

Staff Report-  
Planning Department  
AGENDA ITEM  
May 19, 2015

AGENDA ITEM

# 15-55  
Date 5-19-15

Public Hearing 6-2-15

**TITLE:** Proposed amendments to the Town of Derry Zoning Ordinance, specifically relating to requirements in the Central Business and Traditional Business Overlay Districts.

Article II, Section 165-5, Definitions

Article III, Section 165-13, Off-Street Parking for Non-Residential Uses

Article VI, Section 165-33, Central Business District

Article VI, Section 165-49, Traditional Business Overlay District

**TOWN ADMINISTRATOR COMMENTS:** I concur and recommend that this Zoning amendment be approved.

**BACKGROUND:** In 2014 the Town Council and Planning Board held a Goals setting workshop and at the meeting the Town Council requested that the Planning Board and Planning Department staff review the Derry Zoning Ordinance relating to the Downtown/Traditional Business Overlay and Central Business District's permitted uses, building height requirements, parking and buffer zones. During the course of the past year the Planning Board set up a sub-committee to work on the zoning amendments with the Planning Department staff. The subcommittee held four meetings and made recommendations to the Planning Board. The Planning Board held five workshop meetings and two Public Hearings and approved the zoning amendments and forwarded them to the Town Council for their consideration.

**DISCUSSION:** The purpose of the amendments is to revise the requirements in the Central Business District and the Traditional Business Overlay District (which is the zoning along the frontage lots on East and West Broadway from Crystal Ave. to Maple Street) to encourage future development and redevelopment opportunities within the Downtown business district, promoting economic growth.

**FISCAL IMPACT:** Both new development and redevelopment of existing buildings as well as new development on currently vacant town-owned properties in the district will expand the town's tax base and opportunities for new business and employment.

**RECOMMENDATION:** Staff would recommend that Town Council approve and adopt the below referenced zoning amendments as unanimously approved by the Planning Board on May 6, 2015.

**MOTION:** To amend Article II, Section 165-5, Definitions, to amend Article III, Section 165-13, Off-Street Parking for Non-Residential Uses, to amend Article VI, Section 165-33, Central Business District, and Section 165-49, Traditional Business Overlay District, to amend the permitted uses allowed in the districts, density requirements, building height, parking, and buffer zones.

**Prepared by: George Sioras, Planning Director.**

*"Derry, New Hampshire's Place to Be"*



**PLANNING DEPARTMENT**

CERTIFICATE

The Derry Planning Board hereby certifies to the Clerk of Council of the Derry Town Council that on **May 06, 2015**, the Planning Board, by unanimous vote during a duly noticed **SECOND** public hearing, **APPROVED** the attached revision to the Derry Zoning Ordinance and is hereby forwarding said proposed revision for consideration by the Derry Town Council.

To amend Article II, Section 165-5, Definitions, to add definitions for Contractor, Travel Agent, Light Manufacturing, and Electrical Vehicle Supply Equipment, and to amend definitions for the following terms: Commercial Service Establishment, Bus Depot, Professional Office and Filling Station.

To Amend Article III, Section 165-13, Off-Street Parking For Non-Residential Uses; Article VI, Section 165-33, Central Business District and Section 165-49, Traditional Business Overlay District, to amend the permitted uses allowed in the districts, density requirements, building height, parking and buffer zones.

The purpose of the amendments is to revise the requirements in the Central Business District and Traditional Business Overlay District to encourage future development and redevelopment opportunities within the downtown business district, promoting economic growth.

## Zoning Ordinance

### **Article, II, Section 165-5 Definitions**

COMMERCIAL SERVICE ESTABLISHMENT— A building and/or other structure used principally for providing commercial services to the public, such as a barber, hairdresser, health spa, beauty parlor, shoe repair, shoe shine, laundry, laundromat, dry cleaner, photographic studio, catering, express mail/courier, ~~electrician, plumber, repair services, installation service, general contractor,~~ rental shop and businesses providing similar services. This definition does not include a sexually-oriented business.

CONTRACTOR – Person or persons engaged in specialized services to the general public including electricians, plumbers, HVAC installation or repair services, general repair or installation services, general contractor.

~~BUS DEPOT~~TRANSPORTATION CENTER — A terminal or station where transport vehicles load or unload passengers or goods. This includes bus, shuttle and livery service depots, trolley stations and the like.

TRAVEL AGENT – A person engaged in selling and arranging transportation, accommodations, tours or trips for travelers.

LIGHT MANUFACTURING – An establishment or activity primarily involved in manufacturing or assembly which does not involve on premise use of heat, noise, or odor generating/producing processes which are detectable off-site. Includes micro and nano breweries.

PROFESSIONAL OFFICE – Offices for ~~doctors, dentists, lawyers,~~ engineers, planners, architects, attorneys, insurance, real estate or investment agencies or any similar type of licensed profession. Such uses may occur as home occupations but only in accordance with specific requirements relating to home occupations set forth in this Ordinance or in the Land Development Control Regulations.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE) – a charging station for electric vehicles.

FILLING STATION — A building or structure, or part thereof, or any premises used in connection with tanks, pumps and other appliances for supplying motor vehicles with gasoline, oil, water, ~~electricity,~~ compressed air and other similar supplies, but not used for the purpose of making repairs. This use excludes the sale of vehicles.

### **Article, III, Section 165-13 ~~Off-Street Parking for Non-Residential Uses~~**

Any non-residential use established or expanded after the effective date of this chapter shall ~~provide~~ have adequate off-street parking for employees and customers ~~on land held in the same title as the non-residential use in compliance with Chapter 170, Land Development Control Regulations~~

**Article, VI, Section 165-33 Central Business District (CBD) (Effective 2/16/01)**

A. Purpose. The Central Business District is established for the purpose of encouraging appropriate uses to occur within an area of the community where the predominant character has been and will continue to be historical, municipal, cultural, residential, and commercial. It is intended that the types of land use activities that would be allowed within the district would not have a severe detrimental impact on existing historical, residential uses, or traditional commercial, or cultural uses which continue to be maintained in the district. ~~in~~In order to promote this purpose, the Planning Board, as set forth in this ~~section~~, shall be authorized to adopt architectural design regulations for this district.

B. Permitted uses. The following uses shall be permitted:

~~1. Single family detached dwellings~~Single family dwelling units existing as of the effective date of this amendment (insert date here), shall be considered legal permitted uses.

~~2. Hotels~~

~~3. Bed & Breakfasts~~

~~4. \_\_\_\_\_ and Inns~~

~~2. Multi-unit residential uses consisting of no more than four dwelling units, which may be in combination as a mixed use, with non-residential uses permitted in this district, subject to the following limitations:~~

~~a. All residential units permitted under this sub-section shall be:~~

~~i. A minimum of 800 square feet per unit~~

~~ii. Limited to one or two bedroom units.~~

~~b. Conversion:~~

~~i. Existing structures may be converted for multi-unit residential uses, provided that the lot and the structure meet the minimum standards for this district with respect to area and dimensional requirements, buffer zones, off-street parking, and height limitation.~~

~~ii. Any conversion which involves an existing non-residential or multi-family use, or one which would result in the creation of a combination of non-residential and residential use, or which would result in the creation of a multi-unit dwelling, shall be subject to review and approval by the Planning Board in accordance with Section 165-16 of this chapter and Chapter 170, Land Development Control Regulations.~~

~~3.5. \_\_\_\_\_ Multi-unit residential uses of more than four (4) dwelling units, but are only permitted only as a mixed use in conjunction with permitted non-residential uses, subject to the following limitations:~~

~~a. New construction – the density shall not exceed 18-12 dwelling units per acre.~~

~~b. All residential units permitted under this sub-section shall be:~~

- i. A minimum of 800 square feet per unit.
- ii. Limited to one or two bedroom units.
- iii. Prohibited below the ~~second~~ third floor.

c. Conversion —

- i. Existing structures may be converted for multi-unit residential uses, provided that the lot and the structure meet the minimum standards for this district with respect to area and dimensional requirements, buffer zones, off-street parking and height limitations.
- ii. Any conversion which involves an existing non-residential or multi-family use, or one which would result in the creation of a combination of non-residential and residential use, or which would result in the creation of a multi-unit dwelling, shall be subject to review and approval by the Planning Board in accordance with Section 165-16 of this chapter and Chapter 170, Land Development Control Regulations.

~~4. All stores intended for the retail sale of the following commodities:~~

- ~~1. Antiques~~
- ~~2. Appliances and supplies~~
- ~~3. Art goods~~
- ~~4. Automotive Parts~~
- ~~5. Bakery products~~
- ~~6. Bicycles and their accessories~~
- ~~7. Books, stationary and greeting cards~~
- ~~8. Boots and shoes~~
- ~~9. Cameras and photographic supplies~~
- ~~10. Candy and confections~~
- ~~11. Cigars, cigarettes, tobacco and smoking supplies~~
- ~~12. Clothing and wearing apparel~~
- ~~13. Dairy Products~~
- ~~14. Drug and medicines~~
- ~~15. Electronic Audio/Visual Devices and their accessories~~
- ~~16. Feed, grain and seeds~~
- ~~17. Flowers and plants~~
- ~~18. Fruit and vegetables~~
- ~~19. Furniture and household furnishings~~
- ~~20. Hardware~~
- ~~21. Heating supplies and appliances~~
- ~~22. Ice cream and soft drinks~~
- ~~23. Jewelry, watches and clocks~~
- ~~24. Kitchenware & Crockery~~
- ~~25. Leather, leather goods and luggage~~
- ~~26. Meat and fish~~
- ~~27. Miscellaneous grocery items, food products or dry goods~~
- ~~28. Music and musical instruments~~
- ~~29. Newspapers and magazines~~
- ~~30. Novelties and variety goods~~
- ~~31. Optical goods~~
- ~~32. Paint, wallpaper and painter's and decorator's supplies~~
- ~~33. Pets, such as dogs, cats and birds and pet supplies~~
- ~~34. Pharmaceutical supplies including drugs and medicines~~

- ~~35. Plumbing fixtures and supplies~~
- ~~6. Sporting goods~~ Retail Sales Establishments
- 7. Pharmacy
- 8. Banks
- 9. Transportation Center/Sale of travel accommodations
- 10. Travel Agent
- 11. Commercial Service Establishments
- 12. Contractor
- 13. Indoor Recreational Facility
- 14. Commercial Performing and Fine Arts School
- 15. Professional Office
- 16. Office
- 17. Restaurant
- ~~18. Carwash~~
- 18. Library
- 19. Public/Private Educational Facility
- 20. Radio and Television Broadcasting Studios exclusive of transmitter facilities (upper levels only)
- 21. Home Occupations (located in single family dwellings existing as of the date of this amendment (insert date))
- 22. Parking Facilities

~~36.~~

- ~~5. Offices or stores for the handling of the following sales and/or services:~~
  - ~~1. Banks and other financial institutions~~
  - ~~2. Barber shops and beauty parlors~~
  - ~~3. Boot and shoe repair~~
  - ~~4. Book lending~~
  - ~~5. Bus depots or the sale of travel accommodations~~
  - ~~6. Catering~~
  - ~~7. Express mail, or courier services~~
  - ~~8. Garment cleaning, tailoring, dressmaking~~
  - ~~9. Theaters of the Performing Arts and movie theaters~~
  - ~~10. Moving company offices~~
  - ~~11. Public or private educational services~~
  - ~~12. Real estate and insurance offices, and other professional services~~
  - ~~13. Restaurants, cafes, cafeterias, lunch rooms and retail sale of any goods normally associated with such establishments~~
  - ~~14. Professional Signs~~
  - ~~15. Car Wash~~

- ~~6. Offices for the handling of:~~
  - ~~1. Administrative functions~~
  - ~~2. Software development~~
  - ~~3. Computer sales and service~~
  - ~~4. Internet commerce and services~~
  - ~~5. Professional services~~

- ~~7. The manufacture or processing of the following goods and products provided that it is combined with retail sales of such products on the premises, and that no less than fifty (50%) percent of the square footage of the first floor shall be dedicated to retail sale of the goods and products.~~

- ~~1. Artificial flowers~~
- ~~2. Bakeries~~
- ~~3. Chemical manufacturing associated with retail sale of drugs and medicines~~
- ~~4. Clothing or wearing apparel and their accessories, except boots and shoes~~
- ~~5. Dental and orthopedic appliances and supplies~~
- ~~6. Engraving, grinding and repair of optical products~~
- ~~7. Packaging of feed, grain and seeds~~
- ~~8. Printing and book publishing and binding~~
- ~~9. Repair of watches and clocks and other small articles and appliances~~

~~10.23. \_\_\_\_\_ Repair of household furnishings~~ Light Manufacturing

~~24. Any public uses or use by a semi-public agency whose activities are primarily non-profit in nature.~~

25. Electric Vehicle Supply Equipment

~~8. The following miscellaneous uses:~~

- ~~a. Dancehall or auditorium used primarily for entertainment or recreation~~
- ~~b. Radio and television broadcasting studios exclusive of transmitter facilities (upper levels only).~~

~~9. Home occupations. Any single dwelling unit, whether as part of a multi-unit residential structure or as a single family residence, within this district in which both residential use and non-residential use exists, shall be governed as a home occupation use.~~

~~10. Parking Facilities.~~

C. Area and dimensional requirements

1. Minimum Lot area:
  - a. With public sewer – 30,000 square feet
  - b. Without public sewer – one acre, plus 10,000 square feet for each 200 gallons per day of sewage effluent after the first 200 gallons per day, unless the owner can show adequate plans for sewage disposal on a smaller lot.
2. Minimum Frontage Requirement: 50 feet. (Effective 11/21/03)
3. Minimum Lot Width 50 feet at the 10-foot setback line.
4. Maximum Yard Depth: Front yard – 8 feet.
5. Minimum Yard Depth:
  - a. Side yard: ~~10-5~~ feet.
  - b. Rear yards: ~~20-10~~ feet.
6. Maximum Building or Structure Height. No building or structure within this district shall ~~exceed~~ be higher than 35 feet above sea level in elevation. 60 in height.
7. Lots existing as of the date of this amendment [insert date], regardless of area or frontage, are considered buildable lots provided all other applicable requirements are met.

D. Review. Any change from residential to a non-residential use of a lot or structure, whether in whole or in part, ~~or the development or change or expansion of the use of a lot or structure for non-residential uses~~ shall be subject to review and approval by the Planning Board in accordance with Section 165-16 of this chapter and Chapter 170, Land Development Control Regulations, whether or not such development change or expansion includes a subdivision or resubdivision of the site. Any change in use from one permitted use to another more intense permitted use may be subject to review by the Planning Board, based on the determination of the Planning Director or designee. The Planning Board is authorized to adopt architectural design regulations for this district pursuant to RSA 674:16,I and II, 674:21,I, and 674:44,II. If such architectural design regulations are adopted, they shall be incorporated in Chapter 170, Land Development Control Regulations.

E. Buffer zones. Where a non-residential use in this district abuts ~~a residential use in this district, or abuts a residential district,~~ a buffer zone shall be established to help diminish the effects of the non-residential use on the abutting ~~residential use or residential district.~~ The buffer zone shall be as provided in Chapter 170, Land Development Control Regulations

F. Prohibited uses.

1. Any use of land, building, structure, or equipment which would be injurious noxious or offensive by way of the creation of adverse traffic impacts or conditions, odors, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district.

2. Other land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

- a. Sexually oriented businesses.
- b. Wireless communication facilities.
- c. Uses which are not expressly permitted in Sub-section B of this section.
- d. ~~Manufactured housing~~

G. Parking. Parking shall be located ~~at the rear of the building, or as otherwise provided in~~ Chapter 170, Land Development Control Regulations.

H. Special exception uses. A special exception ~~shall~~ may be granted by the Zoning Board of Adjustment (ZBA), pursuant to RSA 674:33, IV, to owners of parcels of land in the Central Business District (CBD) for land uses listed in this sub-section, as provided herein. In granting such a special exception, the ZBA must find that all of the required conditions listed in this sub-section have been met. The ZBA may attach conditions to any special exception granted under this sub-section that the ZBA deems necessary for conformance to the intent of this section or to alleviate impacts to abutters or to the neighborhood.

1. Uses Permitted by Special Exception:

- Product assembly
- Equipment fit-up and repair
- Research & Development facilities including industrial and environmental testing laboratories
- Automobile repair and restoration
- Wood and metal craft work
- ~~Plumbing contractors, Heating, Ventilation, Air Conditioning (HVAC) contractors and electrical contractors~~

2. Mixed uses. Uses permitted by special exception, as provided in sub-section H.1, shall not be as a mixed use in conjunction with any other permitted use or other use by special exception.

3. Required conditions for special exception. In granting a special exception under the terms of this sub-section H, the ZBA must find all the following to be true:

- a. The proposed Special Exception Use is specified in sub-section H.1 above.
- b. The proposed use provides employment opportunities in the CBD.
- c. The proposed use does not adversely impact the goals and objectives of the CBD, as stipulated in subsection A.
- d. The proposed use makes a positive contribution to a diverse, viable, mixed-use urban center, and will substantially further the economic viability of the district, without negatively impacting the surrounding properties.
- e. The structures, facilities, appurtenances and curtilage of the proposed use will substantially contribute to the streetscape and visual appearance of a traditional New England mill town, including appropriate architecture and landscaping. In seeking a Special Exception, the applicant must demonstrate that the use will substantially revitalize and improve existing structures, or that new structures will be architecturally compatible with the neighborhood in which they are proposed.
- f. The requested use otherwise complies with the provisions of subsections C through G of this section.
- g. The proposed use will not impair the integrity of or be out of character with, the district or immediate neighborhood in which it is located, nor be detrimental to the health, safety or welfare of the residents of the Town.

4. Duration of special exception. Special exceptions granted under this section shall run with the use and shall be transferable from one owner to another, subject to the following conditions:

- a. The use must continue as originally proposed, without enlargement or expansion.
- b. The special exception shall expire on the discontinuance of the use, or change to another use.
- c. The special exception shall expire after one year of inactivity or abandonment.

5. Site plan review. An approved application for a special exception, in addition to any conditions imposed by the ZBA, shall be subject to site plan review in accordance with Section 165-16 of this chapter and Chapter 170, Land Development Control Regulations

**Section 165-49 Traditional Business Overlay District (TBOD) (Effective 2/16/01)**

A. Purpose.

1. To protect and preserve this traditional character of Derry's older Central Business District, we are establishing an overlay district within the Central Business District to be known as the "Traditional Business Overlay District." The Traditional Business Overlay District's purpose is to maintain a consistent and recognizable land use policy within the core of the Central Business District. The core represents the gateway into our community. It represents Derry's history, culture, and uniqueness from other New Hampshire communities. It is the nucleus for Derry's business, governmental, social, and cultural activities.

2. It is intended that land use activities allowed within this district will serve to compliment and enhance existing historical, residential, commercial, and cultural uses. It is intended to promote an attractive and appropriate streetscape, creating a quality downtown image. New construction, reconstruction, rehabilitation, and demolition should be performed in such a way as to preserve and /or build on Derry's uniqueness. To that end, this sub-district will overlay the core of the Central Business District. In the event of a conflict between the requirements of this section and the permitted uses within the Central Business District, the requirements of this section shall take precedence. In order to promote this purpose the Planning Board, as set forth in this section, shall be authorized to adopt architectural design regulations for this district.

B. Permitted uses. The following uses shall be permitted:

1. Multi-unit residential, dwelling unit as a mixed use in conjunction with permitted non-residential use, subject to the following limitations: (Effective 4/18/03)

a. All residential units shall be a minimum of 800 square feet per unit limited to one or two bedroom units.

b. Residential use shall not be permitted below the ~~second~~third floor.

c. ~~Structures shall not exceed 60 feet in height. No building or structure within this district shall be higher than 350 feet above sea level in elevation.~~

d. Conversion: Existing structures may be converted for multi-unit residential uses, provided that the lot and the structure meet the minimum standards for this district with respect to area and dimensional requirements, buffer zones, off-street parking, and height limitation. Any conversion which involves an existing non-residential or multi-family use, or one which would result in the creation of a combination of non-residential and residential use, or which would result in the creation of a multi-unit dwelling, shall be subject to review and approval by the Planning Board in accordance with Section 165-16 of this chapter and Chapter 170, Land Development Control Regulations.

2. ~~All stores intended for the retail sale of the following commodities:~~

~~Antiques~~

~~Appliances and supplies~~

~~Art goods~~  
~~Bakery products~~  
~~Bicycles and their accessories~~  
~~Books, stationary and greeting cards~~  
~~Boots and shoes~~  
~~Cameras and photographic supplies~~  
~~Candy and confections~~  
~~Cigars, cigarettes, tobacco and smoking supplies~~  
~~Clothing and wearing apparel~~  
~~Dairy Products~~  
~~Drug and medicines~~  
~~Electrical equipment~~  
~~Feed, grain and seeds~~  
~~Flowers and plants~~  
~~Fruit and vegetables~~  
~~Furniture and household furnishings~~  
~~Hardware~~  
~~Heating supplies and appliances~~  
~~Ice cream and soft drinks~~  
~~Jewelry, watches and clocks~~  
~~Kitchenware & Crockery~~  
~~Leather, leather goods and luggage~~  
  
~~Meat and fish~~  
~~Miscellaneous grocery items, food products or dry goods~~  
~~Music and musical instruments~~  
~~Newspapers and magazines~~  
~~Novelties and variety goods~~  
~~Optical goods~~  
~~Paint, wallpaper and painter's and decorator's supplies~~  
~~Pets, such as dogs, cats and birds and pet supplies~~  
~~Pharmaceutical supplies including drugs and medicines~~  
~~Plumbing fixtures and supplies~~  
~~Electronic Audio/Visual Devices and their accessories~~  
~~Sporting goods~~  
~~Automotive Parts~~ Retail Sales Establishments

3. Pharmacy

4. Banks

5. Transportation Center

6. Travel Agent

7. Commercial Service Establishment

8. Contractor

9. Indoor Recreational Facility

10. Commercial Performing and Fine Arts School

11. Professional Office

12. Office

13. Restaurant

14. Library

15. Public/Private Educational Facility

16. Radio and Television Broadcasting Studios exclusive of transmitter facilities (upper levels only)

17. Parking Facilities

18. Light Manufacturing

3. ~~Offices or stores for the handling of the following sales and/or services~~
- ~~\_\_\_\_\_ Banks and other financial institutions~~
  - ~~\_\_\_\_\_ Barber shops and beauty parlors~~
  - ~~\_\_\_\_\_ Boot and shoe repair~~
  - ~~\_\_\_\_\_ Book lending~~
  - ~~\_\_\_\_\_ Bus depots or the sale of travel accommodations~~
  - ~~\_\_\_\_\_ Catering~~
  - ~~\_\_\_\_\_ Express mail, or courier services~~
  - ~~\_\_\_\_\_ Hat cleaning, tailoring, dressmaking~~
  - ~~\_\_\_\_\_ Theaters of the Performing Arts and movie theaters~~
  - ~~\_\_\_\_\_ Moving company offices~~
  - ~~\_\_\_\_\_ Public or private educational services~~
  - ~~\_\_\_\_\_ Real estate and insurance offices, and other professional services~~
  - ~~\_\_\_\_\_ Restaurants, cafes, cafeterias, lunch rooms and retail sale of any goods normally associated with such establishments~~
  - ~~\_\_\_\_\_ Professional Signs~~
  - ~~\_\_\_\_\_ Car Wash~~

4. ~~Offices for the handling of administrative functions.~~

5. ~~The manufacture or processing of the following goods and products provided that it is combined with retail sales of such products on the premises, and that no less than 50% of the square footage of the first floor shall be dedicated to retail sale of the goods and products.~~

- ~~\_\_\_\_\_ Artificial flowers~~
- ~~\_\_\_\_\_ Bakeries~~
- ~~\_\_\_\_\_ Chemical manufacturing associated with retail sale of drugs and medicines~~
- ~~\_\_\_\_\_ Clothing or wearing apparel and their accessories, except boots and shoes~~
- ~~\_\_\_\_\_ Dental and orthopedic appliances and supplies~~
- ~~\_\_\_\_\_ Engraving, grinding and repair of optical products~~
- ~~\_\_\_\_\_ Packaging of feed, grain and seeds~~
- ~~\_\_\_\_\_ Printing and book publishing and binding~~
- ~~\_\_\_\_\_ Repair of watches and clocks and other small articles and appliances~~
- ~~\_\_\_\_\_ Repair of household furnishings~~

- 6.19. Any public uses or use by a semipublic agency whose activities are primarily non-profit in nature.

20. Electric Vehicle Supply Equipment

7. The following miscellaneous uses:
- a. ~~Dancehall or auditorium used primarily for entertainment or recreation~~
  - b. ~~Radio and television broadcasting studios exclusive of transmitter facilities (upper levels only).~~

C. Area and dimensional requirements

1. Minimum Lot Area.

- a. With public sewer: 7,500 squarefeet.
- b. Without public sewer: one acre, plus 10,000 square feet or each 200 gallons per day of sewage effluent after the first 200 gallons per day, unless the owner can show adequate plans for sewage disposal on a smaller lot.

2. Minimum lot frontage: 50 feet (Effective 11/21/03)

3. Minimum lot width: 50 feet at the zero foot front setback line.

4. Yard Depths

- a. Front yard: zero feet.
- b. Side yards: no more than five feet.

5. Building Dimensions. Measured from street grade, no building shall be below two stories in height. Measured from street grade, no building shall ~~exceed 60 feet in height~~ be higher than 350 feet above sea level in elevation. The first floor area shall be visibly accessible from the street, or as otherwise provided by architectural design regulations incorporated in Chapter 170, Land Development Control Regulations.

D. Review. Any change from a residential to a non-residential use of a lot or structure, whether in whole or in part, ~~or the development or change or expansion of the use of a lot or structure for non-residential uses~~ shall be subject to review and approval by the Planning Board in accordance with Chapter 170, Land Development Control Regulations, whether or not such development, change or expansion includes a subdivision or resubdivision of the site. Any change in use from one permitted use to another more intense permitted use may be subject to review by the Planning Board based on the determination of the Planning Director or designee. The Planning Board is authorized to adopt architectural design regulations for this district pursuant to RSA 674:16,I & II, 674:21,I, and 674:44.II. If such architectural design regulations are adopted, they shall be incorporated in Chapter 170, Land Development Control Regulations.

E. Buffer zones. Where a non-residential use in this district abuts a residential use ~~in this district~~, a buffer zone shall be established to help diminish the effects of the non-residential use on the abutting residential use ~~or residential district~~. The buffer zone shall be as provided in Chapter 170, Land Development Control Regulations.

F. Sidewalk display. In the interest of public safety, the sidewalks within the public right-of-way within this district shall not be obstructed by merchandise display, seating, or any other permanent or temporary obstructions, except by special permit as may be established by the governing body of the Town of Derry.

G. Parking

1. General provisions.

- a. ~~Residential Use and multi~~ Multi-unit residential use in conjunction with mixed use. Off-street parking Parking shall be provided on the basis of one space per bedroom, with a minimum of three spaces being required per dwelling unit. Parking shall be located ~~at the rear of the building, or as otherwise provided~~ in Chapter 170, Land Development Control Regulations.

b. Non-residential use. ~~Off-street parking~~Parking shall be provided in accordance with Chapter 170, Land Development Control Regulations.

c. All off-street parking areas shall be provided in such a way that no vehicle will be required or will be likely to back into the street, access drive or into the lot. (Effective 7/5/07)

d. No parking will be allowed within the designated buffer zone.

2. ~~Grant of Conditional Use Permit for parking access. Notwithstanding the provisions of any dimensional requirements for side yard setbacks elsewhere in this Section or in this section to the contrary, the Planning Board shall grant a Conditional Use Permit, to allow vehicular access to parking situated behind structures within this district, as provided herein, when the board finds all of the following to be true:~~

a. ~~The provisions of the Zoning Ordinance require that any parking provided on-site be located behind the structure[s] on the site, or as otherwise provided in Chapter 170, Land Development Control Regulations.~~

b. ~~Chapter 170, The Land Development Control regulations require the provision of on-site parking for the proposed use of the site, in addition to any shared parking available in municipal parking lots, garages, or facilities, or available as on-street parking in the immediate vicinity of the site, and such on-site parking requirements have not been waived by the board.~~

c. ~~There currently exists no street, road, access drive, driveway or easement access to the proposed on-site parking lot, other than through the lot frontage. (Effective 7/5/07)~~

d. ~~It is physically impossible or economically unfeasible to obtain street, road, access drive, driveway, or other form of viatic easement or right of pass and repass that would permit access to the proposed on-site parking lot, other than through the lot frontage. In order to demonstrate economic unfeasibility, the applicant must provide documented evidence that rights to any and all such possible access routes cannot be obtained from their current owner, or that the cost of obtaining them from their current owner exceeds 20% of the total project cost, as the project is described in the site plan application. (Effective 7/5/07)~~

3. ~~Terms of conditional use permit for parking access. The conditional use permit for parking access, granted pursuant to this section, shall be subject to the following restrictions, conditions and requirements:~~

a. ~~The maximum permitted side yard setback, on only one side of the parcel (to be called the "chosen side"), to be chosen at the discretion of the board, shall be increased so as to allow safe two-way vehicular access from the frontage of the parcel to an approved and improved parking lot or parking garage located behind the structure[s] on the parcel.~~

b. ~~The maximum side yard setback of the other side of the parcel shall be reduced, in compensation to the increase allotted on the chosen side. The reduction~~

~~shall be as great as may be practically feasible, given public safety issues, and the nature and conditions of the site plan.~~

~~a. The Conditional Use Permit for parking access shall run with the use and shall continue in effect as long as the conditions justifying its issuance persist. If the use changes substantially or the structure[s] on the site change[s] substantially, the Conditional Use Permit shall terminate, coincident with such changes.~~

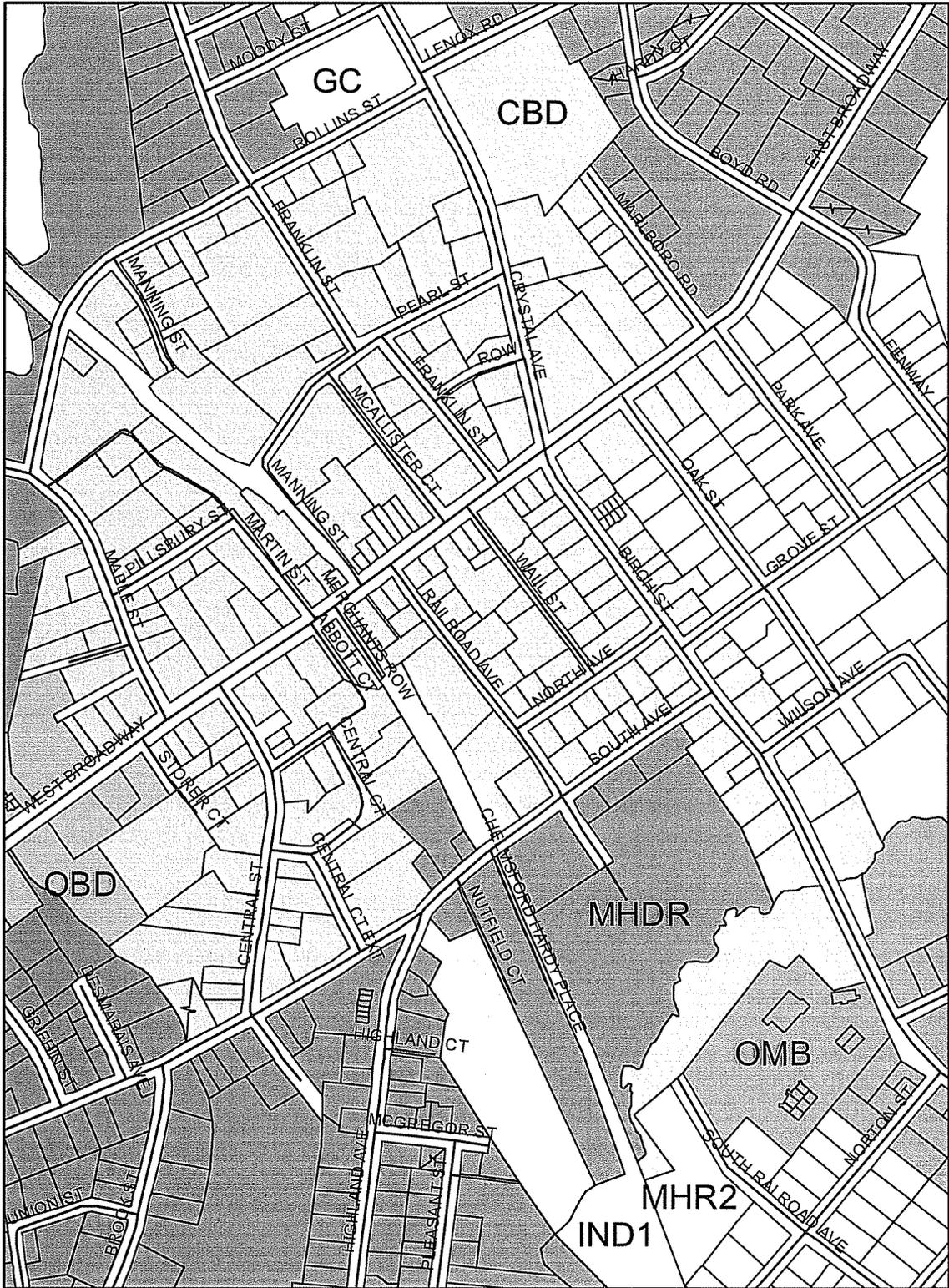
H. Prohibited uses.

Any use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odors, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district.

Other land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

- a. Sexually oriented business as set forth in Article III, Section 165-27.
- b. Wireless communication facilities.
- c. Uses that are not expressly permitted in subsection B.

I. Conflicting provisions. In all cases where the Traditional Business Overlay District is superimposed over another zoning district in the Town of Derry, that district whose regulations are the most restrictive shall apply.



# CENTRAL BUSINESS DISTRICT

## DERRY, NEW HAMPSHIRE GEOGRAPHIC INFORMATION SYSTEM

A COOPERATIVE EFFORT OF THE FOLLOWING DEPARTMENTS:  
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# Traditional Business Overlay District



Town of Derry, NH

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