

ZONING BYLAW  
FOR  
TOWN OF CHESTER, MASSACHUSETTS

■ REVISED MAY 2005

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# **1 SECTION I-PURPOSE**

The purposes of this Bylaw are to promote the health, safety, and general welfare of the inhabitants of the Town of Chester; to protect and conserve the value of property within the Town; and to secure safely from fire, congestion, or confusion, all in accord with the General Laws of the Commonwealth of Massachusetts, Chapter 40A.

## 2 SECTION II - ESTABLISHMENT OF ZONING DISTRICTS

### 2.0 TYPES OF DISTRICTS

For the purposes of this Bylaw, the Town of Chester is hereby divided into the following types of use districts:

<u>Short Name</u>	<u>Full Name</u>
R	Residential
AR	Agricultural Residential
B	Mixed Use Village Business
I	Industrial
FWR	Floodplain and Westfield River Protection

### 2.1 ZONING MAP

Said zoning districts are located and bounded as shown on a map entitled "Zoning Map of Chester, Massachusetts", dated 1968, and on file in the office of the Town Clerk. The Zoning Map with all explanatory matter thereon, is hereby made a part of this Bylaw. The Floodplain and Westfield River Protection District is defined on maps described in Section 4.0.

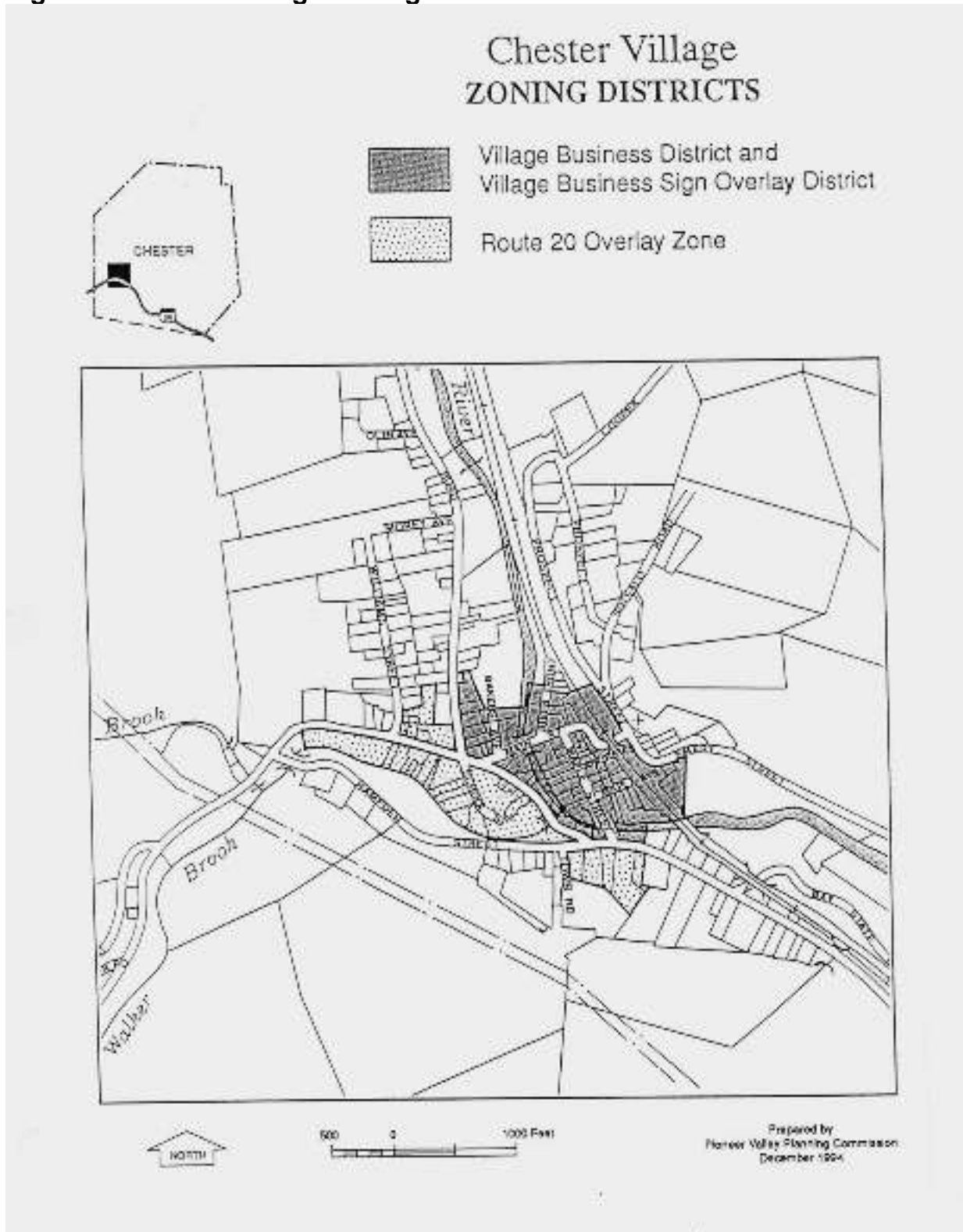
### 2.2 ZONING MAP INTERPRETATION

For purposes of interpretation of the Zoning Map, the location of the boundary lines of the districts shown upon the Zoning Map shall be determined as follows:

- 2.2.1 Zoning district boundaries which follow streets, railroads, or water courses shall be deemed to coincide with the mean center line thereof.
- 2.2.2 Where the boundary lines are shown approximately on the location of property or lot lines and the exact location of the property, lot, or boundary lines is not indicated by means of figures, then the property or lot lines shall be the boundary lines.
- 2.2.3 Where a zoning district boundary, other than an overlay district boundary, divides a lot which was in single ownership on 1968, or upon the effective date of any amendment changing the boundaries of one of the zoning districts in which the lot or a portion of the lot lines, the regulations applicable to either zoning district may be extended to as much of the lot as lies within 30 feet of the adjacent zoning district boundary.

2.2.4 In all cases which are not covered by the other provisions of this Section, the location of boundary lines shall be determined by the distances in feet if given from other lines upon said map, by the use of identifications as shown on the map, or if none are given, then by the scale of said map.

Figure 1: Chester Village Zoning Districts



### 3 SECTION III – GENERAL USE REGULATIONS

#### 3.0 SCHEDULE OF REGULATIONS

3.0.1 Except as provided elsewhere in this Bylaw no building or structure shall be constructed, and no building, structure or land, or part thereof shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized. The restrictions and controls intended to regulate development in each district are set forth in Table 1. Chester Schedule of Use Regulations:

- Y** - Yes – Use Permitted
- SP** - Use Allowed by Special Permit
- N** - No – Use Prohibited

Uses permitted and uses permitted by special permit shall be in conformity with all intensity regulations and other pertinent requirements of the Bylaw.

#### 3.0.2 Floodplain and Westfield River Protection District Uses

See Section 4.0, the Floodplain and Westfield River District, to determine what uses are permitted.

#### 3.0.3 Intensity Regulations

The locations and types of land use are specified in TABLE 1 – CHESTER SCHEDULE OF USE REGULATIONS

**Table 1: Chester Schedule Of Use Regulations**

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.4	<u>AGRICULTURAL</u>					
	Agriculture, Horticulture, Floriculture or Viticulture	Includes the raising of stock. Must be located on Parcels of land with more than 5 acres.	Y	Y	Y	Y
	Small Agriculture, Horticulture, Floriculture or Viticulture	Must be located on parcels of land with 5 acres or less. Excludes the raising of hogs, pigs, or fur-bearing animals.	N	Y	N	N
	Raising of Hogs, Pigs, or Fur-Bearing Animals on Parcels of Land With 5 Acres or Less	Such activity must be carried on at least 500 feet from any property lines.	N	SP	N	N
	Raising of Hogs, Pigs, or Fur-Bearing Animals on Parcels of Land Over 5 Acres	Such activity must be carried on at least 500 feet from any property lines.	Y	Y	Y	Y
	Nursery	Must be located on parcels of land with more than 5 acres	Y	Y	Y	Y
	Small Nursery	Must be located on parcels of land with 5 acres or less.	N	Y	N	N
	Farm Stand	For the display and sale of natural products the majority of which are raised in town during the months of June, July, August and September of every year. Must be located on parcels of land with more than 5 acres.	Y	Y	Y	Y
	Small Farm Stand	For the display and sale of natural products, the majority of which must be raised in town. Must be located on parcels of land with 5 acres or less.	N	Y	N	N



<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.4	<u>AGRICULTURAL (CON'T)</u>					
	Commercial Riding Stable, Riding School on Parcels of Land with More than 5 Acres		Y	Y	Y	Y
	Commercial Riding Stable, Riding School on Parcels of Land with 5 Acres.		N	SP	N	N
	Private Riding Stable		Y	Y	Y	Y
	Aviation Field		N	SP	N	N
	Golf course		N	SP	N	N
	Boat Livery		N	SP	N	N
	Ski Tow		N	SP	N	N
	Soil, Gravel, Loam and Sand Removal		N	SP	N	N
	Boarding Kennel	Must be located on parcels of land with more than 5 acres.	SP	SP	SP	SP
3.0.5	<u>RESIDENTIAL</u>					
	Single Family Homes		Y	Y	Y	Y
	Multi-Family Homes		N	N	Y	N
	Two-family Homes		SP	SP	Y	N
	Common Access Driveways Detached One-Family Dwelling	See Section 5.2 for additional standards	Y	Y	Y	N

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.5	<u>RESIDENTIAL (CON'T)</u>					
	Renting of Rooms or Furnishing of Board	For not more than (4) persons in a dwelling regularly occupies for residential purposes for a period not less than 30 consecutive days.	Y	Y	Y	N
	Dwelling Conversion	Conversion of a one-family dwelling existing at the time of the adoption of this Zoning Bylaw in 1968 into a two-family dwelling	SP	SP	N	N
	Mobile Home	See Section 3.1 for additional information	N	N	N	N
	Creative Development	See Section 5.3 for additional standards	N	SP	N	N
3.06	<u>INSTITUTIONAL</u>					
	Religious, Education or Municipal Use		Y	Y	Y	Y
	Hospital, Sanatorium, Convalescent Home or Nursing Home		Y	Y	Y	N
	Private Club Not Conducted for Profit		SP	SP	N	N
	Child Care Facility		Y	Y	Y	Y
	Family Day Care Home		Y	Y	Y	Y

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.7	<u>BUSINESS</u>					
	Open-Air Movie Theater		N	SP	N	N
	Office		N	N	Y	Y
	Bank		N	N	Y	Y
	Newspaper or Job Printing Establishment		N	N	Y	Y
	Hotel, Motel		N	N	Y	Y
	Bed and Breakfast Home	<p>Before a Special Permit can be obtained the owner must obtain a Disposal works Construction Permit from the Board of Health to ensure that the existing sewage disposal system is adequate for the proposed alteration to the existing building.</p> <p>A Bed and Breakfast use must comply with the following standards:</p> <p>a. The rooming units shall not include individual kitchens.</p> <p>b. The rooming units must share a common entrance for the single-family dwelling.</p> <p>c. The use must not change the single-family character of the dwelling.</p> <p>d. Transient occupants are prohibited from staying more than 60 days in a one-year period.</p> <p>e. The exterior appearance of the structure shall not be altered from its single-family character.</p>	SP	SP	SP	SP

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.7	<u>BUSINESS (CON'T)</u>					
	Bed and Breakfast Establishment	Must comply with the Standards & Conditions Requirements for a Bed and Breakfast Home	SP	SP	SP	SP
	Restaurant		N	N	Y	Y
	Any Wholesale or Retail Business, Research, Laboratory, Service or Public Utility	Uses must not involve manufacturing on the premises except of products the major portion of which is sold on the premises by the producer to the consumer, provided that such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion of fire.	N	N	Y	Y
	Automotive Service Station, Repair Shop, Storage Garage or Salesroom		N	N	Y	Y
	Place of Amusement or Assembly		N	N	SP	N
	Club Conducted for Profit		N	N	SP	N
	Mixed-Use Building	The development of a tract of a building or structure with two or more different uses such as, but not limited to, residential, office, manufacturing, retail, public or entertainment, in a compact form.	N	N	Y	N

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.8	<u>INDUSTRIAL</u>					
	Any Manufacturing or Industrial Use	Including processing, fabrication and assembly, provided that no such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt order, fumes, smoke, gas. Sewerage, refuse, noise, excessive vibration or danger of explosion or fire.	N	N	N	Y
	Automobile Dismantling or Used-Parts Yard		N	N	N	SP
	Junk Yard		N	N	N	SP
3.0.9	<u>ACCESSORY USES</u>					
		Uses customarily incidental to a permitted main use on the same premises, including but not limited to the following:				
	Home Occupation	Use of a room or rooms in a dwelling for customary home occupations by resident occupants such as dressmaking, candy making, or for practice, by a resident, of a recognized profession	Y	Y	Y	Y
	Home Trade	Use of premises or building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber, or other artisan, provided that no manufacturing or business requiring substantially continuous employment of other person(s) be carried on. Accessory structures may be used to house home trade use.	Y	Y	N	N

<u>BY LAW NUMBER</u>	<u>LAND USE CLASSIFICATION</u>	<u>STANDARDS &amp; CONDITIONS</u>	<u>R</u>	<u>AR</u>	<u>B</u>	<u>I</u>
3.0.9	<u>ACCESSORY USES</u> Bus Shelter for Public School	See Section 3.3.3 for additional information	N	Y	N	N

\* the placement of multiple signs on a single business property may require a Special Permit from the Zoning Board of Appeals.

### **3.1 MOBILE HOMES**

No mobile homes may be occupied except in a trailer park operating under a license from the Board of Health. This regulation shall not apply under the following conditions:

- 3.1.1 A mobile home or trailer, which in 1968, is located and occupied in conformity with the provisions of Section III pertaining to detached one-family dwellings, may remain in that location, but, if removed, it shall not return nor be replaced by another trailer or mobile home.
- 3.1.2 The owner or occupier of a residence which has been destroyed by fire or other natural holocaust may place a mobile home on the site of such residence and may, by right, reside in such mobile home for a period not to exceed twelve months while the residence is being rebuilt. Any such mobile home is subject to the provisions of the State Sanitary Code. The mobile home must be removed from the site upon issuance of the Certificate of Occupancy by the Building Inspector for the rebuilt residence.

### **3.2 NON-CONFORMING USES AND STRUCTURES**

3.2.1 This Bylaw shall not apply to any structures or uses lawfully in existence or lawfully begun in 1968 or through subsequent amendment of this Bylaw which do not conform to the requirements of the district in which it is located.

#### **3.2.2 Alteration or Reconstruction**

A non-conforming structure may not be altered or reconstructed, if the cost of such alteration exceeds 50 percent of the assessed valuation of the structure at the time of the change, except by special permit from the Zoning Board of Appeals that the alteration or reconstruction shall not be more detrimental to the neighborhood than the existing structure.

#### **3.2.3 Extension**

There may be no increase in the extent of a non-conforming use or structure.

#### **3.2.4 Restoration**

No non-conforming structure damaged by fire or other causes to the extent of more than 7 percent of its assessed valuation shall be repaired or rebuilt except by special permit from the Zoning Board of Appeals that the restoration shall not be more detrimental to the neighborhood than the original structure.

A non-conforming building listed in the National and/or State Registers of Historic Places which is destroyed by fire or other catastrophe, may be rebuilt with the

approval of the Board of Appeals even where the restoration cost exceeds 75% of the replacement value at the time of the loss.

### 3.2.5 Abandonment

A non-conforming use which has been abandoned for two years or more shall not be re-established, and any other future use shall conform to this Bylaw.

### 3.2.6 Changes

Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

## **3.3 INTENSITY REGULATIONS**

3.3.1 A dwelling hereafter erected in any district shall be located on a lot having not less than the minimum requirements set forth in the Table 2, and no more than one dwelling shall be built upon any such lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in Table 2.

3.3.2 A building or structure hereafter erected in a Business or Industrial District shall be located on a lot having not less than the minimum requirements set forth in Table 2. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth in Table 2.



**Table 2: Table of Intensity Regulations**

<u>DISTRICT</u>	<u>USE</u>	<u>MINIMUM LOT DIMENSION</u>		<u>YARD DIMENSION</u>			<u>MAXIMUM HEIGHT OF BUILDINGS (C)</u>		<u>MAXIMUM % COVERAGE INCLUDING ACCESSORY BUILDING</u>	<u>NOTES</u>
		Area in Sq Ft.	Front (a) in In Ft.	Front (a) in Ft.	Side (b)	Rear in Ft.	No. of Stories	Ft.		
R	Agriculture, Nursery, Farm Stand, Riding Stable	More than 5 Acres	100	25	10	30	2 ½	35	30%	
R	Accessory Use	-	-	-	-	-	-	-	-	See Section 3.3.3
R	Any other permitted use	10,000	100	25	10	30	2 ½	35	30%	
AR	Agriculture, Nursery, Farm Stand, Riding Stable	More than 5 acres	200	40	40	40	2 ½	35	20%	
AR	Accessory Use	-	-	-	-	-	-	-	-	See Section 3.3.3
AR	Creative Development	See Section 5.3	See Section 5.3	See Section 5.3	See Section 5.3	See Section 5.3	See Section 5.3	See Section 5.3	See Section 5.3	
AR	Any other permitted use	86,000	200	40	40	40	2 ½	35	20%	
B & VB	Agriculture, Nursery, Farm Stand, Riding Stable	More than 5 acres	100	25	10	25	2 ½	35	40%	
B & VB	Detached One-Family Dwelling, Renting of Rooms or Furnishing of Board	100,000	100	25	10	20	2 ½	35	40%	

<u>DISTRICT</u>	<u>USE</u>	<u>MINIMUM LOT DIMENSION</u>		<u>YARD DIMENSION</u>			<u>MAXIMUM HEIGHT OF BUILDINGS (C)</u>		<u>MAXIMUM % COVERAGE INCLUDING ACCESSORY BUILDING</u>	<u>NOTES</u>
		Area in Sq Ft.	Front (a) in In Ft.	Front (a) in Ft.	Side (b)	Rear in Ft.	No. of Stories	Ft.		
B & VB	Any other permitted use	8,000 (a)	50	15	10(d)	20(e)	3	40	60%	
I	Agriculture, Nursery, Farm Stand, Riding Stable	More than 5 acres	50	15	10	20	3	40	60%	
I	Accessory use	-	-	-	-	-	-	-	-	See Section 3.3.3
I	Any other permitted use	8,000 (a)	50	15	10(d)	20(e)	3	40	60%	
FWR	Any permitted use	Within the Floodplain and Westfield River Protection district, the dimensions regulations of the underlying district shall remain in effect.								

- a) For single-family and two family residential uses, a lot or parcel of land having an area, frontage, width, yard, or depth dimension lesser than the amounts required by Table 2 may be a valid lot provided that such lot or parcel of land was shown on a plan that was recorded or endorsed, whichever occurred sooner and:
- (i) was not held in common ownership with any adjoining land,
  - (ii) conformed to then existing requirements, and
  - (iii) had less than the requirements but at least five thousand square feet of area and fifty feet of frontage.

However, when two or more substandard lots abut one another, the substandard lots must be combined at the time of the permit application to form one lot which will meet or more closely appropriate the minimum lot area and frontage requirements of the existing zoning bylaw.

- b) To be measured from the right-of-way line where a plan of the way is on file with the Registry of Deeds or, in the absence of such a plan, from a line 25 feet from and parallel with the center line of the street.
- c) The limitation on height of a building shall not apply in any district to chimneys, ventilators, towers, spires or other ornamental features of buildings which features are in no way used for living purposes.
- d) Side yard dimension will be (50) feet when adjacent to Residential (R) District.
- e) Rear yard dimension will be (50) feet when adjacent to Residential (R) District.

### 3.3.1 Accessory Building Intensity Regulations

Bus shelters for public school students and farmstands in the AR district are permitted in the required front yard area. Any other accessory buildings or structures shall not be located within the required front yard area. No accessory building shall be located in any side yard area nearer to the side lot line than 10 feet, or in a rear yard area nearer to the rear lot line than 10 feet, or nearer to another principal or accessory building than 10 feet. Bus shelters cannot exceed 100 square feet in size and one side of the shelter must remain open. Bus shelters must be located on the parcel it serves, not including the street right-of-way.

## **3.4 TRAILERS**

### 3.4.1 General

No travel trailer or similar facility, however mounted, shall be occupied as a residence or parked or stored within the Town of Chester except as provided in Sections 3.4.3

### 3.4.2 Definition

Trailer: A vehicular type portable structure without permanent foundation, which can be towed, hauled, or driven and primarily designed as a temporary living accommodation for recreational, camping, and travel use and including but not limited to travel trailers, recreational vehicles, truck campers, camping trailers, and self-propelled motor homes.

### 3.4.3 Exception

Notwithstanding above, travel trailers and similar facilities may be:

1. Stored in any enclosed garage provided they are not used as a residence or dwelling or for any purpose other than storage or parking.
2. Parked or stored provided such activity is done on the property of principal residence and they are not used as a residence or a dwelling or for any purpose other than storage or parking; or
3. Used as an office or storage in connection with a construction project.

## **4 SECTION IV - OVERLAY DISTRICT REGULATIONS**

### **4.0 FLOODPLAIN AND WESTFIELD RIVER PROTECTION DISTRICT**

#### 4.0.1 Purposes

The purposes of the Floodplain and Westfield River Protection Districts are to:

- a) Protect life, public safety and property from flooding hazards;
- b) Preserve the natural flood control and flood storage characteristics of the floodplain;
- c) Promote the preservation of agricultural lands along the Westfield River;
- d) Prevent any alternations to the natural flow of the river;
- e) Protect fisheries and wildlife habitat within and along the river;
- f) Control erosion and siltation;
- g) Enhance and preserve existing scenic or environmentally sensitive areas along the shoreline;
- h) Conserve shore cover and encourage well-designed developments;
- i) Prevent water pollution caused by erosion, sedimentation, nutrient or pesticide run-off
- j) Preserve and maintain the groundwater table and water recharge areas within the floodplain.

#### 4.0.2 District Delineation

- a) The Floodplain District is herein established as an overlay district and includes all special flood hazard areas designated as Zones A, A1 -30 on the Chester Flood Insurance Rate Maps (FIRM), dated October 16, 1984 Panels 250136001-0015), on file with the Town Clerk, and hereby made a part of this ordinance.
- b) The Westfield River Protection District is herein established as an overlay district. The area subject to the bylaw shall be the entire length of the West Branch, of the Westfield River and that section from the Chester-Middlefield/Worthington town line to the confluence with Kinne Brook of the middle Branch of the Westfield River within the Town of Chester. The Westfield River Protection District shall encompass those floodplain areas

designated as Zone A or Zones A 1-30 on the Town of Chester Flood Insurance Rate Maps (FIRM) for the Westfield River, West Branch and middle Branch from the Chester-Middlefield/Worthington town line to the confluence with Kinne Brook.

Where the floodplain has not been delineated on the FIRM maps or where the delineation is less than 100 feet for the riverbank the Westfield River Protection District shall be defined as that area within 100 feet, measured horizontally, of the riverbank shall be defined as the river's mean annual high water line (see definitions).

c) The boundaries of the Floodplain and Westfield River Protection Districts shall be determined by scaling distances on the Flood Insurance Rate Map. When interpretation is needed as to the exact location of the boundaries of a District, the Building Inspector shall make the necessary interpretation.

#### 4.0.3 Use Regulations

a) All development, including structural and non-structural activities, whether permitted as a right or by special permit must be in compliance with the Mass. Wetlands Protection Act, Chapter 131, Section 40 of the Massachusetts General Laws and with the requirements of the Massachusetts State Building Code 780 CMR 774.0 pertaining to construction in the floodplain, with the State Environmental Code, Title V, and must comply in all respects to the provisions of the underlying district except that where the floodplain and Westfield River Protection Zoning imposes additional regulations such regulations shall prevail.

#### b) Permitted Uses

The following uses of low flood-damage potential and causing no obstruction to flood flows shall be permitted in the Floodplain and Westfield River Protection Districts provided they do not require new structures or fill.

1. Agricultural uses such as farming, grazing and horticulture.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating, play areas and foot, bicycle or horse paths.
4. Conservation of water, plants, and wildlife.
5. Wildlife management areas.

6. Structures existing prior to the adoption of these provisions which conform with the provisions of the bylaws regulating underlying districts, including maintenance and repair usual for continuance of such an existing structure and improvements to such structures provided that the footprint increase of those improvements does not exceed 25% of the overall footprint of the structure. In the event such structure is destroyed said structure may be rebuilt on the same location but no larger than the original overall footprint.

c) Uses by Special Permit in the Floodplain and Westfield River Protection Districts

The following uses may be allowed by Special Permit from the Zoning Board of Appeals in accordance with the Special Permit regulations in Section 6.5 of this bylaw, and additional restrictions and criteria contained herein:

1. Residence and Agricultural-Residence Districts

- a. Single-family residences, not including mobile homes.
- b. Residential accessory uses including garages, driveway, private roads, utility rights-of-way and on-site wastewater disposal systems.
- c. Substantial improvements to structures or buildings, which conform to the provisions of the underlying districts.

2. Business and Industrial Districts

- a. Uses which are in compliance in all respects with the provisions of the underlying districts.

d) Special Permit Requirements in the Floodplain District

The following Special Permit Requirements apply in the Floodplain District:

1. With Zone A 1-30, where base flood elevation is to provide on the FIRM, the applicant shall obtain any existing base flood elevation data. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing, requirements, as appropriate, of the State Building code.

2. No encroachments (including fill, new construction, substantial improvements to existing structures, or other development) shall be

allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100-year flood in accordance with the Federal Emergency Management Agency's regulations for the National Flood Insurance Program.

3. The proposed use shall comply in all respects to the provisions or the underlying District in which the land is located.

4. The Zoning Board of Appeals may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public and the occupants of the proposed use.

5. Within 10 days of the receipt of the application, the Zoning Board of Appeals shall transmit one copy of the development plan to the Conservation Commission, Board of Health, Building Inspector, and the Planning Board. Final action shall not be taken until reports have been received from the above boards or until 35 days have elapsed.

e) Special Permit Requirements in the Westfield River Protection District

The following Special Permit requirements apply in the Westfield River Protection District, in addition to those requirements specified in Sections 4.0.3(d) and 6.5.

1. A buffer strip extending at least one hundred (100) feet in depth, to be measured landward from each riverbank of the Westfield River shall be required for all lots within the River Protection District. If any lot, existing at the time of adoption of this bylaw, does not contain sufficient depth, measured landward from the riverbank, to provide a one hundred foot buffer strip, the buffer strip may be reduced to 50% of the available lot depth, measured landward from the riverbank.

a) The buffer strip shall be kept in a natural or scenic condition.

b) No buildings nor structures shall be erected, enlarged, altered or moved within the buffer strip except as provided for in Section 4.0.3(b) 6.

c) On-site wastewater disposal systems shall be located as far from the Westfield River as is feasible.

f) Special Permit Criteria

In addition to the provisions of Section 6.5 the Zoning Board of Appeals may issue a special permit if it finds the proposed use is compliant with the following provisions:

1. In the Floodplain District, proposed uses must:

- a. Not create increased flood hazards which are detrimental to the public health, safety and welfare.
- b. Comply in all respects to the provisions of the underlying District or Districts within which the land is located.
- c. Comply with all applicable state and federal laws, including the Massachusetts Building Code and the Massachusetts Wetlands Protection Act (M.G.L., C.131, s.40).

2. In the Westfield River Protection District, proposed uses must also:

- a. Be situated in a portion of the site that will most likely conserve shoreland vegetation and the integrity of the buffer strip.
- b. Be integrated into the existing landscape through features such as vegetative buffers and through retention of the natural shorelines.
- c. Not result in erosion or sedimentation.
- d. Not result in water pollution.

g) Restricted Uses Within the Westfield River Protection District

- 1. No altering, dumping, filling or removal of riverine materials or dredging is permitted, except that maintenance of the river, including stabilization or repair of eroded riverbanks, erosion control or removal of flood debris, may be done under requirements M.G.L. Chapter 131, Section 40, and any other applicable laws, bylaws, and regulations. Riverbank repairs shall be undertaken utilizing only natural materials (i.e. rock) and not with man-made materials (i.e. tires).
- 2. All forest cutting over 25,000 board feet at one time shall require the filing of a Forest Cutting Plan in accordance with the Mass. Forest Cutting Practices Act (M.G.L. Chapter 132, Sections 40-46). In addition, no commercial cutting of forest shall occur within



50 feet of the riverbank. In the area between 50 feet and 100 feet from the riverbank, no more than 50% of existing forest shall be cut.

3. No new impoundments, dams or other water obstructions may be located within the district.

4. No private wastewater treatment facilities, including residential package treatment plants, shall discharge directly to the West and Middle Branches of the Westfield River.

5. All other uses not specifically permitted or allowed by special permit approval within the overlay zone are prohibited.

6. All utilities shall meet the following standards:

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters.

c. New on-site waste disposal systems shall be located to avoid impairment or contamination from them during the flooding and shall be located no less than] 50 feet from the riverbank. Replacement of existing on-site waste disposal systems shall be located as far away from the riverbank as is feasible.

#### h) Prohibited Uses in the Floodway

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Chester Flood Boundary and Floodway Map encroachments are prohibited on the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

#### 4.0.4. Definitions

For the purposes of Section 4.0 of this bylaw, the following definitions apply:

Floodway: the channel of a river or other watercourse plus any adjacent areas that must be kept free of encroachment in order that the 100-year flood may be carried without any increase in flood heights, as shown on the Chester Flood Boundary and Floodway map.

Riverbank : the mean annual high-water line, located within a river bank, that is apparent from visible markings, changes in the character or soils or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic and predominantly terrestrial land.

Encroachment: fill, construction of new structures, substantial improvement to existing structures or other development.

Riverine Material: stone, rock, gravel, soil or other materials which comprise the river's bed or riverbank.

Substantial: improvement to a structure or building which exceeds Improvement 25% of the original footprint of such structure or building.

Floodplain: areas which would be flooded during the occurrence of the 100-year flood, shown as Zones A, A 1-30 on the Chester Flood Insurance Rate Maps.

#### **4.1 VILLAGE BUSINESS SIGN OVERLAY DISTRICT AND ROUTE 20 OVERLAY ZONE**

See Section 5.1 for District Regulations.

## 5 SECTION V - SPECIAL LAND USE REGULATIONS

### 5.0 PARKING REQUIREMENTS

5.0.1 Any building hereafter constructed for business or industrial use shall be so located upon its parcel of land that there may be provided an off-street parking area equal to twice the floor area of the building to be constructed.

#### 5.0.2 Handicapped Parking

a) All parking areas shall provide handicapped accessible parking spaces, as required by the Federal Americans with Disabilities Act (ADA).

### 5.1 SIGNS

#### 5.1.2 Applicability

The provisions of this section shall apply to the construction, erection, alteration, use, location, and maintenance of all signs located out of doors, to those signs affixed on any part of a building for the express purpose of being visible from the exterior of the building.

#### 5.1.3 Definitions

a) Farm Stand: A location where the owner of the property provides for sale plants or animals useful to man. These products are: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products.

b) Principal Entrance: A doorway which faces the building's front yard and which is open for public ingress and egress during normal business hours.

c) Property: A lot or contiguous lots owned by a single ownership entity.

d) Sign: Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye by means including intermittent or repeated motion of illumination.

e) Sign, Accessory: Any sign that advertises, or indicates the person occupying the premises on which the sign is erected or maintained, or the

businesses transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter.

f) Sign, Area of:

1. The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any "cutouts" or extensions, but shall not include any supporting structure or bracing.
2. The area of a sign consisting of individual letters or symbols attached to or painted on a surface building, wall or window, shall be considered to be that of the smallest quadrangle or a triangle which encompasses all of the letters and symbols.
3. The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross-section of that object
4. In computing the area of signs, one side of back-to-back signs shall be included.

g) Sign, Construction: A temporary sign of an architect, engineer, or contractor, erected during the period such person is performing work on the premises on which such sign is erected.

h) Sign, Directional: An off-premises sign which indicates the direction or distance to a geographic area, but does not identify or advertise any particular commercial or non-commercial enterprise or group of commercial or non-commercial enterprises.

i) Sign, For Sale, Rent or Lease: A temporary sign advertising real property for sale or lease.

j) Sign, Free-Standing: A self-supporting sign not attached to any building, wall, or fence, but in a fixed location. This does not include moveable or trailer type signs.

k) Sign, Movable: A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.

l) Sign, Off-Premises: Any sign that advertises, or indicates someone other than the person occupying the premises on which the sign is erected or maintained, or some business or businesses other than that transacted thereon, or advertises another property or any part thereof as for sale or rent.

- m) Sign, Political: A Non-Commercial Sign erected to show support for a candidate for public office.
- n) Sign, Projecting: Any sign that is not a free-standing sign and extends over to or into a public road or sidewalk right-of-way.
- o) Sign, Roof: A sign which is located above, or projected above, the lowest point of the eaves or the top of the parapet wall of any building, or which is painted on or fastened to a roof.
- p) Sign, Special Event: A temporary sign used in connection with a circumstance, situation, or event (i.e. church bazaar, grand opening, fair, circus, festival, performance, or competition) that is expected to be complete within a reasonably short or definite period.
- q) Sign, Temporary: Any sign, including its support structure, intended to be maintained for a continuous period of not more than thirty (30) days in any calendar year.
- r) Sign, Wall: Any sign which is painted on, incorporated into, or affixed parallel to the wall of a building, and which extends not more than six (6) inches from the surface of that building.
- s) Village Business Sign, Overlay District: That area shown on the map entitled: Chester Village Business Sign Overlay District, attached hereto and made part of this bylaw.
- t) Route 20 Overlay Zone: Those parcels shown on the map entitled Chester Village Business Sign Overlay District which are both zoned for business and which have street frontage on Route 20.

#### 5.1.2 Signs prohibited in all zoning districts

- a) Moveable or portable signs
- b) Billboards
- c) Off premises signs are generally prohibited, except for off-premises signs which are placed to identify or advertise farm stands or placed temporarily to advertise special events.
- d) Flashing signs, roof signs, signs containing moving parts, and signs containing reflective elements which sparkle in the sunlight are not permitted. Signs indicating the current time and/or temperature are permitted.

e) Any sign advertising or identifying a business or organization which is either defunct or no longer located on the premises is not permitted.

### 5.1.2 Sign locations and sizes

The locations and types of signs are specified in TABLE 3 – PERMITTED SIGN TYPES – PERMANENT and in TABLE 4 PERMITTED SIGN TYPES – TEMPORARY

**Table 3: Permitted Sign Types – Permanent**

	<i>Village Business Sign Overlay District</i>	<i>Route 20 Overlay Zone</i>	<i>All Other Lots</i>
Commercial Signs <sup>1</sup>	Y	Y	Y
Max. Size	12 sq. ft.	32 sq. ft.	6 sq. ft.
Max. Height	8 ft.	15 ft.	6 ft.
Number of Signs Permitted for Property	1	1	1
Non-Commercial Signs <sup>**1'2</sup>	Y	Y	Y
Max. Size	6 sq. ft.	6 sq. ft.	6 sq. ft.
Max Height	5 ft.	5 ft.	5 ft.
Number of Signs Permitted for Property	1	1	1
Directional Signs <sup>1</sup>	Y	Y	N
Max. Size	12 sq. ft.	12 sq. ft.	-
Max Height	5 ft.	5 ft.	-
Number of Signs Permitted for Property	1	1	-
Projecting Signs	Y	Y	Y
Max. Size	12 sq. ft.	32 sq. ft.	6 sq. ft.
Minimum Height	8 ft.	8 ft.	8 ft.
Max Height	12 ft.	15 ft.	
Number of Signs Permitted for Property	1	1	1

Y = Permitted    N = Prohibited

1. Free Standing Commercial and Non-commercial signs shall be placed at least five (5) feet, and Free Standing Directional Signs at least two (2) feet, from any lot line. Both types shall be placed so as not to obstruct the view of traffic.

2. Political Signs are Non-Commercial Signs. The limitation on number of signs permitted on a single property applies to all non-commercial signs except political signs.

\* Permanent signs located in the “Business” or “Village Business Districts” which are attached to a building wall or fence may project up to a maximum of two (2) feet into a pedestrian or public way. Permanent signs located on “All Other Lots” may not project into a street or public way.

\*\* *Non-commercial signs* may not be owned, placed, sponsored, or used by any person other than the owner of the land where such sign is located.

**Table 4: Permitted Sign Types – Temporary**

	<i>Village Business Sign Overlay District</i>	<i>Route 20 Overlay Zone</i>	<i>All Other Lots</i>
Special Event Signs *	Y	Y	Y
Max. Size	12 sq. ft.	12 sq. ft.	8 sq. ft.
Max. Height	8 ft.	8 ft.	6 ft..

For Sale, Rent, or Lease Signs <sup>1**</sup>	Y	Y	Y
Max. Size	8 sq. ft.	12 sq. ft.	8 sq. ft.
Max Height	8 ft.	8 ft.	6 ft.
Number of Signs Permitted for Use	1	1	1

Construction Signs <sup>***</sup>	Y	Y	Y
Max. Size	8 sq. ft.	8 sq. ft.	8 sq. ft.
Max Height	6 ft.	6 ft.	6 ft.
Number of Signs Permitted for Use	1	1	-

Projecting Signs	Y	Y	Y
Max. Size	12 sq. ft.	32 sq. ft.	6 sq. ft.
Minimum Height	8 ft.	8 ft.	8 ft.
Max Height	12 ft.	15 ft.	12 ft.
Number of Signs Permitted Per Property	1	1	1

Y = Permitted    N = Prohibited

\* Such signs may be erected no sooner than fourteen (14) days before the event and must be removed no later than seven (7) days after the event.

\*\* The sign shall be removed no later than 30 days after the sale, rental or lease of the real property.

\*\*\* Construction Signs shall be removed within seven (7) days of completion of the construction or other work.

### 5.1.2 Sign placement & height standards in all zoning districts

- a) The maximum height of all signs shall be measured from the level of the street abutting the part of the property where the sign is placed.
- b) No sign, together with any supporting framework, shall extend to a height above the top of the highest building on the property where the sign is located.
- c) No sign, together with any supporting framework, shall extend to a height above the maximum height of the building on which the sign is placed.
- d) Signs must not dominate building facades or obscure any significant architectural details (including, but not limited to arches, sills, moldings and cornices).
- e) Signs shall be placed so as not to obstruct the view of traffic.
- f) No free-standing sign shall project over or into any public sidewalk or public way.
- g) The dimension, height and number limitations for Projecting Signs apply to Commercial, Non-Commercial and Directional Signs.
- h) In cases where a single property has multiple principal entrances serving multiple business located on that property, one sign is permitted for each business which has its own principal entrance to the building or buildings on that property. The total number of signs permitted by right on a single property having more than one principal entrance is two. The placement of three or more signs on a single property, one for each of three or more businesses which have separate principal entrances, requires a Special Permit from the Zoning Board of Appeals.

## **5.2 COMMON ACCESS DRIVEWAYS**

### 5.2.1 Definition

A "Common Access Driveway" or "Common Access Drive" is a driveway/curb cut shared by not more than two lots, such that each lot has approved frontage on an existing public way, and has access obtained through the common use of a private driveway designed according to the standards for construction of shared driveways in Chester.



### 5.2.2 Authority

The Chester Planning Board shall be the special permit granting authority for all purposes under this section and shall adopt rules and regulations with respect to the administration of applications or special permits under this section, subject to the conditions set forth below.

### 5.2.3 Standards

Proposed common access driveways to be shared by not more than two dwelling units shall require a special permit from the Chester Planning Board. Common Driveways are allowed by Special Permit in the Agricultural/Residential (A/R), Residential (R), and Business (B) zoning districts. Common Driveways shall not be allowed in the Village Business (VB) zoning district. For each such proposal the Highway Superintendent, Fire Chief, Board of Health, Conservation Commission and Building Inspector may provide to the Planning Board written opinion or oral testimony at a public hearing regarding matters pertaining to their particular jurisdiction together with any questions or considerations bearing on the adequacy of the plan. This opinion or testimony may include, but is not limited to, suggestions for road specifications, wetland and open space protection and other criteria designed to promote the health, safety, and welfare of the inhabitants of the Town of Chester. In reaching its decision, the Board shall consider the following factors: Whether the proposed drive creates less adverse impact to wetlands located on the lots or otherwise diminishes environmental degradation; allows safer access to lots; results in the preservation of the rural quality of the area through the reduction in number of access ways and maintenance of existing vegetative and topographical conditions; otherwise promotes the health, safety and welfare of the inhabitants of the Town of Chester. This provision shall be applied in conjunction with the Subdivision Control Law (Massachusetts General Laws, Ch. 41., Sect. 81K-81GG) and the Rules and Regulations Governing the Subdivision of Land in Chester.

a) Each lot must have adequate approved legal frontage on an existing public way. Frontage requirements for each lot shall be along a town, county, state or approved subdivision road. Frontage along the length of private/common access driveways shall in no way be used to satisfy frontage requirements as specified in the zoning bylaw.

b) The following shall accompany an Application filed for a Common Driveway Special Permit:

1. A Site Plan, developed by and carrying the seal of a certified professional engineer or a registered land surveyor, shall be submitted with the Special Permit Application showing the layout for the common driveway, meeting the following specifications:

- a width of at least 18 feet and passing turnouts providing a total width of at least 20 feet along a distance of at least 25 feet, spaced with no more than 300 feet between turnouts and with the first such passing turnout at the driveway connection to the street,
- a maximum grade of 8 percent (4.57°), said driveway shall not exceed a grade of 2 percent (1.15°) within 30 feet of its intersection with the public way,
- a minimum side setback of 25 feet from any property not served by the proposed driveway,
- no connection to any other way except the one from which it originates,
- access from the same public way that serves as the frontage for the lots being serviced by the common driveway, unless unique circumstances presented to the Board are such that the Board may grant permission to access the common driveway from another public way.

2. An Easement Plan suitable for recording at the Registry of Deeds

3. Easements, covenant and agreements for the subject lots containing restrictions prohibiting any additional vehicular access to said lots from other than the common driveway approved by the Special Permits, stating that said common driveway is a private driveway, not a town way. The maintenance, operation, repair and reconstruction (including snow plowing and snow/ice removal) is the responsibility and liability of the property owners. All deed easements, easement plans, restrictions, covenants and agreements must be submitted to and approved by the Board prior to their recording and prior to the issuance of any Building Permits.

c) House numbers identifying all of the homes utilizing the common driveway shall be placed at its intersection with the town road and at each subsequent turn-off from the common driveway sufficient for identification by emergency vehicles.

#### 5.2.4 Certification

Prior to the issuance of any Occupancy Permits for any of the lots serviced by such Common Driveway, the Applicant shall submit to the Board as built plans, prepared and stamped by a registered professional engineer and a certified statement from a registered professional engineer that such common driveway was constructed in accordance with the approved plans.

#### 5.2.5 Street Acceptance

If application is ever made for a Common Driveway to become a Town Way, such common driveway shall first, at applicant's expense, be made to conform to the Rules and Regulations for the Subdivision of Land in the Town of Chester in effect at the time that such application is made.

### **5.3 CREATIVE DEVELOPMENT**

#### 5.3.1 Creative Development Allowed

Creative Development in accordance with this bylaw shall be allowed by Special Permit from the Planning Board in the Agricultural-Residential district. Any person creating three or more lots available for residential use, whether or not by subdivision may apply for a special permit under this section. Creative Development shall be encouraged within the town, and shall be the preferred method of development wherever the following purposes would be served.

#### 5.3.2 Purpose

The purpose of this bylaw is to encourage creative and innovative development patterns which promote the following:

- (a) preservation or enhancement of rural town character, including scenic roads and town centers;
- (b) provision for alternative to strip residential development lining roadsides in the town, and encouragement of development out of view from the road;
- (c) protection of natural resources, historic or archeological structures or sites, or scenic views;
- (d) protection of open space for use as farmland, woodlot or forestry, recreation, or wildlife habitat;

#### 5.3.3 Criteria for Evaluation

No special permit for Creative Development shall be issued unless the application therefore complies substantially with the following criteria:

- 5.3.3.1 All dwellings shall, to the greatest extent possible, be located out of view from any road unless valuable natural resources or farmland located to the rear of the property render building in view of the road more desirable.
- 5.3.3.2 The Creative Development shall create permanent open space. All land within the Creative Development not in use for building lots shall be placed in permanent open space.
- 5.3.3.3 The portion of a parcel placed in open space shall, to the greatest extent possible, be that which is most valuable or productive as a natural resource, wildlife habitat, farmland, or forestry land.
- 5.3.3.4 The Creative Development shall, result in the creation of fewer curb cuts or vehicular access points to a public way than would reasonably be expected to occur under Standard ANR or Subdivision Development.
- 5.3.3.5 The Creative Development shall result in no net increase in density of dwellings on the parcel over the density which could reasonably be expected to occur on the parcel under Standard ANR or Subdivision Development

#### 5.3.4 Terms of Special Permit

Any Special Permit for Creative Development shall state clearly the terms by which the development shall meet the above-listed criteria. The Special Permit granted shall state the acreage and location of open space provided under Section 5.3.3.2; shall identify the natural resources or farmland to be protected under Section 5.3.3.3 and any specific measures to be taken for their protection, shall specify the number and location of dwellings under Section 5.3.3.1 and curb cuts under Section 5.3.3.4 and shall state the number of units, if any, to be constructed under Section 5.3.3.5, including their location and the method by which their creation shall be assured, such as by covenant or easement.

#### 5.3.5 Definitions

- (a) Creative Development shall mean a form of residential development allowed in all districts by special permit, whereby the options of common driveways and flexible area requirements are utilized to create permanent open space and avoid standard ANR and subdivision development.
- (b) Common Driveway in a Creative Development shall mean a vehicular access from a road to more than two but no more than six residential units, built in accordance with the common driveway standards stated below, where allowed by special permit.

### 5.3.6 Common Driveways in a Creative Development

- 5.3.6.1 Common Driveways Allowed - Common Driveways in a Creative Development shall be allowed by Special Permit in accordance with the provisions of this section only. Where applicable, under the Subdivision Regulations, common driveways may be allowed in place of a subdivision road.
- 5.3.6.2 Three to Six Lots Served - No less than three and no more than six lots shall be served by a common driveway in a Creative Development. The driveway shall lie entirely within the lots being served.
- 5.3.6.3 Common Driveway Not to be Used as Frontage - Frontage along the length of any common driveway shall in no way be used to satisfy frontage requirements as specified in the Zoning Bylaw; furthermore, no common driveway shall be accepted as a public road; nor shall the town under any circumstances be held liable for construction, reconstruction, maintenance, or snow removal on any common driveway, unless by contract duly entered into by the town and all landowners served by the common driveway.
- 5.3.6.4 Driveway Right-of-Way Requirements - The landowners of all residences served by a common driveway shall be granted a Right-of-Way for the use of the common driveway. Such Right-of-Way shall be recorded in the Hampden County Registry of Deeds, together with a statement of covenants as follows:
- (a) the common driveway shall at no time be used to satisfy frontage requirements under the zoning bylaw; and
  - (b) the common driveway shall at no time become the responsibility or liability of the town; and
  - (c) each landowner served by the common driveway shall be liable and responsible in whole for the repair and maintenance of any portion of the common driveway to which they have the exclusive Right-of-Way (such as a spur serving solely one parcel); and
  - (d) each landowner served by the common driveway shall be jointly and severally responsible and liable for the repair and maintenance of all portions of the common driveway to which more than one landowner holds a Right-of-Way and

(e) any additional vehicular access to said lots other than the Common Driveway in a Creative Development approved by the Special Permit is prohibited.

#### 5.3.6.5 Common Driveway Standards

(a) Alignment and Dimensions

1. The width of the right of way shall be 40 ft
2. The width of the common driveway surface shall be 18 ft.
3. The common drive shall have 3 ft. gravel shoulders on each side.
4. The slope or grade of a common drive shall in no place exceed 8% if unpaved; or 12% if paved.
5. The common drive shall intersect a public way at an angle of not less than 80 degrees.
6. The minimum curvature of a common driveway shall be sufficient for a fire engine to negotiate, generally no less than a radius of 50 feet
7. There shall be a turnaround area at the resident end of the driveway; such turnaround shall accommodate safe and convenient turning by fire trucks and other emergency vehicles.
8. Other standards may be set based on site configurations, including requirements for drainage.
9. These standards may be waived when, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Bylaw

(b) Construction

1. The common driveway shall be constructed of a minimum 15" gravel base with an oil and stone top layer of 1/2" consisting of three successive layers of 3/4" crushed traprock stone, 1/2" crushed traprock stone and 1/4" crushed traprock stone, with a crown sufficient for drainage.

2. Drainage shall be adequate to dispose of surface runoff. Culverts shall be installed if deemed necessary by the Planning Board.

3. These construction standards may be waived if, in the opinion of the Planning Board, such action is in the public interest and not inconsistent with the purpose and intent of the Zoning Bylaw.

(c) Alignment and Dimensions

The common driveway, at its intersection with the street, must provide a leveling-off area with a slope no greater than 1% for the first 20 feet and a slope no greater than 5% for the next 30 feet.

5.3.6.6 Street Numbers and Identification

Each common driveway shall be assigned one street number; each residence served by the common driveway shall be assigned a letter to use together with the common driveway number for purposes of address and identification. All common driveways shall be clearly marked at the intersection of the driveway and the frontage road by a sign stating the driveway number, house letters, and names of house residents, sufficiently readable from the road to serve the purpose of emergency identification. The fire chief and/or highway superintendent may make more specific requirements for driveway marking.

5.3.6.7 Home offices, home occupations, bed and breakfasts, and other home business uses may be permitted in any dwelling served by a common driveway where the dwelling containing such home business has at least 200 foot frontage on an approved road, and is otherwise shown not to cause nuisance to adjoining landowners and other landowners sharing the common driveway.

5.3.6.8 There shall be a minimum of 1000 feet between the entrances of any two common driveways onto any road.

5.3.6.9 Common driveway design shall to the greatest extent possible minimize adverse impact to wetlands, farmland, or other natural resources; allow reasonable, safe, and less environmentally damaging access to lots characterized by slopes or ledges; and result in the preservation of rural character through reduction of number of access ways; and retention of existing vegetation and topography.

5.3.6.10 If application is ever made for a Common Driveway to become a Town Way, such common driveway shall first, at applicant's expense, be made to conform to the Rules and Regulations for the Subdivision of Land in the Town of Chester in effect at the time that such application is made.

### 5.3.7 Creative Development Using Required Frontage and Flexible Area Standards

5.3.7.1 Creative Developments shall utilize the flexible area provisions of this bylaw, in coordination with Section 5.3.6 regarding Common Driveways in Creative Developments, for the purpose of minimizing the destruction of natural resources while maximizing availability of open space, farmland, and natural character.

#### 5.3.7.2 Required Frontage in Creative Developments

- (a) The frontage of the parcel from which the lots of a creative development area created (whether or not by subdivision) shall equal or exceed the total frontage length required for the sum of all lots created as shown in the Table of Creative Development Dimensional requirements (Table 5). For example, to create a four-lot creative development in a zone where there is a 200 foot frontage requirement per lot, the parcel must have a minimum of 800 foot contiguous frontage along one road.
- (b) Provided that all other requirements of this bylaw are met, there shall be no frontage required for individual lots within a Creative Development, with the exception described in Section 5.3.7.2c below.
- (c) Any building lot which fronts on an existing public road shall have 200 foot frontage. This provision shall not apply to protected open space.

#### 5.3.7.3 Flexible Area in Creative Developments

- (a) Individual lot areas may be as little as 43,000 square feet, as shown in Table 5, provided that the average size for all lots created, including any land reserved as open space, shall be no smaller than 86,000 square feet, as shown in Table 5.
- (b) The total number of building lots which can be created from any parcel shall be determined by subtracting the area of all wetlands (as defined by the Conservation Commission) and 50 percent of the slopes which are greater than 15% from the total parcel area, and dividing the resulting area by the required average lot size of 86,000 square feet, shown in Table 5.



- (c) All land not used for building lots shall be placed in permanent open space in accordance with Section 5.3.10 of this bylaw, but not less than 25% of the total land area.

#### 5.3.7.4 Other Dimensional Requirements

- (a) All lots within a Creative Development shall meet the front, rear and side yard requirements specified in Table 3.

#### 5.3.7.5 Site Design Standards

- (a) Each structure shall be integrated into the existing landscape on the property so as to minimize its visual impact through use of vegetative and structural screening, landscaping, grading, and placement on or into the surface of the lot

**Table 5: Table of Creative Development Dimensional Requirements**

<u>Development Type</u>	<u>Lot Size **</u>	<u>Required Open Space</u>	<u>Total Parcel Frontage Required</u>	<u>Front Yard</u>	<u>Rear &amp; Side Yard</u>	<u>Maximum Height of Buildings</u>
						No. of Stories Ft.
Standard Subdivision or ANR Development	86,000 sq. ft.	None	200 ft. per lot	40 ft.	40 ft.	2 ½ 35
Creative Development Using Flexible Area	43,000 sq. ft.	All land not used for building lots, minimum 25% of the development	200 ft. per lot	25 ft. from a common driveway 150 ft. from a public way	40 ft.	2 ½ 35
Creative Development Using Farmland Preservation Standards	43,000 sq. ft.	Minimum 50% of the parcel	200 ft. per lot	25 ft. from a common driveway 150 ft. from a public way	40 ft	2 ½ 35

\* Provided that average lot size requirements for creative development and open space requirements are met Open Space areas do not include wetlands and/or 50% of the slopes greater than 15%.

\*\* per dwelling unit

### 5.3.8 Creative Development Using Farmland Preservation Standards

Where a parcel for which a special permit under this bylaw is sought is presently used agriculture, the preferred method of residential development shall be as follows:

- 5.3.8.1 All lots to be used for residential development shall be of the minimum area permitted under this bylaw as shown in Table 5. All land not used for residential building lots shall be permanently preserved as open space in accordance with Section 5.3.10. At least on-half of the total parcel shall be so preserved.
- 5.3.8.2 The total parcel frontage required shall be determined in accordance with the frontage standards described in Section 5.3.7.2 and Table 5.
- 5.3.8.3 All buildings, roads and driveways shall be located away from soils which are most suitable for agriculture (based on U.S. Soil Conservation Service classifications for prime farmland soils and soils of state and local importance) to the maximum practical extent. This provision does not apply to the location of on-site septic disposal facilities which must be placed in soils meeting the Massachusetts Environmental Code.
- 5.3.8.4 All roads, driveways, drainage systems and utilities shall be laid out in a manner so as to have the least possible impact on agricultural lands and uses.
- 5.3.8.5 All buildings, homes, and structures shall be located a minimum of 100 feet from agricultural land and shall be separated from agricultural uses by a 75- foot wide buffer strip of trees and fencing sufficient to minimize conflicts between farming operations and residences.
- 5.3.8.6 All Creative Developments under this section shall comply with the dimensional standards in Section 5.3.7.4 and site design standards in Section 5.3.7.5.

### 5.3.9 On Site Sewage Disposal

The following standards shall apply to developments requiring on-site sewage disposal.

- 5.3.9.1 The applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the special permit application. Septic systems shall be placed in the development to

maximize the distance between systems and may be placed within common areas or on individual lots.

- 5.3.9.2 No Creative Development shall be approved unless the applicant can demonstrate to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater from the proposed Creative Development than would be expected from a conventional subdivision with single-family houses on lots meeting the normal size requirements located on the same parcel. Where necessary, the Planning Board may hire a Professional Engineer to analyze and certify groundwater quality impacts and may charge the applicant for the cost of such analysis.

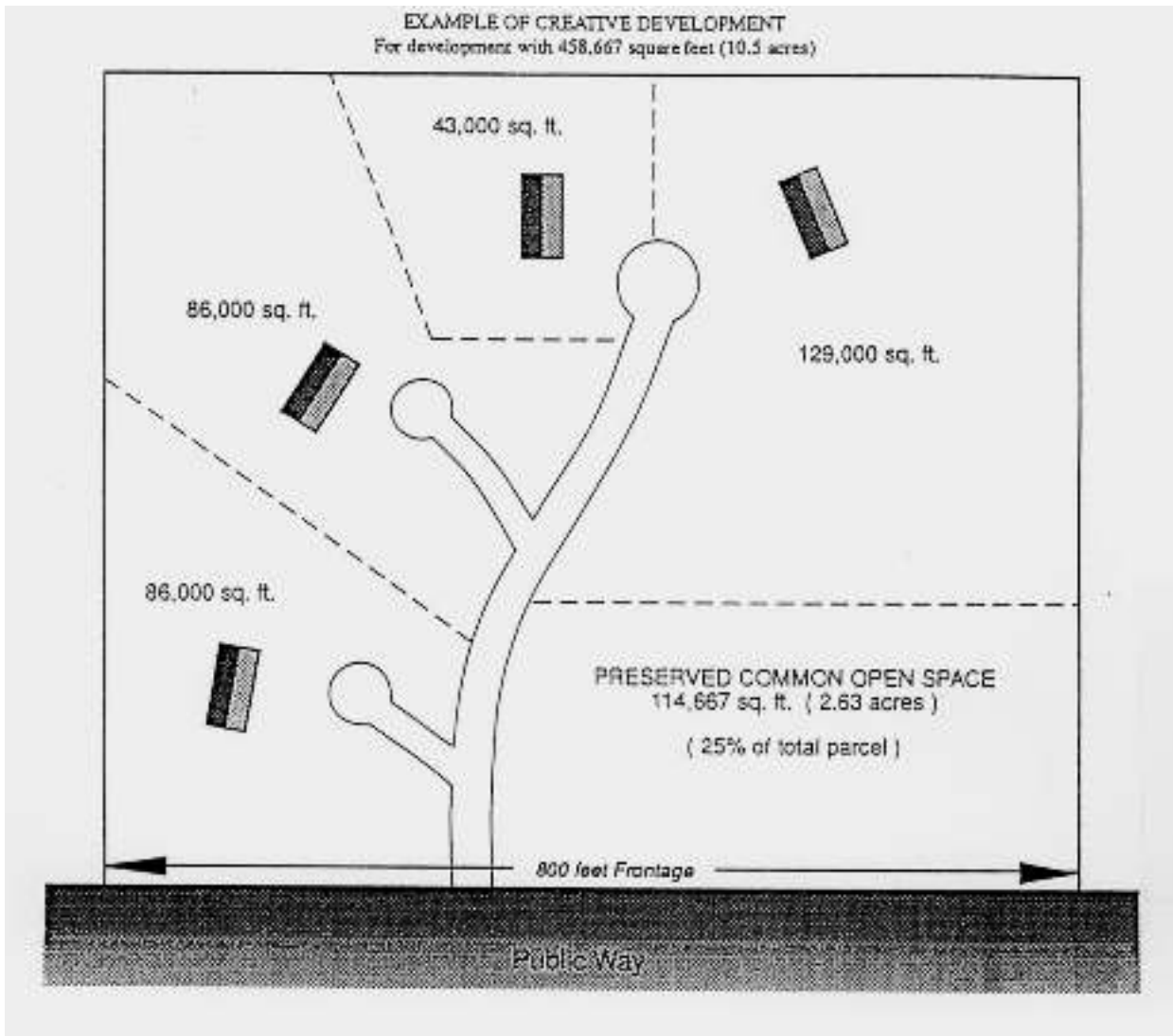
5.3.10 Protection of Open Land

The following standards shall apply to open land to be protected as part of a Creative Development:

- 5.3.10.1 All remaining open land shall be permanently protected by one of the following methods:
- (a) A permanent conservation easement or deed restriction conveyed to the Town of Chester with Town approval or to a non-profit trust or conservation organization whose principal purpose is to conserve farmland or open space. At a minimum, such an easement or restriction shall entail the use of management practices that ensure existing fields or pastures, if any, will be plowed or mowed at least once every year.
  - (b) Ownership in fee simple conveyed to the Town of Chester with Town approval or to a non-profit farm trust, open space or conservation organization as a gift or for consideration.
  - (c) If the protected open space is farmland, farmland owners are not required to sell the part of their property which is to become permanent agricultural open space, provided that they do convey the development rights of that open space in a conservation easement prohibiting future development of this property to Town of Chester with Town approval or to a non-profit trust or conservation restriction.
- 5.3.10.2 A non-profit, homeowner's association shall be established, requiring membership of each lot owner in the Creative Development. The association shall be responsible for the permanent maintenance of all community water systems, common open space, recreational and thoroughfare facilities. A homeowner's association agreement or covenant shall be submitted with the special permit application guaranteeing continuing maintenance of such common

utilities, land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board.

**Figure 2: Example of Creative Development**



## **5.4 WIRELESS COMMUNICATIONS STRUCTURES AND FACILITIES**

### **5.4.1 Purpose**

The purpose of this section is to outline the special permitting process to site wireless communication facilities in the Town of Chester, while minimizing potential damage and adverse visual impacts of wireless communication facilities on adjacent properties, residential neighborhoods and areas of high scenic value; to allow the provision wireless communication services in an orderly way; and to promote shared use of existing facilities to reduce the need for new facilities.

### **5.4.2 Definitions**

For the purpose of Section 5.4 of this bylaw, the following definitions apply:

Distance: Distance shall be measured on a horizontal plane.

FAA: The Federal Aviation Administration

FCC: The Federal Communications Commission

Height point: the distance measured from ground level to the highest on the structure

SPGA (Special Permit Granting Authority): The Planning shall be the SPGA for this section.

Non-Residential Structure: Such structures as, but not limited to, buildings, grain silos and water towers, but does not include dwellings.

Wireless Communication Building: Any building or shelter used to house equipment primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation, and is an accessory to a Wireless communication structure.

Wireless Communication Device: Any antenna, appurtenance, wiring or equipment used in Connection with the reception or transmission of electro-magnetic radiation which is attached to a structure.

Wireless Communication Facility: A general term to include wireless communication building, wireless communication device and wireless communication structure.

Wireless Communication Structure: A monopole tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.

Personal Wireless Service Provider: An entity, licensed by the FCC to provide Personal Wireless Wireless Service

### 5.4.3 Exemptions

The following shall be exempt from this bylaw:

- (a) Wireless communication facilities used exclusively for Town or State emergency services.
- (b) Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the Federal Communication Commission and used solely for that purpose.
- (c) Wireless communication structures and devices used expressly for home television reception.

### 5.4.4 General Guidelines

- (a) No wireless communication facility shall be erected, constructed, or installed without a special permit from the Planning Board acting as the Special Permit Granting Authority (SPGA). Wireless communication facilities may be permitted in any zoning district.
- (b) Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
- (c) Wireless communications structures are encouraged on Town-owned properties where such properties are in compliance with the requirements of this section.
- (d) Wireless communication structures shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification. Any new tower constructed shall be of the monopole type, consisting of a single self-supporting vertical pole with below grade foundation. No other type of structure shall be permitted.
- (e) No wireless communication structure shall be constructed closer to any existing wireless communications structure than is necessary to provide the minimum adequate wireless communications coverage to the Town of Chester, such determination to be made by the Independent Consultant.
- (f) Wireless communication buildings shall be no longer than 500 square feet and 12 feet high, shall be designed to match other accessory buildings on the site and shall be used only for the placement of equipment related to this particular site.
- (g) A special permit shall not be granted for a wireless communication structure to be built on speculation. If Applicant is not simultaneously installing a wireless communication device on the structure, it shall provide a copy of its existing lease/contract with a Personal Wireless Service Provider. Said Provider shall submit all data requested by SPGA to assure compliance with the terms of this section.

### 5.4.5 Siting and Height Requirements

- (a) Setbacks

- (1) The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure.
  - (2) The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
  - (3) The wireless communication structure shall be a minimum distance of three times the height from school buildings, playgrounds, athletics fields and abutting residences to prevent the structure from appearing to “tower” over, and so as not to adversely affect property values.
- (b) The height shall be the minimum height necessary, as determined by the Independent Consultant, to accommodate anticipated and future use, but in no case shall exceed one hundred twenty (120) feet.
  - (c) The wireless communication structure shall, when possible, be sited off ridge lines and where the visual impact is the least detrimental to historic and scenic areas.
  - (d) No new wireless communication structure shall be permitted unless the Applicant demonstrates to the reasonable satisfaction of the SPGA that no existing wireless communication structure can accommodate the Applicant’s proposed wireless communication device. Evidence submitted to demonstrate that no existing structure can accommodate the applicant’s proposed device may consist of any of the following:
    - (1) No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the applicant’s engineering requirement.
    - (2) Existing wireless communication structures or non-residential structures are not of sufficient height to meet the applicant’s requirements.
    - (3) Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be brought up to appropriate strength to support the proposed wireless communication device.
    - (4) The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.
    - (5) The fee, costs or contractual provisions required by the owner in order to share an existing wireless communication structure or to adapt an existing structure for use are unreasonable.
    - (6) The applicant demonstrates that there are other limiting factors that render existing structures unreasonable.

#### 5.4.6 Design Requirements

- (a) Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible.
- (b) There shall be no signs or advertisements, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24-hour basis.



- (c) All wireless communication devices shall be colored, molded, and/or installed to blend into the structure and/or the landscape. The SPGA shall require that all wireless communication structures be constructed to resemble or mimic a native coniferous species of tree or that other camouflage as determined by the SPGA be used to minimize the adverse visual impact of such structures.
- (d) The area around the wireless communication facility shall be completely fenced to control access within an area no greater than 25 feet in radius from the base of the wireless communication structure.
- (e) Night lighting of the facility shall be prohibited, unless required by the FAA.
- (f) There shall be a maximum of one parking space for each facility to be used in connection with maintenance of the site and not to be used for the storage of vehicles or other equipment.
- (g) Existing on-site vegetation shall be preserved to the maximum extent possible.
- (h) Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

#### 5.4.7 Application Process

Application for a special permit for siting wireless communication facilities shall be filed in accordance with Section 6.5.

- (a) Applications for a special permit to construct a new wireless communications structure shall include the following information.

1. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1" = 40' or 1" = 200', where appropriate, on as many sheets as necessary which shows the following:

- north arrow, date, scale(s) of the licensed professional(s) who prepared plans and space for reviewing licensed engineer's seal.
- name and address of landowner and name and address of abutters.
- property lines and location of permanent structures or buildings, within 500-foot radius of proposed wireless communication structure.
- existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at a maximum of 2-foot intervals and spot elevations at base of all the proposed and existing structures.
- vegetation to be removed or altered.

- plans for drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
  - delineation of wetlands, if any.
  - location of wireless communication structure.
  - plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
  - plans for accessory buildings.
  - layout and details of surfacing for access road and parking.
  - amenities such as lighting, fencing and landscaping.
  - four view lines in a one to three-mile radius of the site, beginning at True North and continuing clockwise at ninety-degree intervals, plus additional view lines from any historic, scenic or other areas of Town determined by the SPGA.
2. A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
  3. A locus map at a scale 1 inch equals 1,000 feet (or whatever is necessary to show where in town the proposed tower is sited) which shall show streets and landscape features.
  4. A description of the soil and surface geology at the proposed site.
  5. A narrative report written by the Personal Wireless Service Provider and licensed professional engineer which shall:
    - describe the justification of proposed site.
    - describe the structure and the technical, economic and other reasons for the facility design.
    - describe the capacity of the structure, including the number and type of additional facilities it can accommodate.
    - describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
    - describe the projected future needs of the Personal Wireless Service Provider and how the proposed wireless communications facilities fit with future projections to serve the Town and adjacent towns.

- describe leasing agreement should another carrier desire to co-locate.
  - describe special design features to minimize the visual impact of the proposed wireless communication facility.
6. Proof of approval of all other necessary permits needed for construction and operation.
  7. After the application is submitted, and not more than 14 days before the public hearing, the applicant shall arrange to fly a three foot-diameter, brightly colored balloon at the site of the proposed wireless communication structure at the maximum height of the proposed installation. The date and location of the flight shall be advertised at least 14 days, but not more than 21 days before the flights, and again in the public hearing advertisement in a newspaper with a general circulation in the town. The Applicant shall inform the SPGA in writing of the date and time of the test at least 14 days in advance. The balloon shall be flown for at least eight consecutive hours sometime between 7:00 a.m. and 6:00 p.m. on the date chosen.
- (b) Applications for a special permit to construct a new wireless communication device on an existing wireless communication structure or non-residential structures such as buildings, grain silos, steeples, water towers or other non-residential structures, including co-location with another carrier, provided that the new use does not add to the height of the structure, shall include the following information:
1. Site plans and engineering plans, prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1" = 40' or 1" = 200' on as many sheets as necessary which shows the following:
    - north arrow, date, scale, the seal(s) of the licensed professionals who prepared the plans and a space for the reviewing licensed engineer's seal.
    - plans for supporting and attaching the device including specifications of hardware and all other building material.
    - building plans for accessory buildings, if any.
    - layout and details of surfacing for access road and parking, if it is to be altered from existing condition.
  2. A map showing the areas covered by proposed device(s) of different signal strengths and the interface with adjacent service areas.
  3. A narrative report written by the Personal Wireless Service Provider and licensed professional engineer which shall:
    - include a draft of the contract between the structure/building owner (whichever appropriate) and the Applicant.

- demonstrate that the wireless communication structure or non-residential structure to which the device will be mounted has the structural integrity to support such device.
  - describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
  - describe the projected future needs of the carrier and how the proposed facility fits with future projections.
4. Proof of approval of all other necessary permits needed for construction and operation.
  5. If the proposed facility adds more than five feet to the height of the structure at the effective date of this bylaw and will exceed zone height restrictions, the SPGA may require a balloon test as described above in Section 5.4.7 (a) 7.
- (c) In addition to the submittal requirements of Section 6.5.5, the applicant shall submit one copy of the application to the Fire Chief for his review in accordance with Section 6.5.5.

#### 5.4.8 Independent Consultant(s)

- (a) Upon submission of an application for a Special Permit under this Section, the Applicant shall pay a review fee determined by the SPGA consisting of reasonable costs to be incurred by the SPGA for the employment of Independent Consultant(s). These Consultant(s) shall each be qualified professionals with a record of service to municipalities in one of the following fields:
1. telecommunications engineering
  2. structural engineering
  3. monitoring of electromagnet fields
  4. other relevant fields of experience as determined necessary by the SPGA
- (b) The Applicant shall provide a complete copy of the application for a Special Permit to any Independent Consultant(s) and shall further provide any additional information reasonably requested by the Independent Consultant(s) in order to properly advise the SPGA in their review of the application.
- (c) The Applicant shall grant permission for any Independent Consultant(s) to conduct any necessary site visits.

#### 5.4.9 Approval

- (a) In gaining a special permit for wireless communication facilities, in addition to the findings required by the Town's Zoning Review Bylaw for Special Permits, the SPGA shall find:
1. That the Applicant has demonstrated to the satisfaction of the SPGA that the requirements of this section have been met.
  2. That the size and height of the structure is the minimum necessary.
  3. That the proposed wireless communication facilities will not adversely impact historic structures or scenic views.
  4. That there are no feasible alternatives to the location of the proposed wireless communication facilities, including co-location that would minimize their impact, and the Applicant has exercised good faith in permitting future co-location of facilities at the site.
  5. That the Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the wireless communication facilities.
  6. That the proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emissions of electromagnetic radiation and that the required Monitoring program is in place and shall be paid for by the Applicant.
- (b) When considering an application for a wireless communication facility, the SPGA shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences and will encourage the use of existing structures.
- (c) Any extension or construction of new or replacement towers or transmitters shall be subject to an amendment to the Special Permit, following the same procedure as siting a new wireless communication device on an existing structure.
- (d) Any decision by the SPGA to deny an application for a special permit under this bylaw shall be in conformance with the Telecommunications Act of 1996, in that it shall be in writing and supported by substantial evidence contained in a written record.

#### 5.4.10 Condition of Use

- (a) The applicant shall post an initial bond with the Town Treasurer to cover the costs of remediation of any damage to the landscape which occurs during the clearing of the site of any wireless communication facility. In addition, an annual maintenance bond shall be posted to cover maintenance for the access road, site and structure(s). An access road may include existing town roads not designed for heavy traffic. Both bonds shall be in an amount to be determined by the SPGA.

(b) Regulatory Compliance

1. Annual certification demonstrating structural integrity and continuing compliance with current standards of the FCC, FAA and the American National Standards Institute shall be filed with the Building Inspector by the Special Permit Holder, and shall be reviewed by a licensed professional engineer hired by the Town and paid for by the Special Permit Holder.
2. If the FCC or the FAA regulations are changed, the owner or operator shall bring the facilities into compliance within the six months or earlier if a more stringent compliance schedule is included in the regulation.
3. Failure to comply with any regulations shall be grounds for removal of non-complying structures, buildings, devices at the owner's expense.
4. If the device is moved lower on the structure and the top of the structure is no longer needed, then the non-operational part of the structure shall be removed within 120 days.

(c) Any wireless communication structure which ceases to operate for a period of one year shall be removed by the Special Permit Holder within 395 days of the last day of operation. Cease to operate is defined as not performing the normal functions associated with any wireless communication structure on a continuous and ongoing basis for a period of one year, including the absence of a valid lease/contract with a Personal Wireless Service Provider. At the time of removal, the site of the wireless communication structure shall be remedied such that the site is restored to the same condition as existed prior to the structure being constructed. A cash bond shall be posted with the Town Treasurer in an amount determined by the SPGA to be used by the Town to remove any structure required to be removed and not removed within the time frame required by this Section.

(d) All wireless communication facilities shall be insured by the owner(s) against damage to persons or property. The special permit holder shall provide a Certificate of Insurance to the Board of Selectmen on an annual basis. The Town of Chester shall be added as an additional named insured on the subject insurance policy.

5.4.11 Severability

The invalidity, unconstitutionality, or illegality of any provision of this section shall not have any effect upon the validity, constitutionality or legality of any other provision of this section.

## **6 SECTION VI - ADMINISTRATION**

### **6.0 ENFORCEMENT**

- 6.0.1 This Bylaw shall be enforced by the Selectmen or a Building Inspector, as the Zoning Enforcement Officer. Upon any well-founded information as to a violation, the Selectmen or the Zoning Enforcement Officer shall take immediate steps to enforce this bylaw in any manner provided by law.
- 6.0.2 Permits. No building or structure shall be built or altered and no use of land or building or structure shall be begun or changed without a permit having been issued by the Building Inspector. With each application for a building permit to build or alter, a plan shall be filed showing the lot and location of a building and/or structure therein.
- 6.0.3 Any new building and/or structure shall conform to all adopted state and town Bylaws, codes, and regulations before a Certificate of Occupancy will be issued.
- 6.0.4 Occupancy. No building or structure shall be occupied until a Certificate of Occupancy has been issued by the Building Inspector.
- 6.0.5 The Building Inspector shall issue a cease and desist order on any work in progress or on the use of any premises, if either is in violation of the provisions of this bylaw.

### **6.1 PENALTIES**

Any person violating any of the provisions of this Bylaw may be fined not more than fifty dollars (\$50.00) for each offense. Each day that such violation continues shall constitute a separate offense.

### **6.2 BOARD OF APPEALS**

#### **6.2.1 Establishment**

There is hereby established a Board of Appeals of three (3) members and two (2) associate members to be appointed by the Selectmen, as provided under Chapter 40A of the General Laws as amended.

A Board of Appeals shall be appointed by the Selectmen for terms of three years, the term of one member expiring each year. Vacancies shall be filled

by the Chairman of the Board of Appeals for the balance of any unexpired term. No member shall act in any case in which he may have a personal or financial interest and an associate member may designated in such cases by the Chairman of the Board of Appeals. The Selectmen shall appoint two associate members for a term of one year.

#### 6.2.2 Powers

The Board of Appeals shall have the power to hear and decide petitions for appeals and variances as provided for in this Bylaw and in accordance with the Zoning Act, Massachusetts General Laws, Chapter 40A.

### **6.3 APPEALS**

#### 6.3.1 The Board of Appeals shall hear and decide appeals from:

- (a) Any person aggrieved by reason of an inability to obtain a permit or enforcement action from any administrative officer under the provisions of the Massachusetts General Laws, Chapter 40A;
- (b) Any person including any officer or board of the town or of any abutting town, if aggrieved by any order or decision of the Inspector of Buildings or other administrative official, in violation of any provision of the Massachusetts General Laws, Chapter 40A, or this Bylaw.

6.3.2 Any appeal shall be filed by the petitioner with the Town Clerk within the number of days from the date of the order or decision which is being appealed, as specified in M.G.L., Chapter 40A, Section 15. The notice of appeal shall specify the grounds for the appeal. A copy of the notice, including the date and time of filing certified by the Town Clerk, shall be filed immediately by the petitioner with the Board of Appeals and with the officer or board whose order or decision is being appealed in accordance with the Zoning Act, Massachusetts General Laws, Chapter 40A, Section 15.

6.3.3 In accordance with the Zoning Act, Massachusetts General Laws, Chapter 40A, Section 15, the Board of Appeals shall hold a public hearing within the number of days from the receipt of notice by the Board of such appeal, as specified in M.G.L., Chapter 40A, Section 15. The Board of Appeals shall make a decision on the appeal within the number of days after the date of the filing with the Town Clerk, as specified in M.G.L., Chapter 40A, Section 15.



## 6.4 VARIANCES

6.4.1 Petitions of variances from the terms of the applicable zoning provisions shall be dealt with by the Board of Appeals in accordance with Chapter 40A of the General Laws, as amended. A variance may be granted only if the Board finds that owing to circumstances of relating to the soil conditions, shape, or topography of land or structures and especially affecting the land or structures but not generally affecting the zoning district in which they are located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial derogating to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. A variance is permission to depart from the literal requirement of the Chester zoning bylaw with respect to setback, sideyard, frontage and lot size, but not involving use or activity.

6.4.2 Upon receipt of a petition for a variance, the Board of Appeals may ask the Planning Board for an advisory report on said petition.

### 6.4.3 Public Hearing Notification

In the case of every application for a variance made to it under the provisions of this Zoning Bylaw, the Board of Appeals shall hold a public hearing to consider the application in question and shall cause a notice thereof to be published in the local newspaper and by posting a notice on the Bulletin Board in the Town Office Building not less than the number of days before the day of such hearing, as specified in M.G.L., Chapter 40A, Section 10. A copy of the notice shall also be sent by registered mail to the petitioner, abutters, owners of land directly opposite on any public or private street or way, abutters to the abutters within three hundred (300) feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the town, the planning board of every abutting city or town, and any other person or persons who in the opinion of the board may be interested in such application.

6.4.4 A public hearing shall be held within the number of days after the application for a variance has been filed with the Board of Appeals, as specified in M.G.L., Chapter 40A, Section 10, a copy of which shall forthwith be given to the Town Clerk by the applicant. The ZBA will take final action on the application for a variance within the number of days following the public hearing, as specified in M.G.L., Chapter 40A, Section 10. Failure to do so shall constitute approval. A unanimous vote of a three-members board and a vote of at least four members of a five-member board is required.

- 6.4.5 After giving public notice and holding a public hearing, the Board of Appeals may grant a variance. The following findings must be made by the Board of Appeals before a variance can be issued:
- (a) The variance must be with respect to a particular parcel of land or to an existing building on the land.
  - (b) There must be circumstances relating to the soil conditions, shape, or topography especially affecting such land or structure, but not affecting generally the zoning district in which it is located.
  - (c) Literal enforcement of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant.
  - (d) Desirable relief may be granted if there will not be substantial detriment to the public good, or nullification or substantial derogation from the intent and purpose of this Bylaw.
- 6.4.6 The Board of Appeals may impose conditions, safeguards and limitations on both time and of use, including the continued existence of any particular structures by excluding any condition, safeguard or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner, or owner.
- 6.4.7 Rights granted by the Board of Appeals and not exercised within one (1) year shall lapse and may be re-established only after notice and a new hearing.

## **6.5 SPECIAL PERMITS**

Special Permits are requested for certain uses, structures or condition as specified in Section 3.0 Schedule of Use Regulations.

### **6.5.1 Purpose**

Special permits are intended to provide detailed review of certain uses and structures which may have substantial impact upon traffic and environment, health and safety, property values, utility systems, and the character of the Town among other things. The Special Permit review process is intended to ensure a harmonious relationship between proposed development and its surroundings, and ensure the proposals are consistent with the purpose and intent of the Bylaw.

### **6.5.2 Special Permit Granting Authorities**

The Planning Board shall have those special permit granting authorities specified in Section 3.0, Schedule of Use Regulations.

### 6.5.3 Special Permit Procedure

Special Permits may be issued by Special Permit Granting Authorities (SPGA) in accordance with Massachusetts General Laws Chapter 40A, Section 9 and with the following regulations:

#### (a) Public hearing

1. In the case of every application for a special permit made to it under the provisions of this Zoning Bylaw, the SPGA shall hold a public hearing to consider the application in question and shall cause a notice thereof to be published in the local newspaper and by posting a notice on the Bulletin Board in the Town Office Building the number of days before the day of such hearing, as specified in M.G.L., Chapter 40A, Section 9. A copy of the notice shall also be sent by registered mail to the petitioner, abutters, owners of land directly opposite on any public or private street or way, abutters to the abutters within three hundred (300) feet of the property/line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the planning board of the town, the planning board of every abutting city or town, and any other person or persons who in the opinion of the SPGA may be interested in such application.
2. Special permits shall only be issued following a public hearing held within the number of days after filing an application with the special permit granting authority, as specified in M.G.L., Chapter 40A, Section 9. A copy of which shall forthwith be given to the Town Clerk by the applicant. The SPGA shall take final action on an application for special permit within the number of days following the public hearing, as specified in M.G.L., Chapter 40A, Section 9. Failure to do so shall constitute approval. An unanimous vote of a three-member board and a vote of at least four members of a five-member board is required.

#### (b) Application Procedures

1. All applications for special permits shall be made in writing on forms furnished by the Town Clerk and located in the Town Clerk's office and shall be accompanied by a site plan when required in accordance with Section 3.0, Schedule or Use Regulations. The applicant shall provide the Town Clerk with one original special permit application and site plan and eight copies of the application and site plan for distribution.
2. Misrepresentation of any of the required plan items shall be cause to revoke a special permit.

3. No special permit may be authorized for an activity or use not generally permitted in the district in which the land or structure is located.

#### 6.5.4 Expiration

All special permits that have no time restrictions imposed by the special permit granting authority shall lapse within two (2) years from the date the permit was granted unless substantial use or construction has commenced and continues regularly.

#### 6.5.5 Review Procedures

The Town Clerk shall submit one copy of said application and plan to the Planning Board, the Board of Health, Building Inspector or Zoning Enforcement Officer, and the Conservation Commission for their review. Said Boards and Commission shall within thirty (30) days of the filing date of the application, make recommendations as they deem appropriate and shall send copies thereof to the SPGA and to the applicant in accordance with Chapter 40A, Section II of the Massachusetts General Laws.

#### 6.5.6 Criteria

Where a special permit may be authorized by the Special Permit Granting Authority under this Bylaw, said SPGA may grant, upon written application, such special permit if it finds, among other things:

- (a) That the proposed use would be suitably located in the neighborhood in which it is proposed and/or the total town;
- (b) That the use will be reasonably compatible with the character and scale of other uses permitted as of right in the same district;
- (c) That the use will not constitute a nuisance by reason of an unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories;
- (d) That adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation;
- (e) The proposed use shall comply with any and all additional special permit criteria or special use regulations imposed on individual uses in Section V of this Bylaw;

- (f) The proposed use will not create traffic congestion or impair pedestrian safety. Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets, property or improvements;
- (g) The proposed project shall not create a significant adverse impact to the quality of surface water or groundwater during and after a construction, and provision shall be made for maximizing groundwater recharge;
- (h) The design of the project shall provide for adequate methods of disposal and recycling of sewage, refuse or other wastes generated by the proposed use; and
- (i) The design of the project shall minimize the visibility of visually degrading elements and protect the neighboring properties from potentially detrimental or offensive uses through the use of screening or vegetated buffer zones.

#### 6.5.7 Conditions, Safeguards, Limitations

In granting a special permit, the Special Permit Granting Authority may, in accordance with M.G.L., Chapter 40A, impose conditions, safeguards, and limitations. Such conditions, safeguards, and limitations shall be in writing and may include but are not limited to the following:

- (a) Setback, side and rear yards greater than the minimum required in this Bylaw;
- (b) Screening of parking areas or other parts of the premises from adjoining properties or from streets by the use of walls, fences, plantings or other such devices;
- (c) Limitations of size, number of occupants method or time of operation or extent of facilities;
- (d) Modification of the exterior design or appearance of buildings, structures, signs, or landscape materials;
- (e) Additional parking, loading or traffic requirements beyond the minimum required in the Bylaw;
- (f) Measures to protect against environmental pollution; and
- (g) Performance bond or other security to ensure that the project meets the conditions specified in the special permit.

#### 6.5.8 Transfer

Where a Special Permit involving the construction of buildings has not been implemented by substantial construction, said permit shall not pass to future owners of the property without a public hearing and approval of the Special Permit Granting Authority.

#### 6.5.9 Document Distribution

When a Special Permit has been granted, one copy each of the decision, conditions, and approved plans shall be filed with the Planning Board, the Assessors, Zoning Enforcement Officer and the Town Clerk and one copy shall be returned to the applicant. The set of documents on file with the Town Clerk shall bear the endorsement of the Special Permit Granting Authority and certification that copies of the decision and related plans have been filed in accordance with this section.

#### 6.5.10 Time Schedule

A Special Permit shall only be issued following a public hearing held within the number of days after the date the application was filed with the Town Clerk, as specified in M.G.L., Chapter 40A, Section 9. The SPGA shall act within the number of days following the public hearing, as specified in M.G.L., Chapter 40A, Section 9. Failure of the SPGA to make final action upon an application for a Special Permit within said time period shall be deemed to be a granting of the Special Permit applied for.

#### 6.5.11 Change, Alterations, Expansion

Any substantial change, alteration or expansion of a use allowed by special permit shall require a special permit from the appropriate Special Permit Granting Authority.

#### 6.5.12 Method of Appeal

Any person aggrieved by a decision of the Special Permit Granting Authority may appeal to the Hampden County superior court or the division of housing court department for Hampden County by bringing action within the number of days after the decision has been filed the Town Clerk, in accordance with M.G.L. Chapter 40A, Section 17.

### **6.6 AMENDMENT**

This Bylaw may be amended from time to time at an annual or special town meeting in accord with the provisions of Section 5 of Chapter 40A.

## **6.7 VALIDITY**

The invalidity of any section or provision of this Bylaw shall not affect the validity of any other provision thereof.

## 7 SECTION VII - DEFINITIONS

In construing this Bylaw, the following work shall have the meaning herein given unless a contrary intention clearly appears:

### 7.0 WORD DEFINITIONS

The plural number includes the singular; the word "lot" includes "plot;" the word "building" includes "structure;" the word "occupied" includes "designed, arranged or intended to be occupied;" and the word "used" includes "designed, arranged or intended to be used".

### 7.1 TERM DEFINITIONS

Accessory Building: A subordinate building, the use of which is incidental to that of a principal building.

Accessory Use: The use of a building or premises for a purpose customarily incidental to the main or principal use permitted in the district.

Agriculture: The production, keeping or maintenance, for sale, lease or personal use of plants and animals useful to man, including but not limited to: forages and sod crops, grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids hereof, including the breeding and grazing of any or all of such animals, bees and apiary products; fur animals, trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables, nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

Alteration: A change in or addition to a structure.

Attached: Connected to or united with.

Attic: The space between the ceiling of the top story of a building and its roof and not used for living, sleeping or eating quarters.

Bed and Breakfast Home: An owner-occupied single-family dwelling which may rent up to a maximum of three (3) rooming units for transient occupancy and where breakfast is included in the rent and all accommodations are reserved in advance.

Bed and Breakfast Establishment: An owner-occupied single-family dwelling which may rent four (4) or more rooming units for transient occupancy and where a breakfast is included in the rent and all accommodations are reserved in advance.



Building: A combination of any materials, whether portable or fixed having a roof, to form a structure for the shelter of persons, animals or property. The word “building” shall be construed, where the context requires, as though followed by the words “or part or parts thereof”. A porch is to be considered as part of a building when considering setbacks.

Building, Accessory: See definition of Accessory Building in this section.

Building, Principal: See definition of Principal Building in this section.

Building Lot: See definition of Lot, Building in this section.

Business: The transacting or carrying on of a trade or commercial enterprise, not manufacturing, with a view to profit, or for livelihood.

Child Care Facility: Centers that serve children under seven years of age or sixteen if the children have special needs, or school-age children (under fourteen years of age or sixteen if they have special needs) in programs that are held before or after school hours or during vacation.

Convalescent or Nursing Home: A convalescent or nursing home is defined as any institution, however named, whether conducted for charity or profit which is advertised, announced or maintained for the express or implied purpose of caring for three or more persons admitted thereto for the purpose of nursing or convalescent care.

Corner Lot: A lot bounded on two (2) or more sides by streets. In any corner lot, the street line setback must be maintained from all street lines forming boundaries of a lot.

Detached: Separated from.

Dwelling: A building occupied as a residence for one or more families.

Dwelling, One-Family: A detached building containing one (1) dwelling unit and having no party wall, or walls, in common with an adjacent dwelling.

Dwelling, Semi-Detached: See definition of Semi-Detached Dwelling in this section

Family: (1) A person or a group of persons of immediate kindred who live together as a single housekeeping unit under one head; and (2) a group of non-related individuals not to exceed four, residing cooperatively in one dwelling unit. This section, however, does not apply to non-related disabled persons as defined by any applicable Federal and/or State law and/or regulations.

Family Day Care Home: Any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in neither case, that the total number of children shall not exceed six, including participating children living in the residence. Family day care home shall not mean a

private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor.

Frontage: The linear distance of a lot fronting on a street measured continuously along one line between its side lot lines and their intersection with the street line. (Diagram 1.)

Front Lot Line: See definition of Lot Line, Front in this section.

Front Yard: See definition of Yard, Front in this section.

Habitable Area: Shall be the area of that portion of the principal building exclusive of porches, breezeways, garages, cellars, basements, and any other unfinished area, as measured by the normal dimensions of the structure and commonly used by the occupants of the structure.

Half Story: The space between the ceiling of the top story of a structure and the roof, where the area and height are sufficient for sleeping and living quarters.

Height: In reference to a building, the vertical distance between the highest point of the roof and the average grade of land on which the building is located.

Home Occupation: A room or rooms in a dwelling used for customary home occupations by resident occupants, such as dress making, candy making or for a practice, by a resident, or a recognized profession.

Home Trade: Premises or building used in connection with this trade by a resident carpenter, electrician, painter, plumber, or other artisan, provided that no manufacturing or business requiring substantially continuous employment of other person(s) will be carried on.

Horticulture: The cultivation of a garden or orchard.

Hospital or Sanitarium: A Hospital or Sanitarium is defined as any institution, however named, whether conducted for charity or for profit, which is advertised, conducted or maintained for the purpose or implied purpose or caring for persons admitted thereto for the purpose of diagnosis or medical or surgical treatment which is rendered within said institution.

Hotel: A building operated by a duly licensed inn-holder where lodging is furnished or food is served to transient or permanent guests, and which has a public dining room and a general kitchen.

Junk: Articles such as old iron, brass, copper, tin, lead or other base metals, cordage, old bags, rags, waste paper, paper clippings, scraps, clips, rubber glass, empty bottles, empty cans and all other articles or property discarded or abandoned.

Lot: A parcel of land. In order to be used for building purposes, it must meet the criteria of a building lot.

Lot, Building: A parcel of land in one ownership meeting the dimensional requirements of this bylaw in which such land is situated and if occupied by a principal building and its accessory buildings, meeting the minimum yard requirements of that district, and defined on a plan or a deed recorded in the Registry of Deeds.

Lot Line, Front: The lot line separating a lot from a street right-of-way (see Diagram 1).

Lot Line, Rear: The lot line opposite the street line, except that in case of a corner lot, the rear lot line shall be the line opposite the street line of the street on which the building is numbered or would be numbered. (see Diagram 1.)

Lot Line, Side: The line dividing one lot from another. (see Diagram 1.)

Mobile Home: A vehicle having no motive power of its own. originally designed or permanently altered and equipped for human habitation which is not used to transport property other than property used for human habitation or camping purposes.

Parking Area: Any open space used for parking motor vehicles exclusively, and in which no gasoline nor motor vehicle accessories are sold, or no other business conducted.

Principal Building: The main or most important building on a lot.

Principal Use: The primary or predominant use of any lot.

Professional Engineer: A person employed in a practice of engineering as defined in General Laws, Tercentenary Edition, Chapter one hundred twelve (112), Section eight-one D (81D), and acts amendatory thereto.

Rear Lot Line: See definition of Lot line, Rear in this section.

Rear Yard: See definition of Yard, Rear in this section.

Riding School: An establishment where horses are boarded and cared for and where instruction in riding, jumping and showing is offered and the general public may, for a fee, hire horses for riding.

Riding Stable, Commercial: An accessory building in which horses are bred, sheltered and fed for a fee.

Riding Stable, Private: An accessory building in which horses are sheltered and fed, for private use.

School: A building devoted to the instruction or education in primary, secondary, or high school grade.

Secondhand Material: Materials, articles or machinery which have been used or owned by some person other than the dealer offering the same for sale, and which may again be used without alteration.

Service: The performance of any act for the benefit of another with a view to profit, or for a livelihood. The act of conducting a service enterprise. The performance of any act for the convenience, service, or benefit of an ultimate customer or patron.

Side Lot Line: See definition for Lot Line, Side in this section.

Side Yard: See definition for Yard, Side in this section.

Sign: Any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

Special Permit: Special permit is a process which allows the Town to conduct a more detailed review of certain uses and structures which may have a significant impact on their surroundings.

Special Permit Granting Authority: The Planning Board, unless otherwise specified, shall be the body responsible for granting special permits.

Story: The horizontal portion through a building between floor and ceiling. The word "story" shall not include the portion of the basement or cellar of a building above grade. The word "story" shall not include "attic" as defined in this Section.

Street: A public way, a private way shown on a plan approved under the Subdivision Control Law, or a way in existence when the Subdivision Control Law became effective in Chester having in the opinion of the Planning Board sufficient width, suitable grade, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the abutting land.

Street Line: The dividing line between a street and a lot including street lines established by the public authority laying out the street upon which the lot abuts.

Structure: A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, mast for radio antenna, or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof."

Use: The purpose or activity for which land or buildings are occupied or maintained.

Variance: A departure from the provisions of a zoning bylaw relating to setbacks, side yards, frontage requirements and lot size, but not involving the actual use of structure. A variance is granted because strict enforcement of the zoning bylaw as it applies to a specific lot would cause undue hardship and present site-specific practical difficulties that are not relevant to other lots in the district.

Variance, Use: A variance granted for a use or structure that is not permitted in the district use variances are prohibited in Chester.

Viticulture: The cultivation of grapes.

Yard: A required open space, unoccupied except as herein permitted, between a principal building and a street or lot line.

Yard, Front: The minimum required unoccupied space or area between the street line and the part of the building nearest such street line, such unoccupied space or area extending the entire width or distance across the lot.

Yard, Rear: The required unoccupied space or area within the lot between the rear lot line and the part of the principal building nearest such rear lot line.

Yard, Side: The required unoccupied space or area within the lot between the side lot line and the parts of the building nearest such side lot line.