

## Article III. Regulations Pertaining to All Districts

### § 98-8. Nonconforming buildings, structures and uses.

The following provisions shall apply to all buildings, structures and uses existing on the effective date of this chapter, which buildings and uses do not conform to the requirements set forth in this chapter, and to all buildings, structures and uses that become nonconforming by reason of any subsequent amendment to this chapter and the Zoning Map which is a part thereof, and to all conforming buildings housing nonconforming uses:

#### A. Nonconforming uses.

- (1) Nonconforming uses may continue indefinitely except as indicated in Subsection C below.
- (2) Nonconforming uses shall not be enlarged, extended, reconstructed or placed on a different portion of the lot occupied by such uses as of the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever.
- ~~(3) Nonconforming uses shall not be changed to another nonconforming use without a special permit from the Zoning Board of Appeals, and then only to a use which, in the opinion of said Board, is of the same or more restricted nature.~~
- ~~(4)~~(3) Nonconforming uses shall not be reestablished if such use has been discontinued for any reason for a period of one year or more or has been changed to or replaced by a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

#### B. Buildings and structures nonconforming as to bulk requirements and use.

- (1) Buildings and structures nonconforming as to bulk requirements and use shall not be moved to another location where such building or structure would also be nonconforming.
- (2) Buildings and structures nonconforming as to bulk requirements and use may be restored but not enlarged after damage by fire, accident or ~~other act of~~ Godforce majeure and the nonconforming use reinstated, provided that such restoration or replacement is commenced within six months of the date of destruction and is completed within nine months of the date of issuance of a building permit for such restoration or replacement.

- (3) Normal maintenance and repair, alteration, reconstruction or enlargement of a building which does not house a nonconforming use but is nonconforming as to district regulations for lot area, lot width, front, side or rear yards, maximum height and lot coverage or other such regulation is permitted if the same does not increase the degree of or create any new nonconformity with such regulation in such building.
- (4) Nothing shall prevent normal maintenance and repair of any building or structure or the carrying out upon the issuance of a building permit of major structural alterations or demolition necessary in the interest of public safety. In granting such a permit, the Building Inspector shall state the reason why such alterations are deemed necessary.

C. Cessation of certain nonconforming uses and structures.

- (1) All nonconforming billboards, advertising signs and the structures on which they are located which have been erected in the Town shall be taken down and removed on or before the expiration of three years from the effective date of this chapter, and such lapse of time shall be deemed sufficient to amortize the cost thereof.
- (2) All flashing and moving signs shall be terminated and flashing lights on signs shall be removed on or before the expiration of one year from the effective date of this chapter, which period of time is deemed sufficient to amortize the cost of the lighting to be removed or replaced.
- (3) All signs which are nonconforming as to size or location on a lot or building shall be removed or relocated and/or decreased in size to conform to the requirements of this chapter on or before the expiration of three years from the effective date of this chapter, which period of time is deemed sufficient to amortize the cost thereof.
- (4) Notwithstanding any other provisions of this chapter, any nonconforming outdoor storage of materials, such as but not limited to scrap metal, used lumber or other waste, including burned or dilapidated buildings, trash, rubbish or discarded material or machinery or one or more wrecked, unregistered or partially dismantled vehicles not enclosed within a building, shall, at the expiration of one year from the date of enactment of this chapter, become a prohibited and unlawful use and shall be discontinued, and all such materials shall be removed.
- (5) Preexisting digital signs. A digital sign installed prior to the effective date of the amendment to this chapter, is permitted to remain until the sign is

replaced; provided, however, such sign shall conform to the requirements of this subsection if these requirements can be complied with without replacing the sign. A preexisting digital sign is required to comply with all sign regulations that were in effect at the time the sign was installed but can upgrade with Planning Board review of condition, location, need and compliance with Town Comprehensive Plan; approval can be conditional if given.

D. Existing Non-conforming lots

- (1) Two or more contiguous noncomplying vacant parcels of land in common ownership on or after the effective date of this Zoning chapter shall be deemed to be merged to form one or more lots complying so far as possible to the bulk requirements of the district in which the parcels are located. The lots shall be merged so as to reduce the degree of noncompliance, or to create lots that comply with the bulk requirements applicable to the zoning district within which they are located.
- (2) One or more vacant parcels of land that adjoin a noncomplying improved lot in common ownership on or after the effective date of this Zoning chapter and containing a building or structure shall be deemed to be merged with said improved lot to the extent necessary to bring the improved lot into compliance so far as possible. If any remaining vacant parcel(s) constitutes a complying lot, said parcel(s) shall remain a separate lot. Otherwise, the merged lots shall constitute one lot.
- (3) Merger shall occur whether such contiguous parcels were under common ownership at the date of adoption of this Zoning chapter or come under common ownership any time thereafter.
- (4) No lot so merged, or portion thereof, may be subdivided in any manner that will create or increase the degree of noncompliance.

**§ 98-9. Exceptions to district regulations.**

- A. Existing undersized residential lots of record. Nothing shall prohibit the use of an existing undersized residential lot of record containing less than the prescribed area, width or yard requirements, as specified below, when such lot is owned individually and separate from any adjoining tract at the time of enactment of this subsection, provided that all other provisions of this chapter are met. Yard setback requirements for the following categories of lots must be the minimums specified below:

Minimum Yard Setbacks				
Lot Area (Square Feet)	Front	Side-One	Side-Both	Rear
Below 10,000 <sup>1</sup>	25	8	20	30
Below 10,000 <sup>2</sup>	30	10	25	35
10,000 to 14,999 <sup>1</sup>	30	10	25	35
15,000 to 19,999 <sup>1</sup>	30	15	30	35
10,000 to 19,999 <sup>2</sup>	35	15	30	35
20,000 to 29,999	35	15	30	35
Below 30,000	35	25	50	40
30,000 to 39,999	40	25	50	40
40,000 to 79,999	40	30	60	50
80,000 and over	50	30	80	60

NOTES:

- <sup>1</sup> With both central water and sewer.
- <sup>2</sup> With either central water or central sewer.

B. Height regulations. The height limitations of these regulations may be waived by the Planning Board for the following, provided that such areas do not exceed 10% of the total roof area to which they are a part: flagpole, spire, belfry, chimney, transmission tower or facility, aerial, skylight, water or cooling tower or elevator or stair bulkhead.

C. Yard requirements. The following accessory structures may be located in any required yard:

- (1) Chimneys or pilasters.
- (2) Open arbor or trellis.
- (3) Unroofed steps, patio or terrace no closer than 15 feet to the street line or 10 feet to any side or rear lot line, provided that the building complies with the yard requirements of this chapter. No side or rear yard restrictions are provided for townhouse or attached dwellings.
- (4) Awning or movable canopy not to exceed 10 feet in height above the ground level over which it is located.
- (5) Retaining wall, fence or masonry wall.
- (6) Overhanging roof not in excess of 10% of the required yard setback.

D. Two or more nonconforming, abutting subdivision lots not in separate ownership shall have three years from the date of this subsection to obtain a building permit

under the provisions of Subsection A. Any such nonconforming lots in a subdivision granted final approval by the Planning Board more than three years prior to the effective date of this subsection may be required to be resubdivided if current engineering and environmental design criteria for water, sewer, drainage or buildable area cannot be satisfied when a building permit is applied for, for such lot or lots. In such event the Building Inspector may require that the plot be resubmitted to the Planning Board for resubdivision approval in accordance with the applicable provisions of this chapter and of the Town Subdivision Regulations.

- E. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter which conforms to the bulk, width and depth requirements of this chapter but which is made nonconforming as to bulk, width and depth by any future amendment of this chapter shall have three years from the effective date of the future amendment or three years from the date of final approval, whichever is sooner, to obtain a building permit under Subsection A. Any subdivision lot for which a permit is applied for after the time periods specified herein shall conform to all the bulk regulations of this chapter and Subsection A shall be inapplicable to such a lot.
- F. Any separate lot nonconforming as to bulk which becomes subsequently attached to other adjoining land in the same ownership shall be entitled to the benefit of the provisions of Subsection A only if the total contiguous lot remains nonconforming as to bulk after the lots become attached.

~~G. Any existing lot of record, as of the date of adoption of these regulations, owned separate and apart from any adjacent parcel, which is 10 acres or less and lies in an AR-.3 District, shall not be subdivided such that the potential number of lots created therefrom represents a loss of lots greater than 50% as compared to the potential lots which would have been created from the lot under prior zoning. The number of lots under both scenarios shall be established by the Planning Board based on plans sufficient in detail, to the Planning Board's satisfaction, to make such a determination. Any lots created under this section shall meet the two-acre lot requirements as shown in § 98-25C(1).~~

**H.G.** \_\_\_\_\_ Flag lots. Flag or rear lots shall only be allowed in the AR-.3 District on unsubdivided parcels, and only two such lots shall be allowed per parcel to be subdivided. Any lot in excess of five acres in said subdivision shall carry a deed restriction prohibiting further subdivision of flag lots on that lot.

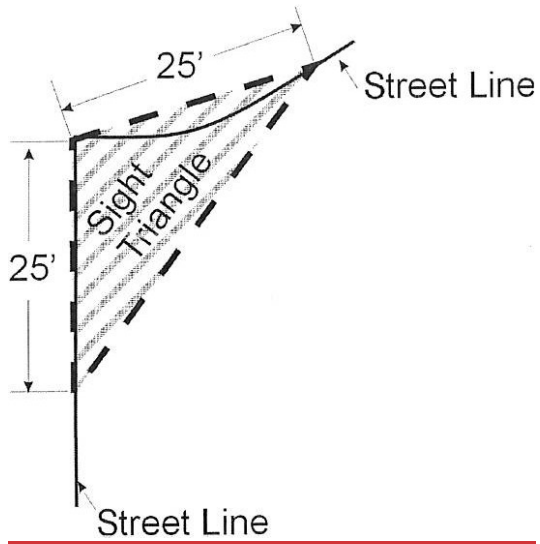
**H.H.** \_\_\_\_\_ Construction of accessory buildings and swimming pools may be allowed in the front or side yard, but not within the required minimum **setback yard** of

such front or side yard, on lots containing five acres or more. However, such accessory structure shall not be visible from the road on which the parcel fronts.

J.I. Existing undersized lots of record in nonresidential zoning districts. The use of an existing undersized nonresidential lot of record, when such lot is owned individually and separate from any adjoining tract at the time of the enactment of this subsection, may be used for a permitted or special permit use in the zoning district in which it is situated subject to site plan review by the Planning Board.

#### **§ 98-10. Corner lots.**

- A. On a corner lot, front yards are required on both street frontages; and one yard other than the front yards shall be deemed to be a rear yard; and the other (or others) a side yard(s). The minimum setback requirements for each shall be complied with required. ~~Front yard setbacks and requirements are required for all yards which abut streets. The narrowest yard of a lot which fronts on two or more streets shall be deemed to be the front yard. The yard opposite the front yard shall be the rear yard and all others shall be side yards.~~
- B. No wall, fence or other structure, and no hedge, shrubbery or other growth taller than three feet shall be erected, installed or maintained within a sight triangle with legs beginning at the intersection of the lots two street lines and proceeding to points along the street line 25 feet distant as shown below. Nor shall the limbs or foliage on any tree obstruct vision or be permitted to grow nearer to the ground than eight feet where such limbs or foliage overhang or are over or upon land within the triangular area as shown below. ~~At all street intersections, no obstructions to vision over 30 inches in height shall be erected on any lot within the triangle formed by the intersecting street lines and a line drawn between points along such street lines 30 feet distant from their point of intersection.~~



C. The Code Enforcement Officer is hereby empowered to order the removal of any such structure or growth within the triangle which, in his or her opinion causes a danger to traffic or public safety.

## § 98-11. Accessory buildings.

A. A permitted accessory building may be located in any required side or rear yard, provided that:

(1) Such building, except those used for farm purposes, shall not exceed 24 feet in height.

(2) Such building shall be set back at least five feet from any lot line and at least 10 feet from the principal building.

(3) Such building shall not occupy more than 30% of the required side or rear yard.

(4) Such building shall meet all front yard setback requirements for corner lots.

B. No such building shall project nearer to the front street line than the principal building.

(1) Construction of accessory buildings may be allowed in the front or side yard, but not within the required minimum setback of such front or side yard, on lots containing five acres or more. However, such accessory structure shall not be visible from the road on which the parcel fronts.

C. In all residence districts, a private garage is permitted only on the same lot as a dwelling.

D. No garage in a residential or LB District shall provide storage for more than one motor vehicle for each 25 feet of lot width or major fraction thereof, or more than one vehicle for each 2,500 square feet of lot area or major fraction thereof, nor for more than eight motor vehicles in any case, of which not more than one vehicle may be a commercial vehicle.

E. Accessory buildings.living space

(1) Accessory buildings shall have no living space unless the accessory building is expressly for the purpose of providing living space, such as a caretaker's or manager's unit, which is provided for elsewhere in these regulations expressly authorized by the Zoning Code. Examples include caretaker's or manger's unit or accessory living spaces authorized in the LB-SL District.

~~(2) Exception: The LB-SL District shall allow accessory buildings to have living space as approved by the Building Department or the Planning Board.~~

~~Setbacks in § 98-11A shall apply.~~

- F. Customary Residential Accessory Uses include greenhouses, garages, sheds, tool houses, playhouses, wading pools or swimming pools, sports courts all incidental and subordinate to the residential use of the premises and not operated for gain.

## ~~§ 98-12.~~ 98-12. Land Disturbance Activity

### ~~Removal and excavation of soil and stripping of topsoil.~~

~~Removal or excavation of sand, gravel, shale, topsoil, black dirt or similar material in excess of 100 cubic yards in any 12 consecutive calendar months shall be permitted only if:~~

A. Land disturbance activities; excavations; soil mining; quarrying. Excavations, soil mining, soil processing, quarrying, blasting and similar activities as a principal use are prohibited. Land disturbance activities, excavations, soil mining, and/or quarrying are hereby prohibited except in conjunction with land development activities associated with a use otherwise allowed as a permitted use or special use in the district within which it is located. Further, any land disturbance activity adversely affecting natural drainage or structural safety of adjoining buildings or lands is hereby prohibited.

B. Administration. The Planning Board is hereby authorized to issue land disturbance permits for activities permitted under this section. Land disturbance permits may only be issued in relation to work to be performed pursuant to an approved subdivision plat, special use permit, or site plan and for a use allowed by right or by special use permit in the district in which the activity is located.

C. Issuance of land disturbance permit.

(1) Except as provided herein, no person shall engage in any land disturbance activity as defined by § 98-2 until a land disturbance permit has been issued by the Planning Board.

(2) Application Submission requirements. An application for a land disturbance permit shall contain the following minimum information.

a. Project plans drawn to a scale of not less than one inch equals 50 feet and duly certified by a New York State licensed landscape architect, professional engineer, architect and/or surveyor, which plans shall include at minimum the following:

i. Existing conditions plan, based upon and including a copy of current property and land survey, showing existing site conditions of the entire subject parcel.

ii. Proposed grading and drainage plan, including:

(a) A site location map at an appropriate scale showing the parcel, surrounding parcels within 300 feet, named area streets and the surrounding zoning designations of the area shown.

(b) Graphic scale and north arrow.

- (c) The name and address of the applicant and property owner (if different).
  - (d) The name, address and telephone number of all plan preparers.
  - (e) The section, block and lot number of the subject parcel.
  - (f) Property owner name and address, and section, block and lot numbers of all contiguous parcels, including those located across abutting streets.
  - (g) Existing and proposed buildings and structures such as drains, culverts, retaining walls, fences, wells, sewage disposal facilities and treatment fields.
  - (h) Existing and proposed topography based on a two foot contour interval. Plans shall delineate all areas with grades of 15% to 25% and grades of 25% and greater.
  - (i) A table quantifying the amount of fill and the amount of excavation (cut) proposed, including quantification of cut and fill balancing, as well as an impact assessment associated with the proposed import and/or export and disposal of fill and/or excavated materials.
  - (j) The limit of proposed disturbance.
  - (k) The location and identification of existing trees over six inches in diameter measured at breast height. Trees proposed to be removed, disturbed or otherwise protected shall be identified and detailed accordingly.
  - (l) Existing and proposed drainage. ~~consistent with the standards and requirements set forth in Chapter xx of the Code of the Town of Chester.~~
  - (m) Controlled Areas (wetlands, watercourses and one-hundred-foot buffer) as defined and regulated ~~§ 98-13.1 in Chapter xx of the Code of the Town of Chester~~ on or adjacent to the premises.
  - (n) Proposed construction vehicular access to the property, including details for maintaining stabilization of said entrance and the prevention of sediments leaving the site or being deposited on adjacent roadways.
- iii. Proposed erosion and sedimentation control plan consistent with the standards and requirements set forth in Chapter 78A, "Stormwater Management" of the Code of the Town of Chester.
  - iv. If applicable, a Stormwater Pollution Prevention Plan (SWPPP)
  - v. Other proposed plans and details as pertinent to the proposed

regulated activity.

b. A narrative description of the proposed regulated activity indicating:

i. Location of subject property and area to be affected.

ii. Environmental impact assessment and description of the existing site and topographic conditions to be disturbed or altered.

iii. Intended purpose of the proposed activity or use and the applicant's interest in the subject property and area to be affected.

iv. Considered alternatives to the proposed activity, and why the proposed regulated activity was chosen instead.

v. The mitigation measures proposed to avoid or reduce related impacts.

c. Such additional information as the Planning Board may deem necessary in order to evaluate the application and related potential impacts thereof.

### (3) Standard of Review.

a. Review of application submission materials. The Planning Board shall review the scope of the proposed regulated activity and may request the applicant to submit such additional information in support of the minimum required application submission materials as set forth in § 98-12C as it deems necessary to determine compliance with this chapter. The Planning Board may consult with the Town planning, engineering or other qualified consultant as deemed appropriate.

b. Conservation Advisory Council referral. The Planning Board shall refer the application to the Chester Conservation Advisory Council, and the Council shall furnish a written report of its findings and comments within 30 days after receipt of such referral.

c. The Planning Board and Conservation Advisory Council and their authorized representatives may enter upon the application property for the purposes of evaluating a proposed application.

d. Notice and public hearing. Notice of public hearing shall be in accordance with § 98-31.2.

e. Permit determination.

i. Within 62 days of receipt of a complete application or from the close of the public hearing, whichever is later, the Planning Board shall

determine if the proposed regulated activity conforms to standards and conditions for approval set forth in this section and shall approve or deny the application.

ii. Conditions. The Planning Board may impose requirements for the modification of a proposed regulated activity and require conditions or limitations with respect to the conduct of such activity consistent with the declaration of policy contained in this section.

iii. The Planning Board shall file a copy of its written permit determination with the Town Clerk, Building Inspector and Conservation Advisory Council. Said permit determination shall specify the basis on which an application has been approved or denied and, in the case of the approval of an application, shall set forth any modifications, conditions or limitations which shall be imposed thereon.

f. The applicant and the Planning Board may, by mutual consent, extend the time periods set forth in this subsection.

g. Standards and conditions for approval.

i. The Planning Board may grant a land disturbance permit if it shall find that the approved activity will not result in the creation of any sharp declivities, pits or depressions, soil erosion or soil fertility problems, depressed land values or create any drainage or sewerage problems or other conditions which would impair the use of the property in accordance with the provisions of Chapter 98, Zoning, of the Code of the Town of Chester, and that such activity will be in harmony with the general purpose and intent of Chapter 98, Zoning, and this chapter, and if the Planning Board further finds that the permit to be granted is capable of being completed within a reasonable time.

ii. In approving a land disturbance permit, the Planning Board shall ensure the following:

(a) That the premises shall be graded, excavated and/or filled in conformity with a proposed contour plan.

(b) When a change in grade is part of the permit, post development slopes shall not exceed 15% to the horizontal or such lesser slope that the Planning Board may specify as necessary for the public health or safety, soil stability or for the reasonable use of the property after completion of the excavation. The Planning Board may, at its discretion, permit a finished slope to exceed 15% where appropriate.

(c) That no fixed machinery shall be erected or maintained in connection with the activity, and that no construction related building shall be erected on the premises except for temporary shelters for machinery and field offices.

(d) That there shall be no excavation or removal and/or filling within 50

feet of any street or property line, except that where the property to be impacted is considered above street grade at the street line, removal and/or filling may take place at a lesser distance from the street line if approved by the Planning Board.

- (e) That after excavation or removal and/or filling, the premises shall be cleared of debris within the time as required by the Planning Board.
- (f) That the top layer of arable soil for a depth of six inches shall be appropriately set aside, retained and protected on the premises and shall be respread over the premises, and that a suitable ground cover shall be planted and grown to an erosion-resistant condition upon the completion of the excavation or removal and/or filling in accordance with the approved contour lines, and that such work shall be completed within the time period as required by the Planning Board. The application of mulch and, possibly, jute netting or similar material may be required if the topsoil is deposited in the drier summer months when germination of stabilizing grass or other ground cover seed is difficult.
- (g) That, if required by the Planning Board, the area to be impacted or a portion thereof shall be enclosed within a fence of such type, height and location as the Planning Board may specify.
- (h) That the Planning Board may establish a schedule to be followed that includes:
  - (i) Limitations on the days of the week or hours of the day during which any work may be performed on the premises.
  - (j) Limitations on the delivery of fill or removal of excavated materials off-site. In no event shall fill or excavated materials be delivered to a site prior to 7:30 a.m. or after 5:00 p.m., nor at any time on Sundays or legal holidays.
  - (k) Limitations as to the size and type of machinery to be used on the premises.
  - (l) The place and manner of disposal of excavated and/or removed tree/brush material.
- (m) Requirements as to the control of dust, noise, and lighting, if permitted, to prevent results injurious or offensive to the general public.
- (n) Installation and maintenance of a construction entrance.
- (o) Installation and maintenance of required erosion control.
- (p) Daily cleaning of roadways.
- (q) That the Planning Board may require the applicant to submit periodic reports, prepared by and bearing the seal of a land surveyor or professional engineer licensed to practice in the State of New York, showing the status and progress of the approved activity, and may require the applicant to pay to the Town an inspection fee in an amount deemed necessary by the Planning Board to defray the cost of inspection of the operation.

- (r) That the Planning Board shall determine whether the proposed excavation, grading, removal of topsoil, clay, sand, gravel, rock or other earth materials, dumping, filling or depositing of earth materials is located in an area characterized by a critical environmental area or other environmental conditions, and whether the proposed activity would be appropriate in light of the site and/or environmental conditions.
- (s) That excavation, grading, removal of topsoil, clay, sand, gravel, rock or other earth materials or dumping, filling or depositing of earth materials or fill of any kind will not be within the drip line of trees located immediately adjacent to the proposed area of disturbance.
- (t) That such activities will be in harmony with the general purposes and intent of this chapter.
- (u) That approval shall comply with the permitting requirements, standards and specifications of State Law and the Town's regulations for stormwater management and erosion and sediment control (Chapter 78A of the Town of Chester Code, entitled "Stormwater Management").
- (v) That the removal and/or impact to existing trees will be necessary and minimal. Existing trees may be important from an historic standpoint as well as for their more pronounced shade, screening, soil stabilization, habitat and fruit and seed production benefits.
- iii. The Planning Board may require an applicant to furnish a bond or other security to guarantee completion and/or maintenance of approved regulated activities, subject to the form and manner of execution as approved by the Town Attorney and Town Board prior to action by the Building Inspector.
- iv. Mitigation measures. An applicant may be required to prepare and implement a mitigation plan to offset the impacts of the proposed regulated activities. Acceptable mitigation must be provided to minimize impacts to the maximum extent practicable, particularly in regard to impacts on slopes exceeding 15% or greater.

D. Activities exempt from a land disturbance permit:

- (1) In connection with the grading (excavation and/or fill activities) of land or the construction and installation of roads, drainage, and other improvements for which subdivision and/or site plan approval have been granted by the Planning Board, and only in accordance with plans as approved by the Planning Board for same.
- (2) In connection with a bona fide agricultural activity, provided that the operator shall file with the Building Inspector a written notice of intent to engage in such activity, stating the approximate acreage to be affected, the general location

thereof, the use or uses to be made of the land and the methods to be employed. Such notice requirement shall not apply to re-use of existing fields in a manner consistent with the initial notice.

(3) In connection with site and/or landscaping improvements for which a site plan, special use and/or wetland permit are not required, where all the following thresholds are met:

a. The cumulative amount of excavation and/or fill is less than 200 cubic yards within any 12 consecutive calendar months.

b. The area of disturbance does not exceed 0.75 acre (32,670 square feet), provided that the area of disturbance is promptly graded and reseeded or otherwise planted.

c. The area of disturbance does not occur within a required yard area as specified in Chapter 98, Zoning (Schedules of Use and Area Requirements).

d. The proposed finished slope does not exceed 15%.

(4) In connection with the repair or replacement of existing facilities, underground utilities (i.e., water, electric, cable service lines) and existing drainage pipes, resulting in no substantive change to the existing field conditions and topographic elevations of the impacted area.

(5) In connection with remediation work performed in accordance with the most current protocols and regulations of the Orange County Department of Health and/or New York State Health Department.

E. Permit implementation and compliance inspections.

(1) The Town shall periodically inspect the land disturbance activities to ensure compliance with the approved plan and to determine that the measures required in that plan are effective in controlling erosion. The right of entry to conduct such inspections shall be expressly reserved in the permit.

(2) Signed manifest required for fill

a. For each truck delivering fill to a site, there shall be a signed manifest stating the date of delivery, the site of origin of the fill (i.e., original location of fill), the type of fill and a representation that the fill complies with the definition for "fill" as set forth in this chapter.

b. The manifest shall be provided to the Building Department by the landowner on a weekly basis or whenever requested by the Building Department on a more frequent basis.

(3) Independent inspector.

a. At the discretion of the Building Department, the landowner shall hire an independent inspector, who shall either be a duly licensed engineer, soil scientist or representative of a certified testing laboratory, and approved by the Building Department, who shall independently provide the Building Department with a certification that the fill delivered is in compliance with the requirements of this chapter and complies with the definition of fill as set forth in this chapter.

b. Said certification shall be provided to the Building Department on a weekly basis or whenever requested by the Building Department on a more frequent basis.

c. This subsection shall not be applicable for projects where fill quantities will not exceed 1,000 cubic yards or where the fill material consists solely of road base, trench backfill, subbase bedding, trench material and bedding, run-of-bank fill for septic systems, sand for concrete or bedding materials and dust prevention materials used for horse-riding rinks and paddocks or other commonly used materials for construction, provided said fill complies with the definition of "fill" as set forth in this chapter.

(4) Certificate of compliance: uUpon the completion of all authorized work conducted pursuant to an authorized fill/excavation permit, the permit holder shall request in writing to the Building Inspector for a final inspection thereof.

(5) An as-built plan of completed work, which plan shall be prepared and certified complete by a New York State licensed surveyor, landscape architect and/or professional engineer, may be required as appropriate to determine compliance and/or satisfaction with any conditions of a granted permit.

(6) If all authorized work is complete in accordance with the issued permit and the provisions of this chapter, then a certificate of compliance shall be issued by the Building Inspector.

(7) If the Town determines that the permit holder has failed to comply with the plan, the Code Enforcement Officer shall immediately serve upon the permit holder, by registered or certified mail, or by personal service or by posting on the property in a conspicuous place, a notice to comply. Such notice shall set forth specifically the measures needed to comply and shall specify the time within which such

measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to the revocation of his permit; furthermore, he shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the revocation of his permit. The remedies as set forth above shall not be the exclusive remedy for a violation of this section, and the Town reserves the right to avail itself of any legal method of terminating activity violative of this provision.

#### F. Waivers.

- (1) The Planning Board may, upon written request by an applicant, waive or modify the required application materials to address the specific instances of the application under consideration. Any such waiver shall not be automatic, but rather shall only be granted if such required application materials are deemed not applicable to the application under consideration and are not requisite in the interest of public health, safety, and general welfare.
- (2) The Planning Board may, upon written request by an applicant, waive the required public hearing, provided all of the following minimum conditions are met:
  - a. Disturbance associated with the regulated activity will impact an area of less than one acre;
  - b. The activity will not disturb or impact any areas of slopes of 15% or greater; and
  - c. The activity will not occur within any minimum required front, side or rear yard area, as set forth in [Chapter xx of the Code of the Town of Chester](#). [Attachment 2, Schedule of Use and Area Requirements.](#)

#### G. Permit expiration.

- (1) Approval of a land disturbance permit shall expire unless such conditions have been met and final plans as may be required have been submitted for endorsement by the Planning Board Chair and Secretary within 180 days of the date of approval. Failure to timely submit final plans shall result in expiration of the approval, thereby making it null and void.
- (2) Approval shall expire unless a certificate of compliance relating thereto has been obtained from the Building Inspector within a time period not to exceed two years from the date of said approval as determined by the Planning Board.
- (3) In the event that building construction is not completed and the building permit thereof expires or the land disturbance permit expires, the premises shall be cleared of any rubbish, building materials, or other unsightly accumulations, and any excavation for a building, basement, foundation, utility or otherwise of a depth greater than two feet below grade shall be filled and the topsoil replaced, or all such excavations shall be entirely surrounded by a substantial fence at least six feet high that will effectively block access to the area. Where necessary,

suitable gates will be installed and provided with locks. Such clearing, filling and/or fencing shall be completed not later than the expiration date of the building permit.

(4) Extension of permit approval time.

- a. An extension of the permit approval time period may be granted by the Planning Board upon a showing of reasonable cause and/or upon determination that the public interest and environment will be best served by not interrupting the activity or use, if commenced.
- b. A request for an extension of permit approval shall be submitted in writing a minimum of 45 days prior to the expiration date for which an extension is requested and shall state at minimum the following:
  - i. The reasons and circumstances for the requested extension.
  - ii. The reasons why the authorized activity or use has not been initiated or completed within the time frame allowed.
  - iii. Any changes in the facts or circumstances involved with or affecting the regulated resource area affected by the authorized activity or use, or the property for which the expiring permit was issued.
  - iv. The status of the authorized activity or use which is the subject of the expiring permit, including a description of the extent of work completed at the time of the extension request and the proposed schedule for completing the remaining authorized work.

H. Remedies

(1) Authority to remove and restore. In addition to other remedies as set forth in this chapter, in the event that the owner, occupant or person in control of such site shall fail to comply with this chapter, the Town shall have the authority, as provided for herein, to enter onto such land and remove such noncomplying fill and restore the land to an appropriate and safe state and charge the cost and expense of such action against the owner and establish a lien against the land in the manner herein provided.

- a. Town Board action. Notwithstanding anything stated in this chapter, any owner of land in the Town shall be required to remove the noncomplying fill which exists upon his land and restore the land to an appropriate and safe state when directed to do so by resolution of the Town Board.
- b. Notice to be served. Whenever the Town Board shall adopt a resolution requiring the owners of land to remove the noncomplying fill which exists thereon and restore the land to an appropriate and a safe state, the Town Board shall specify the time within which such work shall be completed.

Such notice, which shall be sent to the owner by certified mail, return receipt requested, shall set forth, with reasonable certainty, the location at which the condition exists, the material to be removed and the requirement that appropriate restoration measures must be taken. Giving due consideration to the material and the location thereof, the Town shall give the owners no more than 30 days from the date of the mailing of the notice during which actual removal work on such land shall be commenced and no more than 90 days from the date of the mailing of the notice during which removal work and restoration of the land shall be completed. Notice of the adoption of a resolution requiring the work shall be served upon the owners of the land by certified mail, addressed to either the owners at the address of the land or the last known address of said owners. In removing the noncomplying fill and restoring the land to an appropriate and safe state, the owners shall be required to comply with all laws, rules, regulations, orders and ordinances.

c. Failure to comply. Whenever any notice referred to in this subsection has been mailed, as required, and the owner shall neglect or fail to comply with any of the time periods provided herein, the Town Board shall provide for the removal of such fill and restore grade and further declare the owner's surety bond to be in default and authorize the Town Attorney to call the proceeds of said bond.

d. Manner of assessment of cost. In any case where it shall be necessary for the Town Board to have the work performed due to the owner's failure to comply with the Town Board's resolution, the Town shall be reimbursed for the cost of the work performed or the services rendered (including, without limitation, the cost of professionals employed by the Town) at its direction, from the proceeds of the surety bond, or if said bond is insufficient for said purpose or the Town fails to collect said proceeds for any reason, then by assessment or levy upon the lots or parcels of land where such work was performed or such services rendered. All costs actually incurred by the Town upon each lot or parcel and the charge therefor shall be assessed and collected in the same manner and in the same time as other ad valorem Town charges.

(2) Permit suspension and revocation. Any permit issued pursuant to the provisions of this chapter may be revoked by the Planning Board after notice as issued by the Building Inspector, in writing, and a hearing for noncompliance of any conditions of the resolution of approval for the regulated activity or the doing of any act constituting or creating a nuisance or endangering the life or property of another.

- a. Notice. The notice shall describe the offense charged and may either be delivered personally or mailed postage prepaid to the address appearing on the application.
- b. Suspension. Any permit granted pursuant to this chapter may be suspended for cause by the Building Inspector for a period not exceeding five days without a hearing. All work under any permit shall be suspended following notice of a hearing to revoke as provided for in this chapter.
- I. Offenses. Any person who shall violate any order of the Building Inspector or conditions of a Planning Board resolution of approval, issued under this section, shall be deemed to have committed an offense of this chapter.
- J. Penalty. Any person, firm or corporation found guilty of violating any provisions of this subsection shall be subject to any fines set forth in \_\_\_\_\_ of this Zoning chapter.
- ~~A. Such use is authorized by the Planning Board in accordance with the provisions of § 98-30 of this chapter. A building permit may also be required under certain circumstances as delineated in § 50-4 of this Code.~~
- ~~B. The proposed operation shall have a particular time limit for completion of either the entire operation or each stage of the entire operation as imposed by the Planning Board.~~
- ~~C. The proposed operation shall not adversely affect soil fertility, drainage and lateral support of abutting land or other properties nor shall it contribute to soil erosion by water or wind.~~
- ~~D. The proposal shall include a rehabilitation plan for the site or portions of the site related to each stage of the operation, showing both existing and proposed final contours after operations are completed.~~
- ~~E. The proposals shall indicate how adjacent properties and the public will be protected from the hazards of the operation in terms of both on-site activity and off-site traffic generated by that activity.~~
- ~~F. After any such operation the site shall be made reusable for a use permitted in the district in which the site is located. Where topsoil is removed, sufficient arable soil shall be set aside for retention on the premises and shall be respread over the premises after the operation. The area shall be brought to final grade by a layer of earth two feet thick or original thickness, whichever is less, capable of supporting vegetation. Fill shall be of material approved by the Planning Board.~~

- ~~G. No slope in excess of 60% shall be created at any time within 25 feet of an adjacent property.~~
- ~~H. Where any open excavation will have a depth of 10 feet or more with a slope of more than 60%, there shall be a substantial fence, approved by the Planning Board, with suitable gates where necessary, effectively blocking access to the area in which such excavation is located. Such fence shall be located 25 feet or more from the edge of the excavation. All operations shall be screened from nearby residential uses as required by the Planning Board.~~
- ~~I. The slope of material in any excavation shall not exceed the normal angle of repose or 45°, whichever is less.~~
- ~~J. That portion of access roads located within 500 feet of any lot in residential use or lot zoned for residential uses shall be provided with a dustless surface.~~
- ~~K. The top of the natural slope in cut for any excavation, and any mechanical equipment, shall not be less than 25 feet from any lot line.~~
- ~~L. Proper measures, as determined by the Planning Board, shall be taken to minimize the nuisance of noise and flying dust or rock. Such measures may include, when considered necessary, limitations upon the practice of stockpiling excavated material upon the site.~~
- ~~M. At all stages of operations, proper drainage shall be provided to prevent the collection and stagnation of water and to prevent harmful effects upon surrounding properties.~~
- ~~N. No building shall be erected upon the premises except upon the issuance of a building permit in accordance with the regulations contained in this chapter. Temporary buildings for machinery and field offices may be permitted, subject to approval of the Planning Board.~~
- ~~O. No screening, sifting, washing, crushing or other forms of processing shall be conducted upon the premises.~~
- ~~P. Before site plan approval is granted, the owner or his agent shall execute a certified check made payable to the Town of Chester or a bond sufficient in the opinion of the Planning Board to secure the rehabilitation of the site in accordance with the approved site plan. Such bond shall also be approved by the Town Board as to form, sufficiency and manner of execution and shall run for the same term as the site plan approval. The amount of such bond may be reduced when, in the opinion of the Planning Board, a lower amount will be sufficient to accomplish its purposes. In the~~

~~event the owner or his agent does not fulfill the conditions of the bond, the Town shall, after due notice to the operator and to his bonding or surety company and upon their failure to comply with the terms of the site plan approval, proceed with its own forces or by contract and shall charge the costs to the owner, his agent or the bonding or surety company.~~

~~Q. Before site plan approval is granted, the owner or his agent shall pay the Town Board a nonrefundable fee of \$0.02 per cubic yard for estimated yardage to be removed during the term of the site plan approval.~~

~~R. No more than five acres of land shall be excavated during any one period of time.~~

~~S. No operation shall take place within 1,000 feet of a residential district between the hours of 7:00 p.m. and 7:00 a.m. on any day, and no operations of any kind shall take place on Sundays or legal holidays.~~

~~T. Any area of land from which the topsoil has been removed or covered with fill shall be treated as set forth in § 98-12F and seeded to provide an effective cover crop within the first growing season following completion of such operation.~~

## **§ 98-13. Stormwater runoff.**

All applicants shall comply with the requirements of Chapter 78A, "Stormwater."

### § 98-13.1 Wetlands and Watercourses

A. All federal and state wetlands shall be delineated in the field by the Department of Environmental Conservation (DEC) for state wetlands and in accordance with currently applicable federal standards for federal wetlands. The Planning Board shall have the right to request additional information on wetland boundaries, including, but not limited to, verification by others.

B. Disturbance of buffers or wetlands shall only be allowed where federal wetlands are under the federal wetland disturbance limit, where disturbance is essential to provide access to a lot or where a disturbance permit has been issued by the New York State Department of Environmental Conservation and/or the Army Corps of Engineers.

C. All federal wetlands shall be provided with a minimum buffer of 25 feet within which all site disturbance shall not be permitted except for clearance of dead trees or man-made debris on-site.

D. Wetlands shall be no closer than 100 feet to a septic system drain field or expansion area.

E. In instances where wetlands have not been shown, but are believed to exist due to soils maps or site observations, a wetland delineation shall be required by the Planning Board and performed by a qualified wetland delineator acceptable to the Planning Board.

F. No structures or buildings shall be erected within 100 feet of the high-water mark of a stream or within 50 feet of an intermittent stream. This separation shall not apply to swales or drainage channels designed for a site. There shall be no site disturbance within 50 feet of the high-water mark of a stream or within 25 feet of an intermittent stream. All development or site disturbance within 100 feet of any stream shall be reviewed with the intent of mitigating any adverse water quality issues that could impact the stream.

~~A. Applicability. This section shall be applicable to all land development activities within the Town of Chester outside the incorporated village unless specifically exempted.~~

- ~~(1) The Town Highway Superintendent and the Town Engineer shall be the Stormwater Management Officers for the Town and shall accept and review all stormwater pollution prevention plans and submissions.~~
- ~~(2) Each application for land development shall be accompanied by a stormwater management plan or statement of exemption which shall be certified as conforming to the requirements of this section by a licensed professional engineer.~~
- ~~(3) Applicants for any land development activities not subject to review as provided for herein or in the Subdivision Regulations, Chapter 83, of the Town of Chester shall be required to submit a stormwater pollution prevention plan (SWPPP) or statement of exemption to the Stormwater Management Officer, who shall approve the SWPPP if it complies with the requirements of this section.~~
- ~~(4) Applicants for any land development activity subject to Planning Board review in accordance with the Subdivision Regulations, Chapter 83, of the Town of Chester or the Zoning Law, Chapter 98, of the Town of Chester shall be required to submit a stormwater pollution prevention plan to the Planning Board, which shall direct it to the Stormwater Management Officer through the Town Planning Board Engineer for review, who shall approve the stormwater pollution prevention plan if it complies.~~

~~B. Exemptions. The following activities shall be exempt from review under this section:~~

- ~~(1) Agricultural activity as defined in this section.~~
- ~~(2) Silvicultural activity, except that landing areas and log haul roads are subject to this section.~~
- ~~(3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.~~
- ~~(4) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.~~
- ~~(5) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Chester Planning Board on or before the effective date of this section.~~
- ~~(6) Land development activities and site plans which have been approved by the Town of Chester Planning Board or for which a building permit has been approved on or before the effective date of this section.~~

~~(7) Cemetery graves.~~

~~(8) Installation of fence, sign, telephone and electric poles and other kinds of posts or poles.~~

~~(9) Emergency activity immediately necessary to protect life, property or natural resources.~~

~~(10) Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.~~

~~(11) Landscaping and horticultural activities in connection with an existing structure.~~

~~(12) Disturbance of less than one acre which is not part of a larger project.~~

~~C. Stormwater pollution prevention plan. No application for approval of a land development activity shall be subject to public review until the appropriate board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this section.~~

~~D. Contents of stormwater pollution prevention plans:~~

~~(1) All SWPPPs shall provide the following background information and erosion and sediment controls:~~

~~(a) Background information about the scope of the project, including location, type and size of project;~~

~~(b) Site map/construction drawing(s) for the project, including a general location map, should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges;~~

~~(c) Description of the soil(s) present at the site;~~

~~(d) A construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and~~

- infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
- ~~(e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;~~
  - ~~(f) Description of construction and waste materials expected to be stored on site, with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;~~
  - ~~(g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project closeout;~~
  - ~~(h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;~~
  - ~~(i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;~~
  - ~~(j) Temporary practices that will be converted to permanent control measures;~~
  - ~~(k) An implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;~~
  - ~~(l) A maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;~~
  - ~~(m) Name(s) of the receiving water(s);~~
  - ~~(n) Delineation of SWPPP implementation responsibilities for each part of the site;~~
  - ~~(o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from overexposed areas of the site to the degree attainable; and~~

~~(p) Any existing data that describes the stormwater runoff of the site.~~

~~(2) Land development activities as defined herein and meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in Subsection D(3) below as applicable:~~

~~(a) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.~~

~~(b) Condition B: Stormwater runoff from land development activities disturbing five or more acres.~~

~~(c) Condition C: Stormwater runoff from land development activity disturbing between one acre and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.~~

~~(3) SWPPP requirements for Conditions A, B and C:~~

~~(a) All information in Subsection D(1) above.~~

~~(b) Description of each postconstruction stormwater management practice.~~

~~(c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.~~

~~(d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.~~

~~(e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.~~

~~(f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.~~

~~(g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.~~

~~(h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.~~

~~(i) An inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Subsection I of this section.~~

~~E. Plan certification. The SWPPP shall be prepared by a landscape architect or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this section.~~

~~F. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.~~

~~G. Contractor certification.~~

~~(1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."~~

~~(2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.~~

~~(3) The certification statement(s) shall become part of the SWPPP for the development activity.~~

~~(4) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.~~

~~H. Performance and design criteria for stormwater management and erosion and sediment control. All land development activities shall be subject to the following performance and design criteria:~~

~~(1) Technical standards. For the purpose of this section, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this section.~~

~~(a) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").~~

~~(b) New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").~~

~~(2) Water quality standards. Any land development activity shall not cause turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.~~

~~I.—Maintenance and repair of stormwater facilities.~~

~~(1) Maintenance during construction.~~

~~(a) The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this section. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.~~

~~(b) The applicant or developer or his or her representative shall be on site at all times when construction or grading activity is taking place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every seven days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and copied to the site logbook.~~

~~(2) Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times~~

~~for periodic inspection by the Town of Chester to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by the section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Town Attorney for the Town of Chester.~~

~~(3) Maintenance after construction. The owner or operator of permanent stormwater management facilities installed in accordance with this section shall insure such facilities are operated and maintained to achieve the goals of this section. Proper operation and maintenance also includes, as a minimum, the following:~~

~~(a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this section.~~

~~(b) Written procedures for operation and maintenance and training new maintenance personnel.~~

~~(c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations of this section.~~

~~(4) Maintenance agreements. The Town of Chester shall provide a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this section entitled "Sample Stormwater Control Facility Maintenance Agreement." The Town of Chester, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.~~

#### ~~J. Administration and enforcement.~~

~~(1) Erosion and sediment control inspection.~~

~~(a) The Town of Chester Stormwater Management Officer may require such inspections as necessary to determine compliance with this section and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this section and the stormwater pollution prevention plan (SWPPP) as approved. To obtain~~

inspections, the applicant shall notify the Town of Chester enforcement official at least 48 hours before any of the following activities:

- ~~(i) Start of construction.~~
- ~~(ii) Installation of sediment and erosion control measures.~~
- ~~(iii) Completion of site clearing.~~
- ~~(iv) Completion of rough grading.~~
- ~~(v) Completion of final grading.~~
- ~~(vi) Close of the construction season.~~
- ~~(vii) Completion of final landscaping.~~
- ~~(viii) Successful establishment of landscaping in public areas.~~

~~(b) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.~~

~~(2) Stormwater management practice inspections. The Town of Chester Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit as-built plans for any stormwater management practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.~~

~~(3) Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws.~~

~~Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.~~

~~(4) Submission of reports. The Town of Chester Stormwater Management Officer may require monitoring and reporting from entities subject to this section as are necessary to determine compliance with this section.~~

~~(5) Right of entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Chester the right to enter the property at reasonable times and for a reasonable time and in a reasonable manner for the purpose of inspection as specified in Subsection J(3) above.~~

#### ~~K. Performance guarantee.~~

~~(1) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town in its approval of the stormwater pollution prevention plan, the Town may require the applicant or developer to provide, prior to construction, a performance bond in the form of a cash escrow or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.~~

~~(2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by the corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction and until the facilities~~

~~are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.~~

~~(3) Recordkeeping. The Town may require entities subject to this section to maintain records demonstrating compliance with this section.~~

#### ~~L. Enforcement and penalties.~~

~~(1) Notice of violation. When the Town determines that a land development activity is not being carried out in accordance with the requirements of this section, it may issue a written notice of violation to the landowner. The notice of violation shall contain:~~

~~(a) The name and address of the landowner, developer or applicant.~~

~~(b) The address, when available, or a description of the building, structure or land upon which the violation is occurring.~~

~~(c) A statement specifying the nature of the violation.~~

~~(d) A description of the remedial measures necessary to bring the land development activity into compliance with this section, and a time schedule for the completion of such remedial action.~~

~~(e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.~~

~~(f) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.~~

~~(2) Stop-work orders. The Town may issue a stop-work order for violations of this section. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this section.~~

- ~~(3) Violations. Any land development activity that is commenced or is conducted contrary to this section may be restrained by injunction or otherwise abated in a manner provided by law.~~
- ~~(4) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this section shall be guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense, shall be considered an aggravated violation of this section if such violation shall occur within five years of the conviction of the initial offense. An aggravated violation of this section shall be an unclassified misdemeanor and shall be punishable in accordance with the Penal Law of the State of New York by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense committed within the same five-year period, shall be punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this section shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.~~
- ~~(5) Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this section, the Stormwater Management Officer may prevent the occupancy of said building or land.~~
- ~~(6) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable period of time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.~~
- ~~(7) Fees for services. The Town may require any person undertaking land development activities regulated by this section to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town or performed by a third party for the Town.~~

## § 98-14. Fences and walls.

- A. All fences and walls shall conform to corner lot requirements where applicable concerning obstruction of vision (§ 98-10B) and location in front yards of corner lots (§ 98-10A).
- B. Fences and walls not exceeding six feet in height shall be permitted in any yard or along the edge of any yard, provided that no fence or wall along the sides or front edge of any front yard shall be over four feet in height for open fences or over three feet in height for solid fences. This section shall not apply to fences or walls approved for buffering or screening by the Planning Board during the site plan approval process.

## § 98-15. Lighting of properties.

A. All lighting shall comply with Chapter 69, "Outdoor Lighting". Where Chapter 69, "Outdoor Lighting" and this Chapter are inconsistent, the more restrictive provision shall apply.

B. Outdoor light fixtures shall be downward facing and shielded or otherwise covered by a structure to avoid upward light pollution or 'spill' beyond the property line. Lighting shall be limited to 2.0 foot-candles within off-street parking areas and be designed in a manner that keeps the light entirely on the subject site, away from adjoining properties, and out of the night sky.

A.C. Floodlighting of residential buildings and front, side and rear yards is permitted. No floodlight, spotlight or other light shall be erected in such a manner that its beam shall be directed in whole or in part toward a street, road or highway or toward adjoining property or in any way or manner that will cause a traffic hazard due to its glare.

B.D. Lighting of commercial, industrial and residential properties subject to site plan approval.

(1) Outdoor lighting facilities of any kind where the light source is visible from outside the property lines, or where glare extends beyond the property lines or creates public hazards to traffic or public streets are prohibited.

(2) All luminaires for commercial, industrial or multifamily parking areas or private roads and drives shall be pulse-started metal halide cutoff-type shoe box units with a flat glass lens attached to a pole or building on a fixed arm with the flat glass lens oriented parallel to the ground. Lighting in the LB-SL Zones, SR-2 and

SR-6 may be regulated using appropriate period lighting as approved by the Planning Board with the intent of preventing sky lighting or light pollution.

**§ 98-16. Swimming pools.**

No commercial or private swimming pool shall be constructed, installed or maintained on any premises unless it complies with the following provisions:

- A. The term "swimming pool" shall mean any permanently constructed variety which will cause the retention of water to a depth of two feet or more below the level of the surrounding land, or an above-surface pool which will cause the retention of water to a depth of two feet or more, designed, used and maintained for swimming or bathing purposes and which is not readily portable.
- B. Private pools shall be constructed or installed within the confines of the rear or side yard of a premises.
  - (1) Construction of swimming pools may be allowed in the front or side yard, but not within the required such front or side yard, on lots containing five acres or more. However, such swimming pool and any accessory structure shall not be visible from the road on which the parcel fronts.
- C. The pool shall be located at least 15 feet from any rear or side line of a premises and shall be at least 25 feet away from any septic tank and its fields.
- D. No person, membership club or organization shall construct or have constructed a swimming pool without having first applied for and secured approval by the issuance of a permit from the Building Inspector. Upon application for permit, there shall be submitted plans and specifications detailing the pool dimensions, depth, volume in gallons and the distance of the pool from all lot lines and, if any, septic tanks and their fields; a pool fencing proposal shall also accompany these specifications.
- E. After issuance of permit, construction or installation shall be accomplished within a sixty-day period; otherwise, the permit will have expired. The Building Inspector may authorize in writing an additional extension period not to exceed 20 days. If construction of a below-surface pool is not completed within the sixty-day period or extension thereof, any excavation shall be completely filled and the surface restored to its original state.

- F. All material used in the construction of a swimming pool shall be of durable quality and waterproof and designed so as to facilitate its emptying and cleaning. Filter pumps and other mechanical devices shall be located at least 20 feet away from any adjoining premises so as not to interfere with the comfort, health and safety of the occupant of the adjoining premises.
- G. A fence or enclosure of substantial design contiguous to the pool area and not less than 3 1/2 feet in height shall be constructed to completely surround a swimming pool having a depth of two feet or more below ground level. The fence shall be constructed during the sixty-day or extension period. The gate or door opening providing access into the pool area shall be of the same height as the fence or enclosure and shall be equipped with a self-closing and latching device. Any access ladder or steps used in connection with an above-surface-type swimming pool shall be removed when not in use.
- H. Any lighting and electrical fixtures, wiring and installation shall be in accordance with the standard practices as required by the National Electric Code.
- I. Above-surface pools shall be exempt from the fencing requirement unless the Building Inspector shall determine that safety conditions warrant the installation of complete or partial fencing not to exceed the maximum requirements for below-surface pools. Any appeal from a decision of the Building Inspector on fencing shall be made to the Zoning Board of Appeals and shall follow the procedure required in seeking a variance.
- J. If any swimming pool is abandoned or permanently discontinued, the owners of the land upon which it is located shall completely fill the pool area and return the surface to its original state.
- K. All swimming pools shall be provided with drainage to a drainage easement or swale or storm drain, but in no case to a sanitary sewer or toward the direction of a septic field. Below-surface pools shall be provided with washed gravel or crushed stone on the exterior of the pool sides where deemed necessary by the Building Inspector for proper drainage.
- L. No pool located on a lot which is served by a public or central water system shall have its initial filling or seasonal refilling provided from the central water supply system.
- M. Aboveground pools shall be leveled and not located on fill areas.
- N. Safety covers capable of being adequately secured shall be required on all pools during normal off-season periods.

## § 98-17. Prohibited uses.

The following are prohibited uses in all districts:

- A. Any use which is noxious, offensive or objectionable by reason of the emission of smoke, dust, gas, odor or other form of air pollution, or by reason of the deposit, discharge or dispersal of liquid or solid wastes in any form in a manner or amount as to cause damage to the soil and streams or to adversely affect the surrounding area, or by reason of the creation of noise, vibration, electromagnetic or other disturbance, or by reason of illumination on or from which such light or light reflection emanates, or which involves any dangerous fire, explosive, radioactive or other hazard, or which causes injury, annoyance or disturbance to any of the surrounding properties or to their owners and occupants, and any other process or use which is unwholesome and noisome and may be dangerous or prejudicial to health, safety or general welfare.
- A.B. Amusement parks and circuses and related activities, except for a temporary period on special license from the Town Board.
- B.C. Junkyards or sanitary landfills, except as established as an official Town facility or duly licensed by the Town Board and Orange County Department of Health.
- C.D. The removal of black dirt, except as part of a farming operation. [Black Dirt shall be defined as dark, nutrient rich, extremely fertile soil left over from an ancient glacial lake bottom augmented by decades of past flooding of the Wallkill River.](#)
- D.E. Any building or structure or any part of a drainage or disposal system located within 100 feet of any pond or reservoir, lake or watercourse tributary thereto which is part of any water supply system.
- E.F. No building or structure shall be located within the designated floodways and/or floodplains of Seeley Brook, Trout Brook or Black Meadow Creek or any other floodways/floodplains as designated by the Federal Emergency Management Agency except in conformance with the flood damage prevention requirements as set forth in Chapter 52 "[Flood Damage Control](#)" of the Code of the Town of Chester.
- F.G. Travel trailers may not be occupied in any district as a dwelling except in travel trailer courts.
- G.H. Resource recovery operations, including but not limited to reprocessing, recycling, processing and storage of chemical compounds, solvents, industrial wastes and by-products.