact on on-site and adjacent agricultural lands and uses, mature forests stands, or open space.
3. Farm and woods roads and stone walls should be saved and reused for proposed roads or for lot boundaries where possible.
4. To the maximum extent possible, residential units should be integrated into the landscape to avoid interrupting the views from adjacent public ways. Vegetative and structural screening, landscaping, grading and building placement on the lot should be used to minimize visual interference with pre-existing landscape features.
5. To the maximum extent possible, structures should be sited within any woodland contained on the parcel; along the edges of fields; or in locations where structures can be visually screened or absorbed into natural vegetative or topographic features.
6. The design shall avoid large amounts of cut and fill, unnecessary removal of existing groundcover, and avoidable impacts such as noise, traffic, and view interruption on adjacent developed premises.
7. Sewage systems shared or otherwise shall be located outside of all agricultural land supporting farming operations. For shared systems the Planning Board shall require the applicants to demonstrate that, through easements, restrictive covenants running to the Town, (also see Title 5 Covenants) and/or other appropriate legal devices, the maintenance, repair, future upgrades and all liability shall remain perpetually the responsibility of the private parties and their successors in-

**VIII.D.12.f.7.**

interest and should the Board of Health determine that adequate actions are not taken, the Town may provide these services and cause liens to be placed on the appropriate properties. These documents shall expressly require assumption of the obligations and shall be approved by the Planning Board before any occupancy of any dwelling unit.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

**g. Open Space Requirements**

The following standards shall apply to any open space to be protected as part of the flexible development:

1. The area to be preserved as open space shall be made subject to perpetual restriction of the type described in MGL c, 184, Section 31 (including future amendments thereto and corresponding provisions of future laws) running to or enforceable by the Town of Rochester, which restriction shall limit the use of the protected land to the following:
  - a. Agricultural production, including but not limited to, the raising of crops and livestock, forest management activities, nurseries, orchards;
  - b. Activities necessary to successful agricultural production, including but not limited to, farm equipment operations, manure storage, and use of pesticides, herbicides, and fertilizers as regulated by state and federal laws;
  - c. Farm support operations, including but not limited to, farm equipment storage, agricultural processing, greenhouses and farm animal veterinary services.
  - d. Conservation and passive recreation.
  - e. Shared sewage systems, as provided at subsection c.4.k of this Section VIII.D.12. shall not be constructed on land intended for Open Space designation.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

*(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)*

- f. Buildings shall cover not more than 5% of any parcel reserved as protected open space. Said restriction shall be in such form and substance as the Planning Board shall prescribe and may contain additional restrictions on development and use of the

VIII.D.12.g.1.f.

land as the Planning Board may deem appropriate to meet the purposes of this Section. The restriction shall be recorded in the Registry of Deeds.

2. To the extent possible the preserved land shall form a contiguous tract and shall include minimum connected Buildable Area in the same relationship to non-buildable area as the ratio of the requirements of Section VIII.B.2. bear to the Lot Dimensions specified in VIII.B.1.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

3. Ownership shall be as specified in subsection K of this By-Law.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

h. Bonus Incentives

1. Creating a subdivision development using the flexible approach is often less expensive for the developer as roads are shorter and utilities are grouped together. Thus, Rochester's provision of a flexible development option should be considered an incentive unto itself. However, to further encourage flexible development the following "point incentive system" has been developed. A development plan that meets any of the following criteria will earn the number of points listed. Depending on the total number of points earned, a developer may earn a bonus in the form of extra building lots allowed within the development. The Planning Board will determine, upon review of the development plan the bonus point total.
  - a. Plans shall earn 2 points per percentage point by which permanently protected non-wetland land area exceeds 40% of the total area of such land in the development (e.g. protecting 50% of upland would earn 20 points).
  - b. An agricultural management plan that ensures continued crop production (rather than just haying and mowing) on at least 10% of the site area earns 10 points.
  - c. For protected forest land, a forest management plan covering at least 10% of the site area for at least a 10 year term, if prepared by a forester with credentials acceptable to the Planning Board, earns 10 points.

#### VIII.D.12.h.1.

- d. A flexible plan that protects at least 10 acres of land in one contiguous tract earns 5 points; a plan that protects at least 20 acres in a contiguous tract earns 10 points.
  - e. A flexible plan that protects land in a tract that is contiguous to an already protected area so to increase the area of working agricultural land or forest wildlife habitat earns 10 points.
  - f. A development plan that the Planning Board determines screens structures from view from an existing public way as evidenced by cross sections of the definitive plan at a scale of 1" = 10'-0" earns 5 points.
  - g. Architectural designs for the single family structures that the Planning Board determines match the current character of the area earn 10 points. Architectural elevation drawings of the single-family homes must accompany the site plan to be eligible to receive points in this category, and must be determined by the Planning Board to be consistent with guidelines approved or amended and approved by the Planning Board following a public hearing and filed with the Town Clerk prior to the special permit application date.
  - h. Assuring that at least 10% of the lots or dwelling units will be reserved for households having no more than 80% of the regional median income and spending no more than 30% of that income on housing, as determined by the Housing Opportunity Partnership, earns 15 points.
  - i. Assuring that at least 50% of the lots or dwelling units will be reserved for housing to be occupied by households having not more than one member under 55 years of age earns 20 points.
2. A development plan that earns at least 35 points will earn a 10% building lot bonus above the maximum number of building lots allowed under subsection VIII.d.1.a of this Section VIII.D.12, above. A development plan that earns 50 points or more earns a 20% building lot bonus above the maximum number of building lots allowed under subsection d.1.a of this Section VIII.D.12 if the point total results in a building lot bonus of a fractional number, the bonus building lot total will be rounded down to the next lowest whole number. The total number of building lots cannot exceed 120% of the maximum number of building lots allowed under subsection d.1.a of this Section VIII.D.12 before the

VIII.D.12.h.2.

addition of bonus units.

*(Amended: Article XXIII, June 9, 2003 Annual Town Meeting)*  
*(Amended: Article VI, November 27, 2000 Special Town Meeting)*

i. Road Construction Standards

Roads and drainage within a Flexible Development shall be subject to approval of the Planning Board based on the Rules and Regulations governing subdivisions as guidelines. Said construction standards may be waived in the same manner, which applies to Subdivisions.

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*  
*(Amended: Article V, April 24, 2006 Special Town Meeting)*

j. The Planning Board may promulgate Rules & Regulations governing Flexible Development Special Permits from time to time as it judges appropriate.

*(Amended: Article VI, April 24, 2006 Special Town Meeting)*

k. Ownership of various features specified within this subsection:

*(Amended: Article IV, October 29, 2007 Special Town Meeting)*

1. Open Space: The protected open space may be retained under under any of the following options:
  - a. Conveyed to an incorporated non-profit Homeowners Association made up of the owners within the development subject to a covenant, acceptable to the Planning Board, running with the land which shall be recorded and which provides for the following:
    - i. Ownership and membership within the Homeowners Association shall pass with conveyances of the lots in perpetuity.
    - ii. Maintenance of agricultural open space shall be ensured by establishing a maintenance fee for each lot sufficient to cover maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. The covenant established shall describe land management practices that will ensure that the existing fields and pastures will be plowed or mowed at least once per year. Included with the covenant shall be copies of a lease, for a minimum of five years, with a farmer or operator who will

VIII.D.12.k.1.a.ii

- use the land for agricultural purposes. Such a land agreement document shall be submitted with the Flexible Subdivision Plan and shall be subject to approval by the Planning Board and Town Counsel. A tentative agreement should be established and presented with the Preliminary Subdivision Plan.
- iii. The covenant established shall be approved by the Planning Board and specify that each lot owner has equal say in determining the affairs of the organization. Said covenant shall be enforceable by the Town and guarantee continued maintenance of such open space and/or facilities and assessing each lot a share of maintenance expenses including an agreement empowering the Town to perform maintenance of the open space in the event of failure to comply with schedules proposed in subsection C.4.l, and, if the Town is required to perform any maintenance work, the owners of the lots included in the Homeowner's Association shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said costs have been paid.
  - b. Conveyed to a non-profit land trust whose principal purpose is to conserve farmland and/or forest land, and/or open space; at no cost. Acceptance of such conveyance shall be at the option of the non-profit. Should such acceptance be denied by the non-profit, the portions of a Special Permit Decision relating to subsection G.3. shall become void and require reopening of the Special Permit hearing process for purposes of selecting another option with Subsection G.3., as specified in M.G.L. 40.A § 11.
  - c. Conveyed to the Town at no cost if public access is satisfactory as determined by the Planning Board. Acceptance of such conveyance shall be at the option of the town and shall require approval at Town meeting. Should such approval be denied at Town Meeting, the portions of a Special Permit Decision relating to subsection G.3. shall become void and require reopening of the Special Permit hearing process for purposes of selecting another option with Subsection G.3., as specified in M.G.L. 40.A § 11.
  - d. Conveyed to the Rochester Conservation Commission as Conservation Land at no cost if public access is satisfactory as determined by the Planning Board. Acceptance of such conveyance shall be at the option of the Conservation

**VIII.D.12.k.1.d.**

Commission. Should such acceptance be denied by the Conservation Commission, the portions of a Special Permit Decision relating to subsection G.3. shall become void and require reopening of the Special Permit hearing process for purposes of selecting another option with Subsection G.3., as specified in M.G.L. 40.A § 11.

- e. If the Open Space is not to be conveyed to any of the above, the applicant shall provide all of the following to the Planning Board for approval prior to commencement of construction:
    - i. A Covenant providing that the Open Space will be deeded as approved by the Planning Board. In addition, such covenant shall not be released by the Planning Board until proof of ownership has been provided to the Planning Board by the applicant.
    - ii. The covenant shall include an agreement empowering the Town to perform maintenance of the open space in the event of failure to comply with the maintenance program included in the application pursuant to subsection C.4.l., providing that if the Town is required to perform any maintenance work, the owners of the lots included in the Flexible Development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said costs have been paid.
  - f. Time of Dedication: All Open Space shall have been dedicated before any building permits are issued. The Building Commissioner shall be formally notified by the Planning Board upon confirmation that dedication per this subsection K is complete.
- 2. Common Sanitary Facilities: The requirement only for the selection of lots so served is specified in Subsection F.7
  - 3. Roads and Drainage Facilities: Unless and until full acceptance of roads and drainage facilities is consummated by the Board of Selectmen following an affirmative vote of a Town Meeting, these facilities shall be the exclusive responsibility of the Homeowner's Association subject to covenants, enforceable by the Town and satisfactory to the Planning Board, accepting responsibility for all street and drainage maintenance including but not limited to plowing, sanding, road repair, trash removal and drainage system maintenance. Said covenant shall empower the Town to perform maintenance

### VIII.D.12.k.3.

Reasonably and normally expected for roads and drainage in the event of failure of the Homeowner's Association to comply, the Town is required to perform these functions and the lot owners in the Association shall pay the cost thereof and that the unpaid costs shall constitute a lien upon their properties.

### 13. Common Driveway

*(Amended: Article XXI, June 4, 2001 Annual Town Meeting)*

A private way, extending from a public way, serving as common vehicular access to two (2) or more but not more than four (4) single-family, residential house lots. A Common Driveway is defined as that portion of a private way serving two or more houses.

#### (a) Eligibility

The owner of each lot involved shall be party to the application for Special Permit. The Planning Board shall require the applicants to propose legal easements appropriate for permanently allowing passage over private property and location of signs on private property as required.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

#### (b) Purpose

The purpose of this by-law is to enhance the safety and welfare of residents served by Common Driveways and to clarify the rights and responsibilities of builders and residents of homes with Common Driveways, and of the Town of Rochester in order to minimize negative impacts on natural resources, to improve the public safety along public ways by reducing the number of curb cuts, and/or to preserve and enhance rural character by reducing the negative visual impact of multiple driveways exiting upon a public way or a way shown on a subdivision plan. The powers of the Planning Board shall be exercised with due regard for the foregoing.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

#### (c) Scope

Common Driveway shall not be permitted except by Special Permit from the Planning Board. Common Driveways and individual driveways originating from Common Driveways shall be subject to all requirements for driveways and off-street parking to which driveways originating from public ways or ways shown on subdivision plans are subject. A Common Driveway which is in

**VIII.D.13.(c.)**

existence and in use at the time of adoption of this by-law will be allowed to continue; however, if it is expanded, extended, or otherwise substantially changed, it shall be subject to this by-law and shall be brought into compliance through an application to the Planning Board for a Special Permit. A Common Driveway shall not become a public way. The Town of Rochester shall not be required to provide maintenance, snowplowing, school bus pickup, trash or recycle collection, or police patrols along a Common Driveway.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

**(d) Lot and Frontage Requirements**

All lots to be served by a Common Driveway must meet the requirements of a lot as defined in the definition of a “lot” in Section III “Definitions” and meet the criteria for Lot Dimensions of the Town of Rochester Zoning By-Laws, or as otherwise approved by Special Permit or variance from appropriate authority. Common Driveways shall never be used to satisfy zoning frontage requirements. Each lot served shall have vital access frontage on a public way or a way shown on a subdivision plan, which serves to satisfy frontage requirements under Zoning By-Laws of the Town of Rochester. All dimensional requirements for lots served by a Common Driveway shall be the same as would be required for those lots had they not shared a Common Driveway.

*(Amended: Article III, October 27, 2007 Special Town Meeting)*

*(Amended: Article XXIII: June 7, 2004 Annual Town Meeting)*

**(e) Design and Construction Standards:**

An engineering plan shall be presented as follows:

1. Common Driveways shall be designed so that they will provide safe vehicular travel. Due consideration shall also be given to the attractiveness to the layout in order to obtain the maximum livability of the Common Driveway neighborhood.
2. Design and construction standards such as width of driveway, curb-cut radii, pavement thickness, and other such dimensions shall conform with the Zoning By-laws and applicable Planning Board Rules and Regulations governing subdivisions as guidelines, as such standards may be amended from time to time. Said construction standards may be waived in the same manner,

VIII.D.13.(e)2.

which applies to subdivisions. Any subsequent change to the roadway surface after the construction of a Common Driveway shall require a modification of the endorsed plan pursuant to M.G.L. 40.A. § 11 and this Special Permit.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

3. Signage and Addresses

A legally binding provision shall be made for a permanent sign displaying Common Driveway name previously approved by the Board of Selectmen and located where the Common Drive abuts the public way or a way shown on a subdivision plan. Displayed just below said sign shall be a second sign with the words "Private Road". Each of the signs shall comply with the Highway Surveyor's specifications.

A legally binding provision shall be made for a permanent Common Driveway "street" number for each individual driveway where it departs from the Common Driveway. Street numbers shall be assigned by the Building Commissioner.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

4. For new lots created with a proposal for access via Common Driveway, all utilities shall be underground, with corresponding easements as appropriate, unless waived by the Planning Board.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

(f) Maintenance, Repair and Upkeep

In issuing any special permit for a Common Driveway, the Planning Board shall require the applicants to demonstrate that, through easements, restrictive covenants or other appropriate legal devices, the maintenance, repair, snow removal, garbage and trash management, use regulations and liability for the Common Driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest and that any breach of this condition shall be deemed noncompliance with the terms of any Special Permit issued hereunder.

(g) Permanence of Common Driveway

On granting of the Special Permit, the Common Driveway shall be the permanent access to each lot included and specific reference shall be made to this Special Permit in all subsequent deeds to the lots.

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(h) Filing Fee and procedure

1. A filing fee of \$50.00 per lot shall be submitted with the preliminary application (See #2 below) to cover administrative costs. In the event that the Planning Board determines that unusual or exceptional circumstances necessitate expert technical review, such costs shall be paid by the applicants.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

2. A preliminary application shall be made to the Planning Board with all the required legal and engineering plans. A preliminary Special Permit hearing will be scheduled as part of the next regularly scheduled Planning Board meeting. A Special Permit hearing will be scheduled not more than 30 days after formal application is submitted per M.G.L. 40.A. § 11.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

*(Adopted: Article XXI: June 4, 2001 Annual Town Meeting)*

- (i) The Planning Board may promulgate Rules & Regulations governing Common Driveway Special Permits from time to time as it judges appropriate.

*(Amended: Article III, October 29, 2007 Special Town Meeting)*

14. Personal wireless service facilities in accordance with Section XX.

*(Amended: Article V, November 27, 2000 Special Town Meeting)*

15. Special Residential Development in accordance with Section XVIII.

*(Amended: Article I, October 4, 2004 Special Town Meeting)*