# Town of Derry

**New Hampshire**

# ZONING ORDINANCE
# October 01, 2015

## Contents


RECORD OF AMENDMENTS 9

CHAPTER 165 ZONING 15

ARTICLE I - TITLE, AUTHORITY AND PURPOSE 15

Section 165-1 Short Title 15

Section 165-2 Statutory Authority 15

Section 165-3 Purpose 15

ARTICLE II WORD USAGE AND DEFINITIONS 16

Section 165-4 Word Usage 16

Section 165-5 Definitions 16

ARTICLE III GENERAL PROVISIONS 34

Section 165-6 Junkyards 34

Section 165-7 Lots 34

Section 165-8 Number of Buildings Per Lot 34

Section 165-9 Approved Street Required for Residential Lot 34

Section 165-10 Setbacks 34

Section 165-11 Commercial and Industrial Buildings 35

Section 165-12 Sewage Disposal 35

Section 165-13 Parking For Non-Residential Uses 35

Section 165-14 Churches 35

Section 165-15 Offensive Uses 35

Section 165-16 Site Plan Review 35

Section 165-17 Conservation Corridor Buffer Zone 36

Section 165-18 Waste Disposal Systems Near Wetlands 36

Section 165-19 Erosion and Siltation 36

Section 165-20 Wetland Setbacks 36

Section 165-21 Community Water Systems 36

Section 165-22 Building Permit; Construction Requirements 36

Section 165-23 Buffer Zones 38

Section 165-24 Temporary Use Of Manufactured Housing 39

Section 165-25 Accessory Apartment 39

Section 165-26 Modular or Pre-Site Built Housing 40

Section 165-27 Sexually Oriented Businesses (Effective 8/10/95) 40

Section 165-28 Wireless Communications Facilities (Effective 2/20/98) 46
Section 165-28.1 Architectural Design Regulations (Effective 10/20/05) 53
ARTICLE IV - DISTRICTS 55
Section 165-29 Enumeration of Districts 55
ARTICLE V ZONING MAP AND DISTRICT BOUNDARIES 56
Section 165-30 Zoning Map (Repealed and replaced 12/17/09) 56
Section 165-31 District Boundaries (Repealed and replaced 12/17/09) 56
ARTICLE VI DISTRICT PROVISIONS 57
Section 165-32 GC - General Commercial District 57
Section 165-32.1 General Commercial II District (GC-II) (Effective 7/15/04) 60
Section 165.32.2 General Commercial III District (GCIII) (Effective 01/07/2011) 62
Section 165.32.3 General Commercial IV District (GCIV) (Effective 08/06/2015) 63
Section 165-33 Central Business District (CBD) (Effective 2/16/01) 65
Section 165-34 Office/Business District (OBD) 68
Section 165-35 Office/Medical/Business District (OMB) 73
Section 165-36 Office/Research and Development District (ORD) 75
Section 165-37 Neighborhood Commercial District (NC) 76
Section 165-38 Manufactured Housing Park District (MHPD) 79
Section 165-39 Industrial District-I (IND-I) 84
Section 165-40 Industrial District- II (IND-II) (Deleted 7/15/04) 86
Section 165-41 Industrial District – III (IND-III) 86
Section 165-42 Industrial District-IV (IND-IV) 87
Section 165-43 Industrial District-V (IND-V) (Effective 03/17/2004) 89
Section 165-43-1 Industrial District-VI (IND-VI) (Effective 3/17/04) 91
Section 165-44 Multi-Family Residential District (MFR) 92
Section 165-45 Medium-High Density Residential District (MHDR) 93
Section 165-45.1 Medium-High Density Residential District II (MHDR-II) Eff 12/2/05 97
Section 165-46 Medium Density Residential District (MDR) 98
Section 165-47 Low-Medium Density Residential District (LMDR) 102
Section 165-48 Low Density Residential District (LDR) 103
Section 165-49 Traditional Business Overlay District (TBOD) (Effective 2/16/01) 103
ARTICLE VII FLOODPLAIN DEVELOPMENT DISTRICT 107

Section 165-50 Applicability 107
Section 165-51 Definitions 107
Section 165-52 Permit Required 111
Section 165-53 New Construction or Substantial Improvements 111
Section 165-54 Water and Sewer Systems 111
Section 165-55 Certification 111
Section 165-56 Permits From Federal or State Agencies 112
Section 165-57 Alteration or Relocation of a Watercourse 112
Section 165-58 Determination of Flood Elevation 113
Section 165-59 Variances and Appeals 114
ARTICLE VIII GROUNDWATER RESOURCE CONSERVATION DISTRICT (GRCD) (Effective 5/4/95) 116
Section 165-60 Authority and Purpose 116
Section 165-61 Location 116
Section 165-62 Resolution of Boundary Disputes 116
Section 165-63 Definitions 117
Section 165-64 General Provisions 118
Section 165-65 Permitted Uses 119
Section 165-66 Prohibited Uses 120
Section 165-67 Special Exceptions 120
Section 165-68 Non-Conforming Uses 121
Section 165-69 Conflicting Provisions 121
ARTICLE IX CONSERVATION CORRIDOR OVERLAY DISTRICT 122
Section 165-70 Purpose; Conflicting Provisions 122
Section 165-71 Location 122
Section 165-72 Permitted uses 122
Section 165-73 Prohibited Uses 123
Section 165-74 Special Exceptions 123
ARTICLE X WETLANDS CONSERVATION OVERLAY DISTRICT 124
Section 165-75 Authority and Purpose 124
Section 165-76 District Boundaries 124
Section 165-77 Definitions 124
Section 165-78 Boundary Disputes and Incorrectly Designated Areas 126
Section 165-79 General Provisions 127
Section 165-80 District Provisions 128

ARTICLE XI Earth Removal Regulations. 133
Section 165-81 Authority and Purpose 133
Section 165-82 Definitions 133
Section 165-83 Permit Required — Exceptions 134
Section 165-84 Permit Application 139
Section 165-85 Prohibited Projects 143
Section 165-86 Operational Standards 143
Section 165-87 Site Reclamation Standards 146
Section 165-88 Incremental Reclamation 147
Section 165-89 Exceptions to Operational and Reclamation Standards 148
Section 165-90 Application for Amendment To Permit 148
Section 165-91 Hearing 148
Section 165-92 Issuance of Permit 148
Section 165-93 Renewal of Permit 149
Section 165-94 Performance Bond 150
Section 165-95 Appeals 150
Section 165-96 Fees 151
Section 165-97 Enforcement 151
Section 165-98 Conflicting Provisions 151
Section 165-99 Waiver 151
ARTICLE XII SIGNS (Repealed/Replaced 02/07/2014) 153
Section 165-100 Purpose 153
Section 165-101 General Provisions 153
Section 165-101.1 Signs in Residential Districts 155
Section 165-101.2 Signs in Neighborhood Commercial Districts 156
Section 165-101.3 Signs in Business, Commercial, and Industrial Districts 156
Section 165-101.4 Signs in the General Commercial III District 157
Section 165-101.5 Signs in the Traditional Business Overlay District (TBOD) 157
Section 165-101.6 Campground Signs 159
Section 165-101.7 Political Signs 159
Section 165-101.8 Off Premise Signs 159
Section 165-101.9 Nuisance Signs 159
Section 165-101.10 Interactive Digital Signs 159
Section 165-101.11 Electronic Message Center Signs 159
Section 165-102 Non-Conforming Use Signs 160

Section 165-103 (Reserved for Future Use) 160
ARTICLE XIII NON-CONFORMING USES OF LAND AND STRUCTURES 161
Section 165-104 Intent 161
Section 165-105 Non-Conforming Lots of Record 161
Section 165-106 Non-Conforming Use of Land 162
Section 165-107 Non-Conforming Structures 162
Section 165-108 Non-Conforming Uses of Structures or of Structures and Premises in Combination 163
Section 165-109 Repairs and Maintenance 164
Section 165-110 Special Exceptions Not Considered Non-Conforming Uses 164
ARTICLE XIV GROWTH MANAGEMENT (Effective 4/2/99) 165
Section 165-111 Short Title 165
Section 165-112 Statutory Authority 165
Section 165-113 General Considerations; Policy Objectives And Purposes 165
Section 165-114 Temporary Residential Building Permit Limitation 167
Section 165-115 Residential Development—Special Permit System 170
Section 165-116 Basic Development Rights and Additional Development Rights 175
Section 165-117 Capital Improvements Program 176
Section 165-118 Effect of Approval of Special Permit by Planning Board 177
Section 165-119 Appeals 178
Section 165-120 Special Permit Application Fee 178
Section 165-121 Implementing Regulations 178
ARTICLE XV ZONING BOARD OF ADJUSTMENT 179
Section 165-122 Appointment 179
Section 165-123 Membership; Terms of Office 179
Section 165-124 Rules of Procedure, Meetings and Minutes 179
Section 165-125 Appeals 179
Section 165-126 Powers 180
Section 165-127 Disqualification of Member 180
Section 165-128 Motion for Rehearing 181
Section 165-129 Appeal From Decision on Motion for Rehearing 181
ARTICLE XVI ENFORCEMENT 183
Section 165-130 Building Inspector 183
Section 165-131 Injunction or Other Legal Actions 183

Section 165-132 Violations and Penalties 183
ARTICLE XVII IMPACT FEES (Effective 2/21/02) 184
Section 165-133 Statutory Authority; Purpose 184
Section 165-134 Authority of Planning Board; Applicability 184
Section 165-135 Definitions 185
Section 165-136 Assessment Methodology 186
Section 165-137 Administration 188
Section 165-138 Appeals 189
Section 165-139 Waiver 189
ARTICLE XVIII AMENDMENTS; CONFLICTS; EFFECTIVE DATE 190
Section 165-140 Effective Date 190
Section 165-141 Amendments 190
Section 165-142 Conflicting Provisions 190
Section 165-143 Effective Date 190
Section 165-144 Severability Clause (Effective 5/15/03) 190
ARTICLE XIX INDEPENDENT ADULT COMMUNITY OVERLAY DISTRICT (Effective 07/07/2005) 191
Section 165-145 Authority and Purpose: 191
Section 165-146 Definitions 191
Section 165-147 Location 192
Section 165-148 Minimum Lot Requirements: 192
Section 165-149 Density: 192
Section 165-150 General Development Standards: 192
Section 165-151 Design Standards 193
Section 165-152 Accessory Uses 193
Section 165-153 Other Provisions 193
ARTICLE XX LIVESTOCK AND FOWL (Effective 09/10/2009, revised 06/20/2014) 195
Section 165-154 Lot Requirements 195
Section 165-154.1 Lot Setbacks (Effective 06/20/2014) 195
Section 165-155 Nuisances Prohibited 195
Section 165-156 Shelter 195
Section 165-157 Enclosures 195
Section 165-158 Wastes 195
Section 165-159 Interpretation 196

**Section 165-160 Severability** _____ **196**
**Section 165-161 Penalties (Effective 06/20/2014)** _____ **196**
**Section 165-162 Pre-Existing Non-Conforming Status (Effective 06/20/2014) 196**

## RECORD OF AMENDMENTS

| ARTICLE/SECTION/PART AMENDED | SUBJECT MATTER | EFFECTIVE DATE |
|---|---|---|
| Article 1300 (New) | Interim Growth Mgmt. Ord. | Dec. 14, 1994 |
| Article 600 | Light Industry - Insert "H" | Jan. 3, 1995 |
| Article 700, Section 709 Part B | Floodplain – Insert #4 | Jan 3, 1995 |
| Article 2000 (New) | Aquifer Ordinance | May 4, 1995 |
| Article 600, Section 611.1 (Add A.7) | Community Oriented Rec Fac. | June 4, 1995 |
| Articles 200, 300, 600, 1100 | Sexually Oriented Bus. (New) | Aug. 10, 1995 |
| Article 1300 (Readoption) | Interim Growth Mgmt. Ord. | Dec. 14, 1995 |
| Article 1300 | Interim Growth Mgmt. Ord. | (Expired) |
| "Town Wide Rezoning" | Adopt Land Uses & Zoning Map | Jan. 9, 1997 |
| Article 500 Section 501 | Delete Office/R&D Dev. | Feb. 6, 1997 |
| Article 200 Section 202 | Wireless Communication Facilities Defined | Feb .20, 1998 |
| Article 300 Section 323 (New) | Telecommunications Regulation | Feb. 20, 1998 |
| Article 600 (Several sections amended) | To implement the provisions of Section 323.2 (A), (B) & (C) | Feb. 20, 1998 |
| Article 500, Sections 501 & 502-A | Re Rockingham Road parcels | 10/1/98 |
| Article 600, Section 601-I | Replace 601.5 w/601.4 (Corrects Typo) | 1/1/99 |
| Article 600, Section 613 (New) | Industrial V District | 2/5/99 |
| Article 600, Section 604.4 (New) | OMB Dimensional Requirements | 3/18/99 |
| Article 600, Section 605.5 (New) | ORD Dimensional Requirements | 3/18/99 |
| Article 1300 (Replaces Expired Interim GMO) | Growth Management Ordinance (New) | 4/2/99 |
| Article 600, Section 614.4 MHDR | Special Exception Uses Added | 10/7/99 |
| Articles 500 & 501 | General Town Wide Rezoning (Court Decision) | 12/16/99 |
| Article 300, Section 323.2A.4, & 323.2 B | Wireless Communciation | 1/6/00 |
| Articles 200, 400, 500 | Term Definitions, Districts, Zoning Map & District Boundaries (TBOD) | 2/16/01 |
| Article 500, Sections 502B & D | TM 116-272 classified OMB to resolve conflict between zoning map & text. | 2/16/01 |
| Article 600, Section 602 | Central Business District (CBD) | 2/16/01 |
| Article 600 – New Section 618 | Traditional Business Overlay District (TBOD) | 2/16/01 |
| Article 600 – Section 614 MHDR | Private Schools | 5/10/01 |
| Article 3000 – Impact Fees | Impact Fees | 2/21/02 |
| Article V – Section 165-31C (MHDR to OBD) | Add Parcel 26126, Griffin St | 3/20/03 |
| Article V – Section 165-31D (MDR to OMB) | Add Parcels 0539, 0539-1, 0592 Rockingham Rd | 3/20/03 |

| ARTICLE / SECTION/PART AMENDED | SUBJECT MATTER | EFFECTIVE DATE |
|---|---|---|
| Article VI – Sections 165-32.A.1(a) (GC) & 165-49.B(1) (TBOD) | GC-Delete "rooming houses" TBOD-Insert "dwelling unit" | 4/18/03 |
| Article II – Section 165-5 | Term Definitions | 4/4/03 |
| Recodification To conform w/Gen Code Pub as amended | Article XVIII - Add new Section 165-144 - Severability Clause | 5/15/03 |
| Section 165-31.D | Add Parcels 2514 & 2514-1 | 6/20/03 |
| Section 165-32 – GC – District Provisions | Add New Sub-section F. Conditional Use Permit | 11/21/03 |
| Several | Housekeeping Revisions | 11/21/03 |
| Section 165-31 (A) GC & (N) MHDR (GC to MHDR) | Parcel 328 | 3/17/04 |
| New Section 165-43.1 | Create New Industrial VI (Ash St) | 3/17/04 |
| Section 165-29 Enumeration of Districts | Add New Industrial VI District as 14 & renumber through 19 | 3/17/04 |
| Section 165-30 Zoning Map | Add 315-5 & 315-24 New Industrial VI District | 3/17/04 |
| Section165-31,District Boundaries Industrial VI (Ash St) | Add New Sub-section S | 3/17/04 |
| New Section 165-32.1 | Create New General Commercial II District (Tsienneto Rd) | 7/15/04 |
| Section 165-29 Enumeration of Districts GC-II (Tsienneto Rd) | Add #20 | 7/15/04 |
| Section165-31,District Boundaries, GC-II | Add New Sub-section T | 7/15/04 |
| Section 165-30 Zoning Map | Add New GC-II District | 7/15/04 |
| Section 165-40 – IND-II | Deleted when GC-II District Created | 7/15/04 |
| Section 165-31N /MHDR & O/MDR | Fordway & Kendall Pond Rd | 1/21/05 |
| Section 165-34 OBD (West Broadway) | Increase Retail Space From 300 To 1,000 s.f. | 1/21/05 |
| Section 165-50 FEMA | Updated Maps | 5/17/05 |
| Section 165-101 Signs & Billboards | General Provisions | 5/19/05 |
| Section 165-101C Signs Flashing | Definition | 5/19/05 |
| Independent Adult Community Overlay District (IACO) | New Article XIX / Section 165-145 thru 153 | 7/7/05 |
| Amend Building Codes | Sections 165-22.E-Permit Fees; F-Const Req; 25.E-Accessory Apt; I-Modular, 45.C.6-MHDR; 101.H-Signs | 11/17/05 |
| Architectural Design Reg | New Section 165.28.1 | 10/20/05 |
| Signs – Flashing | Section 165-101.C | 12/2/05 |
| Buffer Zones - Sections 165-23, 165-34H, 165-45.B.3.F | Buffer Zones - Retain existing natural growth | 12/2/05 |
| Create New MHDR-II 165-45.1 | Nortonville Vicinity | 12/2/05 |
| CongregateCare/Assisted Living – Section 165-35 B | Permitted Use – OMB District | 5/17/07 |
| CongregateCare/AssistedLiving – Section 165-5 | Definitions | 5/17/07 |
| IACO (55+) Sections 165-149, 165-150, 165-153.3b & c | Density | 7/5/07 |

| ARTICLE / SECTION/PART AMENDED | SUBJECT MATTER | EFFECTIVE DATE |
|---|---|---|
| Road Standards – Sections 165-5 thru 165-103 | Access Drives / Roads | 7/5/07 |
| Section 165-45.1, MHDRII | Clarify total finished living area | 9/10/09 |
| Section 165-46, MDR | Clarify total finished living area | 9/10/09 |
| Section 165-5, Definitions | Add definitions relative to livestock | 9/10/09 |
| Article XX, Livestock Ordinance | Add Livestock Ordinance | 9/10/09 |
| Section 165-30, Zoning Map | Repeal and replace | 12/17/09 |
| Section 165-31, District Boundaries | Repeal and replace | 12/17/09 |
| Section 165-30, Zoning Maps | Change in zoning designation from MHDR to MHDRII -68 parcels | 7/1/2010 |
| Section 165-5, Definitions | Add definition: Professional Office | 01/07/2011 |
| Section 165-29, Enumeration of Districts | Add subpart 22, General Commercial III | 01/07/2011 |
| Section 165-30, Zoning Map | Rezone certain parcels to GCIII | 01/07/2011 |
| Section 165-32.2 | Add Section 165.32.2, General Commercial III | 01/07/2011 |
| Section 165-30, Zoning Map | Rezone 8 parcels from ORD to LMDR | 11/17/2011 |
| Article VII - Section 165-51, Definitions | Delete and amend certain definitions related to Floodplains | 02/16/2012 |
| Article VII - Section 162-55, Certification | Delete references to A1-30, AO or AH | 02/16/2012 |
| Article VII - Section 165-57, Alteration or Relocation of a Watercourse | Amend certain sections to delete references to Zone A, Zone A1-30, add Subsection E | 02/16/2012 |
| Article VII - Section 165-58, Determination of Flood Levels | Delete references to Zones A1-30, AH, FHBM, delete Subsection A.3 | 02/16/2012 |
| Article VII - Section 165-59, Variances & Appeals | Add Subsection C | 02/16/2012 |
| Article IX, Conservation Cooridor Overlay District, Section 165-71 | Change references to Rockingham County, delete reference to Flood Boundary and Flood Insurance Map | 02/16/2012 |
| Article II, Word Usage & Definitions, Section 165-5, Definitions | Delete Contractors Yard, Drive In Restaurant or Refreshment Stand, Retail Store, Vehicular Sales or Repair Facility | 06/14/2012 |
| Article II, Word Usage & Definitions, Section 165-5, Definitions | Amend Agriculture, Commercial Service Establishment, Hotel, Professional Office, Restaurant, Wireless Communication Facilities | 06/14/2012 |
| Article II, Word Usage & Definitions, Section 165-5, Definitions | Add Commercial Agriculture, Non-Commercial Agriculture, Automobile and Similar Vehicular Sales, Automobile Repair Facility/Garage, Automobile Service Station; Church, Filling Station, Indoor Commercial Recreational Facility, Industrial Establishment, Light Industrial Establishment, Manufacturing, Drive In Restaurant, Retail Sales Establishment, Wholesale Business | 06/14/2012 |

| ARTICLE / SECTION/PART AMENDED | SUBJECT MATTER | EFFECTIVE DATE |
|---|---|---|
| Article III, General Provisions, Section 165-14, Churches | Amend provision | 06/14/2012 |
| Article VI, District Provisions, Section 165-42, Industrial District IV (IND IV) | Amend Subsection A, Permitted Uses and Subsection C, Prohibited Uses | 06/14/2012 |
| Article II, Word Usage and Definitions, Section 165-5 | Add Clinic, Bus Depot, Daycare, Health Service Facility, Library, Medical Office, Open Space, Private Educational Facility/Private School, Radio Broadcast Facility, Sale of Travel Accomodations | 07/04/2013 |
| Article III, General Provisions, Section 165-14, Churches | Amend provision to exclude the use in the Industrial IV zone | 07/04/2013 |
| Article VI, District Provisions, Section 165-32 | Amend allowed uses in the General Commercial zone | 07/19/2013 |
| Article VI, District Provisions, Section 165-35, Office/Medical/Business District | Amend provisions to be in accord with changes to the General Commercial allowed uses | 07/19/2013 |
| Article II, Word Usage and Definitions, Section 165-5 | Add definitions for Advertising Device, Billboard, Marquee, Sign Permit, Abandoned Sign, Awning Sign, Directional Sign, Digital Sign, Electronic Message Center Sign, Government Sign, Ground Sign, Interactive Digital Sign, Non-Conforming Sign, Official Sign, Off Premise Sign, Political Sign, Residential Neighborhood Identification Sign, Sandwich Board Sign, Special Event Sign, Temporary Sign, Unsafe Sign, Wall Sign and Warning Sign | 02/07/2014 |
| Article II, Word Usage and Definitions, Section 165-5 | Amend Definition for Flashing Sign, Projecting Sign and Window Sign | 02/07/2014 |
| Article VI, District Provisions | To repeal and renumber the following Sections 165-32.2.E, 165-34L, 165-37G.3, 165-45D.2.f, 165-45.1.C.2.f, 165-46B.2.f, 165-46E.5. 165-49H | 02/07/2014 |
| Article XII, Signs and Billboards | To repeal the Article in its entirety and replace it with Article XII, Signs | 02/07/2014 |
| Article V, Districts, Section 165-30, Zoning Map | To change zoning designation of two parcels from MHDR to GC | 06/06/2014 |

| ARTICLE / SECTION/PART AMENDED | SUBJECT MATTER | EFFECTIVE DATE |
|---|---|---|
| Article II, Word Usage and Definitions | Add definitions for Nuisance, Pasture, Enclosure; amend definitions for Livestock, Structure and Fowl | 6/20/2014 |
| Article XX, Livestock | Revise title to read Livestock and Fowl, amend the majority of the sections contained within the Article and to add Section 165-154.1, Lot Setbacks, Section 165-161, Penalties and Section 165-162, Pre-Existing Non Conforming Status | 6/20/2014 |
| Article III, General Provisions | Revise Section 165-22, and 165-26, to update the references to the Building Code and Property Maintenance Code. | April 24, 2015 |
| Article IV, District Provisions | Section 165-44, and 165-45 to update the references to the Building Code and Property Maintenance Code. | April 24, 2015 |
| Article II, Word Uses and Definitions | Article II, Section 165-5 to add definitions for Green Area/Space, Greenway/Greenbelt, Active Recreation, Recreation Area/Space, Passive Recreation, and Net Buildable Area; and Section 165-8 to amend the number of dwellings allowed on a lot | May 07, 2015 |
| Article VI, District Provisions | Section 165-44 and Section 165-45 to revise denisty calculations, parking calculations, green space and recreational space requirements for multifamily dwellings | May 07, 2015 |
| Article VI, District Provisions | Section 165-45, Secton 165-45.1, Section 165-46 to remove reference to covenants in deeds for special exceptions | July 02, 2015 |
| Article II, Word Uses and Definitions | Section 165-5, Definitions, to amend Commercial Service Establishment, Bus Depot, Professional Office, and Filling Station and to add definitions for Contractor, Travel Agent, Light Manufacturing, and Electric Vehicle Supply Equipment | July 16, 2015 |
| Article III, General Provisions | Section 165-13, Off Street Parking for Non-Residential Uses | July 16, 2015 |

| ARTICLE / SECTION/PART AMENDED | SUBJECT MATTER | EFFECTIVE DATE |
|---|---|---|
| Article VI, General Provisions | Section 165-33 and Section 165-49 to amend the uses permitted in the zones, the area and dimensional requirements, review criteria, buffer zones, prohibited uses and special exception uses | July 16, 2015 |
| Article II, Word Uses and Definitions | Section 165-5, to delete Commercial Recreation Building, to add Commercial Performing and Fine Arts Schools and Studios, to add Movie and Recording Studios and to amend Private Educational Facility/Private School | 08/06/2015 |
| Artivel IV, Districts | Section 165-29, to add a General Commercial IV District | 08/06/2015 |
| Article V, Zoning Map and District Boundaries | Section 165-30, to amend the Zoning Map, moving three parcels from OMB to GCIV, and moving seventy-seven parcels from GC to GCIV | 08/06/2015 |
| Article VI, District Provisions | Section 165-32, 165-33, 165-45, and 165-49 to add Commercial Performing and Fine Arts Schools and Studios as a permitted use, and to create a new section, 165-32.3, GCIV and list the permitted uses for the zone | 08/06/2015 |
| **Article VI, District Provisions** | **Section 165-44.B.2.e and Section 165-45.B.2.e to replace the word "circumference" with "radius"** | **10/01/2015** |

# CHAPTER 165 ZONING

**[HISTORY: Adopted by the Town of Derry 1-5-1993, as amended through 2-21-2002. Subsequent amendments noted where applicable.]**

**GENERAL REFERENCES**
**Heritage Commission – See Ch. 27, Art I**
**Building and property numbers – See Ch 32**
**Mobile homes – See Ch 85**
**Land Development Control Regulations – See Ch. 170**

## ARTICLE Ⅰ - TITLE, AUTHORITY AND PURPOSE

### *Section 165-1 Short Title*

This shall be known and may be cited as the Zoning Ordinance of the Town of Derry, New Hampshire, hereinafter referred to as "this chapter."

### *Section 165-2 Statutory Authority*

This chapter is adopted pursuant to the authority granted by Chapter 674 et seq., New Hampshire Revised Statutes Annotated, as amended.

### *Section 165-3 Purpose*

This chapter, together with associated maps, is enacted for the purpose of promoting the health, safety, and general welfare of the community. It is the intent of this chapter to:

a. Lessen congestion in the streets;
b. Secure safety from fires, panic and other dangers;
c. Provide adequate light and air;
d. Prevent overcrowding of land;
e. Avoid undue concentration of population;
f. Facilitate the adequate provision of transportation, solid waste facilities, water,
g. sewerage, schools, parks, child day care;
h. Assure proper use of natural resources and other public requirements; and
i. Give reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

## ARTICLE II WORD USAGE AND DEFINITIONS

### *Section 165-4 Word Usage*

For the purpose of this chapter, certain terms or words herein shall be interpreted as follows:

A. The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

B. The present tense includes the future tense, the singular number includes the plural and the plural number includes the singular.

C. The words “shall” and “will” are mandatory; the word “may” is permissive.

### *Section 165-5 Definitions*

For the purpose of this chapter, certain terms or words herein shall be interpreted as follows:

ABUTTER — Abutter means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration.

ACCESS DRIVE – A private vehicular right of way providing access from an approved public street to a single multifamily residential or nonresidential building lot. **(Effective 7/15/07)**

ACCESSORY USE — A building or use subordinate and customarily incidental to the main building or use on the same lot. The term "accessory building" when used in connection with agriculture shall include all buildings customarily used for farm purposes.

ADVERTISING DEVICE: Shall include any billboard, sign, notice, poster, display figure, painting, message, placard card or any other device which is designated or intended to attract or which attracts the attention of operators of motor vehicles and/or pedestrians and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in conjunction therewith. **(Effective 2/07/2014)**

AGRICULTURE — Any area of land, including structures thereon, that is used for agricultural purposes, including forestry. This includes the raising of cows, horses, poultry, and other livestock; horticulture and orchards; logging of a forest, woodland, or plantation; selling of products primarily grown or raised directly on such land; and the building, altering or maintaining of woods roads, agricultural roads, skidways, landings, fences, drainage systems, and farm ponds. Any such use shall be deemed to be a permitted use only if it is conducted in accordance with the restrictions of the current Town of Derry and State Health and Sanitary Codes and the Best Management Practices for Animal Husbandry, as published by the New Hampshire Department of Agriculture, Markets and Food, most recent edition. **(Revised 06/14/2012)**

AGRICULTURE, COMMERCIAL — Agricultural use of land for the principal purpose of sale of agricultural products grown either on or off the premises, or for animal husbandry, including any sales facilities located on the premises. A single family detached dwelling is a permitted accessory use. This term shall not include the use of bio-mass fertilizer and/or the raising of pigs or mink. **(Effective 06/14/2012)**

AGRICULTURE, NON-COMMERCIAL — Agricultural use of land accessory to a residential use. **(Effective 06/14/2012)**

APARTMENT HOUSE — A building arranged or intended or designed to be occupied by three or more families living independently of each other and doing their cooking upon the premises, or by three or more individuals living independently but having a common heating system and a general dining room.

ASSISTED LIVING FACILITY - A residential care facility for elderly persons, the age restrictions and/or other requirements which shall not be inconsistent with federal and state law, that is licensed by the State, containing a common dining facility and accessory uses typically needed by elderly residents. Medication dispensing and assistance with daily living activities may be provided. **(Eff 5/17/07)**

AUTOMOBILE AND SIMILAR VEHICLES SALES ESTABLISHMENT — A building and/or lot used principally for the commercial display, sale, lease or rental of new or used automobiles or other motor vehicles, with or without an accessory use for the repair or reconditioning of such vehicles. **(Effective 06/14/2012)**

AUTOMOBILE REPAIR FACILITY/GARAGE — A building and/or lot used principally for the repair and/or servicing of passenger and other light duty motor vehicles. May include structural repairs, painting, and work involving the use of machinery. Outdoor storage shall be governed by the Land Development Control Regulations of the Town of Derry. This use excludes the sale of vehicles. **(Effective 06/14/2012)**

AUTOMOBILE SERVICE STATION — A building and/or lot used principally for the selling of gasoline, oil and related products for motor vehicles. This use may contain an accessory use for the repair and/or servicing of passenger and other light duty motor vehicles. If the station contains more than two (2) service bays, it shall be classified as an automobile repair garage. See Filling Station. This use excludes the sale of vehicles.

AVIATION — The operation of, or any function associated with, aircraft.

BANK — An establishment for the custody, loan, exchange, or issue of money for the extension of credit and for facilitating the transmission of funds, whether it is a drive-through, drive-up or conventional walk-up and walk-in use.

BED & BREAKFAST — See definition of "Tourist Home." **(Effective 4/18/03)**

BILLBOARD: Large outdoor, off premise advertising device, the display space of which is typically leased to, rented to and/or used by a business or organization – for commercial or non-commercial purposes – for a designated period of time. In addition to traditional billboards (in which large pieces of printed paper are affixed to a durable

backing on a structure) billboards also encompass other formats such as digital billboards and inflatable billboards. **(Effective 2/07/2014)**

BUILDING — A constructed unit forming a shelter for persons, animals or property and having a roof and being permanently located on the land. Where the context allows, the word "building" shall be construed as followed by the words "or part thereof."

BUILDING, FRONT LINE — Line parallel to the front lot line transecting that point in the building face which is closest to the front lot line.

BUILDING HEIGHT — Vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the eaves and the ridge for other types of roofs.

BUS DEPOT — See Transporation Center. **(Effective 7/04/2013, Revised 7/16/2015)**

CAMPGROUND — Recreation park area of not less than 10 acres which is suitable for camping/tenting and which is provided with electricity, water, sanitary and solid waste disposal facilities and with one or more service buildings, all conforming to the regulations of the State of New Hampshire. Direct access to the campgrounds shall be from a state highway.

CAMPING TRAILER — A non-self-propelled structure, mounted on wheels, requiring for occupancy the unfolding or erection of articulated parts and designed for travel, recreation and vacation use.

CARE AND TREATMENT OF ANIMALS — The building or use for veterinary establishment, riding school or kennels.

CEMETERY — A use designed for a burial ground of the dead, either public or private, authorized under the laws of the State of New Hampshire.

CENTRALIZED SEWER SYSTEM — Any disposal system designed to locate waste treatment facilities in one area of a development to serve as the disposal system for the entire development and approved for the site by the Department of Environmental Services.

CHURCH — A building and/or other structure used principally by a body or organization of religious believers to regularly assemble for worship. **(Effective 06/14/2012)**

CLINIC — See Health Service Facility. **(Effective 7/04/2013)**

COMMERCIAL PERFORMING AND FINE ARTS SCHOOLS AND STUDIOS — A building used principally for commercial performing or fine arts schools or studios open to the public and that include the teaching of the art. The uses include but are not limited to dance, baton twirling, cheer, drama, music or voice studios, photography, painting, pottery, sculpture, woodworking scrapbooking, arts and crafts facilities and the like. This definition does not inlude a sexually oriented business. **(Effective 08/06/2015)**

COMMERCIAL RECREATION BUILDING — Deleted 08/6/2015

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, rental shop and businesses providing similar services. This definition does not include a sexually-oriented business. **(Revised 06/14/2012, 07/16/2015)**

COMMUNITY FACILITIES/USES — See definition of "public uses."

CONFERENCE CENTER — A place of assembly that is open to the public and to private businesses and organizations on a rental basis, where the primary function is conducting meetings, seminars and events. The definition of conference center shall not include Function Halls intended primarily for private social functions or entertainment, Theatres, Concert Halls or other Assembly uses not primarily related to meetings. Food and/or beverage service for on-premises consumption during scheduled events is considered an accessory use to a conference center. A Hotel shall be considered an accessory use to a Conference Center (Effective 7/15/04)

CONGREGATE CARE FACILITY - A residential facility for elderly persons, the age restrictions and/or other requirements which shall not be inconsistent with federal and state law, containing efficiency units, one and two bedroom units without kitchen facilities. The facility shall contain common dining facilities and other accessory uses typically needed by elderly residents. Services provided shall include but not limited to housekeeping, meals and transportation. Medical services are not required to be provided. **(Effective 5/17/07)**

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. **(Effective 07/16/2015)**

CONTRACTORS YARD — Deleted 06/14/2012

COVERAGE — That percentage of the lot area covered by a building. Where not otherwise specified, coverage shall be limited by setback requirements.

CREMATORIUM — A use to reduce (a dead body) to ashes by the action of fire. It is a use generally associated with funeral establishments or may be a separate use designed for cremation.

DAYCARE — See Group Day Care Facility. **(Effective 07/04/2013)**

DRIVE IN RESTAURANT OR REFRESHMENT STAND — Deleted 06/14/2012

DOMESTIC PETS — Animals commonly kept as household pets such as dogs, cats, small caged animals, and birds (not including fowl) and caged reptiles. (eff 9/10/09)

DWELLING, MULTI-FAMILY — A residential building designed for occupancy by three or more families with the number of families in residence not exceeding the number of dwelling units provided. Proposals for multi-family dwellings shall be subject to review

and approval in accordance with the Town of Derry nonresidential site plan review regulations.

DWELLING, SINGLE FAMILY DETACHED — A freestanding residence designed for and occupied by one family only.

DWELLING, TWO FAMILY (also DUPLEX) — A residential building designed for occupancy by two families living independently of each other in individual attached dwelling units.

DWELLING UNIT — A combination of rooms connected together, constituting an independent housekeeping establishment containing cooking, sanitary and sleeping facilities for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure. It shall include sectional homes and modular units provided these units meet the standards of the local building code, but shall not include motel, hotel, lodging house or similar structures.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE) – A charging station for electric vehicles. **(Effective 07/16/2015)**

ENCLOSURE — An area that is surrounded by a wall, fence or the like. **(Effective 06/20/2014)**

ESSENTIAL SERVICES FACILITY — Buildings reasonably necessary for the furnishing of such services, by public utility companies, as gas, electrical, sewer, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables and similar equipment and accessories in connection therewith.

FAMILY — An individual or two or more persons related by blood, marriage or law.

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, compressed air and other similar supplies, but not used for the purpose of making repairs. This use excludes the sale of vehicles. **(Effective 06/14/2012, revised 07/16/2015)**

FOWL — Chickens, ducks, geese, guinea fowl and peafowl, pheasant, turkey, grouse, roosters, emu and ostrich. **(Effective 09/10/2009, revised 06/20/2014)**

FRONTAGE — The linear distance of any one property line of a lot which abuts an accepted public or private street. **(Effective 11/21/03, revised 7/5/07**)

FUNERAL ESTABLISHMENT — A facility for the preparation of the dead for burial or cremation, of viewing of the body, and for funerals.

GREEN AREA/SPACE — Land area covered by vegetation. Green space or green area may be vegetated with grass, landscape plantings, ground covers or native vegetation. **(Effective 05/07/2015)**

GREENWAY/GREENBELT — Passive open space improved only with trails or other pedestrian or bicycle passageways. Greenways link subdivisions to other subdivisions

and to activity centers. Greenbelts are located on the edge of a subdivision or community. **(Effective 05/07/2015)**

GROUP DAY CARE FACILITY — Both child and adult day care, unless otherwise noted, for a part, but not all, of a twenty-four-hour day.

GROUP RESIDENCE — Includes home for the aged, orphanage, children's home, rest home, extended care facility, student dormitory and similar types of group living accommodations.

HEALTH SERVICE FACILITY — A Health Service Facility shall include but not be limited to a facility providing clinically related outpatient diagnostic, treatment, or rehabilitative services, as well as preventative services, and includes without limitation, alcohol, drug abuse and mental health services – provided such services are provided by licensed practitioners. **(Effective 07/04/2013)**

HOME OCCUPATION/BUSINESS — A use of a professional or service character that has been customarily carried out in the home and conducted within the dwelling by the resident/owner thereof which is clearly secondary to the dwelling use for living purposes, and which does not change the character thereof.

HOSPITAL — Includes sanitarium, nursing home, convalescent home and other place for the diagnosis, treatment or care of human ailments, licensed for in-patient care by the State of New Hampshire, and its subsidiary structures located on the same lot as the primary facility, including, but not limited to, clinics, medical offices, laboratories and support buildings.

HOTEL — A facility offering transient lodging accommodations to the general public supervised by a person in charge at all hours and which may include additional facilities and services such as restaurants, bars, meeting and function rooms, entertainment, personal services, and recreational facilities. This term shall include Inn and Motel but shall not include rooming houses, apartment houses or lodging houses. A full service restaurant is considered an accessory use to a Hotel. **(Revised 06/14/2012)**

INDOOR COMMERCIAL RECREATIONAL FACILITY — A building used principally for indoor commercial recreation as a business for profit, open to the public. The uses include but are not limited to a bowling alley, pool hall, indoor pool, tennis court, gymnasium, health club, auditorium, hand ball court, roller or ice skating rink, indoor movie theatre and the like. This definition does not include a sexually-oriented business. **(Effective 06/14/2012)**

INDUSTRIAL ESTABLISHMENT — A structure and/or lot used principally for the manufacturing, refining, assembling or processing of raw materials or components through the systematic use of machinery and labor, to produce durable and/or non-durable finished goods, component parts, chemicals, foodstuffs or other products. This definition shall not include a power plant, Bio-Mass facility or incineration facility. Outdoor storage of goods shall be governed by the Land Development Control Regulations of the Town of Derry. **(Effective 06/14/2012)**

INDUSTRIAL ESTABLISHMENT, LIGHT — A structure and/or lot used principally for the assembly of components, which are themselves produced off site and which as a final

product or by-product do not create any noxious or hazardous substance of any kind, whether the operation is provided with a sophisticated scrubbing, cleaning or reducing process or not. **(Effective 06/14/2012)**

INN — See definition of "Motel". **(Effective 4/18/03)**

INTERNAL ACCESS DRIVE – An private vehicular right of way within a nonresidential or multifamily site providing access from an approved public street to an individual driveway or parking lots. **(Effective 7/15/07)**

JUNK — Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

JUNKYARD —

A. Any place of storage or deposit, whether in connection with a business or not, where two or more unregistered or old motor vehicles no longer intended or in condition for legal use on the highways are held, whether for the purpose of resale of used parts, for the purpose of reclaiming for use some or all of the materials whether metal, glass, fabric or otherwise, or to dispose of them or for any other purpose. The term includes any place of storage or deposit for any purposes of used parts or materials from motor vehicles which, when taken together, include in bulk two or more vehicles.

B. An establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills. The word does not include any motor vehicles registered with the Director of Motor Vehicles under RSA 261:104 and controlled under RSA 236:127.

C. It shall not include an establishment operated by a firm or individual registered under the laws of the State of New Hampshire as a new or used motor vehicle dealer, provided the establishment only has wrecked or ruined motor vehicles which are still registered and are not kept or stored for a period exceeding 160 days. Such dealer shall maintain records showing the owner of the vehicle, the number and state of vehicle registration, and the date of its original entrance upon this premises.

LIBRARY — See Public Uses. **(Effective 07/04/2013)**

LIGHT INDUSTRY — The assembly, manufacture, processing or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odors, smoke, vapor and waste or emissions are effectively confined to the premises or disposed of so as to avoid any environmental pollution, and conducted in such a manner that the noise level at the property line will not exceed 80 decibels, and flashing and vibration shall not be perceptible off-site.

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. **(Effective 07/16/2015)**

LIVESTOCK — includes, but is not limited to horses, cattle, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, yaks, elk and deer species. **(Effective 09/10/2009, revised 06/20/2014)**

LODGING HOUSE — Any dwelling (other than a hotel or motel) in which living accommodations, without individual kitchen facilities, are rented to three or more non-transient guests. A boarding room or rooming house shall be deemed a lodging house.

LOT — A lot is a parcel of land occupied, or to be occupied, by only one main building and the accessory building or uses customarily incidental to it, except as may otherwise be provided herein. A lot shall be of sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required.

LOT AREA — The horizontal area of the lot lying within the lot lines, exclusive of any area in a street right-of-way.

LOT, CORNER — A lot situated at the intersection of, and abutting, two streets which have an angle of intersection of not more than 135˚. A lot abutting on a curved street shall be deemed a corner lot if the tangents to the curve at its point of intersection with the side lot lines meet at the interior angle of not more than 135˚.

LOT LINE, FRONT — That lot line which directly abuts the street side of the lot, except for lots which have multiple lot lines which abut streets, in which case the front lot line shall be deemed to be that lot line (abutting a street) which the front entrance of a dwelling or building faces.

LOT MEASUREMENTS — Depth of a lot means the average horizontal distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot. Width of a lot means the distance measured across the minimum front setback line.

LOT OF RECORD — A lot which is part of a subdivision of record in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

MAIN BUILDING OR USE — A building or use which houses or constitutes the principal activity on the premises. This shall also include the principal building.

MANUFACTURING — The making of goods or materials from raw materials or unfinished products, includes assembling and processing. This use may also include a retail component. **(Effective 06/14/2012)**

MANUFACTURED HOUSING — Any structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length or, when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and

electrical heating systems contained therein. Manufactured housing as defined herein shall not include pre-site built housing as defined herein.

MARQUEE – A structure over and in front of an entranceway to a building designed and intended for shelter. **(Effective 02/07/2014)**

MEDICAL OFFICE — Business and professional offices such as those for doctors, dentists and related health care facilities. **(Effective 07/04/2013)**

MEMBERSHIP CLUB — Building or use catering to club members and their guests for recreational and social purposes, and not operated primarily for profit.

MOBILE HOME — See definition of "manufactured housing."

MOTEL — A commercial establishment offering public accommodations comprised of a building or buildings, which contains four or more apartments or living accommodations for ten or more persons, with or without kitchens, and which constitutes primarily the temporary abode of persons who have their residence elsewhere. This term shall include hotels and inns but shall not include rooming houses, apartment houses or lodging houses. **(Effective 4/18/03)**

MOTOR HOME — A portable, temporary dwelling to be used for travel, recreation and vacation, and constructed as an integral part of a self-propelled vehicle.

MOVIE AND RECORDING STUDIOS – A bulding used commercially to produce musical or sound recordings or to produce motion pictures. **(Effective 08/06/2015)**

MUNICIPAL FACILITIES/USES — See definition of "public uses."

NET BUILDABLE AREA — Land equal to the total parcel area, less wetlands, poorly drained and/or very poorly drained soils. **(Effective 05/07/2015)**

NON-COMPLYING BUILDING — A structure, or part thereof, not in compliance with this chapter covering building bulk, dimensions, height, area, yards, or density laws, ordinances and regulations prior to the enactment of this chapter.

NON-CONFORMING USE — A use which lawfully occupied a building or land on the effective date of this chapter or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

NUISANCE — An interference with another's rights or interests by way of being offensive, annoying, dangerous, obstructive, or unhealthful. This includes an activity or condition that interferes with the use and enjoyment of one's property. **(Effective 06/20/2014)**

OFFICE — Place where the business of a commercial, industrial, service or professional organization is transacted.

OFF-LOT SEWER — The provision that sewer shall be by municipal disposal only.

OFF-LOT WATER — Provision of water from a source not located on the same lot as the building for which the water is provided. When the source is not municipal water, the

adequacy of the source shall be determined by review of the Planning Board, the Town Engineer and appropriate state authorities.

ON-LOT SEWER — Sewage disposal by means located on the same site as the building in which the sewage is generated.

OPEN SPACE — Land unoccupied by buildings or structures that may or may not be deeded conservation land. **(Effective 07/04/2013)**

OUTDOOR STORAGE — Storage not in a structure, provided that any storage material other than new equipment, new building material, or other new products displayed for sale, is fenced or screened.

PARKING FACILITY — A use dedicated to the outdoor storage of registered motor vehicles which may be at ground level, below ground, and/or above ground. Such use shall be devoted to the parking of passenger cars, and shall specifically exclude unregistered motor vehicles and trucks registered over one ton.

PARKING SPACE, OFF-STREET — For the purposes of this chapter, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public or private street, access drive, or alley and maneuvering room. Required off-street parking areas for three or more automobiles shall have individual spaces marked and shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public or private street, walk, or alley, and so that any automobile may be parked without moving another. **(Effective 7/5/07)**

PASTURE — A large are of land where animals feed on the grass. **(Effective 06/20/2014)**

PRE-SITE BUILT HOUSING — Any structure designed primarily for residential occupancy, which is wholly or in substantial part made, fabricated, formed, or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this chapter, pre-site built housing shall not include manufactured housing as defined herein.

PRIVATE EDUCATIONAL FACILITY/PRIVATE SCHOOL — Any school which is not a public educational facility and is not a nursery school, such as a private school offering education for students in any grades K-12, colleges, and universities. Any private educational facility shall be subject to the change in use process, site plan determination or site plan review as determined by the Planning Department. A private educational facility shall not be permitted in the Industrial zone(s) unless it is accessory and incidental to another permitted business. **(Effective 07/04/2013, revised 08/06/2015)**

PROFESSIONAL OFFICE – Offices for 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. **(Effective 01/07/2011, revised 06/14/2012, 07/16/2015)**

PRODUCE STAND — Seasonal sale of flowers, garden supplies, or agricultural produce designed to serve customers principally traveling by automobile.

PUBLIC USES — Uses by agencies and departments of local, county, state and federal governments including:

- Cemetery: May include burial ground, mausoleum, cemetery vaults and necessary maintenance structures.

- Education: Includes such functions as elementary, middle, junior high and high schools, college, vocational or technical school, kindergarten, and similar educational institutions.

- Institution: Public facilities primarily engaged in public services such as health and research.

- Office: Includes such functions as office, laboratory, library, post office, clinic, assembly and court.

- Public Safety: Includes such functions as fire, police, rescue, and ambulance services.

- Public Water, Public Sewer: Water supply and sewage disposal systems approved by the town for municipal operation.

- Recreation: Includes such functions as recreation center, senior citizens center, gymnasium, auditorium, and outdoor recreation facilities such as play fields, tennis courts and golf courses.

- Service: Includes such functions as garage, warehouse, vehicular repairs, outside storage for vehicles and supplies, and similar uses.

- Waste treatment: Includes areas or structures for disposal of sewage, solid waste and garbage under the control of a governmental unit, including incinerators, sewage treatment plants, and similar methods of disposal.

- Wastewater treatment: The process, either public or private, of cleaning water which carries wastes from homes, businesses and industries that is a mixture of water and dissolved or suspended solids, in association with required water purification standards. Such use shall include all necessary functions of waste water treatment with the exception of storage of sludge and other waste materials.

PUBLISHING — Includes printing and related types of operations.

RADIO BROADCASTING FACILITY — Any installation consisting of one or more transmitters or receivers, etc., used for radio communications. See also Wireless Communication Facilities. **(Effective 07/04/2013)**

RECREATION, ACTIVE — Park, playground, motorized recreation area such as on Off-Highway Recreational Vehicles (OHRVs), boats and the like. **(Effective 05/07/2015)**

RECREATION, AREA/SPACE — Land set aside for the recreational use, passive or active, of residents or community members. **(Effective 05/07/2015)**

RECREATION, PASSIVE — Activities such as cross country skiing, hiking, birdwatching. **(Effective 05/07/2015)**

RECREATIONAL FACILITY, OUTDOOR — Outdoor recreational activities including such facilities as outdoor tennis courts, swimming pools, golf courses, play fields, and similar uses. No buildings shall be allowed except for the necessary related uses such as rest rooms and maintenance facilities.

REMOVAL OF NATURAL MATERIAL — The removal of natural material is the removal of loam, sand, gravel, stone or other fill material for sale in commercial quantities, or for the use in another location.

RESEARCH AND DEVELOPMENT FACILITY — A combination of office and laboratory or light manufacturing space used exclusively for the purpose of new product research or development. The limitations set forth in the definition of "research lab" shall otherwise apply to research and development facilities.

RESEARCH LAB — A use that provides for experimental study, and is not of a manufacturing nature, and at least 50% of the floor space shall be used for office space, and no activities shall result in heavy trucking.

RESTAURANT — A building or other structure used principally to provide refreshments or meals to the public for consumption principally on the premises. This includes diner, cafe and cafeteria, tear room and the like, and shall not include drive-in restaurants. It shall be an eating establishment which is primarily designed for its patrons to eat at tables, booths or a counter. Takeout refreshments are only incidental to the main purpose of the establishment. The service of alcoholic beverages to patrons seated at tables or at a bar as an appurtenance of a meal, or while waiting to be seated for a meal, shall be considered a use which is customarily incidental to the use of a full-service restaurant. **(Revised 06/14/2012)**

RESTAURANT, DRIVE-IN — A building used principally to dispense prepared food and/or beverages to the public for consumption on or off premises, the major attributes of which are assembly line production of food and speed of dispensing, self-service by the customer by standing in line, and/or service to the customer in automobiles, and which generates a large volume and rapid turn over of entering and exiting motor vehicle traffic. **(Effective 06/14/2012)**

RETAIL SALES ESTABLISHMENT — A structure and/or lot used principally for the sale of products to the public or at wholesale, such as grocery, drug store, general merchandise store, book store, department store, or distributor of goods/products and the like. This shall exclude any free-standing retail stand, motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service, and commercial service. Outdoor storage of goods shall be governed by the Land Development Control Regulations of the Town of Derry. This definition does not include a sexually-oriented business. **(Effective 06/14/2012)**

SALE OF TRAVEL ACCOMMODATIONS — travel agent's office. See Retail Sales Establishment. **(Effective 07/04/2013)**

SERVICE AREA — The area adjacent to a building entrance, usually in the rear, through which supplies are received and waste materials are moved.

SEXUALLY ORIENTED BUSINESS — Any and all businesses described in Section 165-27 of this chapter.

SIGN PERMIT: Town's authorization for a sign, as issued by the Code Enforcement Office. **(Effective 02/07/2014)**

SIGN — Any device having a display surface on one or both sides to inform or attract the attention of persons not on the premises on which the sign is located; provided, however, that the following shall not be included in the application of the regulations contained herein:

- Signs not exceeding one square foot in area and bearing only property numbers, post office box numbers, names of occupants of premises, or other identification of premises.

- Flags and insignia of any government except when displayed in connection with a commercial promotion.

- Legal notices, identification, informational, or directional signs erected as required by governmental bodies.

- Signs directing and guiding traffic and parking on private property, but bearing no advertising.

SIGN, ABANDONED –Any sign that does not display a visibly legible message for a consecutive period of sixty (60) days; any sign the owner of which cannot be located at the owner's last address as reflected in the records of the department; or, any sign no longer fully supported by the structure designed to support the sign, for a consecutive period of 60 days. Also refer to Section 165-101.9, Nuisance Signs. This does not include signs for businesses that are undergoing permitted renovations or that operate seasonally. **(Effective 02/07/2014)**

SIGN, ATTACHED — A sign that is attached to a building wall.

SIGN, AWNING– The sign area affixed or otherwise included in an awning structure. For purposes of sign area, the total combined text or advertising shall be included in one sign type. Area is calculated by the combined total of all advertising elements. **(Effective 02/07/2014)**

SIGN, DIRECTIONAL - A sign on private property without a commercial message that provides direction; for example, entrances, exits, or street numbers. **(Effective 02/07/2014)**

SIGN, DIGITAL - A sign that has advertising or information projected onto it, typically by technological means. This includes electronic signs. **(Effective 02/07/2014)**

SIGN, ELECTRONIC MESSAGE CENTER - An on premise sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means, the installation of which is subject to the provisions of Section 165-101.11, Electronic Message Center Signs. **(Effective 02/072014)**

SIGN, FLASHING –A sign that has varying degrees of intensity when in use and/or which exhibits changes in light, color, light direction, and/or animation. Electronic message center signs properly operating in accordance with the provisions of Section 165-101.11 are not considered flashing signs. **(Effective 05/19/2005, Revised 02/07/2014)**

SIGN, FREE-STANDING — A sign, which is not attached or affixed, to a structure or building and which is supported by a pole/s or their supporting members.

SIGN, GOVERNMENT –A sign authorized by this municipality, another government agency, the State of New Hampshire or the Federal Government. This includes Historical, Cultural or Natural Site signs. **(Effective 02/07/2014)**

SIGN, GROUND –A sign supported by one or more uprights, pylons, or foundation elements, including wheel-mounted (other than on motor vehicles), in or upon the ground, and not attached to a building. **(Effective 02/07/2014)**

SIGN, INTERACTIVE DIGITAL –A sign that displays a menu that allows a person to touch the screen and respond to the menu's questions. **(Effective 02/07/2014)**

SIGN, MONUMENT — A sign that is erected on a solid base placed directly on the ground and itself being constructed of a solid material.

SIGN, NON-CONFORMING –A sign in place before the effective date of this Article (2/7/2014) that does not comply with all of the requirements of the ordinance. **(Effective 02/07/2014)**

SIGN, OFFICIAL – Signs of a non-commercial nature erected by or on behalf of government entities or public utilities. **(Effective 02/07/2014)**

SIGN, OFF PREMISE - A sign advertising products, services and activities not produced, available, conducted or performed on the property where the sign is located. **(Effective 02/07/2014)**

SIGN, PARAPET – A sign located on a parapet wall (regardless of the height of that wall).

SIGN, POLITICAL – Signs erected in connection with elections or political campaigns pursuant to RSA 664:14-23. **(Effective 02/07/2014)**

SIGN, PROJECTING –A sign affixed to any part of a building or structure which extends beyond the building or structure by more than 12 inches. **(Revised 02/07/2014)**

SIGN, RESIDENTIAL NEIGHBORHOOD IDENTIFICATION –A sign at the entrance of a residential neighborhood identifying the neighborhood. **(Effective 02/07/2014)**

SIGN, ROOF — Any sign that is:

a. Located above the level of the eaves on pitched or gambrel roofs.
b. Located above the building's roof on a building with a flat roof.
c. Located above the top of the vertical wall of a building with a mansard roof.

SIGN, SANDWICH BOARD (A-FRAME) –A self-supporting, free standing ground sign, hinged at the top and reinforced for stability with side supporting rods/chain/rope, which is portable and temporary in nature. Sandwich board signs shall not exceed four (4) feet in height and two (2) feet in width. **(Effective 02/07/2014)**

SIGN, SPECIAL EVENT –A sign for limited on-site gatherings. Special event shall include, but is not limited to, grand openings, vehicle shows, displays, craft shows, charitable benefits and fund-raisers, performances, athletic competitions, and festivals. **(Effective 02/07/2014)**

SIGN, SURFACE AREA OF — The surface of a sign shall be computed as including the entire area within a regular geometric form, or combinations of regular geometric forms, comprising all of the display area of the sign, and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in the computation of the surface area.

SIGN, TEMPORARY – A sign that is used in connection with a circumstance, situation, or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period of time after the erection of the sign; or a sign that is intended to remain on the location where it is erected or placed for a reasonably short or definite period of time after the erection of the sign, **not to exceed seven (7) days.** If the sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as a temporary sign. **(Effective 02/07/2014)**

SIGN, TEMPORARY MOBILE — A temporary sign customarily located on a trailer or similar wheeled apparatus whether self propelled or pulled by another vehicle, intended for promotional purposes or to convey an advertising message of any kind, which is not permanently affixed to the ground.

SIGN, UNSAFE – Any sign that poses a health, safety or general welfare hazard due to lack of maintenance, structural instability, inadequate attachment to the building or structure, faulty electrical wiring, has the potential to pose or cause a traffic hazard, or other natural or man-made cause. **(Effective 02/07/2014)**

SIGN, WALL – A sign attached to, painted upon, placed against, or supported by the exterior surface of any building. **(Effective 02/07/2014)**

SIGN, WARNING –A sign exclusively devoted to warning the public of dangerous conditions and unusual hazards such as drop offs, high voltage, fire danger, and explosives. **(Effective 02/07/2014)**

SIGN, WINDOW –Illuminated and non-illuminated signs placed in the windows of a structure, viewed or intended to be viewed from outside the structure. Such signs are considered part of the total sign area for that frontage. **(Revised 02/07/2014)**

SPECIAL EXCEPTION — A specific enumerated use of a building or lot which may be permitted under this Chapter only upon application to the Board of Adjustment and subject to the approval of the Board in accordance with the conditions pertinent thereto, and only in cases where the words "Special Exception" in this Chapter pertain.

STREET LINE — Right-of-way line of a street as dedicated by subdivision plat or a deed of record. Where the width of the street is not established, the street line shall be considered to be 25 feet from the center line of the street pavement or as designated in the Master Plan.

STREET, PRIVATE – Shall mean any vehicular right of way which the Town or State has no duty to maintain and that:

1. is a privately owned and maintained roadway;
2. is shown upon a plan approved pursuant to NH RSA's;
3. is shown on a plan duly filed and recorded in the Office of Rockingham County Registry of Deeds; or
4. is approved by any other official action of the Town of Derry. A road contains all the land within the right of way. As used herein, road has the same meaning as street. **(Effective 7/5/07)**

STREET, PUBLIC — A public right-of-way which the town or state has the duty to maintain regularly or a public right-of-way shown on a subdivision plat approved by the Planning Board, recorded with the County Registry of Deeds, constructed to town specifications, and duly accepted by the municipality, which provides the principal means of access to abutting property. As used herein, road has the same meaning as street. **(Effective 7/5/07)**

STRUCTURE — Anything constructed or erected having a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include, but are not limited to, buildings, kennels, swimming pools, billboards, and poster panels. It shall not include minor installations such as fences less than 3 ½ feet high, agricultural and safety fences, mail boxes, and flagpoles. **(Revised 06/20/2014)**

SUBDIVISION — The division of the lot, tract, or parcel of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing, or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision.

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 transporation, accomodations, tours or trips for travlers. **(Effective 07/16/2015)**

TOURIST HOME — Any owner-occupied dwelling (other than a hotel or motel) in which living accommodation, with or without kitchen facilities, are offered to the traveling public for rental to ten or fewer transient guests, none of whom shall stay for more than

fourteen days in any calendar year. This term shall include bed and breakfasts but shall not include lodging houses or rooming houses or apartment houses. **(Effective 4/18/03)**

TRAVEL TRAILER — A vehicular, portable, non-self-propelled structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, having a body width not exceeding eight feet, and a body length not exceeding 32 feet.

TRUCK TERMINAL — A facility for transfer of merchandise and the repair, maintenance, and servicing of tractor trucks and trailers used for the transportation of such merchandise.

USE, PERMITTED — Use specifically allowed in a zoning district excluding illegal uses and non-conforming uses.

VARIANCE — Such departure from the terms of this chapter as the Board of Adjustment, upon appeal in specific cases, is empowered to authorize only under applicable statutes of the State of New Hampshire.

VEHICULAR SALES OR REPAIR FACILITY — Deleted 06/14/2012

VEHICULAR SERVICE STATION — Any area of land, including the structures thereon, that is used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, and which may include facilities used for polishing, greasing, washing, spraying, dry cleaning, mechanical repairs, or otherwise cleaning or servicing such motor vehicles. A service station is not a vehicular sales or repair facility as defined herein.

WAREHOUSE — A fully enclosed building used for bulk storage of goods and merchandise, including bulk sales outlets and self-storage units.

WHOLESALE BUSINESS — Use which constitutes the sale of goods in quantity, usually for re-sale. **(Effective 06/14/2012)**

WIRELESS COMMUNICATIONS FACILITIES — Any towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or any other electromagnetic spectrum-based transmission/receptions including cell towers. This definition shall not include towers or antennas that are less than twenty-five (25) feet in height from the ground and which are accessory to a principal use, nor shall this definition include antennas used exclusively in the amateur radio services or antennas otherwise permitted by federal or state preemption. **(Effective 06/14/2012)**

YARD — That portion of a lot not occupied by a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.

YARD, FRONT SETBACK — Yard between the front lot line and the front of a building extended to the side lot lines of the lot. The depth of the front yard shall be measured from the street line to the front line of the building.

YARD, REAR — Yard between the rear lot line and the rear line of a principal or accessory building extended to the side lot lines of the lot. The depth of the rear yard shall be measured from the rear lot line to the rear line of the building.

YARD SALE — The sale of excess items by a family from its residence to customers coming to the residence to view and purchase the items. It shall include garage, lawn, attic, tag and porch sale, and similar expressions intending to convey such type of sales.

YARD, SIDE — Yard between the principal building or accessory building and a side lot line, and extending through from the front yard to the rear yard.

## ARTICLE III GENERAL PROVISIONS

### *Section 165-6 Junkyards*

No junkyard or place for the storage of discarded machinery, vehicles, or other materials shall be permitted in any district.

### *Section 165-7 Lots*

No permit shall be granted for the construction of, or placement of, a building or dwelling on a lot in any district unless said lot shall comply with the following requirements:

a. Residential Lots — Each residential lot shall meet the requirements for the zoning district in which it is located, as set forth in Articles IV, V, VI herein; provided said lot meets the requirements of the New Hampshire Department of Environmental Services.

b. Pre-existing Residences — The provisions of Sub-section A shall not be deemed to prohibit the construction or placement of accessory buildings or improvements or enlargements of pre-existing dwellings or accessory buildings or improvements on residential lots existing at the time of adoption of the preceding amended Section 165-7, if said proposed building, improvement or enlargement shall not violate any applicable setback requirements of this chapter, and provided said building or improvement meets the requirements of the New Hampshire Department of Environmental Services.

### *Section 165-8 Number of Buildings Per Lot*

Only one residential building or dwelling shall be situated on a lot, except as provided elsewhere in the Ordinance specifically for permitted multifamly use consisting of at least three (3) dwelling units per building. **(Revised 05/07/2015)**

### *Section 165-9 Approved Street Required for Residential Lot*

Each lot shall face on an approved public street. No buildings or structures shall be constructed, and no use shall be established on a lot having less frontage than the minimum dimension indicated in the district in which the lot is located. Minimum lot frontage shall be a continuous, unbroken line along one approved public street. **(Effective** 11/21/03**, 7/5/07)**

### *Section 165-10 Setbacks*

All buildings or dwellings shall comply with the dimensional requirements for setback for the district in which the property is located, or shall conform with the average setback of

the structures 300 feet from either side of the building on the same side of the street. **(Effective 11/21/03)**

### *Section 165-11 Commercial and Industrial Buildings*

No commercial or industrial building shall be constructed or placed on a lot smaller than that required for a dwelling.

### *Section 165-12 Sewage Disposal*

Buildings or businesses not connected to the public sewer shall be required to contain an additional 10,000 square feet of lot size above the minimum for the zone 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.

### *Section 165-13 Parking For Non-Residential Uses*

Any non-residential use established or expanded after the effective date of this chapter shall have adequate parking for employees and customers in compliance with the Land Development Control Regulations. **(Revised 07/16/2015)**

### *Section 165-14 Churches*

Churches, together with their customary accessory uses, such as a school directly connected to and controlled by a church, shall be permitted in any zoning district of the Town of Derry with the exception of the Industrial IV zone. **(Revised 06/14/2012, 07/04/2013)**

### *Section 165-15 Offensive Uses*

No use that is injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise, or other cause shall be permitted in any district.

### *Section 165-16 Site Plan Review*

All development or change or expansion of use of land or buildings for nonresidential uses or for multi-family dwelling units, whether or not such development includes a subdivision or resubdivision of the site, shall be subject to review and approval or disapproval by the Planning Board in accordance with the provisions of this chapter and Chapter 170, Land Development Control Regulations.

### *Section 165-17 Conservation Corridor Buffer Zone*

A buffer zone of at least 125 feet shall be required between a septic tank or an absorption field and the Conservation Corridor Overlay District.

### *Section 165-18 Waste Disposal Systems Near Wetlands*

No waste disposal systems shall be located closer than 75 feet to any wetland.

### *Section 165-19 Erosion and Siltation*

All construction, forestry and agricultural activities within 100 feet of any wetland shall be undertaken with special care to avoid erosion and siltation into the wetlands.

### *Section 165-20 Wetland Setbacks*

a. No buildings shall be located closer than 75 feet to any wetland one acre or larger in size, and no building shall be located closer than 30 feet to any wetland less than one acre in size. **(Effective 11/21/03)**

b. Where an existing use within the setback is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction. The new or rebuilt use shall not extend further into the wetland or setback area than the original use.

### *Section 165-21 Community Water Systems*

All community water systems, including the well lots where pump house and wells are located, shall be deeded to the Town of Derry upon satisfactory completion and testing of the entire system. The town ownership of the community water system shall include the water main, pipes from the water main to the pump house, pipes from the pump house to the wells, the well system, the well lot, and all water service lines from the water main to the property line or water service curb stop. Well lots shall be of sufficient size to encompass at least the entire area within the required protective exclusion radius.

### *Section 165-22 Building Permit; Construction Requirements*

A. Permit Required. Any person proposing to erect or construct any building or structure, or proposing to alter any existing building or structure must first obtain a permit from the Building Inspector.

B. Application, Decision and Compliance.

1. Before a permit shall be issued by the Building Inspector, he shall determine whether the proposed work complies with all applicable provisions of this chapter and all other applicable building, electrical, fire, and other codes, chapters and regulations of the Town of Derry. A specific blueprint or other appropriate record of the approved plan shall be filed with the Building Inspector before a building permit is issued.

2. The Building Inspector shall act to approve or disapprove the building permit application within 10 days of the receipt of said application. The Building Inspector shall make inspections of all buildings in the process of construction and shall report any violations to the Town Council.

C. Permit to be Withheld. No permit shall be issued for construction or alteration unless the proposed structure will present a reasonable appearance and will be in keeping with the neighborhood, and unless the building is to be finished on the exterior in a permanent manner and is to be suitably painted on the outside whenever the same is of wood or a material customarily painted. This is intended to eliminate the erection of structures obviously out of place for the neighborhood where they are located and which may be detrimental to property values and neighborhood character.

D. Permit Duration and Renewal. Building permits shall be valid for one year from the date of issuance. Said permits may be renewed for a period of one year provided that construction under the original permit was commenced during the first year. On a new building, "construction commenced" shall mean the completion of at least the foundation. After the foundation is constructed, buildings must be completed within one year unless the permit is extended by the Building Inspector for good cause. All permits issued prior to the enactment of this chapter shall expire one year from the date of enactment of this chapter unless renewed as provided herein.

E. Permit Fees - The building permit fee schedule shall be as is contained in the International Building Code as currently adopted by the State of New Hampshire and as amended by the Town of Derry under Chapter § 30 of the Town of Derry Code. **(Effective 11/17/05, Revised 04/24/2015)**

F. Construction Requirements: All construction shall be in accordance with: **(Effective 11/17/05, Revised 04/24/2015)**

1. The State Building Code as currently adopted by the State of New Hampshire and as adopted by The Town of Derry under Chapter § 30 of the Town of Derry Code and shall include the:

- International Building Code as amended by the Town of Derry under Chaper § 30 of the Town of Derry Code as amended by The State of New Hampshire;
- International Residential Code as amended by the State of New Hampshire;

- International Plumbing Code as amended by the State of New Hampshire;
- International Mechanical Code as amended by the State of New Hampshire;
- International Energy Conservation Code as amended by the State of New Hampshire;
- International Existing Building Code as amened by the State of New Hampshire, and the
- National Electrical Code (NFPA 70) as amended by the State of New Hampshire.

2. In addition to the State Building Code, all codes as may be currently adopted by the State of New Hampshire Fire Marshall's Office and as contained in Chapter SAF-C6000 State Fire Code, and the International Property Maintenance Code as amended and adopted by the Town of Derry under Chapter § 30 of the Town of Derry Code.

G. Sewage. All dwellings and buildings containing required plumbing fixtures shall be equipped with sewage disposal systems approved by the State of New Hampshire Water Supply and Pollution Control Division. If the sewer line comes within 125 feet of the property line, or for special use of lagoons, refer to Chapter 122, Sewers and amendments thereto. **(Effective 11/17/05)**

## *Section 165-23 Buffer Zones*

In all industrial district zones and in the Office, Research & Development District, before any building, parking lot, or driveway can be constructed that is non-residential in nature and abuts a residence or residential district, a buffer zone shall be established with the following minimum characteristics: **(Effective 12/2/05)**

a. It shall be a minimum of 50 feet wide.

b. It shall be landscaped and maintained with the purpose in mind to diminish the effect of lighting, sound and odor created by the non-residential use.

c. Minimum plantings for the buffer zone shall be three rows of coniferous type trees running parallel with the residential district. These trees shall have a minimum height of six feet, and be planted at a distance of 12 feet to 16 feet on center. They shall be staggered so as to present a more dense buffer zone. Landscaping of the buffer zone shall be approved by the Planning Board.

d. When the existing trees and under story vegetation in the buffer zone are sufficiently dense so as to provide screening at least as effective as the minimum plantings specified in paragraph (c), above, the Planning Board may opt to require the maintenance of the existing vegetative buffer in lieu of cutting it down to accommodate new plantings, or may opt to require a combination of new plantings and existing vegetative buffer. **(Effective 12/2/05)**

e. Landscaping of the buffer zone shall be approved by the Planning Board.

### *Section 165-24 Temporary Use Of Manufactured Housing*

The Building Inspector may issue a temporary occupancy permit, upon application, for the use of a manufactured housing unit as a temporary residence or as a temporary construction office only after a building permit has been issued for a new or replacement structure, and under the following conditions:

a. Temporary residence. Such unit may be used only by the owner of the primary residence where the primary residence has been damaged by fire or other unforeseen event.

b. Temporary construction office. Such unit may be used by the contractor for office use only.

c. A unit to be used as a temporary residence shall be connected to approved water supply and wastewater disposal systems in accordance with state and local requirements.

d. Any such unit shall be located on the lot where the construction activity is occurring, and shall be placed so as to comply with the setback requirements of the district in which it is located.

e. The temporary occupancy permit shall be valid for a period of one year. The Building Inspector may renew said permit for an additional year, upon application made at least 30 days prior to the expiration date, provided the construction has been diligently pursued and it can be shown that the work will be completed (under a valid building permit) within the renewal period.

f. The temporary residence or construction office shall be removed from the lot within 30 days of the issuance of the occupancy permit for the new or replacement structure.

### *Section 165-25 Accessory Apartment*

The creation of an accessory apartment in an existing single family detached dwelling shall be subject to all of the following conditions:

a. The lot on which the existing single family detached dwelling is situated must have the minimum area required for the zoning district in which it is located.

b. Where municipal sewer is not provided, the owner shall have written approval from the Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services stating that the septic system meets the requirements for the combined use.

c. Off-street parking shall be provided for at least four vehicles.

d. The total floor area of the existing structure cannot be increased by more than 10% to accommodate the accessory apartment.

e. The floor area of the accessory apartment cannot exceed 600 square feet, nor can the floor area of the existing dwelling unit be decreased to less than 800 square feet. **(Effective 11/17/05)**

f. The accessory apartment must be contained within or be attached to the existing dwelling or be within a structure which is attached to the existing dwelling.

g. The conversion of an independent free-standing accessory structure for the purpose of creating an accessory apartment is prohibited.

h. The accessory apartment shall be composed of and limited to a kitchen, a living room, one bedroom, and a bathroom.

i. Room sizes in the primary dwelling unit and in the accessory apartment must conform to the minimum requirements of the International Residential Code. **(Effective 11/17/05)**

j. Once an accessory apartment is created under this section, no further conversion of the structure will be allowed for purposes of creating an additional dwelling unit.

k. An accessory apartment shall not be permitted in conjunction with any special exception.

l. An accessory apartment shall not be permitted if a variance has already been granted or would be needed for the lot with respect to the provisions of Section 165-7, sub-sections A and B, or of Sections 165-8, 165-9, 165-10 or 165-12.

m. The structure and the lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single family dwelling.

## *Section 165-26 Modular or Pre-Site Built Housing*

Modular or Pre-site built housing constructed in accordance with the Town and State Building Codes shall be allowed in all areas of the Town where residential construction is presently allowed, under the same requirements as conventional single family housing in the same district. **(Revised 04/24/2015)**

## *Section 165-27 Sexually Oriented Businesses* ***(Effective 8/10/95)***

A. Purpose and Intent.

1 The Town of Derry, through its Planning Board, conducted several public hearings regarding the concentration of sexually oriented businesses within the Town of Derry and the secondary effects of such businesses upon the health, safety and general welfare of the town. At these public hearings, several citizens presented information regarding the adverse secondary effects of the concentration of sexually oriented businesses on the community. The Planning also received and reviewed printed materials and reports regarding the adverse secondary effects of such businesses on the community. All such material and testimony is a part of the record of the Planning Board in recommending amendments to this chapter addressing the concentration of sexually oriented businesses and the adverse secondary effects of such concentration upon the health, safety and general welfare of the community.

2 Based upon the record established by the Planning Board, it is the purpose and intent of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the town of Derry; and it is the intent to promote the health, safety and general welfare of the citizens of the Town of Derry and it is the intent of this section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses; and the provisions of this section have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and it is not the intent nor the effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the Constitution of the United States of America, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended markets; and, neither is the intent nor effect of this section to condone and legitimize the distribution of obscene material.

B. Definition of Sexually Oriented Businesses. A sexually oriented business is any place of business at which any of the following activities is conducted:

ADULT BOOKSTORE or ADULT VIDEO STORE

1. An establishment that devotes more than 15% of the total display, shelf, rack, wall, table, stand or floor area, utilized for the display, sale, rental, or distribution for consideration or offers for sale, rental, or for any other form of consideration of the following, or an establishment which, as one of its principal business purposes, offers for sale, rental, or for any other form of consideration, any one or more of the following:

a. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, tapes, records, CD-Roms or other forms of visual or audio representations which depict or describe specified sexual activities or ìspecified anatomical areas or meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1; or,

b. Instruments, devices or paraphernalia which are designed for use in connection with sexual conduct as defined in RSA 571-B:1, other than birth control devices.

2. An establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual conduct or activities and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is offering for sale or rental or for other consideration to specified material which depict or describe specified sexual conduct or activities or specified anatomical areas.

3. An adult bookstore or adult video store does not include an establishment that sells, rents, or distributes for any other form of consideration or offers for sale, rent, or distribution for any other form of consideration material described in sections 1a or 1b hereof, as an incidental or accessory part of its principal stock in trade, does not devote more than 15% of the total display area of the establishment to the sale, rent, or distribution of material described in sections 1a or 1b hereof, and such enterprise does not constitute a principal business purpose.

ADULT CABARET — A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.

ADULT DRIVE-IN THEATER — An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or an outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.

ADULT MOTEL — A motel or similar establishment offering public accommodations of any form of consideration which provides patrons with closed circuit television transmissions, films motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.

ADULT MOTION-PICTURE ARCADE — Any place to which the Public is permitted or invited, wherein coin or slug-operated, electronically or electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is

devoted to the showing of material which meets the definition of harmful to minors and/or sexual conduct, as set forth in RSA 571-B:1.

ADULT MOTION-PICTURE THEATER — An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of ìharmful to minors andor sexual conduct as set forth in RSA 571-B:1, for observation by patrons.

ADULT RESTAURANT — A bar, restaurant, retail seller of food andor beverage for consumption on premises or off premises, or any similar establishment which employs, hires, contracts with, or uses any person to person any service for such bar, restaurant, retail seller of food and/or beverages for consumption on premises or off premises, or any similar establishment in a state of nudity.

ADULT THEATER — A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of harmful to minors andor sexual conduct as set forth in RSA 571-B:1.

NUDE MODEL STUDIO — A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal andor the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration and such display is characterized by an emphasis on activities which meet the definition of “harmful to minors” andor “sexual conduct” as set forth in RSA 571-B:1.

SEXUAL ENCOUNTER CENTER— A business or commercial enterprise that as one of its principal business purposes, offers for any form of consideration:

a. Physical contact in the form or wrestling or tumbling between persons of the same or opposite sex where such physical contact is characterized by an emphasis on activities which meet the definition of “harmful to minors” andor “sexual conduct” as set forth in RSA 571-B:1; or

b. Activities between male and female persons andor persons of the same sex when one or more persons is in the state of partial nudity or nudity.

C. Terminology Definitions — The following terms shall have the following meanings for the purposes of this section: NUDE or NUDITY – The showing of:

a. Human male or female genitals or pubic area with less than a fully opaque covering; or

b. Any portion of the anal cleft or cleavage of the male or female buttocks. Attire that is insufficient to comply with this requirement includes, but is not limited to, g-strings, t-back thongs, and other clothing or covering that does not completely and opaquely cover the anal cleft or cleavage of the male or female buttocks; or

c. The portion of the human female breast directly or laterally below a point immediately above the top of the areola with less than a fully opaque covering; this definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing, provided the areola is not exposed; or

d. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

PRINCIPAL BUSINESS PURPOSES — Such activity constitutes at least 10% of the gross revenues of the establishment at the specific location operated by the establishment.

SPECIFIC ANATOMICAL AREAS — Include any of the following:

1. the fondling or other erotic touching of the human genitals, pubic regions, buttocks, anus, or female breasts;
2. sex acts, normal or perverted, actual or simulated, including intercourse, copulation or sodomy;
3. masturbation, actual or simulated; or
4. excretory function as part of or in connection with any of the activities set for in Sub-section 1,2, or 3 above.

SPECIFIED SEXUAL CONDUCT OR ACTIVITIES — The male genitals in a state of sexual arousal andor the vulva or intimate parts of the female genitals.

SUBSTANTIAL PORTION OF TOTAL PRESENTATION TIME — The presentation of films or shows for viewing on more than seven days within any 56 consecutive day period.

D. Locational Requirements — Sexually oriented businesses, as defined in this Section, shall be permitted in the General Commercial District, provided that all of the regulations, requirements and restrictions for the General Commercial District are met; and the following conditions, regulations and requirements are met:

1. Separation of Uses — Sexually oriented businesses shall not be permitted within 1,000 feet of another existing sexually oriented business or one for which a building permit or a zoning certificate of use has been applied for.
2. Use Setbacks — Sexually oriented businesses shall not be permitted within 450 feet of:
    a. Any residence or any building used principally as a residence such as an apartment building or rooming house;
    b. Indoor andor outdoor amusement establishment;
    c. Any church, place of worship, parish house, or convent;
    d. Public, parochial or private school, or kindergarten;
    e. Licensed day care an/or day nursery, or state approved day care center;
    f. Public sports or recreation park;

g. Any building, structure, property, or marker designated as historic by any federal, state, or local board, agency, or commission.

3. Zoning district setbacks —

a. Sexually oriented businesses shall not be permitted within 450 feet of the following zoning district boundaries:

i. Any residential district;
ii. Any industrial district;
iii. Central Business District;
iv. Office/Business District; and
v. Neighborhood Commercial District.

b. Sexually oriented businesses are prohibited in all zoning districts within the Town of Derry, other than the General Commercial District.

4. Setback From Governmental Offices — Sexually oriented business shall not be permitted within 450 feet of any building owned or used by the Town of Derry or any other governmental agency for governmental purposes.

5. Town Setback — Sexually oriented business shall not be permitted within 450 feet of the Town line.

6. Restrictions within a building — Sexually oriented business shall not be permitted within a building, premises, or structure, or other facility that constitutes or includes a sexually oriented business.

E. Measure of distance — The distance between any sexually oriented business and other named point of reference shall be measured in a straight line, without regard to intervening structures, from the closest property line of the site identified in paragraphs Sub-sections D1 through 6 above and the closed exterior wall of the building in which the sexually oriented business operates. When the measurement of distances involve a geographic boundary, the point of reference shall be deemed to be the boundary.

F. Application procedures — The Planning Board shall review and approve, or approve with conditions, or disapprove applications for sexually oriented businesses under site plan regulations for the Town of Derry. When approving applications, the Planning Board may impose reasonable restrictions for buffering, outdoor lighting, signage, parking, adequate ingress and egress from the site off and on to public roads, pedestrian movement, and provide for appropriate landscaping and building aesthetics consistent with the site plan regulations for the Town of Derry, New Hampshire and avoid site development layout which may result in negative environmental impact to ensure that any displays of merchandise visible to the general public are in conformity with N.H. RSA 571-B.

G. Applicability — This section shall be effective upon passage. Any sexually oriented business which was in operation prior the adoption of this section shall be subject to the provisions of Article XIII, Section 165-106.

H. Enforcement — Notwithstanding any other provision of this chapter, any person, partnership, corporation, or other entity who is found in violation of this section shall be subject to a fine in an amount not to exceed $100 per day for each violation.

## *Section 165-28 Wireless Communications Facilities* ***(Effective 2/20/98)***

A. Purpose and Intent — The purpose of this section is to establish regulations for Wireless Communications Facilities. The goals of this section are:

1. Protect residential areas and lands by minimizing adverse impacts of towers;
2. Encourage the location of towers in non-residential and otherwise appropriate zoning districts;
3. Minimize the total number of towers in the community;
4. Encourage the joint use of new and existing tower locations;
5. Ensure that towers are located in areas that minimize adverse impacts;
6. Ensure towers and antennas are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening, and innovative camouflaging techniques;
7. Enhance the ability to provide telecommunications services to the community quickly, effectively and efficiently;
8. Consider public health and safety impact on the community of the telecommunications facilities;
9. Avoid damage to adjacent properties from tower failure through careful engineering and locating of tower structures;
10. Encourage the attachment of antennas to existing structures;
11. Facilitate the provision of telecommunications services throughout the municipality.

B. Wireless facilities; regulation and performance criteria — The location, placement on a lot construction of wireless communications facilities shall be in accordance with this section as follows:

1. Location —
   a. Construction of wireless communications facilities are prohibited in the following Districts, except as provided in the Telecommunication Overlay Zone.
      i. Medium High Density Residential District (MHDR)
      ii. Medium Density Residential District (MDR)
      iii. Manufactured Housing Park District (MHPD)
      iv. Multi-Family Residential District (MFRD)
      v. Central Business District (CBD)
      vi. General Commercial District (GC)
      vii. Office Business District (OBD)
      viii. Low Density Residential District (LDR)
      ix. Low Medium Density Residential District (LMDR)

b. Construction of wireless communication towers shall be allowed in the following Telecommunication Overlay Zone:

| Tax Map No. | Parcel No. | |
|---|---|---|
| 101 | 0115 | 022-1 |
| | 0115-1 through 15 | 022-8 through 11 |
| | 0118 | 022-11-1 |
| | 0119 | |
| 102 | 0119-1 through 30 | |
| 107 | 022-1 | 023-4 |
| | 022-2 through 7 | 024 |
| | 023-3 | 025 |
| | 023-3-1 | 028 |
| | 023-3-2 | 0218 |

c. Construction of wireless communications facilities are a permitted use by right in the following Districts only if the criteria of Table D of this section are met.

Industrial I District (IND-I)
Industrial II District (IND-II) **(Deleted 7/15/04)**
Industrial III District (IND-III)
Industrial IV District (IND-IV)
Office/Medical/Business District (OMB)
Office, Research & Development District (ORD)

d. Towers shall be at least 3/4 of a mile apart.

2. Co-location —

a. Co-location is the sharing of telecommunication facilities by more than one wireless provider. This ordinance encourages that wireless communications antenna be placed on an existing wireless facility tower if it is physically and legally possible. Antennas may be attached to an existing tower which is in compliance with all requirements of this section, as long as the height of the tower is not increased. The new antenna and any telecommunications support facilities must comply with all applicable regulations in this chapter. If a tower is replaced to accommodate co-location, only one tower may remain on the lot.

b. In order to facilitate the maximum use of an existing tower, promote co-location and to reduce the potential for new towers, where an existing tower is on a non-conforming lot or is a valid preexisting non-conforming use, the Zoning Board of Adjustment shall grant a special exception to allow additional antennas on such existing towers and additional ground support facilities of all of the following conditions are met:

i. There is no increase in the existing height of the tower.

ii. The proposed expansion of any ground support facility and buildings shall otherwise meet all setback requirements and any buffer restrictions applicable to the lot.

iii. The Board finds that the proposed expansion to the wireless communication facility is necessary and essential to providing the applicant's telecommunication service.

c. In granting a special exception, the Board of Adjustment may impose conditions, including buffers or screening to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed expansion on adjoining properties and preserve the intent of the section.

3. Variances to this section by the Zoning Board of Adjustment are subject to Site Plan Review.

4. Wireless Facility Performance Criteria (See Table D), attached hereto.

5. All new ground towers shall be subject to site plan review. The assessment and review of each application for a wireless facility's compliance with the performance criteria of Table D shall be the responsibility of the Building Inspector after consultation with the Planning Director. This assessment shall be in writing and provided to any Board or authority exercising jurisdiction over the application. Applications for co-location of antenna on existing facilities shall be expedited and, unless there is an additional impact on the site caused by the addition, site plan approval shall be waived upon such a finding by the Building Inspector.

6. As part of the site plan review process, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable or unwilling to remove the tower. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of the issue date of the notice to remove the tower or antenna. If the abandoned tower is not removed within 90 days the municipality may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

7. Towers are allowed only in the zoning districts set forth in sub-section B.1.b and c and shall be considered a permitted use in that zone. The existence of another structure or use on the same zone lot shall not preclude the installation of a tower provided all other requirements are met, that is in compliance with the regulations contained herein and the structure is permitted by right for the zone in which it is located.

8. Towers and/or antennas shall meet the following requirements, all of which shall be reviewed as part of the Planning Board Site Plan Review.

a. The design of towers, antennas, and telecommunications support facilities shall use materials, colors, textures, screening, landscaping that

create compatibility with the natural setting, surrounding structures and minimize impact on surrounding properties.

b. The towers, antennas and telecommunication support facilities shall be constructed in a manner of material which ensures the safety of the public, abutters and occupants of the lot upon which the structure is constructed. If there is a health safety concern, the Planning Board may require such engineering or other scientific studies to determine the issue as it deems appropriate at the applicant's expense. All towers shall conform to National Tower Code ANSI/EIA/TIA0222-F.

c. Signs shall be limited to those signs required for cautionary or advisory purposes only.

d. Towers.

1. Setbacks and height. Height and setback requirements are governed by Table D. Tower height shall be the distance measured from the lowest point within 10 feet of the structure to the highest point on the tower or other alternative tower structure, including the base pad and any antenna attached to the tower.

2. Color. Towers shall be finished in a color to reduce visual obtrusiveness, and meet the requirements of sub-section B(8)(a) subject to any applicable standards of the Federal Aviation Administration (FAA).

3. Support facilities and buildings associated with towers shall, in addition to the setback and height requirements of Table D, maintain the minimum setback requirements of the zone district in which it is located.

4. Support facilities and buildings associated with towers shall provide solid view-obscuring security fencing not less than 8 feet in height.

5. Support facilities and buildings associated with towers shall provide landscaping in accordance with the following requirements.

a. The tower compound shall be landscaped with a buffer of plant materials that effectively screens the view of the tower base and support facilities from property used for residences. The standard buffer shall consist of a landscaped strip of at least five feet wide outside the perimeter of the improvements and shall provide for and maintain suitable landscaping on the remainder of the lot so as to accomplish the purpose of this section.

b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the Planning Board as part of the Site plan review process.

c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. For towers located on large, wooded lots, natural growth around the property perimeter may be considered a sufficient buffer.

6. Lighting. Towers shall not be artificially illuminated unless required by the Federal Aviation Administration (FAA) or other governmental regulation. Ground level security lighting not more than 20 feet in height my be permitted if designed to minimize impacts on adjacent properties.

e. Antennas installed on a structure other than a tower.

1. Height. Height of the antenna shall be governed by Table D.

2. Telecommunications support facilities:

a. Telecommunications support facilities may be located on the roof of a building, subject to applicable building and safety or fire codes.

b. The antenna and telecommunications support facilities shall be a neutral color that is identical to, or closely compatible with, the color of the supporting structure.

9. Application — The provisions of this section and the Town of Derry site plan review regulations, where applicable, shall govern all applications for wireless communications facilities.

a. In order for an application to be acted on, the following must be submitted in addition to any requirements required under the site plan review regulations contained in the land use regulations of the Town of Derry:

1. The first application for a permit by a provider or an applicant for a provider shall include an inventory of all of that provider's existing towers, antennas, or sites approved for towers or antennas, that either within Derry or within 2,000 feet of the border thereof;

2. A vicinity map drawn to scale showing adjacent land uses within 1,000 feet, including those in adjacent municipalities.

3. A scaled set of plans containing the following information in addition to information required the municipality's site plan review regulations —

a. Location and legal description of the proposed site;
b. Type and height of the proposed tower;
c. On site land uses and zoning;
d. Adjacent roadways;
e. Proposed means of access;
f. Setbacks from property lines;
g. Architectural elevation drawings of the proposed tower, antenna and any other telecommunications support facilities;
h. Site topography;
i. Parking;
j. A landscape plan showing specific landscape materials and details;
k. The method of fencing, finished color and, if applicable, the method of camouflage and illumination.

4. An affidavit from the owner of the property acknowledging that the owner of the property is responsible for the removal of a tower that is abandoned or is unused for a period of 12 months. The landowner is only responsible in the case of the insufficiency of the bond that is specified in subsection B.6.

5. All towers, antennas and telecommunciation support facilities shall meet applicable regulations of the Federal Aviation Administration (FAA). The engineer preparing the site plan shall certify that such requirements are met.

b. Regardless of whether site plan review is required, every applicant for an antenna shall provide the Building Inspector with the information required in Sub-section B.9.a.3, 4 and 5 of this section.

c. The Builidng Inspector may share information, except for the confidential proposed system design, with other applicants applying for administrative approvals or use exceptions under this section or other organizations seeking to locate towers/antennas in Derry, except that the Building Inspector is not, by sharing such information, in any way represienting or warranting that such sites are available or suitable for any use.

d. Inventory and tracking. The Building Inspector shall compile a list of towers and maintain and update the same from information furnished by all service providers.

C. Applicability —

1. Amateur radio and citizen band radios.

a. This section shall not govern any tower, or the installation of any antenna that is owned and operated by a federally licensed amateur radio station operator and the tower or antenna is used for the exclusive

purpose of amateur radio operations. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

b. This section shall not govern the installation of any antenna that is used for the exclusive purpose of facilitating the use of a Citizen Band Radio, except any towers in this section shall be limited to 70 feet in height.

2. Receive only antennas. This section shall not govern any tower, or the installation of any antenna that is used exclusively for receive only antennas, except any towers in this section shall be limited to 70 feet in height.

3. Home business antennas. This section shall not govern or the installation of any antenna that is used exclusively for a home business in a resiential zone, except any towers in this section shall be limited to 70 feet in height.

4. Essential services & public utilities. Wireless communications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the municipality's ordinances or regulations.

5. Public property. The provisions of this section shall not apply to antennas or towers located on property owned, leased or otherwise controlled by the municipality.

6. Existing towers. The provisions of this section shall not apply to the addition of antenna to existing wireless communications towers as of the effective date of this chapter unless the addition of such will increase the height of the tower or otherwise additionally impact the existing tower's site modifications to existing towers, except as set forth in the preceding sentence, shall be subject to the terms thereof.

**TABLE D - WIRELESS FACILITY PERFORMANCE, CRITERIA**

| | MHPD, NC, CBD,GC, OBD, MDR, MHDR, LDR, & LMDR | IND-I, IND-III, IND-IV, OMD, ORD, & TELECOMMUNICATION OVERLAY ZONE |
|---|---|---|
| D.1 Antenna to be affixed to a new (proposed) ground tower | Not Allowed | Allowed Maximum Tower Height - 190 feet.<br>Setbacks – The GREATER distance by application of the following:<br>(1) 50% of tower height plus 10 feet from site boundaries or residential structures; or<br>(2) All facilities must meet setback requirements of this Chapter and Chapter 170, Land Development Control Regulations.<br>(3) The tower shall be fenced to a minimum height of 8 feet with 2 strands of barbed wire.<br>(4) Site plan review required. |

| | MHPD, NC, CBD,GC, OBD, MDR, MHDR, LDR, & LMDR | IND-I, IND-III, IND-IV, OMD, ORD, & TELECOMMUNICATION OVERLAY ZONE |
|---|---|---|
| D.2 Antenna to be affixed to an existing builidng without a roof tower. | Not Allowed | Allowed<br><br>(1) Antenna may be placed on a facade or roof of conforming building or structures without regard to height or setback of the building.<br>(2) Antenna support structures will be considered to be roof towers if the height of the structure exceeds 10 feet above permitted height of building. |
| D.3 Antenna to be affilixed to a new (proposed) roof tower. | Not Allowed | Roof towers may be placed on the roof of a conforming building using either of the following to determine tower height and setback.<br><br>(1) Tower height above the roof may be as high as the setback distance to the nearest roof edge.<br>(2) The heights allowable for a ground tower may be used for a roof tower if the required setbacks for a ground tower are met. |
| D.4 Antenna to be added to an existing approved or permitted tower | Not Allowed | Allowed if the following conditions are met:<br>(1) The tower height is not increased.<br>(2) No ancillary features are added to the tower other than antenna, required safety hardware, and ancillary equipment buildings.<br>(3) All conditions of the previous tower approval have been satisfied. |
| D.5 Existing non-conforming tower | N/A | Subject to zoning requirements concerning non-conforming structures. |
| D.6 Ancillary equipment building(s) | Not Allowed | Subject to all requirements of appropriate zone (i.e., bulk, setback, etc.) |

## *Section 165-28.1 Architectural Design Regulations* ***(Effective 10/20/05)***

1. PURPOSE

The purpose of this amendment is to grant authority to the Planning Board to adopt Architectural Design Regulations that would apply, with varying degrees of compliance requirements, to all zoning districts in the Town of Derry where non-residential uses or multi-family residential uses are permitted. This language supersedes existing, more specific language in this Chapter 165 that already permits the adoption of Architectural Design Regulations that would be applicable in selected zoning districts.

A. The Planning Board is authorized to adopt Architectural Design Regulations for any zoning district, as listed in Section 165-29, pursuant to the authority granted in RSA 674:16 I & II, 674:21 I, and 674:44 II, subject to the limitations in the following sub-sections B through D.

B. Architectural Design Review shall be applicable only for non-residential uses or multi-family residential uses that are subject to Site Plan Review. The Architectural Design Regulations shall not apply to any zoning district where the only permitted uses are single-family or two-family residential uses.

C. Architectural Design Review compliance criteria shall be differentiated for specific zoning districts, or groups of zoning districts, to accomplish the valid public purpose authorized under state law, but without imposing undue burden or hardship on specific types of development. If such Architectural Design Regulations are adopted by the Planning Board, the provisions of the regulations shall include tiered levels of compliance requirements covering all zoning districts, and provisions for a process to grant waivers of portions of the regulations, pursuant to the Planning Board's existing statutory authority to grant waivers to its Site Plan Regulations.

D. If such Architectural Design Regulations are adopted by the Planning Board, they shall be incorporated into Chapter 170, Land Development Control Regulations.

## ARTICLE IV - DISTRICTS

### *Section 165-29 Enumeration of Districts*

For the purpose of this chapter, the Town of Derry is divided into zoning districts as follows —

1 GC, General Commercial District
2 CBD, Central Business District
3 OBD, OfficeBusiness District
4 OMB, OfficeMedical/Business District
5 ORD, OfficeResearch & Development District
6 NC, Neighborhood Commercial District
7 MHPD Manufactured Housing Park District
8 I-1, Industrial District-I
9 I-II, Industrial District-II **(Deleted 7/15/04)**
10 I-III, Industrial District-III
11 I-IV, Industrial District-IV
12 MFR, Multi-Family Residential District
13 I-V, Industrial District-V
14 I-VI Industrial District VI **(Effective 3/17/04)**
15 MHDR, Medium-High Density Residential District
16 MDR, Medium Density Residential District
17 LMDR, Low-Medium Density Residential District
18 LDR, Low Density Residential District
19 TBOD, Traditional Business Overlay District
20 GC-II, General Commercial District-II **(Effective 7/15/04)**
21. Medium High Density Residential District II (MHDR-II) **(Effective 12/2/05)**
22. General Commercial III District (GCIII) **(Effective 01/07/2011)**
23. General Commercial IV District (GCIV) **(Effective 08/06/2015)**

In addition, the Floodplain Development Overlay District, the Conservation Corridor Overlay District, and the Wetlands Conservation Overlay District and the Groundwater Resource Conservation District shall be considered as overlayments of all zoning districts, and, pursuant to Section 165-142, shall be deemed to be applicable if conflicting with the requirements of any underlying zoning district.

## ARTICLE V ZONING MAP AND DISTRICT BOUNDARIES

### *Section 165-30 Zoning Map* ***(Repealed and replaced 12/17/09)***

The locations of the Derry zoning districts are as shown on the Official Zoning Map of the Town of Derry, New Hampshire which consists of the tax map overlays updated to **August 08, 2015,** which is hereby declared to be a part of this Article. Included with these are the Flood Insurance Rate Maps and the Floodway and Flood Boundary Maps of the Flood Insurance Study of the County of Rockingham, NH dated May 17, 2005 or as amended, as well as the Flood Insurance Study, both of which were prepared by the Federal Emergency Management Agency; and the Prime Wetlands Maps and the Prime Wetlands Report dated November 11,1986 which are incorporated herein by reference. Reference is also made to the maps described in Article VIII, Groundwater Resource Conservation District. Any change in the location of boundaries of the Zoning District hereafter made through amendments of this article shall be indicated by alteration of the Zoning Map and Tax Map, and the maps as altered, are declared to be a part of this article.

### *Section 165-31 District Boundaries* ***(Repealed and replaced 12/17/09)***

A. Where a boundary is indicated as a highway, street, railroad, watercourse, or Town boundary, it shall be construed to be the centerline thereof, or such town boundary.
B. Where a boundary is indicated as approximately parallel to a highway, street, railroad, watercourse or Town boundary, it shall be construed to be parallel to the centerline thereof or such Town boundary.
C. Where a boundary coincides within ten (10) feet or less, with a lot line, the boundary shall be construed to be the lot line.
D. If no natural boundary is given, the location of any boundary shall be determined by use of coordinates identified by permanent bounds.

## ARTICLE VI DISTRICT PROVISIONS

### *Section 165-32 GC - General Commercial District*

A. Permitted Uses. **(Revised 07/19/2013)**

1. The following types of uses shall be permitted:

a. Automobile Repair.

b. Automobile and similar vehicle sales.

c. Automobile service station.

d. Bank

e. Bus depot/sale of travel accomodations

f. Clinic

g. Commerical Performing Fine Arts Schools and Studios (**(Effective 08/06/2015)**

h. Commercial Service Establishment

i. Day Care

j. Drive-In Restaurant

k. Essential Services Facility

l. Filling Station

m. Home Occupations

n. Hospital

o. Hotel

p. Inn

q. Indoor Commercial Recreational Facility

r. Library

s. Light Industry

t. Manufacturing

u. Office

v. Professional Office

w. Any public use or use by a semipublic agency for which the activities are primarily non-profit in nature.

x. Public/Private Educational Facility

y. Radio Broadcasting and receiving stations, excluding wireless communication towers

z. Restaurant

aa. Retail Sales Establishment

bb. No use described in Section 165-32.A.1 shall be construed or interpreted to allow sexually oriented businesses in the General Commercial District except as provided in Subsection D.

2. Single family dwelling units existing as of the effective date of this amendment (July 19, 2013), shall be considered legal permitted uses.

B. Area and dimensional requirements

1. Minimum Lot Area:
   a. With public sewer; thirty thousand (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: 125 feet **(Effective 11/21/03)**
3. Minimum Yard Depths:
   a. Front yard: 35 feet;
   b. Side and Rear yards: 20 feet.

C. Buffer zones shall be established in accordance with the provisions of the Chapter 170, Land Development Control Regulations.

D. Sexually Oriented Businesses are permitted in the General Commercial District. Sexually oriented business shall comply with and shall satisfy all restrictions in Section 165-27.

E. Wireless Communications Facilities are a prohibited use in the General Commercial District.

## F. Conditional Use Permit **(Effective 11/21/03)**

The Planning Board, upon receiving a completed application under the terms of this section, and upon making findings of fact as stipulated and required herein, shall grant a Conditional Use Permit for certain non-residential uses within the GC District, subject to the terms, conditions and restrictions of this section

1. Non-residential uses allowed by Conditional Use Permit

The following non-residential uses shall be eligible for Conditional Use Permit, as provided herein.

a. Self-storage
b. Accessory uses to Self-storage

2. Required conditions for issuance of Conditional Use Permit

The Planning Board shall issue a Conditional Use Permit for any of the uses listed in sub-section 1, subject to the terms, conditions and restrictions of this section, if the Board shall find all of the following to be true:

A. The proposed use provides reasonable architectural & landscape features that in the opinion of the Board will not devalue abutting properties. Any architectural design regulations that may from time to time be adopted by the Derry Planning Board and incorporated into the Land Development Control Regulations, shall be applicable, as additional requirements, for any Conditional Use Permit issued under the terms of this section

B. The proposed use will not cause an undue or unmitigated impact upon its surrounding neighborhood in terms of pedestrian or vehicular traffic, unusual noise, or excessive light levels, based on the design standards and existing or proposed capacity of public and private infrastructure servicing the neighborhood and the proposed use, such as roadways, access drives traffic signage and signalization, sidewalks, water and sewer. **(Effective 7/5/07)**

C. The proposed use complies with those site plan requirements for uses allowed in the GC District.

D. The proposed use augments and complements the other permitted uses within the neighborhood and the GC District.

E. The proposed location and size of the proposed use within the GC District would not be essentially incompatible with the neighborhood and be more advantageous and practicable in one area of the GC District than in all areas of the GC District.

3. Duration

All Conditional Use Permits issued pursuant to the provisions of this section shall “run with the use” and not be subject to revocation unless:

A. The conditional use is changed to some other use permitted within the GC District, or
B. The conditional use is abandoned for a period exceeding one year.

4. Conditions and Restrictions – The following general rules apply to the granting of a Conditional Use Permit:

1. Any conditional use permitted under the provisions of this section shall be subject to all restrictions and requirements of the GC District.

2. All storage of property shall be within an enclosed building.

3. No on site repair of vehicles or other machinery stored in the facility may be conducted.

4. The facility may not be used as a transfer and storage business where vehicles are a part of the business.

5. In approving a conditional use permit, the Planning Board may impose conditions and/or restrictions on the use consistent with the unique characteristics of the neighborhood and its environment.

5. Application – Applicants shall be required to submit an application for a Conditional Use Permit in such detail as may be set forth in regulations established by the Planning Board.

## *Section 165-32.1 General Commercial II District (GC-II)* ***(Effective 7/15/04)***

PURPOSE: To encourage those uses that best fit the infrastructure and land within said district and will provide a potential to increase Derry's commercial tax base and provide employment opportunities to Derry residents.

A. PERMITTED USES

The following uses are allowed in the GC-II District:

1. Professional Office of 5,000 gross square feet (GSF) or greater with multiple occupants OR at least 2,500 GSF with a single occupant, or with no minimum GSF on lots of record in existence as of the adoption of this amendment that have a land area less than the area requirements imposed by this amendment.

2. Natural expansion of valid pre-existing non-conforming uses (VPENCU), existing as of the adoption of this amendment, as provided in Article XIII of this ordinance, by NH State Statues, and by relevant case law.

3. Hotel and/or Conference Center.

4. Full-Service Restaurants. Drive-thru service shall not be permitted as part of this use.

5. Retail sales of 5,000 gross square feet (GSF) or greater that may be divided into a smaller individual retail establishments , or with no minimum GSF on lots of record in existence as of the adoption of this amendment that have a land area less than the area requirements imposed by this amendment. Drive-thru service shall not be permitted as part of this use.

6. Pharmacy, including drive-thru service.

7. Filling station for the sale of gasoline and accessory uses. This includes a mini-mart and/or sale of food items. No additional stations shall be allowed within 1,000 feet of an existing or proposed station.

8. Bank of 1,500 gross square feet (GSF) or greater, which may include drive-thru service.

9. Wholesale sales of 2,500 gross square feet (GSF) or greater, or with no minimum GSF on lots record in existence as of the adoption of this amendment that have a land area less than the area requirements imposed by this amendment, which may include retail sales and contract installation or construction as accessory uses. Drive-thru service shall not be permitted as part of this use.

10. Retail sales or lease of new automobiles and trucks of 2,500 gross square feet (GSF) or greater, which may include any of the following as accessory uses; wholesale sales of new automobiles and trucks, retail and/or wholesale sale of used automobiles and trucks or servicing and repair of automobiles and trucks.

B. AREA AND DIMENSIONAL REQUIREMENTS:

1. Minimum lot area:
   a. With public sewer – 30,000 sq. ft.
   b. Without public sewer – 1 acre plus 10,000 square feet for each 200 gallons a day of sewer effluent after the first 200 gallons, unless the owner can show proper plans for the disposal of sewer on a smaller lot
2. Minimum Frontage Requirement – 200 feet
3. Minimum lot width – 200 feet at the 35 foot front setback line
4. Minimum yard depth –
   a. Front yard – 35 feet.
   b. Side and rear yards – 20 feet.

C. BUFFERS: Buffer zones shall be established in accordance with the provisions of Chapter 170, the Land Development Control Regulations.

D. ADDITIONAL REQUIREMENTS:

1. Any development in this district shall be subject to the Architectural Design Regulations contained within Chapter 170, the Land Development Control Regulations.

2. Uses specifically prohibited in the GC-II District:
   a. Sexually oriented businesses.
   b. Wireless communication facilities.
   c. Manufactured housing.

## *Section 165.32.2 General Commercial III District (GCIII)* *(Effective 01/07/2011)*

Purpose: To protect and preserve the character of the neighborhood in the vicinity of a historic site, there is established a General Commercial III district which limits and regulates the uses, size, height and architecture of structures in the zone so as to compliment this historic site.

A. PERMITTED USES

The following uses are allowed in the GC-III District:

1. Professional Office of 5,000 gross square feet (GSF) or greater with multiple occupants OR at least 2,500 GSF with a single occupant.
2. Full-Service Restaurants. Drive-thru service shall not be permitted as part of this use.
3. Retail store of 5,000 gross square feet (GSF) or less. A structure may be divided into smaller individual retail establishments so long as the total GSF is 5,000 or less.
4. Pharmacy. Drive thru service shall be limited to one drive thru window.
5. Bank of 1,500 gross square feet (GSF) or greater. Drive through service shall be limited to one drive thru window.

B. AREA AND DIMENSIONAL REQUIREMENTS:

1. Minimum lot area:
   a. With public sewer — 30,000 sq. ft. (currently not available in this zone).
   b. Without public sewer — The minimum lot area shall be one acre or larger, as shall be determined by the soils based lot size determination provisions of Chapter 170, Land Development Control Regulations.
2. Minimum Frontage Requirement — 200 feet
3. Minimum lot width — 200 feet at the 35 foot front setback line
4. Minimum yard depth
   a. Front yard — 35 feet.
   b. Side and rear yards — 20 feet.

C. BUFFERS. Buffer zones shall be established in accordance with the provisions of Chapter 170, the Land Development Control Regulations except that where existing natural vegetation screening exceeds the buffer zone requirements under Chapter 170 of the Land Development Control Regulations for the buffered area, the existing natural vegetation may remain.

D. ADDITIONAL REQUIREMENTS:

1. Architecture shall be complimentary to the historic site and shall be subject to the Architectural Design Regulations contained within Chapter 170, the Land Development Control Regulations.
2. Construction of any structure shall not exceed the height of the tallest building on the historic site in the zone.

E. EXCLUDED USES. Uses specifically prohibited in the GC-III District: **(Repealed/renumbered 02/07/2014)**

a. Sexually oriented businesses.
b. Wireless communication facilities.

F. For the purpose of this zone, a 'historic site' shall be defined as a site listed on the National or State Historic Register.

### *Section 165.32.3 General Commercial IV District (GCIV)* *(Effective 08/06/2015)*

A. Permitted uses.

1. The following types of uses shall be permitted:

   a. Agriculture

   b. Assisted Living Facility

   c. Automobile Repair

   d. Automobile and Similar Vehicle sales

   e. Automobile Service Station

   f. Bank

   g. Commercial Performing and Fine Arts Schools and Studios

   h. Commercial Service Establishment

   i. Conference Center

   j. Day Care

   k. Essential Services Facility

   l. Filling Station

   m. Home Occupation

   n. Hospital

   o. Hotel

   p. Inn

   q. Indoor Commercial Recreation Facility

   r. Light Industry

   s. Manufacturing

t. Movie and Recording Studios

u. Nursing Home

v. Professional Office

w. Publishing

x. Public/Private Educational Facility (Trade School)

y. Radio Broadcasting, exluding wireless communication towers

z. Research and Development Facility/Research Lab

aa. Restaurant

bb. Restaurant, Drive-In

cc. Retail Sales Establishment

dd. Television Broadcasting

ee. Transportation Center (Bus Depot)

ff. Warehouse

gg. No use described in Section 165-32.3.A.1 shall be construed or interpreted to allow sexually oriented businesses in the General Commercial IV District except as provided in Subsection D.

2. Single family dweling units existing as of July 19, 2013 shall be considered legal, permitted uses.

B. Area and Dimensional Requirements

1. Minimum Lot Area

a. With public sewer: Thirty thousand (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: 125 Feet

3. Minimum Yard Depth:
   a. Front Yard: 35 Feet
   b. Side and Rear Yards: 20 Feet

C. Buffer zones shall be established in accordance with the provisions of Chapter 170, Land Development Control Regulations

D. Sexually oriented businesses are permitted in the General Commercial IV District. Sexually oriented businesses shall comply with and satisfy all restrictions in Section 165-27.

## *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 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: **(Revised 07/16/2015)**

1. Single family dwelling units existing as of July 16, 2015, shall be considered legal permitted uses.
2. Hotels
3. Bed and Breakfasts
4. Inns
5. Multi-unit residential uses are only permitted as a mixed use in conjunction with permitted non-residential uses, subject to the following limitations:

   a. New construction – the density shall not exceed 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 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.

6. Retail Sales Establishment
7. Pharmacy
8. Banks
9. Transporation Center
10. Travel Agent
11. Commercial Performing and Fine Arts Schools and Studios **(Effective 08/06/2015)**
12. Commercial Service Establishments
13. Contractor
14. Indoor Recreational Facility
15. Commercial Performing and Fine Arts School
16. Professional Office
17. Office
18. Restaurant
19. Library
20. Public/Private Educational Facility
21. Radio and Television Broadcasting Studios exclusive of transmitter facilities (upper levels only)
22. Home Occupations (located in single family dwellings existing as July 16, 2015
23. Parking Facilities
24. Light Manfucturing
25. Any public use or use by a semi-public agency whose activities are primarily non-profit in nature.
26. Electric Vehicle Supply Equipment

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: **(Revised 07/16/2015)**
   a. Side yard: 5 feet.
   b. Rear yards: 10 feet.
6. Maximum Building or Structure Height. No building or structure within this district shall be higher than 350 feet above sea level in elevation. **(Revised 07/16/2015)**
7. Lots existing as of July 16, 2015, regardless of area or frontage, are considered buildable lots provided all other applicable requirements are met. **(Effective 07/16/2015)**

D. Review. Any change from residential to a non-residential use of a lot or structure, whether in whole or in part 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. **(Revised 07/16/2015)**

E. Buffer zones. Where a non-residential use in this district abuts a residential district, a buffer zone shall be established to help diminish the effects of the non-residential use on the abutting residential district. The buffer zone shall be as provided in Chapter 170, Land Development Control Regulations **(Revised 07/16/2015)**

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: **(Revised 07/16/2015)**

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

G. Parking. Parking shall be as provided in Chapter 170, Land Development Control Regulations. **(Revised 07/16/2015)**

H. Special exception uses. A special exception 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. **(Revised 07/16/2015)**

1. Uses Permitted by Special Exception: **(Revised 07/16/2015)**

   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

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 165-34 Office/Business District (OBD)*

A. Purpose. The Office/Business District is established for the purpose of permitting appropriate uses to occur within an area of the community where the predominant

character has been, and will possibly continue to be, subject to change as a result of the growth which has affected the Town as a whole, and as a result of the influence exerted by the increased traffic volume on West Broadway. It is intended that the types of land use activities which would be allowed within this district should not greatly aggravate an already serious traffic problem on West Broadway, nor should they have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district. For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate.

B. Permitted uses. Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein:

Business and professional offices such as those for doctors, dentists and real estate;
Single family detached dwellings;
Single family detached dwellings containing a maximum of one business or professional office of the type described herein;
Offices to handle the sale of products and services provided that any retail area associated with the business complies with the limitations as outlined in subsection D. **(Effective 1/21/05)**
Those uses allowed pursuant to sub-section D.

C. Prohibited uses. Land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

Grocery and convenience stores
Drug Stores
Restaurants
Fast food sales
Day care services
Gasoline stations
Sales, repair and/or service facilities intended principally for motor vehicles
Video rentals
Other retail businesses except as allowed in Subsection D
Sexually oriented businesses as set forth in Article III, Section 165-27
Wireless Communications Facilities
Other uses which, in the opinion of the Planning Board, would likely have an adverse impact on the character of the district or on West Broadway traffic conditions and traffic safety.

D. Other allowable use. Retail business uses may be allowed provided that the floor area devoted to such use does not exceed 1,000 square feet. Parking shall be as required pursuant to sub-section G. **(Revised 1/21/05)**

E. Limitations. The following limitations shall apply to the conversion of existing residential structures, and to the construction of new non-residential structures within this district:

1. Conversion of existing structures. Existing residential structures may be converted to a permitted nonresidential use provided that:

a. Any additions to existing structures must comply with setbacks for new construction (Section 2.a.4) and maximum lot coverage restrictions (Section I). **(Effective 1/21/05)**

b. The exterior architecture of the existing structure shall not be modified to the extent that the structure no longer retains a residential appearance.

2. New construction. If an existing residential structure is removed, in whole or in part, or if a vacant parcel is developed for the purpose of establishing a permitted nonresidential use, the following requirements shall apply:

a. The non-residential use shall comply with the following lot area, dimensional, and yard requirements:

1. Minimum Lot Area -10,000 square feet;
2. Minimum Frontage Requirement – 100 feet; (Eff 11/21/03)
3. Minimum Lot Width-100 feet at the street line;
4. Minimum Building Setbacks:
   Front yard: 35 feet from the edge of the street right-of-way.;
   Side and rear yards: 15 feet each from the property line.

3. New structures**,** and additions to existing structures **(Effective 1/21/05)**shall be designed and constructed so that their architectural appearance, scale, proportion and material will blend with the existing residential character of the district. Consideration should be given to each of the following:

1. the height, bulk and area of the structure;
2. the type and the pitch of the roof;
3. the size and the spacing of the windows, doors and other openings;
4. the size, type and location of towers, chimneys and roof structures; and
5. the exterior colors and materials.

F. Plan 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 nonresidential uses shall be subject to review and approval by the Planning Board in accordance with Chapter 170, Land Development Control Regulations**.** The Planning Board is authorized to adopt Architectural Design Regulations for this district pursuant to RSA 674:16,I, and 674:44, II. If such architectural design regulations are adopted, they shall be incorporated in Chapter 170, Land Development Control Regulations (LDCR) whether or not such development, change or expansion includes a subdivision or resubdivision of the site. **(Effective 1/21/05)**

G. Off-street parking.

1. Parking shall be located at the rear of the building; **(Effective 1/21/05)**

2. Residential use. Off-street parking shall be provided on the basis of one space per bedroom, with a minimum of three spaces being required per dwelling unit;

3. Non-residential Use - Off-street parking shall be provided in accordance with Chapter 170, Land Development Control Regulations;

4. 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 or into the lot;

5. No off-street parking will be allowed on the lot any closer than 25 feet from the street right-of-way line;
6. No parking will be allowed within the designated buffer zone;

7. Parking — **(Effective 1/21/05)**

1. General provisions -

a. Residential use and multi-unit residential. Off-street parking shall be provided on the basis of one space per bedroom, with a minimm 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 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 or into the lot;

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 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 Planning Board.
c. There currently exists no street, road, driveway or easement access to the proposed on-site parking lot, other than through the lot frontage.
d. It is physically impossible or economically unfeasible to obtain street, road, driveway, or other form of viatic easement or right of

pass and re-pass 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.

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 Planning 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 in the allotted area "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, in the discretion of the Planning Board.

c. 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. Buffer zone. 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 nonresidential use on the abutting residential use or residential district. The characteristics of the buffer zone shall be as follows:

1. It shall have a minimum width of 10 feet, being parallel to and running the entire length of the non-residential use property line, or as required by the Planning Board.

2. It shall be planted with a single row of evergreen type trees or shrubs which, at the time of planting, shall have a minimum height of six feet. Said trees or shrubs shall also be maintained at a height of at least six feet.

3. The spacing of said trees or shrubs shall be such that they will create a dense screening at the time of planting.

4. When the existing trees and under story vegetation in the buffer zone are sufficiently dense so as to provide screening at least as effective as the minimum plantings specified in paragraphs (2) and (3), above, the Planning

Board may opt to require the maintenance of the existing vegetative buffer in lieu of cutting it down to accommodate new plantings, or may opt to require a combination of new plantings and existing vegetative buffer. **(Effective 12/2/05)**

5. Landscaping of the buffer zone shall be approved by the Planning Board. **(Effective 12/2/05)**

I. Maximum lot coverage — Lot coverage by principal and accessory uses, structures and buildings, including parking areas, shall, in the aggregate, not exceed 70% of the lot area.

J. Curb cut. There shall be allowed only one curb cut per lot on West Broadway. Said curb cut shall not exceed 20 feet in width.

K. Conforming and non-conforming lots and structures, and non-conforming uses.

1. All existing lots within this district, having structures thereon, shall be considered to be legally conforming lots until such time as the structures are either removed or damaged by storm or fire to the extent that the replacement or repair cost exceeds 50% of the original structure's assessed valuation; then such lots shall be considered to be non-conforming lots unless they meet the lot area and frontage requirements cited in sub-section E.2.a of this section.
2. Existing non-conforming structures may continue to be used for legally permitted purposes until such time as they are either removed or damaged as described in sub-section K.1; then such structures may only be replaced in accordance with the requirements of this Section, and other pertinent provisions of this chapter, and in accordance with Chapter 170, Land Development Control Regulations.
3. Existing non-conforming structures and non-conforming lots and uses shall not be rendered more non-conforming.
4. All existing non-conforming uses which legally existed on August 2, 1991 may continue until such time as they are discontinued for a period of 12 consecutive months; then they may be replaced only by a permitted use.

L. Conflicting provisions. Where the provisions of this section conflict with any other provision of this chapter or Chapter 170, Land Development Control Regulations, the more restrictive provision shall take precedence. **(Repealed/Renumbered 02/07/2014)**

## *Section 165-35 Office/Medical/Business District (OMB)*

A. Purpose. The Office/Medical/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, influenced by Parkland Medical Center and ancillary healthcare related uses. It is intended that the types of land use activities which would be allowed within this district will not have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district. For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate.

B. Permitted Uses. Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein: **(Revised 07/19/2013)**

1. Business and professional offices such as those for doctors, dentists and related health care facilities;
2. Single family detached dwellings;
3. Single family detached dwellings containing a maximum of one business or professional office of the type described herein;
4. Those uses allowed pursuant to Section 165-32.A.1 **(Revised 07/19/2013)**
5. Wireless Communications Facilities
6. Congregate Care Facilities, Assisted Living Facilities **(Effective 5/17/07)**
    a. Congregate Care Facilities and Assisted Living Facilities shall be exempt from the Article XIV - Growth Management Ordinance. There shall be a deed restriction that these facilities cannot be converted into multi-family units.
    b. Maximum building structure height : 60 feet
    c. These facilities shall be subject to the Architectural Design Review Regulations contained within Article XIV of the Land Development Control Regulations (LDCR)

C. 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, odor, 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 as set forth in Article III, Section 165-27;
    b. Uses which are not expressly permitted in sub-section B of this section.

D. Area And dimensional requirements. **(Effective 3/18/99)**

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: 125 feet. **(Effective 11/21/03)**

3. Minimum Lot Width: 125 feet at the thirty-five foot front setback line.

4. Minimum Yard Depths;

a. Front yard: 35 feet.
b. Side and rear yards: 20 feet.

### *Section 165-36 Office/Research and Development District (ORD)*

A. Purpose. The Office/Research & Development District is established for the purpose of encouraging particular nonresidential uses to occur within areas of the community. It is intended that the types of land use activities which would be allowed within this district will not have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district. For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate. All development proposals shall be subject to review and approval by the Planning Board in accordance with Chapter 170, Land Development Control Regulations.

B. Permitted uses. Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein:

1. Business, professional, administrative or headquarters offices
2. Research, experimental or testing laboratories, excluding animal experimentation and pharmaceutical
3. Medical and dental laboratories.
4. Animal hospital, veterinary clinics
5. Research and Development facilities
6. Existing residential uses as of the date of adoption of this section.
7. Wireless Communications Facilities

C. 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, odor, 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:
Grocery and convenience stores;
Gasoline stations;
Sales, repair and/or service facilities intended principally for motor vehicles;
Fast food sales
Video rentals;
Other retail businesses
Sexually oriented businesses as set forth in Article III, Section 165-27.

D. Buffer zones. Buffer zones shall be established in accordance with the provisions of Article III, Section 165-23.

E. Area and dimensional requirements. **(Effective 3/18/99)**

1. Minimum lot area: The minimum lot area required shall be three acres, or larger, as shall be determined by the "soils based lot size determination" provisions of Chapter 170, Land Development Control Regulations.
2. Minimum Frontage Requirement: 200 feet. **(Effective 11/21/03)**
3. Minimum lot width: 200 feet at the thirty foot setback.
4. Minimum yard depths:
    a. Front yard: 30 feet.
    b. Side and rear yards: 20 feet.

## *Section 165-37 Neighborhood Commercial District (NC)*

A. Objectives and characteristics. It is the intent of the Town of Derry to create zoning districts within the town to be known as Neighborhood Commercial or NC districts. An NC district is intended to provide an opportunity for the development of limited retail sales and service facilities in the proximity of residential neighborhoods, thus minimizing unnecessary traffic congestion in the major shopping areas within the town as well as helping to reduce national fuel consumption. It is intended that any such facilities will be designed to blend harmoniously with the residential areas in which they are located and will be spaced such that they will afford convenience to the neighborhoods in which they are located, but will not create substantial or continuous commercial districts.

B. Location of NC Districts

1. NC districts are intended to be floating districts and may be located anywhere within Residential Districts provided that they meet the following criteria: **(Duplicate words deleted Effective 11/21/03)**

    a. No NC district (or portion thereof) shall be located within 1 1/2 miles (horizontal straight-line measure) from:
        i. any other NC district;
        ii. any business or industrial district within the town (within which NC district uses are permitted); or
        iii. the nearest boundary of a parcel of property on which any other existing convenience store which regularly sells milk, bread, eggs, soda or newspapers is located within the town; and

    b. The Planning Board has approved and filed a plat in the Registry designated as an NC district, based upon the requirements of this chapter as well as those of Chapter 170, Land Development Control Regulations and other applicable regulations; and

    c. The Code Enforcement Officer (CEO) has not filed a notice of termination of NC District in accordance with sub-section D, Duration of NC Districts as set forth below.

2. In the event that more than one applicant submits an application for establishment of an NC district, which if approved would conflict with Sub-section B.1.a above, the first application received by the Planning Board which

contains complete and correct data, information, permits and approvals shall take precedence.

C. Size of NC Districts. An NC district shall be the same size as, and coincident with, a single lot (parcel) which conforms with the minimum lot size requirements for residential lots in the underlying (surrounding) district (including, where applicable, lot size by soil type).

D. Duration of NC Districts

1. An NC district shall continue to exist as long as it is in compliance with the provisions of this chapter including, but not limited to, the provisions related to hours of operation. A period of one year following Planning Board approval and recording of a plat is allowed for the construction and commencement of operation of the facilities, as evidenced by the issuance of a Certificate of Occupancy, failing which the CEO shall issue a notice of termination of NC District which shall be filed in the Registry of Deeds. The one-year period may be extended by, and following application to, the CEO for a reasonable additional period of time, provided that the applicant has diligently pursued and has, in good faith, attempted to complete construction within such time period.

2. In the event that an NC district (or the activities permitted therein) fails to comply with the requirements of this chapter, in any way, for an aggregate period of 90 days in any 12 month period, the CEO of the Town of Derry shall revoke the Certificate of Occupancy for all facilities and operations within the NC district. Within 30 days following the final outcome of any permitted appeals of the decision of the CEO which result in the decision being sustained, the CEO shall issue a notice of termination of NC District, which shall be filed in the Registry of Deeds.

3. The duration of the NC district shall not be adversely affected by the expansion of an industrial or business district subsequent to the approval and recording of an NC district plat.

E. Permitted uses within an NC District. Only the following uses shall be permitted within an NC district:

1. The retail sale of grocery and sundry items including, as a minimum, milk, bread, eggs, soda and newspapers as customarily found in a "convenience" store. No sale for on-premises consumption is permitted. (Sale of coffee and doughnuts for off premises consumption is permitted.)

2. The retail rental of audio or video tapes or discs as a secondary use to subsection E.1 above. Such secondary use shall not occupy more than 25% of the usable floor area of the building.

F. Prohibited uses within an NC District

Any use or activity not expressly permitted above.
Outside storage or display of goods or merchandise.
Sale of motor fuels.

Portable or temporary signs.
On-premises video games, or equivalent, are specifically prohibited.
Sexually oriented businesses are prohibited within the Neighborhood Commercial District.
Wireless communications facilities

G. Limitations. **(Repealed/Renumbered 02/07/2014)**

1. Hours of operation. The retail sale of groceries and sundries shall be conducted on a regular and continuing basis for a minimum of 80 hours per week between the hours of 6:00 a.m. and 10:00 p.m. only. No operation shall be permitted between the hours of 10:00 p.m. and 6:00 a.m.

2. Building. Only one building shall be located within an NC district, and such building shall be used exclusively for the permitted uses.

H. Area and dimensional requirements.

1. Minimum lot area: See subsection C, Size of NC Districts, above.

2. Minimum frontage. The NC district (lot) shall have a minimum of 200 feet of frontage on an approved public street (at the front lot line, and not at the setback line), which has been designated as an arterial or collector road only, as referenced in the Transportation Plan in the 1994 Derry Master Plan. **(Effective 7/5/07)**

3. Minimum setbacks. All buildings and parking areas and all other areas which are intended or may be used for vehicular travel (except for the accessegress point) shall be set back a minimum of 50 feet from all lot lines.

4. Lot coverage. Not more than 25% of the lot area shall be occupied by the building, parking areas, driveway, or other improvements which reduce the green space.

5. Height. The maximum height of any point of the building or other structures within an NC district shall not exceed 25 feet above the lowest finished grade elevation at any point adjacent to the foundation of such building or structure.

6. Floor area:

   a. Maximum footprintplan area of the building (including porches) shall be 2,000 square feet.
   b. Minimum footprintplan area of the building shall be 1,200 square feet.
   c. The maximum perimeter of the building shall not exceed 180 square feet.
   d. The sales floor area shall be limited to a single level only and shall not exceed 2,000 square feet.

I. General requirements.

1. The design and finish of the building and all other improvements within an NC district shall be in conformance with that of existing residential improvements within the surrounding neighborhood, as determined by the Planning Board.

2. Exterior finishes of cinder block, cement block, fiberglass or metal shall not be permitted. Flat roofs shall not be permitted.

3. The building constructed in the NC district shall be designed and constructed (including water supply and sewage disposal with capacity for at least three bedrooms) so as to facilitate future use as a single family residence in the event that the owner chooses to convert the building to a residence (and thus abandon the NC district) or in the event that a notice of termination of NC District is issued.

4. Landscaped visual and acoustic buffer zones, at least 25 feet deep, shall be provided inside, and immediately adjacent to, all lot lines except for street boundary lines. Buffer zones may be required along street boundary lines at the discretion of the Planning Board.

5. Vehicular access to, and egress from, an NC district shall be by means of a single driveway with a width not exceeding 24 feet.

## *Section 165-38 Manufactured Housing Park District (MHPD)*

A. Purpose. The purpose of this district is to allow the use of manufactured housing units under conditions which are intended to enhance affordable housing opportunities.

B. Permitted uses. Uses permitted within this district shall be limited to single family detached manufactured housing units as defined in this chapter.

C. Minimum tract area. A manufactured housing park site shall consist of at least 15 acres.

D. General Provisions.

1. Regulatory Floodway - Except in existing manufactured housing parks, the placement of manufactured homes is prohibited within the regulatory floodway as designated on the Flood Boundary Maps of the County of Rockingham, NH and the Flood Insurance Study bearing the effective date of May 17, 2005 or as amended. **(Effective 5/17/05)**

2. Suitability of Site - No manufactured housing park shall be located as to be:

a. inaccessible from a town- or state-maintained road;

b. on poorly drained land or land that is unsuitable for septic tank disposal of sewage in those cases where access to and connection with the municipal sewerage system is unavailable;

c. on land subject to flooding, erosion or other hazard; or

d. on land that is exposed to chronic nuisances such as, but not limited to, noise, smoke, dust, fumes, and/or odors. The developer shall establish, to the satisfaction of the Planning Board, that land proposed for a manufactured housing park is suitable for such development.

3. License required. No manufactured housing park, whether newly constructed or currently existing, shall be operated after the effective date of this chapter until it shall first have been licensed by the Code Enforcement Officer.

a. Application for a license shall be made annually and shall show the name and address of the owner of the park, the number of units within the park, the names and addresses of the unit owners, and the number of vacant spaces within the park.

b. The first such application shall be accompanied by a plan of the park, drawn to scale, showing the location of the interior access drives and private streets, the individual unit spaces, drainage, sanitary and water facilities, and electric, telephone and gas utilities. **(Effective 7/5/07)**

c. All renewal applications shall be accompanied by information as to any changes in the original plan or other park information. At the discretion of the Code Enforcement Officer, a new plan may be required if the changes are numerous.

4. Inspection required. No original or renewal license shall be issued until a completed application has been submitted, as required herein, and until after the park has been inspected to determine that it meets all necessary health and safety requirements of this chapter.

5. Existing parks — Existing manufactured housing parks may not be expanded or altered except in conformance with the provisions of this chapter.

6. Fees — Licensing and renewal fees shall be established by the Town Council.

7. Unoccupied units — No unoccupied manufactured home shall be stored or exhibited for sale for commercial purposes within the manufactured housing park.

8. Hygiene and sanitation — Every manufactured home shall be provided with adequate hygiene and sanitation facilities. Water supply, water service, plumbing, sewage disposal and treatment, electric power service, bottled or piped gas service, heating equipment and fuels, refuse and garbage storage

and disposal, and insect and rodent control shall be provided in full compliance with all pertinent state and local health regulations and requirements.

E. Design standards. After the effective date of this chapter, all new manufactured housing parks, and the expansion and alteration of existing parks, shall be subject to the following minimum design standards, compliance with which shall be determined by the Planning Board under Chapter 170, Land Development Control Regulations.

1. Standards for parks.

a. Interior access drives and private roads shall have a minimum right-of-way width of 50 feet, centered within which there shall be a paved travel way having a minimum width of 24 feet. Interior access drives and private roads shall be constructed in accordance with the requirements for public streets as specified in the "Table of Geometric and Other Standards for Streets" contained in Chapter 170, Land Development Control Regulations. **(Effective 7/5/07)**

b. Interior access drives and private roadways shall be adequately illuminated at night, and shall be identified by signs of a design approved by the Public Works Director. **(Effective 7/5/07)**

c. At least 10% of the total park area, exclusive of the interior access drives, private roads, unit spaces, and utility and service areas, shall be reserved for recreation and open space purposes for the exclusive use of the residents thereof. Recreation areas shall be enclosed by appropriate fencing to protect children from streets**,** access drives and parking areas. Land designated for recreation and open space purposes shall be approved by the Planning Board as being suitable for the intended use. **(Effective 7/5/07)**

d. A buffer zone which complies with the provisions of Chapter 170, Land Development Control Regulations shall be established around the park perimeter.

e. Water, sewer and underground utility lines that run under interior access drives or private roads shall be sleeved to the satisfaction of the Public Works Director. **(Effective 7/5/07)**

f. If the park is to be connected to the municipal water system, the service connection to said system shall be a minimum of 6 inches in diameter, and there shall be connected therewith fire hydrants of a number and at such locations within the park as are to be determined by the Derry Fire Department.

g. Each park shall have a minimum of one access on a public right-of-way. The width of said access shall be at least 50 feet.

2. Space standards.

a. Each space shall be a minimum of 7,200 square feet in area, shall be at least 60 feet wide by at least 120 feet in depth, and shall front upon an interior access drive or private road. The bounds of each space shall be clearly marked. **(Effective 7/5/07)**

b. Each space shall include provision for at least two off-street parking spaces, each at least 10 feet wide by 22 feet long, having an all-weather surface area.

c. Each manufactured housing space shall be provided with a four-inch thick reinforced concrete pad, the length and width of which shall be sized to accommodate the dimensions of the manufactured housing unit to be placed thereon.

d. Each space shall be provided with an all-weather walkway.

e. Each space shall have an attachment for water supply, the source and distribution system of which meet all state and local regulations.

f. Each space shall be provided with a connection to an adequate central sewage disposal system which shall meet all state and local regulations.

g. If a centralized subsurface disposal system is used, the septic tank and leach field shall not be located on any manufactured housing space, but shall be located on a separate lot of sufficient size to accommodate the ultimate capacity of the park.

h. If each manufactured housing space is to be served on-site by an individual subsurface disposal system, the space being served shall be at least one acre in area.

i. Separate lots containing subsurface disposal systems shall not be considered part of the required open space and recreation area.

j. Each space shall be properly graded and drained to assure the adequate disposal of surface and storm water.

k. Each space shall be provided with a storage building having at least 100 square feet of floor area.

l. All buildings on the space shall be at least 20 feet apart.

m. Each space shall be provided with an electrical source supplying at least 100 amps, 120/240 volts. The installation shall comply with all applicable state and local electrical codes.

n. Each space shall be provided with a light post at the access drive or street end of the driveway, to which the access drive or street number of the space shall be attached in such manner as to be adequately illuminated and visible to emergency services personnel. **(Effective 7/5/07)**

o. Each space shall be provided with a substantial flytight receptacle from which all garbage and refuse shall be removed and disposed of by the park owner not less frequently than once weekly.

3. Manufactured housing construction and placement standards.

a. All manufactured housing units placed within a manufactured housing park, whether a new or an existing park, after the effective date of this chapter shall be certified as being constructed in accordance with the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974.

b. No manufactured housing unit shall be placed closer than 50 feet to a public street right-of-way line.

c. A manufactured housing unit, including any attachment thereto, such as a carport, and all accessory buildings, shall be located on the space so that the unit and all accessory buildings are at least 30 feet from the edge of the right-of-way of the interior access drive or private road, and 20 feet from any lot line of the space. **(Effective 7/5/07)**

4. Open space and improvements maintenance assurance.

a. In the event that the owner of the park, or any successor owners shall, for any reason, fail to maintain the common area[s] and improvements in reasonable order and condition in accordance with the approved plan, the Code Enforcement Officer shall serve written notice upon the owner, or his heirs and assigns, setting forth the deficiencies in the maintenance, order and condition of the common area[s] and/or improvements.

b. Such notice shall include a demand that said deficiencies be cured forthwith and that a statement of intent to comply, and a date of compliance, shall be filed with the Code Enforcement Officer within 14 days of said notice, unless it pertains to safety or health, in which case the Code Enforcement Officer may take immediate action.

c. If such maintenance shall not have been performed, or if said statement of intent shall not have been filed by the stated time, the Town, in order to preserve the taxable values of the properties within the park, and to prevent nuisance, safety or health risks, may enter upon the common area[s] and/or improvements and maintain such area[s] and/or improvements for a period not to exceed one year. Said entry and maintenance shall not vest any rights in the general public to the use or the enjoyment of the common area[s] and/or improvements.

d. Before the expiration of that period, the Town shall, upon its initiative, or upon the request of the owner theretofore responsible for the maintenance, call a public hearing to be held by the Town Council. Notice of said hearing shall be given to the owner of the park.

e. At the hearing, the owner of the park shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year or other designated period.

f. If the Town Council shall determine that the owner is not ready and able to maintain said common area[s] and/or improvements in a reasonable condition, the Town may, in its discretion, continue to maintain said area[s] and/or improvements during the next succeeding year and, subject to a similar hearing and determination, during each succeeding year thereafter. The decision of the Town Council in any such case shall constitute a final administrative decision.

g. The cost of such maintenance by the Town shall be assessed against the park owner, and shall become a tax lien on said property.

h. At the time of entering upon said common area[s] and/or improvements for the purpose of maintenance, notice of such lien shall be filed in the office of the Rockingham County Registry of Deeds.

F. Exemption.

The provisions of this section shall not apply to manufactured homes in the possession of dealers as stock-in-trade for sale or resale, as long as said manufactured homes remain unoccupied, except that no such manufactured homes shall be stored in a manufactured housing park.

## *Section 165-39 Industrial District-I (IND-I)*

A. Permitted uses. The following uses shall be permitted within the Industrial District-I:

1. The manufacture of various products including, but not limited to:

| | |
|---|---|
| Appliances | Office supplies |
| Building material | Photographic and optical products |
| Chemicals | Plastics |
| Clothing | Sporting goods |
| Food | Textiles |
| Furniture | Transportation equipment |
| Instruments | Wood products |

2. Other large-scale uses including, but not limited to:
   - Building materials storage and sale
   - Freight terminal
   - Fuel and storage tanks
   - Mail order storage yards
   - Sand and gravel pits
   - Warehouse
   - Wholesale businesses
3. Agricultural and forestry uses.

4. Wireless communications facilities

B. Accessory uses — Accessory uses, buildings and structures usually associated with these permitted uses shall be allowed, including off-street parking facility, signs, and temporary buildings for uses incidental to construction.

C. Prohibited uses. The following uses shall be prohibited within the Industrial District-I:

1. Any industry which produces smoke other than that which comes from normal heating and power producing purposes, subject to the limitation of Section 165-15 of this chapter.

2. The following activities are specifically prohibited:
   - Acetylene gas manufacture
   - Ammonia, beachline powder, chlorine manufacture
   - Asphalt manufacturing or refining
   - Blast furnace
   - Boiler making
   - Brick, terra cotta or tile manufacturing
   - Coke manufacturing
   - Creosote treatment or manufacturing
   - Dye stuff manufacturing
   - Emery cloth or sandpaper manufacturing
   - Foundries
   - Manufacture of gunpowder and other explosives
   - Manufacturing of tar roofing or tar waterproofing
   - Slaughtering of animals or fowl
   - Smelting of ores
   - Stockyards
   - Tanning or curing of raw hides or skins, or japanning of leather
   - Tar distillation or manufacturing
   - Any business use including any sexually oriented business

D. Area and dimensional requirements.
1. Minimum lot area: One acre (43,560 square feet)
2. Minimum Frontage Requirement: 125 feet. **(Effective 11/21/03)**
3. Minimum lot width: 125 feet at the thirty foot front setback line
4. Minimum yard depths:
   a. Front yard: 30 feet;
   b. Side and rear yards: 20 feet.

E. Building height. Building height shall be subject to the review and approval of the Planning Board.

F. Water and sewer services.
1. Town water service shall be used, if available.

2. Town sewer service shall be used if said town sewer is located within 100 feet of a property line of a parcel under consideration, as required by the Sewer Chapter 122, Sewers.

3. All connections to the town water and sewer systems shall be made in strict conformity with Chapter 122, Sewers, Chapter 156, Water, Water Main Specifications, and the Sewer and Water Service Connection Specifications of the Town of Derry.

4. In the event that town water and sewer services are not available, state-approved water and sewer systems shall be required.

G. Buffer zones. Buffer zones shall be established in accordance with the provisions of Article III, Section 165-23.

H. Off-street parking. Off-street parking shall be provided in accordance with the provisions of Chapter 170, Land Development Control Regulations.

## *Section 165-40 Industrial District- II (IND-II) (Deleted 7/15/04)*

## *Section 165-41 Industrial District – III (IND-III)*

A. Permitted uses. Only the following uses are permitted within Industrial District-III:

Manufacturing industries
Warehouse and wholesale uses
Professional office uses in buildings of greater than 10,000 square feet
Public utilities
Machinery and transportation equipment, sales, service and repair
Freight and trucking terminals, offices and brokers
Contractors yards
Parking garages
Animal hospital, veterinary clinics
Bulk fuel storage and distribution
Printing establishment
Contract cleaning establishment
Industrial supply establishment
Hotel/motel
Breweries and bottling facilities
Enclosed recycling of non-hazardous materials
Wireless communications facilities

B. Prohibited uses. Any industrial 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, odor, 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. Sexually oriented businesses are prohibited in this district.

C. Area and dimensional requirements

1. Minimum lot area; One acre (43,560 square feet) when served by town sewer. If not served by the town sewer, the minimum lot area shall be one acre in addition to meeting the lot size requirement specified in Table A, Minimum Lot Size by Soil Type, as contained in Chapter 170, Land Development Control Regulations.
2. Minimum Frontage Requirements: 125 feet. **(Effective 11/21/03)**
3. Minimum lot width: 125 feet at the thirty foot front setback line.
4. Minimum yard depths:
   a. Front yard: thirty feet;
   b. Side and rear yards: 20 feet.

D. Building height. Building heights of up to 60 feet shall be permitted, notwithstanding any other provision of this chapter.

E. Buffer zones: Buffer zones shall be established in accordance with the provisions of Article III, Section 165-23.

F. Off-street parking. Off-street parking shall be provided in accordance with the provisions of Chapter 170, Land Development Control Regulations.

## *Section 165-42 Industrial District-IV (IND-IV)*

A. Permitted uses. The following uses shall be permitted within the Industrial District-IV: **(Revised 06/14/2012)**

1. Manufacturing

2. Other large-scale uses including, but not limited to:

   Building materials storage and sale
   Freight terminal
   Fuel and storage tanks
   Mail order storage yards
   Sand and gravel pits
   Warehouse
   Wholesale businesses

3. Agricultural and forestry uses

4. Retail Sales Establishment

5. Wireless communications facilities

6. Restaurant

7. Restaurant, Drive in

8. Commercial Service Establishment

9. Indoor Commercial Recreational Facility

10. Professional Office

11. Hotel

12. Industrial Establishment

13. Industrial Establishment, Light

14. Automobile Repair Facility/Garage

15. Automobile Service Station

B. Accessory uses. Accessory uses, buildings and structures usually associated with these permitted uses shall be allowed, including off-street parking facility, signs, and temporary buildings for uses incidental to construction.

C. Prohibited uses. The following uses shall be prohibited within the Industrial District-IV: **(Revised 06/14/2012)**

1. Any industry which produces smoke other than that which comes from normal heating and power producing purposes, subject to the limitation of Section 165-15 of this chapter.

2. The following activities are specifically prohibited:
   - Acetylene gas manufacture
   - Ammonia, beachline powder, chlorine manufacture
   - Asphalt manufacturing or refining
   - Blast furnace
   - Boiler making
   - Brick, terra cotta or tile manufacturing
   - Coke manufacturing
   - Creosote treatment or manufacturing
   - Dye stuff manufacturing
   - Emery cloth or sandpaper manufacturing
   - Foundries
   - Manufacture of gunpowder and other explosives
   - Manufacturing of tar roofing or tar waterproofing
   - Slaughtering of animals or fowl
   - Smelting of ores
   - Stockyards
   - Tanning or curing of raw hides or skins, or japanning of leather
   - Tar distillation or manufacturing
   - Automobile Vehicle Sales
   - Churches

3. Sexually oriented businesses are prohibited in this district.

D. Area and dimensional requirements

1. Minimum lot area: one acre (43,560 square feet)
2. Minimum Frontage Requirements: 125 feet. **(Effective 11/21/03)**

3. Minimum lot width: 125 feet at the thirty foot front setback line
4. Minimum yard depths:
   a. Front yard: 30 feet;
   b. Side and rear yards: 20 feet

E. Building height. Building height shall be subject to the review and approval of the Planning Board.

F. Water and sewer services.

1. Town water service shall be used, if available.

2. Town sewer service shall be used if said town sewer is located within 100 feet of a property line of a parcel under consideration, as required by Chapter 122, Sewers.
3. All connections to the town water and sewer systems shall be made in strict conformity Chapter 122, Sewers, Chapter 156, Water Main Specifications, and the Sewer and Water Service Connection Specifications of the Town of Derry.

4. In the event that town water and sewer services are not available, state-approved water and sewer systems shall be required.

G. Buffer zones. Buffer zones shall be established in accordance with the provisions of Article III, Section 165-23.

H. Off-street parking

Off-street parking shall be provided in accordance with the provisions of Chapter 170, Land Development Control Regulations.

## *Section 165-43 Industrial District-V (IND-V)* *(Effective 03/17/2004)*

A. Purpose. The Industrial-V District is established for the purposes of encouraging particular non-residential uses of an industrial nature that are less intense then those uses allowed in Industrial Districts I through IV. To carry out the purposes of this zone, certain prohibitions, restrictions, limitations and requirements are deemed to be necessary and appropriate.

B. Permitted uses. The following uses shall be permitted within the Industrial District-V:

1. The manufacture of various products as follows:

| | |
|---|---|
| Appliances | Office supplies |
| Building material | Photographic and optical products |
| Clothing | Textiles |
| Furniture | Wood and metal products |
| Instruments | Electronic assembly and software development |

2. Other uses as follows:
Building materials storage and wholesale.
Self storage facility with ancillary truck rental use.
Warehouse,

3. Agricultural and forestry uses.

C. Accessory uses. Accessory uses, buildings and structures usually associated with these permitted uses shall be allowed, including off-street parking facility, signs, and temporary buildings for uses incidental to construction.

D. 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, odor, 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 as set forth in Article III, Section 165-27.
b. Uses which are not expressly permitted in sub-section B.
c. Wireless communications facilities.

E. Area and dimensional requirements.

1. Minimum lot area One acre (43,560 square feet).
2. Minimum Frontage Requirements: 125 feet **(Effective 11/21/03)**
3. Minimum lot width: 125 feet at the thirty foot front setback line.
4. Minimum yard depths:
   a. Front yard: 30 feet
   b. Side and rear yards. 20 feet.

F. Building height. Building height shall be subject to the review and approval of the Planning Board.

G. Water and sewer services.

1 Town water service shall be used, if available.

2 Town sewer service shall be used if said town sewer is located within 100 feet of a property line of a parcel under consideration, as required by Chapter 122, Sewers.

3 All connections to the town water and sewer systems shall be made in strict conformity with Chapter 122, Sewers, Chapter 156, Water, the Water Main Specifications, and the Sewer and Water Service Connection Specifications of the Town of Derry.

4 In the event that town water and sewer services are not available, state approved water and sewer systems shall be required.

H. Buffer zones. Buffer zones shall be established in accordance with the provisions of Article III, Section 165-23.

I. Off-Street parking shall be provided in accordance with the provisions of Chapter 170, Land Development Control Regulations. Section 165-43.1 - Industrial District-VI (IND-VI) **(Effective 3/17/04)**

## *Section 165-43-1 Industrial District-VI (IND-VI) (Effective 3/17/04)*

A. District objective. This district allows for the establishment of office and light manufacturing employment opportunities in the community and takes into consideration vehicular and truck access and the availability of municipal water and sewer.

B. Permitted uses. Only the following uses shall be permitted within this district:
Manufacturing industries
Warehouse and wholesale uses
Professional office and appurtenant uses in buildings of greater than 10,000 square feet
Public utilities
Parking garages
Animal hospital, veterinary clinics
Printing establishments
Industrial supply establishments
Hotel/motel
Breweries and bottling facilities
Enclosed recycling of non-hazardous materials

C. Prohibited uses. Any industrial 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, odor, 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. Sexually oriented businesses are prohibited in this district.

D. Area and dimensional requirements

1. Minimum lot area: one acre (43,560 square feet) when served by town sewer. If not served by the town sewer, the minimum lot area shall be one acre in addition to meeting the lot size requirement specified in Table A, Minimum Lot Size by Soil Type, as contained in Chapter 170, Land Development Control Regulations

2. Minimum Frontage Requirement: 125 feet

3. Minimum lot width: 125 feet at the thirty foot front setback line.

4. Minimum yard depths:
   a. Front yard, 30 feet;
   b. Side and rear yards, 20 feet.

E. Building height. Building heights of up to 60 feet shall be permitted, notwithstanding any other provision of this chapter.

F. Buffer zones. Buffer zones shall be established in accordance with the provisions of Article III, Section 165-23.

G. Off-street parking. Off-street parking shall be provided in accordance with the provisions of Chapter 170, Land Development Control Regulations.

## *Section 165-44 Multi-Family Residential District (MFR)*

A. Permitted uses. The uses permitted within this district shall be limited to the following:

Single family detached dwelling
Two-family dwellings
Multi-family dwellings
Accessory apartments (must also comply with the provisions of Section 165-25).

B. Area and dimensional requirements.

1. Single family detached and two-family dwellings:
   a. Minimum lot area
      i. When served by municipal water or municipal sewer, the minimum lot area required shall be 15,000 square feet per dwelling unit.
      ii. When served by both municipal water and municipal sewer, the minimum lot area required shall be 10,000 square feet per dwelling unit.
      iii. When served by a community water system, the minimum lot area required shall be one acre (43,560 square feet) per dwelling unit.
   b. Minimum Frontage **(Effective 11/21/03)**
      i. When served by either municipal water or municipal sewer, or by both, the minimum lot frontage required shall be 100 feet.
      ii. When served by a community water system, the minimum lot frontage required shall be 125 feet.
   c. Minimum lot width.
      i. When served by either municipal water or municipal sewer, or by both, the minimum lot width required shall be 100 feet at the thirty-five foot front setback line, or 100 feet at the front lot line.
      ii. When served by a community water system, the minimum lot width required shall be 125 feet at the thirty-five foot front setback line, or 125 feet at the front lot line.
   d. Minimum yard depths.
      i. Front yard shall be 35 feet;
      ii. Side and rear yards shall be 15 feet.

2. Multi-family dwellings (More than two units per building).

a. Minimum lot area. The minimum lot area required shall be 5,000 square feet per dwelling unit. The density calculation of 5,000 square feet per dwelling unit shall be calculated based on the net buildable area of land. Calculations resulting in less than a whole number should be rounded down to the nearest whole number. (For example, 27.2 or 27.9 should be rounded down to 27 units). **(Revised 05/07/2015)**

b. Minimum lot frontage. The minimum lot frontage shall be 150 feet. **(Revised 05/07/2015)**

c. Minimum lot width. The minimum lot width required shall be 150 feet at the 35 foot setback. **(Effective 11/21/03)**

d. Minimum yard depths. The minimum front, side and rear yards shall be 30 feet each.

e. Building height: Multi-family dwellings shall not exceed one hundred ten percent (110%) of the average building height of other residential dwellings within a 500 foot radius of the lot. **(Revised 05/07/2015; 10/01/2015)**

C. Additional multi-family requirements.

1. The maximum length of a multi-family dwelling shall not exceed 200 feet.
2. The minimum distance between multi-family dwellings shall not be less than 35 feet.
3. All multi-family dwellings shall be connected to the municipal water and the municipal sewer systems.
4. At least 15% of the net buildable lot area shall be provided for recreation space. Green area on non-residential site plans may not be applied toward recreational space calculations. **(Revised 05/07/2015)**
5. Off-street parking shall be provided in accordance with Chapter 170, Land Development Control Regulations.
6. Multi-family dwellings shall be constructed in accordance with the provisions of the New Hampshire State Building Code as adopted by the State of New Hampshire and as adopted and amended by the Town of Derry under Chapter § 30 of the Town of Derry Code. **(Revised 04/24/2015)**

## *Section 165-45 Medium-High Density Residential District (MHDR)*

A. Permitted uses. The uses permitted within this district shall be limited to the following:

Single family detached dwelling.
Two-family dwellings.
Multi-family dwellings.
Accessory apartments (must also comply with the provisions of Section 165.25)

Commercial Performing and Fine Arts Schools and Studios **(Effective 08/06/2015)**
Private schools. **(Effective 5/10/02)**

B. Area and dimensional requirements

1. Single family detached and two-family dwellings:

a. Minimum lot area.

i. When served by municipal water or municipal sewer, the minimum lot area required shall be 15,000 square feet per dwelling unit.

ii. When served by both municipal water and municipal sewer, the minimum lot area required shall be 10,000 square feet per dwelling unit.

iii. When served by a community water system, the minimum lot area required shall be one acre (43,560 square feet) per dwelling unit.

b. Minimum lot frontage **(Effective 11/21/03)**

i. When served by either municipal water or municipal sewer, or by both, the minimum lot frontage required shall be 100 feet.

ii. When served by a community water system, the minimum lot frontage required shall be 125 feet.

c. Minimum lot width

i. When served by either municipal water or municipal sewer, or by both, the minimum lot width required shall be 100 feet at the 35 foot front setback line, or 100 feet at the front lot line.

ii. When served by a community water system, the minimum lot width required shall be 125 feet at the 35-foot front setback line.

d. Minimum yard depths.

i. Front yard shall be 35 feet.

ii. Side and rear yards shall be 15 feet.

2. Multi-family dwellings.

a. Minimum lot area. Minimum lot area required shall be 5,000 square feet per dwelling unit. The density calculation of 5,000 square feet per dwelling unit shall be calculated based on the net buildable area of land. Calculations resulting in less than a whole number should be rounded down to the nearest whole number. (For example, 27.2 or 27.9 should be rounded down to 27 units). **(Revised 05/07/2015)**

b. Minimum lot frontage shall be 150 feet. **(Effective 11/21/03)**

c. Minimum lot width. Minimum lot width required shall be 150 feet at the front lot line.

d. Minimum yard depths. Side and rear yards shall be 30 feet each

e. Building height. Multi-family dwellings shall not exceed one hundred ten percent (110%) of the average building height of other dwellings within a 500 foot radius of the lot. **(Revised 05/07/2015; 10/01/2015)**

3. Private schools.

a. Minimum lot area: One acre (43,560 square feet)

b. Minimum lot frontage: 125 feet. **(Effective 11/21/03)**

c. Minimum lot width: 125 feet at the front lot line and 125 at the thirty foot front setback line

d. Minimum yard depths.
   i. Front yard: 30 feet;
   ii. Side and rear yards: 20 feet

e. Building height. Building height shall be subject to the review and approval of the Planning Board.

f. Buffer zones. Before any building, parking lot, or driveway can be constructed that is non-residential in nature and abuts a residence or residential district, a buffer zone will be established with the following minimum characteristics: **(Effective 12/02/2005)**
   i. It shall be a minimum of 50 feet wide.
   ii. It shall be landscaped and maintained with the purpose in mind to diminish the effect of lighting, sound and odor created by the nonresidential use.
   iii. Minimum plantings for the buffer zone shall be three rows of coniferous type trees running parallel with the residential district. These trees shall have a minimum height of six feet, and be planted at adistance of 12 feet to 16 feet on center. They shall be staggered so as to present a more dense buffer zone. Landscaping of the buffer zone shall be approved by the Planning Board.
   iv. When the existing trees and understory vegetation in the buffer zone are sufficiently dense so as to provide screening at least as effective as the minimum plantings specified in paragraph (iii), above, the Planning Board may opt to require the maintenance of the existing vegetative buffer in lieu of cutting it down to accommodate new plantings, or may opt to require a combination of new plantings and existing vegetative buffer. **(Effective 12/2/05)**
   v. Landscaping of the buffer zone shall be approved by the Planning Board. **(Effective 12/2/05)**

g. Off-street parking. Off-street parking shall be provided in accordance with the provisions of Chapter 170, Land Development Control Regulations.

h. Site plan review. All development or change or expansion of use of land or buildings for non-residential uses, whether or not such development includes a subdivision or resubdivision of the site, shall be subject to review and approval or disapproval by the Planning Board in accordance with the provisions of this chapter and Chapter 170, Land Development Control Regulations

C. Additional multi-family requirements

1. The maximum length of a multi-family dwelling shall not exceed 200 feet.
2. The minimum distance between multi-family dwellings shall not be less than 35 feet.
3. All multi-family dwellings shall be connected to the municipal water and the municipal sewer systems.

4. At least 15% of the net buildable lot area shall be provided for recreation space. Green area on non-residential site plans may not be applied toward the recreational space calculation. **(Revised 05/07/2015)**
5. Off-street parking shall be provided in accordance with Chapter 170, Land Development Control Regulations.
6. Multi-family dwellings shall be constructed in accordance with the provisions of the New Hampshire State Building Code as adopted by the State of New Hampshire and as adopted and amended by the Town of Derry under Chapter § 30 of the Town of Derry Code. **(Effective 11/15/2005, revised 04/24/2015)**

D. Special exception uses.

1. A special exception may be granted by the Zoning Board of Adjustment to allow an owner-resident to conduct a home business in herhis dwelling. Such home business shall be limited to the following professions or trades:

a. Lawyer, doctor, clergyman, real estate agent, insurance agent, or similar recognized profession or business
b. Artist, artisan or craftsman
c. Tradesman or repairman

2. A request for only such special exception uses as are specified in sub-section D.1 above may be granted, provided that the Zoning Board of Adjustment finds favorably with respect to each of the following conditions: **(Revised 07/02/2015)**

a. The applicant claims the dwelling unit as her/his legal residence;
b. The residential use was established by the applicant prior to the filing of the request for the special exception;
c. The proposed home business will not be injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke vibration, noise, or other cause;
d. The home business use will be conducted within the residential structure, or other existing structure, and will not exceed 25% of the finished living area of the dwelling. (eff 9/10/09)
e. The home business use will not change the residential character of the dwelling, or the property;
f. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time; **(repealed/renumbered 02/07/2014)**
g. Sufficient off-street parking will be provided for employees, clients, and customers. Where lot size permits, the parking will not be provided within 25 feet of the front lot line, nor within 10 feet of a side or rear lot line;
h. Not more than one home business use will be conducted on the property;

3. Special exceptions granted under this section are intended for use by the current residents and, as such, shall not be transferable to subsequent occupants. **(Effective 10/7/99)**

4. Nothing in this subsection D shall be construed to allow sexually oriented businesses within this district.

## *Section 165-45.1 Medium-High Density Residential District II (MHDR-II) Eff 12/2/05*

A. Permitted uses. The uses permitted within this district shall be limited to the following:

1. Single family detached dwellings.
2. Accessory apartments (must also comply with the provisions of Section 165.25)

B. Area and dimensional requirements

1. Single family detached dwellings:
   a. Minimum lot area.
      i. When served by municipal water or municipal sewer, the minimum lot area required shall be 15,000 square feet.
      ii. When served by both municipal water and municipal sewer, the minimum lot area required shall be 10,000 square feet.
      iii. When served by a community water system, the minimum lot area required shall be one acre (43,560 square feet).

   b. Minimum lot frontage
      i. When served by either municipal water or municipal sewer, or by both, the minimum lot frontage required shall be 100 feet.
      ii. When served by a community water system, the minimum lot frontage required shall be 125 feet.

   c. Minimum lot width
      i. When served by either municipal water or municipal sewer, or by both, the minimum lot width required shall be 100 feet at the 35 foot front setback line, or 100 feet at the front lot line.
      ii. When served by a community water system, the minimum lot width required shall be 125 feet at the 35-foot front setback line.

   d. Minimum yard depths.
      i. Front yard shall be 35 feet.
      ii. Side and rear yards shall be 15 feet.

C. Special exception uses.

1. A special exception may be granted by the Zoning Board of Adjustment to allow an owner-resident to conduct a home business in herhis dwelling. Such home business shall be limited to the following professions or trades:
   a. Lawyer, doctor, clergyman, real estate agent, insurance agent, or similar recognized profession or business
   b. Artist, artisan or craftsman
   c. Tradesman or repairman

2. A request for only such special exception uses as are specified in sub-section C.1 above may be granted, provided that the Zoning Board of Adjustment finds favorably with respect to each of the following conditions: **(Revised 07/02/2015)**

a. The applicant claims the dwelling unit as her/his legal residence;

b. The residential use was established by the applicant prior to the filing of the request for the special exception;

c. The proposed home business will not be injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke vibration, noise, or other cause;

d. The home business use will be conducted within the residential structure, or other existing structure, and will not exceed 25% of the finished living area of the dwelling. (eff 9/10/09)

e. The home business use will not change the residential character of the dwelling, or the property;

f. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time; **(Repealed/renumbered 02/07/2014)**

g. Sufficient off-street parking will be provided for employees, clients, and customers. Where lot size permits, the parking will not be provided within 25 feet of the front lot line, nor within 10 feet of a side or rear lot line;

h. Not more than one home business use will be conducted on the property;

3. Special exceptions granted under this Section are intended for use by the current residents and, as such, shall not be transferable to subsequent occupants. **(Effective 10/7/99)**

4. Nothing in this subsection C shall be construed to allow sexually oriented businesses within this district.

## *Section 165-46 Medium Density Residential District (MDR)*

A. Permitted uses. The uses permitted within this district shall be limited to:

1. Single family detached dwellings, in the form of conventional subdivisions
2. Manufactured housing subdivisions
3. Accessory apartment
4. Campgrounds

5. Production or sale of farm produce by residents of the district. The production or sale of farm produce, as permitted above, shall be allowed, provided that such use is not injurious, noxious or offensive to the neighborhood.
6. Community-oriented recreational facilities which facilities provide guidance and promote the health, social, education, physical, vocational and character development of boys and girls, with appropriate related social gatherings, child care, appropriate fund raising events and adult programs, such as but not limited to Community Centers, Girls' Clubs, Boys' Clubs, YWCAs and YMCAs.

B. Special exception uses.

1. A special exception may be granted by the Zoning Board of Adjustment to allow an owner-resident to conduct a home business in her/his dwelling. Such home business shall be limited to the following professions or trades:
   a. Lawyer, doctor, clergyman, real estate agent, insurance agent, or similar recognized profession or business
   b. Artist, artisan or craftsman
   c. Tradesman or repairman

2. A request for only such special exception uses as are specified in Sub-section B.1 above may be granted, provided that the Zoning Board of Adjustment finds favorably with respect to each of the following conditions:
   a. The applicant claims the dwelling unit as her/his legal residence;

   b. The residential use was established by the applicant prior to the filing of the request for the special exception;

   c. The proposed home business will not be injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke vibration, noise, or other cause;

   d. The home business use will be conducted within the residential structure, or other existing structure, and will not exceed 25% of the finished living area of the dwelling. (eff 9/10/09)

   e. The home business use will not change the residential character of the dwelling, or the property;

   f. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time; **(Repealed/renumbered 02/07/2014)**

   g. Sufficient off-street parking will be provided for employees, clients, and customers. Where lot size permits, the parking will not be provided within 25 feet of the front lot line, nor within 10 feet of a side or rear lot line;

h. Not more than one home business use will be conducted on the property;

3. Special exceptions granted under this Section are intended for use by the current residents and, as such, shall not be transferable to subsequent occupants.

4. Nothing in this sub-section B shall be construed to allow sexually oriented businesses within this district.

C. Single family detached dwellings, in conventional subdivisions

1. Minimum lot area

a. The minimum lot area required shall be one acre, or larger as shall be determined by the soils based lot size determination provisions of Chapter 170, Land Development Control Regulations.

b. This requirement shall not be applicable to any legally existing or approved lot containing at least 25,000 square feet and having a width of at least 125 feet at the 35-foot front setback line, and having frontage of at least 125 feet, provided that said lot meets the requirements of the Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services. **(Effective 11/21/03)**

2. Minimum lot frontage: The minimum frontage required in this district shall be 125 feet. **(Effective 11/21/03)**

3. Minimum lot width. The minimum lot width required in this district shall be 125 feet at the thirty-five foot front setback line, or 125 feet at the front lot line.

4. Minimum yard depths: The minimum front yard shall be 35 feet; the minimum side and rear yards shall be 15 feet.

D. Manufactured housing subdivisions —

1. Housing types permitted. Manufactured housing subdivisions may contain manufactured and pre-site built housing, as defined in this chapter, as well as conventional site-built housing.

2. Limitation. Manufactured housing subdivisions shall be limited to single family detached dwellings.

3. Provisions. The area and dimensional requirements for individual lots within a manufactured housing subdivision shall be the same as those which apply to conventional single family subdivisions in this district. [See sub-section C.1, 2, and 3.

4. Manufactured housing construction standards

All manufactured housing units placed within a manufactured housing subdivision after the effective date of this chapter shall be certified as being constructed in accordance with the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974.

E. Campgrounds. Nothing herein shall prevent land from being utilized, maintained, or operated as a recreational campground, provided that the campground conforms to the regulations of the State of New Hampshire and meets the following requirements:

1. Operation. All campgrounds shall be permitted to operate only from May 1 through October 31.

2. Access. Access to the campgrounds shall be from a state highway. Before any campground can be constructed, entrance and exit roadways shall be established with the following minimum characteristics:
   a. They shall be a minimum of 25 feet wide.
   b. They shall be no closer than two 250 feet from any existing residence or center line of any existing residential curb cut, whichever is closer.

3. Sites and facilities. Campsites and facilities shall be no closer than 1,000 feet from an existing residence.

4. Buffer zone. Before any campground can be constructed, a buffer zone of 500 feet from the lot lines for the entire perimeter of the parcel shall be maintained in its natural state. In the absence of natural screening, additional buffer zone requirements may be imposed by the Planning Board.

5. Plan review: Review and approval by the Planning Board shall be required in accordance with Chapter 170, Land Development Control Regulations. **(Repealed/renumbered 02/07/2014)**

6. Camping spaces. Each camping space shall:
   a. Contain a minimum land area of 2,000 square feet, not including roads and access drives.
   b. Have, as part of the two thousand square feet area, a minimum of 200 square feet for off-street parking.
   c. Be at least 40 feet wide.

7. Service facilities. A service building, or buildings, for toilets and shower facilities shall be provided. No camping space shall be more than 500 feet from a service building.

8. State approval. Prior to the granting of an Occupancy Permit, written approval of the State Board of Health shall be furnished, certifying that all facilities for water supply, toilets, sewage disposal, and solid waste disposal comply with the State Board's requirements.

9. Accessory buildings.

a. Permitted accessory buildings in a campground shall be limited to the following:

i. An office for the manager and staff of the campground, and an office providing adequate first aid facilities, both of which may be in a dwelling or service building.

ii. A service building, not to exceed 1,500 square feet of gross floor space, which may contain equipment and supplies, recreation rooms, and a shop for convenience goods primarily for the occupants of the campground, provided that no advertising device is visible from a street or from adjacent lots.

iii. Service buildings to accommodate bathers at beach or pool sites.

b. Additional requirements may be imposed by the Planning Board for any other buildings or structures incidental to the recreational aspects of the campground, including commercial recreational facilities as defined in this chapter.

10. Nothing in this subsection E shall be construed to permit a sexually oriented business within a campground.

## *Section 165-47 Low-Medium Density Residential District (LMDR)*

A. Permitted uses.

1. All uses allowed in Sections 165-46A.1 through B.3.

2. Wireless communications facilities are permitted in the Telecommunication Overlay Zone as defined by the overlay zone contained in Section 165-28B.1.b and subject to the provisions of Section 165-28 governing Wireless communications facilities.

B. Area and dimensional requirements:

1. Minimum lot area. The minimum lot area required shall be two acres, or larger, as shall be determined by the soils based lot size determination provisions of Chapter 170, Land Development Control Regulations.

2. Minimum lot frontage: The minimum lot frontage required in this district shall be 150 feet. **(Effective 11/21/03)**

3. Minimum lot width. The minimum lot width required in this district shall be 150 feet at the thirty-five foot front setback line, or 150 feet at the front lot line.

4. Minimum yard depths. The minimum front yard shall be 35 feet; the minimum side and rear yards shall be 15 feet.

C. Manufactured housing subdivisions. See Section 165-46.D.

D. Campgrounds. See Section 165-46.E.

## *Section 165-48 Low Density Residential District (LDR)*

A. Permitted uses.

1. All uses allowed in Article VI, Section 165-46.A.1 through B.3.
2. Golf course/country club

B. Area and dimensional requirements:

1. Minimum lot area. The minimum lot area required shall be three acres, or larger, as shall be determined by the "Soils Based Lot Size Determination" provisions of Chapter 170, Land Development Control Regulations.

2. Minimum lot frontage. The minimum lot frontage required in this district shall be 200 feet. **(Effective 11/21/03)**

3. Minimum lot width. The minimum lot width required in this district shall be 200 feet at the thirty-five foot front setback line.

4. Minimum yard depths. The minimum front yard shall be 35 feet; the minimum side and rear yards shall be 15 feet.

C. Manufactured housing subdivisions. See Section 165-46.D.

D. Campgrounds. See Section 165-46.E.

## *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: **(Revised 07/16/2015)**

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 third floor. **(Revised 07/16/2015)**

   c. No building or structure within this district shall be higher than 350 feet above sea level in elevation. **(Revised 07/16/2015)**

   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. Retail Sales Establishment
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 and Studios **(Effective 08/06/2015)**
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
19. Any public uses or use by a semipublic agency whose activities are primarily non-profit in nature.
20. Electric Vehicle Supply Equipment

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 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. **(Revised 07/16/2015)**

D. Review. Any change from a residential to a non-residential use of a lot or structure, whether in whole or in part 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. **(Revised 07/16/2015)**

E. Buffer zones. Where a non-residential use in this district abuts a residential district, a buffer zone shall be established to help diminish the effects of the non-residential use on the abutting residential district. The buffer zone shall be as provided in Chapter 170, Land Development Control Regulations. **(Revised 07/16/2015)**

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. **(Revised 07/16/2015)**
   a. Multi-unit residential use in conjuncction with mixed use. 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 as otherwise provided in Chapter 170, Land Development Control Regulations.

b. Non-residential use. 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.

H. Prohibited uses. **(Repealed/renumbered 02/07/2014)**

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.

## ARTICLE VII FLOODPLAIN DEVELOPMENT DISTRICT

### *Section 165-50 Applicability*

The following regulations in this section shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study of the County of Rockingham, NH dated May 17, 2005 or as amended, together with the associated Flood Insurance Rate Maps (FIRM) dated May 17, 2005 or as amended, which are declared to be a part of this chapter and are hereby incorporated by reference. **(Effective 5/17/05)**

### *Section 165-51 Definitions*

For purposes of this article, certain words or terms shall be interpreted as defined herein. Where the definition of a word or term contained in this section conflicts with a similar word or term as defined in Article II of this chapter, the definition contained in this section shall apply only to these floodplain development provisions.

AREA OF SPECIAL FLOOD HAZARD — The floodplain within the Town of Derry subject to a one percent or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A and AE. **(Revised 02/16/2012)**

AREA OF SHALLOW FLOODING — Deleted 02/16/2012

BASE FLOOD — The flood having a one percent possibility of being equaled or exceeded in any given year.

BASEMENT — Any area of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL — Deleted 02/16/2012

BUILDING — See "structure."

DEVELOPMENT — Any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials as defined by FEMA. **(Revised 02/16/2012)**

FEMA — The Federal Emergency Management Agency.

FLOOD BOUNDARY AND FLOODWAY MAP — Deleted 02/16/2012

FLOOD INSURANCE STUDY — An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

FLOOD INSURANCE RATE MAP (FIRM) — An official map incorporated with this chapter, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Derry.

FLOOD INSURANCE STUDY — Deleted 02/16/2012

FLOOD OR FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters, and/or
b. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD PLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source (see definition of "flooding").

FLOOD PROOFING — Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

FLOODWAY — See "regulatory floodway."

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading and unloading of cargo or passengers, and ship-building and ship-repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior), or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior, or
2. Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 days. This includes manufactured homes listed in a manufactured home park or subdivision. **(Revised 02/16/2012)**

MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale. **(Effective 02/16/2012)**

MEAN SEA LEVEL — The National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION – For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. **(Effective 02/16/2012)**

ONE-HUNDRED-YEAR FLOOD — See “base flood.”

RECREATIONAL VEHICLE – Defined as:

a. Built on a single chassis;
b. 400 square feet or less when measured at the largest horizontal projection;
c. Designed to be self-propelled or prematurely towable by a light duty truck; and
d. Designed primarily **not** for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use. **(Effective 02/16/2012)**

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. **(Revised 02/16/2012)**

SPECIAL FLOOD HAZARD AREA — See “area of special flood hazard.” **(Revised 02/16/2012)**

START OF CONSTRUCTION — Includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

STRUCTURE — For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% percent of the market value of the structure.

A. The market value of the structure should be:

1. The appraised value of the structure prior to the start of the initial repair or improvement, or
2. In the case of damage, the value of the structure prior to the damage occurring.

B. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VIOLATION – The failure of a structure or other development to be fully compliant with the community's flood plan management regulations. A structure or other development without the elevation certificate, or other certifications, or other evidence of compliance required under Section 165-55, Section 165-58 (B) (2), or Section 165-57 (C) (D) of this ordinance is presumed to be in violation until such time as that documentation is provided. **(Effective 02/16/2012)**

WATER SURFACE ELEVATION — The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

### *Section 165-52 Permit Required*

All proposed development in any special flood hazard areas shall require a permit.

### *Section 165-53 New Construction or Substantial Improvements*

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction and substantial improvements shall be:

A. Designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

B. Constructed with materials resistant to flood damage;

C. Constructed by methods and practices that minimize flood damage; and

D. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### *Section 165-54 Water and Sewer Systems*

Where new and replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

### *Section 165-55 Certification*

A. For all new or substantially improved structures located in zones A or AE, the applicant shall furnish the following information to the Building Inspector: **(Revised 02/16/2012)**

1. The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
2. If the structure has been floodproofed, the asbuilt elevation (in relation to NGVD) to which the structure was floodproofed.
3. Any certification of floodproofing.

B. The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

### *Section 165-56 Permits From Federal or State Agencies*

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1334.

### *Section 165-57 Alteration or Relocation of a Watercourse*

A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board.

B. The applicant shall submit, to the Building Inspector, certification provided by a registered professional engineer assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.

C. Along watercourses that have a designated Regulatory Floodway, no encroachments, including fill, new construction, substantial improvements, or other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. **(Revised 02/16/2012)**

D. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. **(Revised 02/16/2012)**

E. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meets the following floodway requirement: **(Effective 02/16/2012)**

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

### *Section 165-58 Determination of Flood Elevation*

A. In special flood hazard areas, the Building Inspector shall determine the 100-year flood elevation in the following order to precedence according to the data available: **(Revised 02/16/2012)**

1. In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

2. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any one-hundred-year flood elevation data available from federal, state, or other sources, including data submitted for development proposals submitted to the community, e.g., subdivisions, site approvals, etc.

B. The Building Inspector's 100-year flood elevation determination will be used as criteria for requiring, in Zones A and AE, that: **(Revised 02/16/2012)**

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation;

2. All new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall;

   a. Be floodproofed so that below the 100-year flood elevation the structure is watertight, with walls substantially impermeable to the passage of water;

   b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

   c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement

is in addition to applicable state and local anchoring requirements for resisting wind forces.

4. Recreation Vehicles placed on sites within zones A and AE shall either **(Effective 1/3/95, revised 02/16/2012)**
   a. Be on the site for fewer than one hundred and 180 consecutive days;

   b. Be fully licensed and ready for highway use; or

   c. Meet all standards of Section 60.3.b.1 of the National Flood Insurance Program regulations and the elevation and anchoring requirements for manufactured homes in paragraph c.6 of Section 60.3.

5. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, providing the enclosed areas meet the following requirements:
   a. The enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access, or storage;

   b. The area is not a basement; and

   c The area shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

      i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
      ii. The bottom of all openings shall be no higher than one foot above grade.
      iii. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwater.

## *Section 165-59 Variances and Appeals*

A. Any order, requirement, decision or determination of the Building Inspector made under these floodplain development regulations may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33,I(b), in determining whether or not any variance will be contrary to the spirit of these regulations, the Board of Adjustment shall consider the following:

1 That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;

2 That, if the requested variance is for activity within a designated Regulatory Floodway, no increase in flood levels during the base flood discharge will result; and

3 That the variance is the minimum necessary, considering the flood hazard, to afford relief.

C. The Zoning Board of Adjustment shall notify the applicant in writing that: **(Effective 02/16/2012)**

a. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and

b. Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

D. The community shall:

1. maintain a record of all variance actions, including their justification for their issuance; and

2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## ARTICLE VIII GROUNDWATER RESOURCE CONSERVATION DISTRICT (GRCD)

**(Effective 5/4/95)**

### *Section 165-60 Authority and Purpose*

A. By the authority granted under RSA 674:21 I(j), Environmental Characteristics Zoning and RSA 674:16, Grant of Power, as amended, and in the interest of the public health, safety and the general welfare, the Groundwater Resource Conservation District (GRCD) is established to protect, preserve and maintain existing and potential groundwater resources and primary groundwater recharge areas within this district, known as “aquifers,” from adverse development, land use practices or depletion. Derry's Master Plan-1994 Update, adopted June 1994, and the Water Resource Management and Protection Plan, Adopted 1989, proposes such protection.

B. This is to be accomplished by regulating land uses which would contribute polluted water and pollutants to designated aquifers identified as being needed for present and future public and private water supply.

### *Section 165-61 Location*

A. The GRCD is identified as those areas designated as stratified drift by blue shading which appears on maps prepared by U.S. Geological Survey in cooperation with the State of New Hampshire Department of Environmental Services Water Resources Division identified as U.S. Geological Survey, Water Resources Investigations Report (WRIR) 91-4025, Bow, New Hampshire 1992, or as amended.

B. These areas are subject to any additional standards which apply to the underlying zoning classification.

C. The GRCD map may be seen at the Planning Board office during their business hours.

### *Section 165-62 Resolution of Boundary Disputes*

A. Planning Board. During Planning Board review, when the actual boundary of the GRCD is disputed by any owner or abutter affected by said boundary, the Planning Board, at the owner/abutter's expense and request, may engage the services of a Professional Hydrologist, Certified Geologist, or Soil Scientist, or Registered Professional Engineer, to determine the site specific boundary of said District. Based upon the site specific, documented, scientific and technical information submitted by the qualified professional, in these cases, the Planning Board shall have the authority to make the final determination as to the location of a disputed boundary.

B. Code Enforcement Officer (CEO). Approved building lots shall be under the authority of the CEO who many use the same professionals listed in Sub-section A. Based upon the site specific, documented, scientific and technical information submitted

by the qualified professional, in these cases, the CEO shall have the authority to make the final determination as to the location of a disputed boundary.

### *Section 165-63 Definitions*

As used in this article, the following terms shall have the meanings indicated:

AQUIFER — A geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or a spring under ordinary hydraulic gradients.

DISCHARGE — The spilling, leaking, pumping, pouring, emitting, emptying, or dumping of toxic or hazardous materials upon or into any land or waters in the Town of Derry. Discharge includes, without limitations, leakage of such materials from failed or discarded containers or underground or above ground storage systems, and disposal of such materials into any on-site sewage disposal system, dry well, catch basin, or unapproved landfill.

GROUNDWATER — Water below the land surface in the zone of saturation of the soil or rock and includes perched water separated from the main body of groundwater by an unsaturated zone.

HAZARDOUS OR TOXIC MATERIALS AND WASTE — Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town, as referenced below. Toxic or hazardous materials include, without limitation, volatile organic chemicals, heavy metals, radioactive or infectious wastes, acids and alkalis, and include products such as pesticides, herbicides, solvents and thinner, and such other substances as defined in New Hampshire Water Supply and Pollution Control Div. Rules, Env-Wm 102.73 in New Hampshire Solid Waste Rules Document 5172, or as amended, as listed in N.H. Waste Management Division Hazardous Waste Rules Env-Wm 100 through Env-Wm 1000, as specified in Env-Wm Part 402 through Env-Wm Part 404.

IMPERVIOUS SURFACE — Created as a result of human activity, such as driveways, parking lots, roads, access drives, roof tops, compacted lawns and other features at or above the soil surface that impede infiltration of water into the soil to provide groundwater recharge. **(Effective 7/5/07)**

Naturally occurring relatively impervious conditions such as bedrock outcrops and soil with restrictive layers within 18 inches from below the natural soil surface.

LEACHABLE WASTES — Waste materials including solid wastes, sludge and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.

MINING — The removal of geological materials such as topsoil, sand, gravel, or bedrock.

NON-CONFORMING USE — Any lawful use of buildings, structures, premises, land or parts thereof existing as of the effective date of this article, or amendment thereto, and not in conformance with provisions of this article, shall be considered to be non-conforming use.

PRIMARY RECHARGE AREA — Areas that collect precipitation or surface water and transmit it into the area of contribution to existing or potential water supply wells. Primary recharge areas are stratified drift aquifer areas surrounding existing or potential water supply well sites.

SANITARY WASTEWATER — Wastewater arising from ordinary domestic water use as from toilets, sinks, bathing facilities, etc. and containing such concentrations and types of pollutants as to be considered normal household wastes.

SATURATED ZONE — The zone beneath the land surface in which all open spaces are filled with water.

SLUDGE — Residual materials produced by the sewage treatment process.

SOLID WASTE — Any discarded or abandoned material including refuse, putrescible material, septage, or sludge as defined by New Hampshire Solid Waste Rules Env-Wm 100-2800, or as amended. Solid waste includes solid, liquid, semi-solid, or certain gaseous waste material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities.
STRATIFIED DRIFT — Sorted and layered unconsolidated deposits formed in streams flowing from glaciers or settled from suspension in quiet water bodies fed by such streams.

STRUCTURE — Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purpose of this article, buildings are structures.

## *Section 165-64 General Provisions*

A. The Conservation Commission shall be notified by the Code Enforcement Officer, upon receipt of any permit application in the GRCD.

B. Rulings of the Code Enforcement Officer may be appealed to the Zoning Board of Adjustment (ZBA).

C. The ZBA may require that the applicant for a special exception provide data or reports by a professional hydrologist, certified geologist or soil scientist, or registered professional engineer to certify with appropriate evidence that conditions in Sections 165-67.B.1, 165-67.B.2, 165-67.B.3, and 165-67.B.4 are true. The ZBA may engage such professional assistance as it requires to adequately evaluate such reports and to assess the proposed use in accordance with the above mentioned criteria. Said services shall be paid by the applicant.

D. All development proposals shall be subject to review in accordance with the provisions of Chapter 170, Land Development Control Regulations.

E. Residential Nothing in this article shall be deemed to prohibit the storage and handling of products for normal household use.

F. Manure, agricultural compost and chemical fertilizer shall be handled in accordance with RSA 431:33 to 35, or as amended. See Manual Of Best Management Practices For Agriculture in New Hampshire as prepared by New Hampshire Department of Agriculture, August, 1993 or as amended.

### *Section 165-65 Permitted Uses*

A. Any use permitted in the underlying district shall be permitted within the GRCD except those which are expressly prohibited in Section 165-66, with the following additional conditions:

1. Coverage. No more than 30% of a lot, shall be rendered impervious by building and pavement, unless the applicant demonstrates in the site plan application that heshe has incorporated engineering technology in the drainage design to allow recharge of the aquifer.
2. Above ground storage. Commercial and Industrial chemicals, road salt, fertilizers, herbicides, pesticides, and other hazardous or toxic materials and waste shall be stored within a fully enclosed structure, with an impermeable floor, designed to contain any spill within the structure.

3. Location. Where the premises are partially outside of the GRCD, potential pollution sources such as on-site waste disposal systems shall be located outside the GRCD to the extent feasible.

4. Drainage. All construction and/or development activities shall incorporate drainage design standards for stormwater management and erosion and sedimentation control which, at a minimum, reflect the recommendations of the publication Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, prepared by the Rockingham County Conservation District, prepared for the Department of Environmental Services in cooperation with the United States Department of Agriculture, Soil Conservation Service, August, 1992, or as amended.

5. Septic system design and installation. In addition to meeting all local and state septic system requirements, all new on-lot sanitary waste water disposal systems installed in the GRCD shall be designed by a septic system designer and installer licensed in New Hampshire. These systems shall be installed under the supervision of the Health Officer who shall perform a basic area inspection, in person, as part of said supervision.

B. The Health Officer, or qualified agent of the Town shall inspect the installation of each new system prior to covering, and shall certify that the system has been installed as designed.

C, Septic systems are to be constructed in accordance with the most recent edition of Chapter Env-Ws 1000, Subdivision and Individual Sewage Disposal System Design Rules as published by the New Hampshire Water Supply and Pollution Control Division, or as amended.

## *Section 165-66 Prohibited Uses*

The following uses shall not be permitted within the GRCD:

a. Disposal of solid waste.
b. Underground storage of hazardous or toxic materials and waste.
c. Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.
d. Dumping of snow containing de-icing chemicals brought from outside the GRCD.
e. Junk and salvage yards.
f. All on-site treatment, disposal, or recycling of hazardous or toxic materials as a principle business operation.
g. Any other use or activity that, based upon the following findings of fact:
    1. Will have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
    2. Will cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer.
    3. Will discharge wastewater on site other than that which is permitted under the provisions of this article.

## *Section 165-67 Special Exceptions*

A. Hazardous or toxic material and waste. Waste generated by, but not limited to, the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary:

Airplane, boat and motor vehicle service and repair
Chemical and bacteriological laboratory operation
Dry Cleaning
Electronic circuit manufacturing
Metal plating, finishing and polishing
Motor and machinery service and assembly
Painting, wood preserving and furniture stripping
Pesticide and herbicide application

Photographic processing
Printing

B. Procedures. The hearing for a special exception shall be held by the Zoning Board of Adjustment with mandatory attendance of the Planning Board and Conservation Commission to provide advice. In the case of any use which may be allowed by special exception in the underlying zoning district, it must be found by the ZBA, in written findings of fact, that all of the following are true:

1. The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.

2. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer.

3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this article.

4. The proposed use complies with all other applicable sections of this article.

## *Section 165-68 Non-Conforming Uses*

A. Any non-conforming use may continue and may be maintained, repaired, replaced, and improved, unless such use is determined to be an imminent hazard to the public health and safety by Town Council, Health Officer or Code Enforcement Officer.

B. No non-conforming use may be expanded, changed to another non-conforming use. No non-conforming use may be renewed after it has been discontinued for a period of 12 months or more.

## *Section 165-69 Conflicting Provisions*

In all cases where the GRCD is superimposed over another zoning district in the Town of Derry, that district whose regulations are the more restrictive shall apply.

## ARTICLE IX CONSERVATION CORRIDOR OVERLAY DISTRICT

This area, to be known as the "Conservation Corridor," shall be all lands in the 100-year flood plain determined by the Federal Insurance Administration's Flood Insurance Rate Maps (FIRM) of Rockingham County, NH, dated May 17, 2005 or as amended, on file with the Town Clerk, Planning Board and Building Inspector. These maps, as well as the accompanying "Flood Insurance Study of Rockingham County, NH, are incorporated herein by reference. **(Revised 02/16/2012)**

### *Section 165-70 Purpose; Conflicting Provisions*

The purpose of this article is to regulate uses in important wetland and watershed areas. The objective is to prevent the destruction of watershed areas and wetlands which provide flood protection, recharge of ground water supply, and augmentation of stream flow, and for the protection of the community against the costs that may be incurred when unsuitable development occurs in swamps, marshes, along watercourses, or in areas subject to floods. In event of conflict between the requirements of this Article and the permitted uses within a zoning district, the requirements of this Article shall take precedence.

### *Section 165-71 Location*

This area, to be known as the "Conservation Corridor," shall be all lands in the 100-year flood plain determined by the Federal Insurance Administration's Flood Insurance Rate Maps (FIRM), dated May 17, 2005, on file with the Town Clerk, Planning Board and Building Inspector. These maps, as well as the accompanying "Flood Insurance Study of Rockingham County, NH," are incorporated herein by reference. **(Revised 02/16/2012)**

### *Section 165-72 Permitted uses*

The following uses are permitted within this district:

Agriculture.
Forestry.
Wildlife management.
Outdoor recreation activities, providing that they do not alter the existing topography.
Construction and maintenance of public water supply systems.
Construction and maintenance of public sewer and utility systems.
Accessory uses and structures usually associated with these permitted uses, provided that such accessory uses do not affect the existing topography, and that no accessory building is larger than 500 square feet.

### *Section 165-73 Prohibited Uses*

The following uses are prohibited in this district:

All new construction or placement of new buildings, except as provided in Section 165-72.
New subsurface waste treatment systems
Piggeries
Manure stockpiling
Mink farms
Amusement parks
Race tracks
Outdoor movie theaters
Junk yards
Any use that, in the opinion of the Building Inspector, is contrary to the intent or purposes of this article

### *Section 165-74 Special Exceptions*

A special exception for the expansion of an existing use may be granted by the Zoning Board of Adjustment provided that:

A. It is shown, by the applicant, that such expansion will not be contrary to the purposes set forth in this article; and

B. Written recommendations of the Conservation Commission are considered by the Zoning Board of Adjustment.

## ARTICLE X WETLANDS CONSERVATION OVERLAY DISTRICT

### *Section 165-75 Authority and Purpose*

By the authority granted in RSA 674:16-17 and 674:20-21, and in the interest of public health, convenience, safety, and the general welfare, the Wetlands Conservation Overlay District is established in order to regulate the use of land areas subject to extended periods of high water table, flooding, or standing water. It is the intent of this district to:

A. Prevent the development of structures or other land uses on naturally occurring wetlands which would contribute to the pollution of surface and groundwater.
B. Prevent the alteration of natural wetlands which provide flood protection, recharge of ground water supply, or augmentation of stream flow during dry periods.
C. Prevent unnecessary or excessive expenses to the town to provide and maintain essential services and utilities which could arise because of inharmonious use of wetlands.
D. Encourage those uses that can be appropriately and safely located in wetland areas.
E. Create an undisturbed and natural buffer to the prime wetlands.
F. Protect unique and unusual natural areas.
G. Protect wildlife habitats and maintain ecological balances.

### *Section 165-76 District Boundaries*

The limits of the Wetlands Conservation Overlay District are hereby determined to be the following:

A. All areas of very poorly drained soils.
B. Areas of poorly drained soils 2,000 square feet or more in size, and that exhibit a predominance of 50% or more wetland vegetation.
C. Areas of any wetland of any size if contiguous to surface waters such as lakes, ponds and streams.
D. Areas designated as bogs regardless of any size.

### *Section 165-77 Definitions*

Words and terms used in this Article are defined as follows:

BOGS — Highly acidic wetlands that have usually developed in undrained glacial depressions and are generally underlaid by thick layers of saturated organic soils called peat, or as further defined by the New Hampshire Wetlands Board.

HIGH INTENSITY SOIL MAPS FOR NEW HAMPSHIRE — The most recent document prepared by the Society of Soil Scientists of Northern New England detailing the

standard for making high intensity soils maps on file with the Rockingham County Conservation District.

MARSHES, FRESHWATER — Characterized by herbaceous (soft-stemmed) vegetation or as further defined by the New Hampshire Wetlands Board.

POORLY DRAINED SOILS — Soils with a moderately high water table as described in the report entitled "Soils Information for Resource Planning for the Town of Derry," dated March 1980, or as further defined by High Intensity Soils Maps for New Hampshire on file with the Rockingham County Conservation District.

PRIME WETLANDS — Those areas designated "prime wetlands" within the scope of RSA 483-A and the New Hampshire Code of Administrative Rules, Part WT-700. These wetlands are described in the "Derry Prime Wetlands Report" dated November 11, 1986. The topographic definition of each prime wetland is included in separate maps correlated to the report. Both the aforementioned maps and report are incorporated in this Ordinance by reference. The mapped locations of the Prime Wetlands are identified on maps which are on file with the Derry Planning Office. They are as follows:

PRIME WETLANDS BUFFER ZONE — That area extending 150 feet beyond the boundary of each prime wetland as defined above.

QUALIFIED SOIL SCIENTIST — A person qualified in soil classification and mapping who is recommended or approved by the State Board of Natural Scientists.

SWAMPS — Contain predominantly woody vegetation (shrubs and trees) and range in wetness from occasionally flooded to standing water most of the year, or as further defined by the New Hampshire Wetlands Board.

VERY POORLY DRAINED SOILS — Soils with a permanent high water table as described in the report entitled "Soils Information for Resource Planning for the Town of Derry," dated March 1980, or as further defined by High Intensity Soils Maps for NH on file with the Rockingham County Conservation District.

WETLANDS — Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to, swamps, bogs, marshes, ponds, and lakes, as well as soils that are defined as poorly or very poorly drained.

| PRIME WETLAND NUMBER | LOCATION | MAP NUMBER |
|---|---|---|
| A/1 | North of Hood Pond, off Franklin Street | 122 |
| A/6 | West of By-Pass 28, eastof Scobie PdRdShields Brook | 134 |
| A/9 | East of By—pass 28, South of English Range Road | 140 |
| A/11 | Abuts Eleanor Avenue., east of By-Pass 28 | 150 |
| A/15 | East of Pingree Hill Road, Auburn Line | 151 |
| B/6 | Southwest intersection Adams Pond & Hampsteads Roads | 130 |
| B/7 | Southwest intersection Cross and Adams Pond Roads | 136 |
| B/8 | Southeast of Worthley Road | 142 |
| B/9 | North of intersection of Beaver Lake & N Shore Roads | 142 |
| B/12 | North of 102; W of English Range Road | 141 |
| B/15 | East of Back Chester Road, south of Chester Line | 149 |
| B/16 | West of Back Chester Road, east of Pioneer Circle | 149 |
| C/3 | Between Gulf and Island Pond Roads | 106 |
| C/4 | South of Hampstead Road, east of Oleson Road | 132 |
| C/7 | West of Damren Road and North of Hampstead Road | 132,138 |
| C/9 | North of Walnut Hill between Damren & Adams Pd Roads | 143, 137 |
| C/10 | North of Walnut Hill Road east of Patridge Lane | 110, 137 |
| D/5 | Feeds into Ballard Pond | 110 |
| D/7 | Island Pond Road south of Drew Road | 120 |
| D/8A | Drew Brook; crossed by Drew Road | 121, 127 |
| D/8B | Drew Brook; Drew Road | 121 |
| D/14 | Leavitt Brook, railroad bed, Jackman Road | 126 |
| E/1 | Windham Line, west of Frost Road | 102 |
| E/8 | Windham Road | 108 |
| F/6 | Northeast of Beacon Hill Road on I-93 | 101,102,108 |
| F/7 | East of Fordway Ext. and south of Bowers Road | 107, 108 |
| F/11 | Along Berry Road south of Claire Avenue | 114 |
| F/13 | North of Pierce Avenue and along the Brook | 123, 117 |

### *Section 165-78 Boundary Disputes and Incorrectly Designated Areas*

A. When a boundary of the Wetlands Conservation Overlay District is disputed, or in the event that an area is incorrectly designated as being poorly drained or very poorly drained on the Town of Derry, New Hampshire, Soils Information for Resource Planning, March 1980 map, the Planning Board and/or the Conservation Commission, at the applicant's expense, may engage a professional biologist andor soils scientist qualified in field analysis to determine the precise location of the Wetlands Conservation Overlay District boundaries of the properties affected. A report of their findings shall be submitted to the Planning Board and shall include, but not be limited to, a revised soils map of the area in question prepared by a qualified soils scientist along with a written report.

B. The Planning Board shall adjust the boundary of this district, if necessary, based on the evidence provided as set forth above. If the evidence indicates that the boundary or area in question has been incorrectly designated, the restrictions contained in this Article shall not apply. Conversely, in the event that an area has poorly drained or very poorly drained soils within the meaning of the aforementioned definitions, then the restrictions contained in this Article shall apply. The Planning Board shall reserve the right to withhold action on any plat pending the results of an onsite inspection by the Board or its appointed agent.

### *Section 165-79 General Provisions*

The following general provisions shall apply with respect to all permitted, special exception, and conditional use applications pertinent to this district:

A. Environmental assessment. The Planning Board, with the concurrence of the Conservation Commission, may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Article. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

B. Compliance with conditions. The Zoning Board of Adjustment may itself, in cases where it has jurisdiction, or upon petition from the Building Inspector, Conservation Commission or the abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth in this article have been met. The costs of such studies shall be borne by the applicant.

C. Performance security. Prior to the granting of a Conditional Use Permit under this article, the applicant shall agree to submit a performance security to the Planning Board. The security shall be submitted and approved prior to issuance of any permit authorizing construction. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Conservation Commission and approved by the Planning Board to ensure the construction has been carried out in accordance with the approved design.

D. Filled lands and preexisting uses.

1. Lands which may have been wetlands, but which were filled under properly issued state and town permits granted prior to the adoption of this Article, shall be judged according to the soils and flora existing at the site at the time application for building permit or subdivision is made.

2. Structures and uses existing at the time of the adoption of this article may be continued, provided that such use shall not be expanded to encroach further upon the wetlands or designated setback areas.

E. Exemption for residential structures. Notwithstanding other provisions of this article, the construction of additions and extensions to one- and two-family dwellings shall be permitted within the Wetlands Conservation Overlay District provided that:

1. The dwelling lawfully existed prior to February 4, 1988; and
2. That the proposed construction conforms with all other applicable ordinances and regulations of the Town of Derry.

F. Special exceptions; vacant lots of record. Other provisions of this article notwithstanding, upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Wetlands Conservation Overlay District on vacant lots, provided that all of the following conditions are found to exist:

1. The lot upon which an exception is sought was an official lot of record as recorded in the Rockingham County Registry of Deeds prior to the date of the first legal notice pertaining to this chapter, posted and published in the Town of Derry, New Hampshire.

2. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation Overlay District.

3. Due to the provisions of this chapter, no reasonable and economically viable use of the lot can be made without the exception.

4. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this article.

5. The proposed use will not create a hazard to individual or public health, safety, and welfare due to the loss of wetlands, the contamination of ground water or other reason.

G. Conflicting regulations. In all cases where the Wetlands Conservation Overlay District is superimposed over another zoning district in the Town of Derry, that district whose regulations are the more restrictive shall apply.

## *Section 165-80 District Provisions*

A. Prime wetlands and prime wetlands buffer zones

1. Permitted uses. Permitted uses in areas designated as prime wetlands and/or prime wetlands buffer zones are as follows:

a. Wildlife habitat development and management.
b. Conservation areas and nature trails.
c. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of the prime wetlands from pollution caused by fertilizers, pesticides, and herbicides used in such cultivation.

2. Conditional uses. A conditional use permit may be granted by the Planning Board (RSA 674:21, II) for the following purposes:

a. Forestry and tree farming within the buffer zone, using best management practices in order to protect prime wetlands from damage, to prevent sedimentation, and to prevent destruction of wildlife habitats, provided that any forestry andor tree farming activities shall first be reviewed and approved by the Conservation Commission. Final approval shall be given by the Planning Board.

b. The construction of fences, foot bridges, catwalks, and wharves only, provided:
   1. Said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
   2. The natural contour of the prime wetland is preserved;
   3. The Conservation Commission has first reviewed and approved the proposed construction; and
   4. The Planning Board has received Conservation Commission approval in writing and has reviewed the proposed construction.

3. Prohibited use. No dredging or filling shall be permitted in the prime wetlands.

4. Special exception in prime wetlands buffer zones.

a. Upon application to the Zoning Board of Adjustment, a special exception shall be granted for uses in the outermost 75 feet of the prime wetlands buffer zones, provided that all of the following conditions are found to exist:

1. The proposed special exception is essential to the productive use of land not within the prime wetlands buffer zone.
2. Design and construction methods will be such as to minimize detrimental impact upon the Prime Wetland and the seventy-five foot buffer nearest the prime wetland. The site will be restored as nearly as possible to its original condition.
3. Economic advantage alone is not reason for the proposed construction.
4. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the prime wetlands buffer zone.
5. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this article.
6. The proposed use will not create a hazard to individual or public health, safety, and welfare due to the loss of the prime wetlands buffer zones, the contamination of ground water or other reason.
7. Any special exception granted shall not disturb the 75 feet of the prime wetlands buffer zone nearest the prime wetland.

8. When a parcel is being developed, no landlocked land or unbuildable lot shall be created that would require a special exception or variance under this article.

b. Studies/reports that may be required:
Botanist
Biologist
Soil scientist
Sediment/erosion control plan
Impact on the wetland, water quality and habitat
Drainage calculations
Amount of area to be disturbed

c. Appropriate escrow shall be established for construction and inspection.

d. No special exception shall be granted in the prime wetlands.

e. The hearing for the special exception shall require a joint meeting of the Zoning Board of Adjustment, Planning Board, and the Conservation Commission, provided there is a significant and substantial impact to the productive use of the land defined as landlocked or unbuildable lots caused by the creation of the prime buffer zones.

5. Pre-existing use in the prime wetland buffer zones.

a. Structures and uses existing at the time of the adoption of this chapter may be continued.
b. Where an existing use within the buffer is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction, and the new or rebuilt use shall not extend further into the buffer area than the original use.
c. Expansion of an existing use shall require a permit from the Code Enforcement Officer (CEO).

1. The application for a permit shall be accompanied by two copies of a drawing of the proposal prepared to scale, or so that dimensions are clearly defined. One copy shall be retained by the CEO and one copy shall be forwarded (by the CEO) to the Conservation Commission a minimum of five working days prior to the issuance of the permit.
2. If the proposed expansion of use is found to be detrimental to any function of the wetland, the CEO shall not issue the permit.

B. Poorly drained and very poorly drained soils, other than prime wetlands.

1. Permitted uses. Any of the following uses that do not result in the erection of any buildings, and that are otherwise permitted by this chapter:

a. Poorly drained soils. Permitted uses in areas of poorly drained soil are as follows:

1. Any use otherwise permitted by this Ordinance and state and federal laws that does not involve the erection of a structure, and that does not alter the surface configuration of the land by the addition of fill or by dredging,except as a common treatment associated with a permitted use.

2. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of the wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation.

3. Forestry and tree farming, using best management practices in order to protect poorly drained soils and streams from damage, and to prevent sedimentation.

4. Wildlife habitat development and management.

5. Recreational uses consistent with the purpose and intent of this article.

b. Very poorly drained soils. Permitted uses in areas containing very poorly drained soils, marshes, open water, and perennial streams are as follows:

1. Uses specified under sub-section B.1.a.1 through 5 shall be permitted except that:

a. There shall be no alteration of the surface configuration of the land by filling or dredging; and

b. There shall be no use which results in the erection of a structure, except as provided for in sub-section B.1.b.2 below, in accordance with the same provisions which apply to those uses.

2. The construction of fences, foot bridges, catwalks and wharves only, provided that:

a. Said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;

b. The natural contour of the wetland is preserved;

c. The Conservation Commission has first reviewed and approved the proposed construction; and

d. The Planning Board has received Conservation Commission approval in writing, and has reviewed and approved the proposed construction.

c. Bogs, Permitted uses in bogs shall be limited to only those uses specified in subsection B.1.b.2 above and then only in accordance with the same provisions as apply to those uses.

2. Conditional Uses. A conditional use permit may be granted by the Planning Board (RSA 674:21 II) for:

a. The construction of roads**,** access drives and other access ways; **(Effective 7/5/07)**

b. Pipelines, power lines and other transmission lines;

c. Water impoundment and the construction of well water supplies;

d. Drainageways to include streams, creeks or other paths of normal runoff water; and

e. Common agricultural land drainage.

3. Conditional use provisions. Such uses, for which a conditional use permit may be granted, may be permitted provided that all of the following conditions are found to exist:

a. The proposed construction is essential to the productive use of land not within the Wetlands Conservation Overlay District;

b. Design and construction methods will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition;

c. No alternative which does not cross a wetland, or has less detrimental impact on the wetland, is feasible;

d. Economic advantage alone is not reason for the proposed construction.

## ARTICLE XI Earth Removal Regulations.

### *Section 165-81 Authority and Purpose*

Chapter 155-E of the New Hampshire Revised Statutes Annotated requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the municipality in which the operation is to occur. The purpose of the Statute and of these regulations is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

### *Section 165-82 Definitions*

As used in this article, the following terms shall have the meanings indicated

ABUTTER — Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be affected by the proposal under consideration. For purposes of receipt of notification by the municipality of a public hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356B:3, XXIII.

APPLICATION — A completed application for an excavation permit. An application shall not be considered complete until all of the excavation application checklist items have been completed and accepted to the satisfaction of the regulator in addition to any other requirements of this or any other chapter or other regulations of the Town of Derry.

COMMERCIAL — Any use of any earth material for sale or resale on or off the site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.

DIMENSION STONE — Rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in this Section.

EARTH — Sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

EXCAVATION AREA — The area within an excavation site where excavation has occurred or is eligible to occur under the provisions of these regulations which is used, or has been used, for the commercial taking of earth, including all slopes.

EXCAVATION SITE — Any area of contiguous land in common ownership upon which excavation takes place.

REGULATOR : The Planning Board of the Town of Derry.

### *Section 165-83 Permit Required — Exceptions*

No owner shall permit any excavation of earth on his premises without first obtaining a permit therefore, except as follows:

A. Existing Excavations. The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the two-year period before August 24, 1979, may continue such existing excavation of the excavation site without a permit, subject to the following:

1. Such an excavation site shall be exempt from the provisions of local zoning provided that, at the time the excavation was first begun, it was in compliance with any local ordinances and regulations that may have been in effect.

2. Such an excavation area may not be expanded, without a permit under these regulations, beyond the limits of the Town of Derry and the area which, on August 24, 1979 and at all times subsequent thereto, has been contiguous to and in common ownership with the excavation site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site as of that date, as modified by the limitations of Section 165-86A through D, inclusive. The term "contiguous" means land whose perimeter can be circumscribed without interruption in common ownership, except for roads or other easements, in the Town of Derry.

3. When such excavation is not allowed in that location by the Town of Derry Zoning Ordinance in effect on August 4, 1989, or when the Zoning Ordinance allows such excavation only by special exception, expansion may be restricted or modified with conditions by order of the Regulator if, after notice to the owner and a hearing, the Regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.

4. Such excavation shall be performed in compliance with the express operational and reclamation standards contained in these regulations Sections 165-86 through 165-88).

5. The owners or operators of any existing excavation area for which no permit has been obtained under these regulations and for which an excavation report, as required by RSA 155E:2,I(d), was not filed with the regulator by August 4, 1991 shall be determined to be abandoned per sub-section B.1.c of this section. The excavation report shall contain the following information:

a. The location of the excavation by tax map and parcel number;
b. The date the excavation first began;
c. A description of the limits of permissible expansion as described in sub-section A.2, which are claimed to apply to the excavation;

d. An estimate of the area which has been excavated to date; and
e. An estimate of the amount of commercially viable earth materials still available on the parcel.

6. The exemption from local zoning or site location regulations as stated in sub-section A.1 shall include the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall permit any such quarrying or crushing of bedrock to occur for the first time on any excavation site without first obtaining a permit therefore under these regulations.

B. Abandoned excavations. The permit and zoning exemptions under this Section shall not apply to any abandoned excavation, as defined in sub-section B.1 below.

1. For purposes of this subsection B, any excavation, except for excavations or excavation sites described in sub-section C of this section, whether subject to a permit under these regulations or not, for which the affected area has not yet been brought into complete compliance with the reclamation standards of these regulations, shall be deemed abandoned if:

a. No earth material of sufficient weight or volume to be commercially useful has been removed from that excavation site during any two- year period, either before, on, or after August 4, 1989; provided, however, that before the end of such 2 year period, the owner or operator may extend the period by submitting to the Regulator a reclamation timetable to be approved by the Regulator, and by posting a bond or other security with the Town Treasurer in a form and in an amount prescribed by the Regulator, sufficient to secure the reclamation of the entire excavation site in accordance with the reclamation standards contained in these regulations; or

b. The excavation site is in use and is not an excavation or excavation site as described in sub-section C of this section, but does not conform with the incremental reclamation standards of these regulations, or the owner or operator has not posted a bond or other security and submitted a reclamation timetable to be approved by the regulator as described in sub-section B1.a or

c. The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of an existing excavation pursuant to sub-section A.5 within the prescribed period.

2. In addition to the enforcement remedies provided in Section 165-97, the regulator may order the owner of any land upon which an abandoned excavation is located to either file a reclamation timetable, to be approved by the Rregulator, and bond or other security as described in sub-section B.1.a above, or to complete reclamation in accordance with these regulations within a stated reasonable time. Such an order shall only be made following a hearing for which notice has been given in accordance with Section 165-91, if the regulator finds that the public health, safety, or welfare requires such reclamation. If the owner fails to complete the reclamation within the time prescribed in the order, the regulator may cause the reclamation to be completed at the expense of the Town. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

3. The site of an excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the reclamation standards of these regulations, may be made subject to the remedy prescribed in Sub-section B.2 only if the regulator finds, in writing, that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health and safety.

C. Stationary manufacturing plants.

1. No permit shall be required under these regulations for excavation from an excavation site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with a stationary manufacturing and processing plant which was in operation as of August 24, 1979, and which used earth obtained from such excavation site. Such excavation shall be performed in compliance with the operational and reclamation standards as expressly set forth in Sections165-86 through 165-88 inclusive of these regulations, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this paragraph. Loss of such non-permit status shall be preceded by written notice from the regulator that the excavation is not in compliance and the owner shall have failed to bring such excavation into compliance within 30 days of receipt of such notice. Such excavation may be expanded without a permit under these regulations to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by Section 165-86A through E, inclusive.

2. No further permit shall be required under these regulations for excavation from a site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with a stationary manufacturing and processing plant for which a local or state permit has been granted since August 24, 1979, and before August 4, 1989, which uses earth obtained from such site. It is further provided that their operation and reclamation shall continue to be regulated by such local or state permits and any renewals or extensions thereof by the permitting authority or authorities.

D. Highway excavations. No permit shall be required under these regulations for excavation which is performed exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or by an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, subject, however, to the following:

1. A copy of the pit agreement executed by the owner, the agent, and the governmental unit shall be filed with the regulator prior to the start of excavation. The failure to file such agreement, or the failure of the excavator to comply with the terms of such agreement, shall be deemed a violation of these regulations, and may be enforced pursuant to Section 165-97.

2. Such excavation shall not be exempt from this chapter, or other applicable ordinances, unless such an exemption is granted pursuant to sub-section D.3 below, or from the operational and reclamation standards as expressly set forth in Sections 165-86 through 165-88, inclusive, of these regulations, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this sub-section D. Before beginning such excavation, the governmental unit or its agents shall certify to the regulator that:

   a. The excavation shall comply with the operational and reclamation standards of Sections 165-86 through 165-88, inclusive, of these regulations;

   b. The excavation shall not be within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of an approving abutter, unless requested in writing by said approving abutter;

   c. The excavation shall not be within 150 feet of any dwelling which either existed or for which a building permit has been issued at the time the excavation is commenced;

   d. The excavation shall not be unduly hazardous or injurious to the public welfare;

   e. Existing visual barriers to public highways shall not be removed, except to provide access to the excavation;

   f. The excavation shall not substantially damage a known aquifer, so designated by the United States Geological Survey; and

   g. All required permits for the excavation from state or federal agencies have been obtained.

3. The New Hampshire Department of Transportation or its agent may apply directly to the appeals board created under RSA 21-L to be exempted

from the provisions of this chapter or other ordinances or regulations, with respect to the excavation or transportation of materials being used exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

a. The application shall state whether the applicant has requested any exceptions or variances which may be available at the local level, and shall describe the outcome of such requests.

b. Prior to acting on the application, the board shall hold a hearing in the Town of Derry. At least seven days prior to such hearing, notice shall be published in a newspaper of general circulation in the Town, and shall be sent by certified mail to the applicant, the Chair of the Planning Board and the Conservation Commission and, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in Section 165-82.

c. Following the hearing, the board shall issue a written decision, copies of which shall be mailed to the applicant and the parties to whom notice was sent. If an exemption is granted, the written decision shall include:

1. A statement of the precise section of the ordinance or regulation from which the applicant is exempted. The applicant shall not be exempt from any section or provisions not so listed.

2. An identification of the public interest being protected by the ordinance or regulation.

3. A statement of the State interest involved, and of why, in the opinion of the board, that the State interest overrides the interest protected by the ordinance or regulation.

4. Any conditions to be imposed on the applicant to protect the public health, safety, or welfare.

d. The decision of the board may be appealed in the manner providedfor zoning decisions in RSA 677:4-14; provided, however, that adecision under this sub-section D.3 shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required.

E. Other exceptions.

1. The following additional excavation activities are exempt from the permit requirements of these regulations:

a. Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure or the construction or alteration of a parking lot or way including a driveway on a portion

of the premises where the removal occurs; provided, however, that no such excavation shall be commenced without a permit under these regulations unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued.

b. Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment.

c. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E.

2. A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth, at a later date, after giving written notification to the regulator of the intent to remove the stockpiled earth.

### *Section 165-84 Permit Application*

A. Any owner or owner's designee subject to these regulations shall, prior to excavation of his land, apply to the Regulator for an excavation permit and submit a reclamation plan. A copy of the application shall also be submitted to the Town of Derry Conservation Commission. The application shall be signed and dated by the applicant and shall contain at least the following information in addition to that required by the Excavation Application Checklist and other applicable regulations:

1. The name and address of the owner of the land to be excavated;

2. The name and address of the person who will actually do the excavating;

3. The names and addresses of all abutters to the premises which will be excavated;

4. An excavation plan at a scale of no less than one inch equals 100 feet and showing the area to be excavated, appropriate buffers, and any dwelling units, septic systems, and wells within 150 feet of the perimeter of the area to be excavated. All plans submitted to the regulator shall comply with the erosion and sedimentation control provisions of Chapter 170 Land Development Control Regulations. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six copies of the final plans shall be filed with the regulator prior to the issuance of a permit. The excavation plan shall include:

   a. The tax map and number of the parcel to be excavated;

b. The seal and signature of a land surveyor or professional engineer registered in the State of New Hampshire;

c. Existing topography of the site and within 100 feet thereof at contour intervals of two feet, based on a permanent assumed benchmark;

d. Proposed topography of the site and within 100 feet thereof at two-foot contour intervals at the completion of excavation and restoration;

e. The number of acres involved in the project;

f. The volume of material to be removed;

g. The breadth, depth and slope of the proposed excavation (and existing excavation where applicable);

h. The estimated time of duration and description of phasing of the project;

i. Existing vegetation;

j. All surface drainage patterns including wetlands and standing water, lakes, streams, and the like;

k. Location of all easements, on and below the ground;

l. Names, locations, widths and elevations of all public and private roads**,** access drives and rights-of-way on and adjacent to the excavation site; **(Effective 7/5/07)**

m. A log of borings or test pits that extend to either the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data;

n. The location and extent of any stone walls, ledge outcroppings, wells existing buildings, septic systems, utilities, significant natural and man-made features, and the like;

o. A locus map, at a scale of one inch equals one thousand feet 1,000 feet showing the proposed operation in relation to existing roads;

p. Any existing and all proposed excavation areas;

q. Any existing and all proposed accessory facilities activities;

r. Existing and proposed access drives and private roads, including widths and surface materials; **(Effective 7/5/07)**

s. Existing and proposed fencing, buffers or visual barriers, including heights and materials;

t. Storage areas for topsoil to be used in reclamation;

u. All measures to control erosion, sedimentation, water and air pollution, and hazards to human safety;

v. The locations of existing buildings, structures, septic systems and wells on abutting properties within 150 feet of the property boundary;

w. The locations of all driveways and road intersections within 200 feet of the property boundary;

x. Aquifer locations and limits as identified by the United States Geological Survey and other acceptable sources; and

y. Zoning districts on and within 150 feet of the property.

5. A reclamation plan, including a timetable therefore, at the same scale as the excavation plan, and covering the same area. All plans submitted to the regulator shall comply with the erosion and sedimentation control provisions of Chapter 170, Land Development Control Regulations. All plans submitted shall be of a quality that they are easily understood and of accuracy that compliance can easily be checked. At least six copies of final plans shall be filed with the regulator prior to the issuance of a permit. The reclamation plan shall include:

a. The seal and signature of a professional engineer or land surveyor registered in the State of New Hampshire;
b. All boundaries of the area proposed for reclamation;
c. The final topography of the area proposed for reclamation;
d. Final surface drainage patterns, including the locations and physical characteristics of all drainage facilities;
e. A schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime and application rates;
f. Soil conditioning specifications, i.e., liming and fertilizing required base on soils analysis performed by the University of New Hampshire or other equivalent organization;
g. The plant materials to be used in the restoration, and their quantities and sizes;
h. The subsequent reuse of the site, if known;
i. Cross-sectional views showing existing, excavated, and restored topographic configuration;
j. An erosion and sedimentation control plan, regardless of the size of the excavation area;
k. Such other information as the Regulator may reasonably require.

6. Copies of related permit approvals and other documents pertinent to the excavation proposal, such as the Water Supply and Pollution Control Division (RSA 485A:17, RSA 148:5-a), the Wetlands Board (RSA 482-A), stump disposal, New Hampshire Department of Transportation (RSA 249:13-18, access permit), and any other permits required by state or federal regulations.

7. Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the regulator prior to the issuance of an excavation permit. The regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The regulator reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and addressed in the hauling plan.

8. Statements of specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons.

9. Proof that written notice of the proposed excavation has been given to the holders of any mortgages on the property and, if the applicant is not the owner, proof that written notice of the proposed excavation has been given to such owner and that the owner has agreed to allow such excavation.

10. A written statement from the Tax Collector of the Town of Derry (on a form to be furnished and prescribed by the Planning Board) certifying that all current taxes levied against the property have been paid in full and that there are no unreleased tax liens encumbering said property.

11. All application fees as per the excavation application form.

12. Such other information as the regulator may reasonably require.

B. Additional permit requirements

1. No excavation of a new area or expansion of an existing area shall exceed five acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application within one year after the permit expiration date. If reclamation is not completed within one year after the permit expiration date, the Town may declare part or all of the bond forfeited, and use these monies to reclaim the site.
2. If an existing excavation in operation at the time of the adoption of these regulations cannot be restored within one year, no additional new excavation into an undisturbed area shall be permitted until the existing excavated area has been restored in accordance with these regulations.
3. The applicant shall be responsible for a proportionate share of the cost of refurbishing any existing public road(s) which access the excavation site, and for the repair of Town-maintained roads which are damaged as a result of hauling earth from the site. The regulator may require these

costs to be bonded prior to the granting of a permit to excavate. **(Effective 7/5/07)**

4. No solid andor hazardous waste, septage, dredge spoils, or organic waste and debris shall be disposed of on the excavation site unless specifically authorized andor permitted by the appropriate local, state or federal authority.

### *Section 165-85 Prohibited Projects*

The regulator shall not grant a permit:

A. Where the excavation would violate the operational standards of Section 165-86 of these regulations;

B. For any excavation to occur within 50 feet (measured horizontally) of the boundary of any disapproving abutter or within 10 feet (measured horizontally) of the boundary of any approving abutter unless written approval is requested by said abutter. The term "disapproving abutter," as used in these regulations, shall be considered to be one who has not filed a written request with the regulator to allow an excavation within 50 feet of his property line.

C. When the excavation is not permitted by this chapter or other applicable ordinance;

D. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;

E. When the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;

F. When the excavation requires land use permits from state or federal agencies; but the regulator may approve the application when all necessary land use permits have been obtained;

G. Where the project cannot comply with the reclamation standards contained in Sections 165-87 and 165-88 of these regulations; or

H. Where existing visual barriers to public highways would be removed, except to provide access to the excavation.

### *Section 165-86 Operational Standards*

It shall be a violation of these regulations for any person to excavate, or for any owner to permit excavation on his excavation site, when such excavation is subject to a permit under these regulations, without complying with the following minimum standards or when such excavation is not subject to a permit under these regulations pursuant to Section 165-83 without complying with the following express standards:

A. No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.

B. No excavation shall be permitted within 50 feet of the boundary of a disapproving abutter or within 10 feet of the boundary of the approving abutter. Any abutter who does not submit a written request for approval of an excavation to occur within 10 feet of hisher property boundary shall be considered a disapproving abutter.

C. No excavation shall be permitted closer than one hundred and 150 feet to an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun.

D. No excavation shall be permitted within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area or within 25 feet of any other stream, river, or brook which normally flows throughout the year, or any naturally occurring standing body of water less then 10acres, prime wetland as designated in accordance with RSA 482-A:15,I or any wetland greater than five acres in area as defined by the Wetlands Board.

E. Vegetation shall be maintained or provided within the buffer areas required by parts A through C of this section.

F. Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property valuation. The regulator shall have the authority to require additional screening (e.g., vegetation or fencing) where necessary.

G. Appropriate erosion, sedimentation, air and water quality control measures shall be integrated into the excavation process. Excavations shall comply with the erosion and sedimentation control provisions in Chapter 170, Land Development Control Regulations (LDCR).

H. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are strictly prohibited.

I. Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods.

J. No fuels, lubricants, or other toxic or polluting materials or chemicals shall be stored onsite unless done so in compliance with state and federal laws and regulations pertaining to such materials.

K. Where the depth of the excavation will exceed 15 feet and temporary slopes will exceed a grade of 1:1, a fence or other suitable barricade shall be erected to warn of danger or to limit access to the site.

L. Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion (e.g., by seeding, covering, or other acceptable practices). No topsoil shall be removed from the site without first obtaining specific written approval from the regulator.

M. Prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the regulator, sufficient to secure the reclamation of the land area to be excavated.

N. All temporary structures and processing machinery required during excavation operations shall be removed from the site within 30 days after such operations cease.

O. Start-up and shutdown times for all machinery associated with an excavation operation shall be determined by the regulator. Such times shall be reasonable with respect to the type of operation proposed and the character of the neighborhood in which it is located.

P. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.

Q. All proposed access drives or private roads leading to the excavation site shall intersect existing streets and roads at locations that have been duly approved by appropriate state or local officials, and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 249:13-18 (highway access) shall be adhered to by the applicant and shall be shown on the excavation Plan. **(Effective 7/5/07)**

R. Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by federal, state and local authorities.

S. No excavation shall substantially damage any aquifer identified on mapping by the U.S. Geological Survey. The regulator shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:

1. The excavation shall not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
2. The excavation shall not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.
3. The regulator may require that the applicant provide data or reports, prepared by a professional groundwater consultant, which assess the potential for aquifer damage that could be caused by the proposed excavation project.

T. The applicable state statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at the excavation site.

U. No processing machinery shall be erected or maintained on the lot within 300 feet of any property line.

V. Excavation operations shall be set back at least 25 feet from wetlands (as defined in this chapter), and the applicant must demonstrate that no sedimentation or

drainage of the wetlands will occur as a result of the excavation. The regulator shall have the authority to require greater wetlands setbacks in situations where the regulator can demonstrate that the greater setback will be required in order to protect the wetlands from degradation due to the proposed excavation operation.

W. For excavation projects which require a permit from the Water Supply and Pollution Control Division pursuant to RSA 485-A:17, the provisions of that statute, and the rules adopted thereunder, shall supersede the provisions of this section.

X. Nothing herein contained shall be construed as to forbid the creation of a lake or pond, provided that adequate provision has been made for the runoff of water in such manner as will not damage or interfere with the use of any road, highway, access drive or abutting property, and further provided that such lake or pond shall be adequately fenced. **(Effective 7/5/07)**

Y. Existing active excavation operations whose normal activities cease for more than 120 consecutive days shall leave the slopes in such condition that they conform to the provision of Section 165-87A.

## *Section 165-87 Site Reclamation Standards*

Within 12 months after the expiration date of a permit issued under these regulations, or of the completion of any excavation, whichever occurs first, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum standards or when such excavation is not subject to a permit under these regulations pursuant to Section 165-83, to meet each of the following express standards:

A. No slope in soil material shall be left steeper than 2:1 (two horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. The required slope may be modified by the Planning Board where ledge rock necessitates steeper slopes, or to a lesser slope if necessary for soil stability or safety, or for reasonable reuse and development of the lot.

B. Ground levels and grades shall be established as shown on the approved Reclamation Plan as soon as practical during site excavation, but not later than one year after excavation has been completed.

C. Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or strippings, if any, but in any case covered by soil capable of sustaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.

D. All earth and vegetative debris, stumps, boulders, etc. resulting from the excavation shall be removed or otherwise lawfully disposed of.

E. All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the regulator. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.

F. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety, unless the regulator shall specify different restoration.

G. The topography of the land shall be left so that water draining from the site leave the property at the original, natural drainage points and in the natural proportions of flow. For excavation projects which require a permit from the Water Supply and Pollution Control Division pursuant to RSA 485-A:17, the provisions of that statute, and the rules adopted under it shall supersede this Sub-section G as to areas of excavation sites covered thereby. The excavator shall file a copy of the permits issued under RSA 485-A:17 with the regulator.

H. If deemed necessary by the regulator, suitable trees or shrubs may be required to be planted elsewhere on the site in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.

I. Depending upon the proposed reuse of the affected area, the following criteria shall govern the depth of the final excavation:

1. If the site is to be reused for building purposes, the minimal elevation of the bottom of the excavation shall be at least five feet above the mean annual high water table, or it shall conform to the original grade prior to any excavation or disturbance of the earth.

2. If the site is to be reused as a pond, the minimal elevation of the bottom of the excavation shall be 5 feet below the mean annual high water table.

## *Section 165-88 Incremental Reclamation*

Except for excavation sites of operating stationary manufacturing plants, any excavated area of five contiguous acres or more, which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a two-year period, shall be reclaimed in accordance with the provisions of Section 165-87 of these regulations, within 12 months following such depletion or two-year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. Each operator, other than the operator of stationary manufacturing plants which are exempt from permit requirements pursuant to Section 165-83C, shall prepare and submit for the regulator's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site.

### *Section 165-89 Exceptions to Operational and Reclamation Standards*

The regulator, upon application and following a hearing held in accordance with the provisions of Section 165-91 of these regulations, may grant an exception in writing to the standards contained in Sections 165-86, 165-87 and 165-88 for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed, and include reasonable alternative conditions or standards. The regulator's decision on any request for such exception may be appealed in accordance with Section 165-95.

### *Section 165-90 Application for Amendment To Permit*

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation permit, which application shall be subject to approval in the same manner as provided for an excavation permit.

### *Section 165-91 Hearing*

A. Prior to the regulator approving or disapproving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within 30 days of receipt of a completed application.

B. A notice of the hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time and place of the hearing.

C. A legal notice of the hearing shall also be published in a newspaper of general circulation in the Town at least 14 days in advance of the hearing. The 14 days shall not include the day of publication nor the day of the hearing, but shall include any Saturday, Sunday or legal holiday within said period.

D. A notice of the hearing shall be sent by mail to the members of the Derry Conservation Commission.

E. A legal notice shall also be posted in at least 3 public places in Town.

F. The cost of notifying the abutters and the cost of publishing the legal notice in the newspaper shall be paid by the applicant.

G. Within 20 days of said hearing, or any continuation thereof, the regulator shall render a written decision approving or disapproving the application. If disapproved, the regulator shall state the reasons for disapproval in writing.

### *Section 165-92 Issuance of Permit*

A. If, after the public hearing, the regulator determines that the project for which the application was submitted is not prohibited by these regulations, and if the regulator

approves the application, the regulator shall grant a permit to the applicant provided that, prior to issuing the permit, the regulator shall require:

1. The posting of a bond, with such surety as the regulator shall reasonably determine, with the Town Treasurer in an amount as reasonably set by the regulator based on the working size of the project (not including stockpile areas or areas already restored where excavation work is completed), to guarantee compliance with the terms of the permit. The bond shall not expire until 18 months following the end of the permit or any extension thereof.

2. That any and all local, state or federal permits must have been obtained, as required, and that copies of said permits have been provided to the regulator.

3. The payment of the excavation permit fee as specified in Section 165-96.

B. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto.

C. The permit shall not be assignable or transferable without the prior written consent of the regulator.

D. The permit shall specify the date upon which it expires. The expiration date of all excavation permits issued by the Town of Derry shall be December 31 in the year in which they are issued.

E. The regulator may include in the permit such reasonable conditions as are consistent with the purpose of these regulations and may include requirements for a permit for excavation which are more stringent than the standards set forth in RSA 155-E, including the provision of visual barriers to the excavation.

F. The calling of a bond or surety which is found not to hold sufficient monies to restore the area does not, however, relieve the landowner of his obligation to comply with the reclamation provisions of these regulations. It shall be the responsibility of the regulator to take whatever means are necessary to force compliance.

### *Section 165-93 Renewal of Permit*

A. All valid excavation permits issued by the Town of Derry shall expire on December 31 in the year in which they are issued.

B. The regulator may renew any existing permit following:

The filing of a completed application for permit renewal with the regulator by October 1. Said application shall be accompanied with the renewal fee as specified in Section 165-96;

Inspection of the excavation site by the Regulator by October 30 to check the operation and to order any necessary work to be completed by December 31 in order to be in compliance with the terms of the permit and these regulations;

A determination by the regulator that the work being performed on the site is consistent with that as shown on the approved excavation and/or reclamation plan(s) which served as the basis for the permit for which the renewal is being requested; and

A public hearing on said renewal application as provided for in Section 165-91.

C. Should the regulator, for any reason, deem that a renewal of the permit is not in the best interests of the Town of Derry, the regulator shall notify the applicant in writing, by December 31, stating the reason(s) for denial, and shall refund the renewal fee.

### *Section 165-94 Performance Bond*

The regulator shall establish the amount of a performance bond prior to the issuance of the excavation permit. The bond amount shall be reasonably sufficient to guarantee compliance with the restoration in accordance with the provisions of Section 165-87. The bond requirements shall be based on the acreage of the project or approved phases and the estimated per-acre restoration costs. The bond will be returned to the applicant when the restoration work has been completed and a final satisfactory site inspection has been conducted by the regulator or its designee. The applicant shall pay for any bond reviews by the Town's designated engineer andor Town Counsel, or any other professional service necessary to review the proposed excavationreclamation plan.

### *Section 165-95 Appeals*

A. If the regulator disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the regulator for a rehearing on such decision or any matter determined thereby.

B. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within 10 days of the date of the decision appealed from.

C. The regulator shall either grant or deny the request for rehearing within 10 days and, if the request is granted, a rehearing shall be scheduled within 30 days.

D. Any person affected by the regulator's decision on a motion for rehearing to the regulator may appeal in conformity with the procedures specified in RSA 677:4-15.

### *Section 165-96 Fees*

A. In accordance with the provisions of RSA 155-E:8, an excavation permit fee in the amount of $50 shall be payable to the Town of Derry prior to the issuance of a permit or a renewal permit.

B. The regulator may assess reasonable additional fees necessary to perform application plan review and the annual compliance review.

### *Section 165-97 Enforcement*

A. The regulator may suspend or revoke the permit of any person who has violated any provision of his/her permit or these regulations or made a material misstatement in the application upon which his/her permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section 165-95.

B. The regulator shall issue cease and desist orders against any operator if he/she is found in violation of any of the terms of these regulations. Such orders shall remain in effect until the violation is corrected.

C. Any cease and desist order issued by the regulator shall take effect, for the purpose of these regulations, on the date it is issued, and shall be served by either certified mail or by a law enforcement officer.

D. Fines, penalties, and remedies for violations of these regulations shall be as stated in RSA 676:15 and 676:17.

E. To ascertain if there is compliance with these regulations, a permit issued hereunder or an order issued hereunder, the Regulator or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

### *Section 165-98 Conflicting Provisions*

A. Where the provisions of these regulations are in conflict with other ordinances, regulations, or laws, the more stringent shall apply.

B. Nothing in these regulations shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in state laws, and no exemption under these regulations shall be construed as an exemption from any state statute.

### *Section 165-99 Waiver*

The regulator, upon application and following a hearing, may grant a waiver, in writing, to the standards contained in these regulations for good cause shown except as prohibited

by RSA 155-E. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternatives.

## ARTICLE XII SIGNS (Repealed/Replaced 02/07/2014)

### *Section 165-100 Purpose*

A. Signs can perform important functions that are essential for public safety and general welfare including communicating messages, providing information about goods and services, and orienting and directing people. It is further recognized that because of potential detrimental impacts, signs must be regulated to:

1) Prevent hazards to vehicular and pedestrian traffic safety by controlling the number, location and placement of signs;
2) Provide easy recognition and legibility of permitted signs and uses and promote visual order and clarity on streets;
3) Facilitate efficient communication by implementing design criteria that produces signs which can easily be read, recognized and are without distracting elements;
4) Complement the historic and scenic character of the Town of Derry;
5) Support business and community vitality by informing the public of available goods, services and activities;
6) Provide guidance on the type, location and size of signs to protect the public from hazardous and distracting displays, and create an attractive environment which is conducive to business, industry and tourism;
7) Sufficiently differentiate local signs from official/government signs so as to avoid potential confusion.
8) Enable fair and consistent enforcement of the sign regulations; and,
9) Address new technologies.

### *Section 165-101 General Provisions*

A. Signs shall be permitted as designated in this Section or in other Sections of this ordinance, but all signs shall be subject to the following regulations. Existing signs that were lawful at the time of enactment or amendment of this chapter (2/7/2014) shall be allowed to be continued. However, if and when such signs are replaced or substantially repaired, the new or repaired sign or signs shall conform to the provisions contained herein. In the event that there is a conflict between this Article and another Section of the Ordinance, the more restrictive provision shall apply.

1) No sign shall be erected without a sign permit issued by the Code Enforcement Officer unless otherwise exempted by the provisions of this chapter.
2) Pursuant to applicable State of New Hampshire RSAs as may be amended from time to time, signs may not be erected adjacent to a state or federal right of way without first obtaining a permit from the New Hampshire Department of Transportation and must comply with local rules, regulations and requirements. Signs proposed to be erected within the right of way of any state controlled Class I, II, or III highway are subject to all state regulations governing their installation and location.

3) Official town, state or federal signs shall be exempt from these regulations. These include but are not limited to portable reader boards, and message boards installed at municipal facilities.
4) No permit is required for a temporary sign, such as signs advertising barn and yard sales, and auction signs, if the sign is no more than six square feet in size and is posted for a period not to exceed seven (7) days.
5) A new business may use temporary signs while awaiting the arrival of permanent signage; however, temporary signs shall be allowed only until permanent signage is installed, or for 60 days, whichever is the shorter period of time, and shall be limited to the same area and setback requirements as the permanent signage.
6) Poster type signs are allowed at the street level only, and must not occupy more than 20% of a window area and shall be no larger than 36" x 48". The poster type sign must be related to the use conducted or goods available on the premises.
7) Construction signs identifying parties involved in construction on the premises are allowed to the extent that they are no larger than 32 square feet. Such signs shall remain only for the duration of work on the property and must be removed promptly by the contractor at project completion.
8) No sign shall be erected adjacent to any public way in such a manner as to obstruct clear and free vision or where, by reason of its position, shape, color, illumination, or wording, the sign may obstruct the view of, or be confused with, any authorized traffic sign, signal or device, or otherwise constitute a hazard to pedestrian or vehicular traffic. Such determination shall be made by the Code Enforcement Officer.
9) Whether attached to a building or free standing, no part of any sign or advertising device shall be closer than 10 feet to a lot line or public way. The Traditional Business Overlay District and the Central Business District are not subject to this requirement.
10) Animated, moving, flashing signs, and signs that emit audible sound, noise, or visible matter (i.e., smoke, bubbles, or water), are prohibited. Scrolling, flashing, or changing messages are also prohibited, including full resolution video displays, and computer generated video unless otherwise permitted. See Section 165-101.11, Electronic Message Center Signs.
11) Pursuant to applicable State of New Hampshire RSAs as may be amended from time to time, signs are prohibited from being affixed, attached, or displayed upon any object of nature, utility pole, telephone pole, or highway sign in such a manner that the object is utilized as an integral part of the sign's support.
12) No sign shall be more than 40 feet above ground level except when attached to a building.
13) No sign attached to a building shall project over the roof line of the building.
14) Billboards are prohibited.
15) Public traffic and directional signs, warning signs, Historical, Cultural, and Natural Site signs, and signs designating public activities shall be permitted in all districts.
16) Warning signs shall not exceed three square feet, except as otherwise approved by the Code Official.
17) Special Event signs are allowed only on the lot for which they are advertising, can be in place fourteen (14) days prior to the event and must be removed within two (2) days following the close of the event. Special Event signs shall be erected no more than once per quarter, in any calendar year, unless an

exception has been granted. Exceptions to the number of events or the sign location shall be requested in writing and submitted to the Town Administrator.

18) Church signs in residential areas shall be limited to 24 square feet. They shall not be internally illuminated, but may be externally illuminated. Church signs in all other districts shall comply with that district's sign requirements.
19) No sign shall include nudity; images of or references to specific sexual conduct or activities; images of or references to specific anatomical areas; or images of or references to instruments, devices or paraphernalia which are designed for use in connection with specific sexual conduct or activities.
    a. Specific anatomical areas or specific sexual conduct or activities, including instruments, devices or paraphernalia which are designed for use in connection with specific sexual conduct or activities, or their images, shall not be visible in any fashion whatsoever from the exterior of the building in which the business is located.
    b. The terms nudity, specific sexual conduct or activities and specific anatomical areas are defined in Section 165-27B.
20) Sandwich board signs, as defined in Section 165-5, are not to be placed on sidewalks in such a way that they restrict pedestrian traffic in any manner. The addition of a sandwich board shall not exceed the permitted total number of square feet of sign allowed under the ordinance.
21) No permit shall be required for real estate sale signs. One sign per lot containing the message that the real estate on which the sign is located (including buildings for sale, lease or rent) shall be permitted. Such signs shall not be illuminated and shall not exceed four (4) square feet in area in residential districts or eighteen (18) square feet of area in non-residential districts and shall be removed immediately after sale, lease or rental. Additional signs on commercial lots can be permitted at the discretion of the Code Enforcement Officer on a case by case basis.
22) All signs erected in The Town of Derry shall comply with Section 3107 of the International Building Code as currently adopted by the State of New Hampshire and as amended by the Town of Derry.
23) Violations of this Article are subject to the provisions of Article XVI, Section 165-32, Violations and Penalties.

### *Section 165-101.1 Signs in Residential Districts*

A. Notwithstanding the provisions of Section 165-101, General Provisions, the following shall apply in all residential districts.

1) One sign identifying a multi-family complex/development shall be allowed provided that it does not exceed 20 square feet in area.
2) Residents may erect a single freestanding sign not exceeding 3 square feet in area, showing the owner's name and/or address. Persons conducting home occupations may further erect a single sign not to exceed 3 square feet if so approved by the Zoning Board of Adjustment.
3) Signs larger than six square feet shall be set back at least ten feet from the front lot line or public way.
4) One unlit sign naming a residential development may be approved by the Planning Board as part of a subdivision or site plan review approval. The sign

shall not exceed sixteen (16) square feet in area, shall be durably constructed, solidly erected and provisions shall be made, to the satisfaction of the Planning Board, for future maintenance of the sign. No sign shall be placed in the public right of way.

### *Section 165-101.2 Signs in Neighborhood Commercial Districts*

A. Only one free standing sign shall be permitted within a Neighborhood Commercial District. Such sign shall be for facility name and address identification only and shall not contain any product or advertising information. Such sign shall have a maximum surface area of 10 square feet on each of the two sides. The maximum height of the sign above grade shall be eight feet and shall be located a minimum of 10 feet from all property lines of the parcel. The sign shall not be internally illuminated and internally illuminated lettering shall not be utilized.
B. In addition to the one free-standing sign, one flat sign attached to the surface of the building will be permitted. Such sign shall have a maximum surface area of 20 square feet, shall not be internally illuminated and shall not utilize internally illuminated lettering. No other signs will be permitted in a Neighborhood Commercial district.

### *Section 165-101.3 Signs in Business, Commercial, and Industrial Districts*

A. Signs or other advertising devices in business or industrial districts shall be permitted as follows:

1) Signs as are permitted in the residential districts.
2) A maximum of three signs for a business or industrial establishment whether attached to a building or free standing to include two building signs and one free standing sign.
3) Shopping mall signs shall be limited to three per business to include the signs on a common pylon for the plaza/mall and the individual building business sign. This does not include unit number identification on the rear door(s) of the business which provides life safety information.
4) For commercial use, the aggregate area of all signs shall not exceed two square feet for each linear foot of public street frontage. This provision does not apply to shopping malls.
5) For industrial uses in solely industrial districts, the aggregate area of all signs shall not exceed four square feet for each linear foot of public street frontage.
6) No sign shall be greater than one hundred square feet in size in a commercial district, or greater than 200 square feet in size in an industrial district.
7) Temporary signs such as notices of special sales or sandwich boards, etc., shall be permitted, but shall not be located off the lot containing the business. See also Section 165-101A.17, Special Event Signs and Section 165-101A.20, Sandwich Boards.
8) In the Central Business District, there shall be no setback requirement provided that a free-standing sign, or a sign mounted to a building which projects in a perpendicular fashion shall not impede line of sight.
9) Existing free standing signs that are not in compliance with the regulations shall remain non-conforming uses until such time as the business associated with

such sign shall not be open to the public for a period of sixty (60) days; the specified business, for which the sign exists as of the date of the adoption of this chapter should change; or the sign should be more than fifty percent (50%) destroyed by fire, accident and/or natural disaster; then all free standing signs shall be brought into compliance with this chapter. This does not include signs for businesses that are undergoing permitted renovations or that operate seasonally.

10) Wireless Communication Facility signs shall be limited to those required for cautionary or advisory purposes only.
11) Signs for single occupant buildings located in the Office Business District shall be limited to one sign per business which shall not exceed 10 square feet in size, shall not be internally illuminated nor contain internally illuminated lettering, and shall be set back on the lot a distance of 10 feet from the nearest edge of the roadway pavement. In cases of multi-tenant buildings, the sign for each business shall be located on one common sign and be limited to six (6) square feet per tenant.

### *Section 165-101.4 Signs in the General Commercial III District*

A. Signs in this district shall be of a low profile, monument style and must compliment the architectural design of the building and surroundings.
B. No internally illuminated, scrolling, or electronic signs of any type shall be permitted.

### *Section 165-101.5 Signs in the Traditional Business Overlay District (TBOD)*

A. The following provisions shall apply to signs in the TBOD only. Except where specifically defined herein or otherwise defined in this chapter, all words used in this subsection pertaining to the regulation of signs shall carry their usual and customary measure. The purpose of this subsection is to promote the health, safety and the general welfare in accordance with the future development of the Traditional Business Overlay District and to protect important views, create a quality downtown image, and to reduce visual clutter in this district. The sign regulations for the Traditional Business Overlay District concerning the size, placement and certain aspects of design, have been developed to integrate signs with the visual environment, and to improve the effectiveness of individual signs through emphasis on appropriate design. It is the intent to encourage signs which will be compatible with the buildings and their surroundings, be informative, legible, and provide examples of quality graphics appropriate for the community.

1) General Regulations:
    a. Signs shall be permitted in this district in accordance with the provisions of this chapter, subject to further compliance with the following limitations.
    b. Any sign located within a public right-of-way is subject to town approval.
    c. In the Traditional Business Overlay District there shall be no setback requirement provided that a free-standing sign or a sign mounted to a building which projects in a perpendicular fashion shall not impede line of sight.

d. Display signs not greater than two square feet, pertaining to churches, service clubs or civic organizations may be erected or displayed. For the purpose of this section, civic and service organizations shall be defined as non-profit establishments organized by a group of local citizens.
e. No sign shall be placed upon a marquee, unless displayed on or around the outside faces or edge of the marquee. The lettering within such signs shall not be over 1.5 feet high. This sign area shall be included in the maximum aggregate sign area allowed for said property.
f. Signs shall not be permitted to be painted upon or affixed to any object within a public right of way, a community facility, or public recreation area, except signs essential for the public safety and welfare.
g. No roof signs shall be permitted.
h. A parapet sign will be allowed as part of an approved exterior elevation design, but not more than one-third (1/3) of the sign may exceed the roofline.
i. Sandwich boards are allowed subject to the requirements of Section 165-101, Sandwich Boards.
j. Existing signs that are not in compliance with the regulations shall remain valid, pre-existing, non-conforming uses until such time as the business associated with such sign shall not be open the public for a period of sixty (60) days, or the specified business for which the sign exists as of the adoption of this chapter should change, or the sign should be more than 50% destroyed by fire, accident and/or natural disaster; then all signs shall be brought into compliance with this chapter. This does not include signs for businesses that are undergoing permitted renovations or that operate seasonally.
k. All projecting signs shall be located in such a manner so as not to block line of sight from a motor vehicle or from pedestrian foot traffic and no portion of the sign shall be located less than 8 feet from the grade.
l. Decorative flags, banners and awnings depicting a product sold or a service rendered shall be considered a sign and shall comply with all the requirements of this chapter.
m. No neon, argon, or krypton, shall be permitted.
n. No sign shall be internally illuminated nor shall a sign utilize internally illuminated lettering.
o. No monument signs shall be permitted.
p. Unless otherwise specified, the following permanent sign provisions shall apply:
    i. The aggregate area of all signs permitted on any lot shall not exceed one square foot for each linear foot of street frontage but in no case shall it exceed 50 square feet, whichever is less for single tenant buildings.
    ii. A minimum total sign area of 20 square feet shall be permitted on any lot regardless of linear footage of street frontage.
    iii. One additional separate wall sign, not to exceed 50 square feet shall be allowed which contains no advertising but promotes the name of the building.
    iv. On lots with multiple businesses, each business shall be allowed a sign having a maximum of twenty (20) square feet.

### *Section 165-101.6 Campground Signs*

A. Campground signs shall conform to a maximum size of 20 square feet and be limited to one sign per entrance.

### *Section 165-101.7 Political Signs*

A. Political signs shall conform, be erected, and removed pursuant to the appropriate State of New Hampshire RSAs as may be amended from time to time. Political signs are not allowed on public property, but they may be displayed on private property with the consent of the landowner. The candidate must remove the sign within five (5) days following the election. The candidate is personally liable for removal/disposal of the sign after the five (5) day period.

### *Section 165-101.8 Off Premise Signs*

A. Off-premise signs are permitted, provided that the owner of the lot on which the sign is to be placed, has granted a recorded easement for the sign.

### *Section 165-101.9 Nuisance Signs*

A. An unsafe or abandoned sign is declared a public nuisance, and shall be abated by the Owner within fifteen (15) business days of receiving notice from the Code Enforcement Officer. After thirty (30) days from the date of notice, the sign may be removed by the Town of Derry. The property owner shall be personally liable for costs incurred by the town for removal of the sign. Such costs shall become a lien on the real estate.

### *Section 165-101.10 Interactive Digital Signs*

A. Interactive digital signs are permitted in the Business, Commercial, and Industrial districts but shall meet all setback and other relevant requirements for the zone and shall be subject to Planning Board review and approval.

### *Section 165-101.11 Electronic Message Center Signs*

A. Electronic message center signs are allowed in the General Commercial and Industrial IV districts only. All illumination elements on the face of an electronic message center sign shall remain at a fixed level of illumination for a period of not less than five (5) seconds. Changes from one message to another shall be accomplished by the change of all illumination elements on the face of an electronic message center sign simultaneously, with the provision that the sign may fade to complete darkness and then re-illuminate with or fade to the new message. Electronic message center signs shall be equipped with the ability to adjust the brightness of the sign, and shall not be operated at a brightness which is greater than 0.3 foot candles above ambient light

conditions as measured by using a foot candle light meter held at height of five feet and aimed towards a sign consistent with the sign-to-viewer distance. Electronic message center signs shall not contain animation.

### *Section 165-102 Non-Conforming Use Signs*

A. Any conforming sign advertising and located on the same premises with a non-conforming use, may be maintained, repaired, and replaced during the life of the non-conforming use subject to compliance with this Article.

B. Existing signs that are not in compliance with these regulations shall remain valid, pre-existing, non-conforming uses until such time as the business associated with such sign shall permanently be closed and not be open to the public for a period of sixty (60) days, or the specified business for which the sign exists as of the adoption of this chapter should change, or the sign should be more than 50% destroyed by fire, accident and/or natural disaster; then all signs shall be brought into compliance with this chapter. This does not include signs for businesses that are undergoing permitted renovations or that operate seasonally.

### *Section 165-103 (Reserved for Future Use)*

## ARTICLE XIII NON-CONFORMING USES OF LAND AND STRUCTURES

### *Section 165-104 Intent*

A. Within the districts established by this chapter, or amendments that later may be adopted, there exist lots, structures and uses of lots and structures which were lawful before this chapter was enacted or amended, but which would be prohibited, regulated, or restricted under the terms of this chapter or future amendment. It is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this chapter that nonconformities shall not be enlarged upon, extended or expanded, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

B. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this chapter and upon which actual building construction has been carried out diligently. "Actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

### *Section 165-105 Non-Conforming Lots of Record*

In any district in which single-family detached dwellings are permitted, a single-family detached dwelling and customary accessory buildings may be erected on a single lot of record existing on the effective date of adoption or amendment of this chapter, subject to the limitations of 165-7A and the following provisions:

A. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

B. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of the adoption or amendment of this chapter, and if all or part of the lots do not meet the requirements established for lot width or area, the lands involved shall be considered to be an undivided parcel for zoning purposes, and no portion of said parcel shall be used or sold in any manner which diminishes compliance with the lot width and area requirements of this chapter, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this chapter.

### *Section 165-106 Non-Conforming Use of Land*

Where, at the time of passage of this chapter, lawful use of land exists which would not be permitted by the regulations imposed by this chapter, the use may be continued as long as it remains otherwise lawful, provided that:

A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied by such use on the effective date of adoption or amendment of this chapter;

B. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of the adoption or amendment of this chapter;

C. If any such non-conforming use of land ceases for 12 months or more, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which the land is located.

D. This section shall not be deemed to apply to residential lots described in Section 165-7B.

### *Section 165-107 Non-Conforming Structures*

Where a lawful structure exists on the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following provisions:

A. No such non-conforming structure may be enlarged or altered in any way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

B. Should such non-conforming structure or non-conforming portion of the structure be abandoned for 12 months or more, or damaged or destroyed by fire or other cause or its use diminished by eminent domain taking to the extent of more than 50% of its replacement cost at the time of the damage or destruction or taking, and a building permit for such reconstruction, repair or replacement is not applied for within 6months after such event, such structure may not be reconstructed except in conformity with the provisions of this chapter.

C. Should such structure be moved, for any reason, for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

D. This section shall not be deemed to apply to residential lots described in Section 165-7B.

### *Section 165-108 Non-Conforming Uses of Structures or of Structures and Premises in Combination*

If lawful use involving individual structures, or of structures and premises in combination, exists on the effective date of adoption or amendment of this chapter, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

A. No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

B. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of the adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

C. If no structural alterations are made, any non-conforming use of a structure and premises may, as a special exception, be changed to another non-conforming use provided that the Zoning Board of Adjustment shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Zoning Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this chapter.

D. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations of the district, and the non-conforming use may not hereafter be resumed.

E. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for 12 consecutive months or more (except where government action impedes access to the premises), the structure, or structure and premises in combination, shall not hereafter be used except in conformity with the regulations of the district in which it is located.

F. Where non-conforming use status applies to a structure and premises in combination, voluntary removal or destruction of the structure shall eliminate the non-conforming use status of the land. Destruction for the purpose of this sub-section is defined as damage to an extent of more than 50% of the replacement cost at the time of removal or destruction.

G. Should such non-conforming use of a structure or non-conforming portion of a structure covered by this section be damaged or destroyed by fire or other cause, or its use diminished by eminent domain taking to the extent of more than 50% of its replacement cost at the time of the damage, destruction or taking, and a building permit for such reconstruction, repair or replacement is not applied for within 6 months after

such event, such structure may not be reconstructed except in conformity with the provisions of this chapter.

H. This section shall not be deemed to apply to residential lots described in Section 165-7B.

### *Section 165-109 Repairs and Maintenance*

A. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10% of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

B. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition and such condition continues without the institution of corrective action for 30 days after notice thereof from said official**,** it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

C. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

### *Section 165-110 Special Exceptions Not Considered Non-Conforming Uses*

Any use which is permitted as a special exception in a district under the terms of this chapter (other than a change allowed by Zoning Board of Adjustment action from a non-conforming use to another non-conforming use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall be considered a conforming use.

## ARTICLE XIV GROWTH MANAGEMENT (Effective 4/2/99)

### *Section 165-111 Short Title*

This article shall be known and may be cited as the "Growth Management Ordinance (GMO) of the Town of Derry, New Hampshire."

### *Section 165-112 Statutory Authority*

The Growth Management Ordinance (GMO) is enacted pursuant to the authority granted under RSA 674:16, 674:17, 674:21, 674:21-a and 674:22.

### *Section 165-113 General Considerations; Policy Objectives And Purposes*

A. The Town of Derry has been experiencing unprecedented and rapid growth with respect to its population, housing, land development and utilization of resources since the mid 1980's. In real terms, Derry's population growth has far exceeded other communities in Rockingham County, especially since 1980. Derry's population grew by 10,700 persons from 1980 to 1990, an increase of over 50% during this period. Londonderry, its neighbor, grew by 6200 persons in the same period. However, towns in the remainder of the County experienced significantly lower growth in real terms. Housing starts in a similar period show that from 1980 to 1993 Derry constructed over 6,000 housing units, where Londonderry constructed less than 3,000 and other surrounding towns far fewer.

B. This period of rapid growth threatens to continue unabated with its attendant demands on public services and facilities. Transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities and requirements have been and are being constructed to meet the needs of the town's growing population; but the town has been unable to provide these services and facilities at a pace which will keep abreast of the ever-growing public need. Derry has taxed itself to the very limit, having one of the highest property tax rates in the State of New Hampshire and certainly the highest among its neighbors. Derry's property tax rate in 1995 was $41.41 per $1,000.00, an increase of almost 39% percent from 1990. In 1997, Derry's tax rate was the highest of the surrounding communities. Derry is faced with a continuing additional demand for services, including a requirement to build additional school facilities so as to accommodate its existing student population in accordance with State of New Hampshire mandates. Future residential growth will increase the demands on Derry's crowded schools and overtaxed population.

C. Derry's major transportation arteries are at full capacity and, in most cases, at levels of service indicative of a failure condition. Some of these arteries are state highways and their improvement is not prioritized in the state's ten year transportation plan. All of Derry's major arteries, including compact roads and town arterial streets are severely impacted by the growth of surrounding communities in addition to Derry's own astounding growth. Route 102, Derry's main street, crosses Interstate 93 at one of its

major junctions, also crossing Route 28 and the Route 28 By-pass at major intersections, one of which is a rotary located in a Historic District. These roads form a north-south and east-west transportation corridor providing access for most of the surrounding communities to Interstate 93 and to the Boston commuter market. Accordingly, Derry is faced with extremely expensive highway improvements resulting from impacts both within and without the community. These must be funded almost exclusively out of Derry's already extremely high tax rate.

D. Faced with the physical, social and fiscal problems caused by the rapid and unprecedented growth, the Town of Derry has adopted an updated comprehensive Master Plan to guide its future development; and it has adopted a revised zoning map and a Capital Improvement Program so as to provide for a balance of the orderly, adequate, and economical development of the community. In doing so, Derry has considered and sought to balance its future residential, commercial, industrial, and public land uses with the availability of community facilities, including transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities.

E. In adopting these policies, Derry has considered local and regional development needs, recognizing in the process that over 50% of its housing units are multi-family or mobile home units. These provide low and moderate income housing opportunities far in excess of its surrounding communities. At least 1700 of these low and moderate income units have been constructed since 1980. Derry has also made elderly housing one of the preferred uses in its downtown redevelopment plan so as to provide additional, properly located elderly housing.

F. This Growth Management Ordinance is adopted to promote and ensure the orderly development of land within the Town of Derry, to promote public health, safety, and welfare of its residents, and for the following specific purposes:

1. To manage growth to ensure its compatibility with the revised Master Plan for the Town of Derry. The Master Plan has taken a long-term view of Derry's future and its land use patterns. In doing so the Planning Board has determined a long term usage pattern for all remaining developable land in Derry, anticipating a full build-out population of 45,000 residents, as compared to the current Derry population of approximately 32,000 people.

2. To regulate and control the timing of development consistent with the Master Plan and Capital Improvements Program and provide a means to temporarily regulate the number of building permits issued during periods of excessive development pressure.

3. To assess and balance community development needs. The Planning Board has considered the necessity to immediately address the imbalance of Derry's tax base, exacerbated by the State mandated 1993 revaluation which reduced Derry's net valuation by approximately one-third (1/3). The Planning Board finds that the resulting increase in an already heavy burden imposed on Derry's residential taxpayers requires immediate redress. To meet this imbalance, the Planning Board has recommended adoption of a 30-year Capital Improvement Plan upon which the growth management features of this article are based.

4. To consider past and future regional development conditions.

5. To ensure that essential municipal services, such as schools, transportation/roads, sewerage and water services, are available and will have sufficient capacity and quantity to accommodate new development. Derry's Planning Board has considered, in view of its findings as to the desirable land usage in Derry and its ultimate population estimate of 45,000 people, the minimum long-term capital needs of Derry in the form of a Capital Improvement Program. The resultant Capital Improvement Plan balances Derry's ability to pay with the needs anticipated for essential public facilities to service the build-out population.

6. To balance Derry's long-term capital needs, the impact of future development and Derry's ability to pay for the essential services this development requires. The Planning Board considers that Derry taxpayers are simply unable to support the rate of residential growth that Derry has sustained in the past. It has also considered the impact imposed upon Derry by development in surrounding communities and its already strained ability to absorb ever increasing educational costs with its limited tax base.

7. To implement a residential unit allocation system to regulate the rate of residential growth commensurate with the Town's ability to provide adequate public facilities and services, based upon the goals, policies and objectives set forth in the Capital Improvement and Master Plans.

8. To prevent deterioration of public facility service levels, environmental degradation, and potential land use conflicts.

### *Section 165-114 Temporary Residential Building Permit Limitation*

The Planning Board hereby finds that Derry's short-term fiscal situation requires that a temporary building permit limitation be established. Derry's schools have been found to be overcrowded and inadequate for its existing student population. Seven hundred students are now being educated in temporary or portable facilities. The state has required Derry to construct new school facilities anticipated to cost $15,000,000.00. These facilities are required in spite of the fact that Derry has recently constructed a new middle school, and sin spite of the fact that Derry has one of the highest property tax rates in the State of New Hampshire and the highest rate in Rockingham County. The Planning also recognizes the uncertainty now attending New Hampshire's system of funding public education. Derry currently has approximately 120 outstanding and un-issued single-family residential building permits which, if used, will exacerbate an already overcrowded school situation. Additionally, Derry's short-term capital needs must consider the design and implementation of a viable transportation infrastructure for Derry's core community and industrial/commercial development needs. The Planning Board finds that these needs must be met as a priority among Derry's capital improvement requirements and has prepared a Capital Improvement Plan reflecting this

priority. Accordingly, and in anticipation of additional submissions of residential plans and permit applications, the Planning hereby establishes this temporary building permit limitation and permit allocation system pursuant to RSA 674:22.

A. No more than 50 building permits for residential housing units shall be issued in any year until the expiration of this temporary building permit limitation.

1. Building permits shall be allocated based upon the following classes of priority:

   a. Building permits for subdivisions or developments approved and otherwise eligible for the Basic Development Right pursuant to Section 165-116A below.

   b. Other building permit applications, if any.

2. Lots which are exempted pursuant to RSA 674:39 and 676:12V, or which are covered under legal settlement agreements with the Town pertaining to their status as vested lots, shall not be affected by this provision, nor shall building lots legally existing as of the date of first posting of this article for public hearing, June 5, 1998, which otherwise conform to this chapter and as to which a single residential unit building permit is applied for. The provisions of this section shall not apply to housing for older persons under RSA 354-A:15, and supported residential care facilities under RSA 151 and New Hampshire Code of Administrative Rules He-P 805.

3. For purposes of establishing allocation priorities, permits shall be issued quarterly, commencing on the 1st days of July, October, January and April in each fiscal year on the basis of a pro rata allocation of then-available permits, on a first-come-first-served basis until exhausted. All permits available in any quarter shall be available for issuance as of the first day of such quarter. Any unused building permits in any quarter shall be included in the next quarter's allocation. Authorized but unissued building permits in any year shall be carried forward and be additional to the next fiscal year's building permit allocation.

4. Permits shall be allocated pro rata based upon the number of applicants ineach class, as defined in sub-section A.1 above, up to the maximum allowable permits in any quarter. Each eligible applicant shall receive at least one building permit until the respective allocation is exhausted. If the relevant allocation would be exhausted, the available permits shall be allocated within each class, based upon the date and time of application filing, until exhausted. Eligible applicants who applied for building permits and were unable to receive at least one permit in each allocation, shall receive priority over other applicants in the class for the next occurring allocation.

B. This permit limitation provision shall expire in four years; provided, however, that the Planning Board shall annually review and act upon this limitation as described in sub-section C below; and further provided that the Planning Board may re-impose such building permit limitation for a period(s) not to exceed one year, if it determines that conditions are such that prospective growth, based upon the number of approved but un-built residential lots that are then available to be built, and/or the anticipated applications for additional residential building lots will cause conditions which threaten a short-term and significant disruption of the Town's Growth Management Plan. Conditions which the Planning Board may consider are:

1. Availability of excess school capacity of 10% or less.

2. Projected residential growth, based on building permits issued, which would exceed 5% percent over the previous year for two years in a row or 7% percent in any year.

3. Conditions of failure as determined by the Public Works Director or the State of New Hampshire Department of Transportation (NHDOT) of the Town's major arterial intersections:

| | |
|---|---|
| Ross' Corner | Crystal Avenue and Broadway |
| Shute's Corner | Route 93 Exit 4 Interchange |
| Webster's Corner | Intersection of Fordway Extension and Route 102 |
| Route 102 Rotary | Intersection of Route 28 By-Pass and Tsienneto Rd<br>Intersection of Tsienneto Road and Route 102 |

C. Review

1. Any permit limitation imposed shall be reviewed annually in April of each year starting with April of the year following the adoption of this article by the Planning Board which shall consider whether:

a. Based on a report of the Derry School District that sufficient school capacity is available with reserve or excess capacity sufficient to meet the projected three year growth in student population, considering building permits eligible to be issued pursuant to exemptions contained herein plus the number equal to the maximum number of permits allowed under this section;

b. Based upon a report of the Town's Public Works Director the conditions of failure specified in sub-section B.3 above have been alleviated or will be alleviated within the ensuing 12 months; and

c. Residential growth for the previous two years did not exceed 5% over the previous year for 2 years in a row or 7% in any year.

2. In the event the Planning Board shall find as provided in sub-section C.2.a or b below, the Planning Board shall, in the case of sub-section C.2.a or may, in the case of a finding under sub-section C.2.b suspend the permit limitation effective on the first day of the month following the finding or increase the number of permits to be issued for the next succeeding twelve month period, as conditions warrant. Annual periods described in this section shall run from July 1 to June 30.

a. Subsection C.1.a above and either sub-section C.1.b or c above have been met; or

b. The Planning Board is satisfied that the improvements specified in the Capital Improvement Program for the next ensuing three years will be adequate to satisfy sub-section C.1.a above and provide reasonable relief from the conditions set forth in sub-section C.1.b and c above so as to avoid dangers to the health, safety or welfare of the community.

## *Section 165-115 Residential Development—Special Permit System*

A. General Provisions The following section describes the procedure by which special permits for residential development shall be applied for and may be granted by the Planning Board. The special permit application and issuance system described in this section shall determine if and when special permits so issued may be exercisable, based on the availability of adequate public facilities.

1. A residential developer shall be required to obtain a special permit from the Planning Board prior to the issuance of any building permit for a new residential unit in any subdivision or site plan proposed before the Planning Board.

2. The provisions of this section shall not be applicable to residential lots, site plans or subdivision plans which are exempted pursuant to RSA 674:39 or 676:12V or which are covered under legal settlement agreements with the Town pertaining to their status as vested lots; nor shall building lots legally existing on the date of first posting of this article for public hearing, June 5, 1998, which otherwise conform to this chapter, and as to which a single residential unit building permit is applied for, be subject to the provisions of this section. The provisions of this section shall not apply to Housing for Older Persons under RSA 354-A:15, and Supported Residential Care Facilities under RSA 151 and New Hampshire Code of Administrative Rules He-P 805.

B. Procedure for special permit

1. Application. Residential subdivision or development applicants shall be required to submit an application for special permit to the Town's Planning Director in such detail as shall be set forth in regulations established by the Planning Board, including a map showing the location of all abutting

land holdings of the applicant or by entities owned or controlled by the applicant and the extent of the land proposed for development. The Planning Director shall review the application with respect to all of the standards set forth in Sub-section C, as to the availability of municipal services and facilities and as to projected improvements scheduled to be completed in the Capital Improvement Plan of the Town. The Planning Director may request reports from appropriate Town, or regional agencies, boards or officials, as may be desirable or as required by Planning Board regulations in force and applicable to the application. Within 20 days of the submission of an application otherwise meeting the application requirements of Chapter 170, Land Development Control Regulations, the Planning Director shall notify the Planning Board and the applicant as to his finding as to the acceptability of the application under this section and as to whether and how many of the development points the proposal is presently eligible to claim.

2. The Planning Director shall also proceed to notice the application for public hearing at the first regular meeting of the Planning Board not less than 10 days after the submission of the written report referred to in sub-section B.1. Such public hearing shall be conducted after notice in accordance with RSA 676:4 I.(d). Applications shall be deemed completed applications within the meaning of RSA 676:4 I(b) only when they have conformed to all the requirements of this section and the application procedure in Chapter 170, Land Development Control Regulation.

3. The Planning Board shall, within 30 days after the report is submitted by the Planning Director, determine whether to accept jurisdiction of the plan pursuant to RSA 676:4 I.(b). The number and designation of any lots approved in such special permit(s) to be issued shall be determined by the Planning Board in conjunction with of its subdivision/site plan review conducted pursuant to RSA 676:4, et seq.

C. Qualification for special permit through development points

1. Except as otherwise set forth in Section 165-116A, no special permits granted by the Planning Board under this section shall be exercisable unless a proposed residential development receives the following number of development points: LDR- 8 points, LMDR- 8 points, MDR-11 points and all other districts-12 points; provided that the proposed development in any district must receive at least one development point in each of the following categories: transportation, school facilities, police protection and fire protection facilities. For the definitions of zoning districts (LDR, LMDR and MDR, etc.), see Article V of this chapter.

2. Development points shall be awarded according to the following categories. No application shall receive points in more than one sub-category of each part of this subsection C.2

a. Sewer facilities.

i. Municipal sewer system available and municipal sewer treatment facility has 21% or greater reserve capacity: 2 points
ii. Approved septic system available with alternate location on premises: 1 point.
iii. All others: zero points

b. Water supply facilities
i. Municipal water supply system connection available: 2 points
ii. Public utility water system preexisting this article is available: 1 point
iii. Existing or proposed approved well on lot: 1 point
iv. All others: zero points.

c. Drainage facilities. Percentage of required drainage capacity available. All calculations based upon historic one-hundred-year storm event.

Ninety percent to 100% on-site storm water detention no adverse downstream impact: 1 point.

Less than 90% on-site storm water detention or adverse downstream impact: zero points.

d. Transportation facilities.

i. Highway infrastructure improvements for roads or intersections impacted by this project installed or to be installed within 1 year: one point. Impacted roads are those roads which form one of the following intersections:
Ross' Corner
Crystal Avenue and Broadway
Shute's Corner
Route 93 - Exit 4 Interchange
Webster's Corner
Intersection of Fordway Extension and Route 102
Route 102 Rotary
Intersection of Route 28 By-Pass and Tsienneto Rd
Intersection of Tsienneto Road and Route 102

ii. Any negative impact to either the intersections listed in sub-section C.2.d.1 or intersections with arterial or collector streets identified by the Planning Board and/or its consultants as in failure and not mitigated by improvements set forth in Capital Improvement Plan or by the applicant. Arterial or collector streets are those designated as such in the Derry Master Plan: zero points.

iii. All other: zero points.

e. School Facilities.

Adequate school facilities available and having capacity for additional students: one point.

All other: zero points.

Adequate school facilities are deemed to be those facilities defined by the New Hampshire Legislature or other authority designated to do so, and approved, if required, by the New Hampshire court of competent jurisdiction, which meet the minimum standards of adequacy established by such definition.

No school facilities within the jurisdiction of the Derry School Board shall be deemed adequate unless conforming to such standard without the use of temporary or portable facilities. Notwithstanding the foregoing, school facilities are not adequate if the available student capacity of any such facility, which otherwise meets the standard set forth in the preceding two sentences, is not sufficient to meet or exceed the student enrollment projected for the applicant's development when combined with student enrollment growth projected from available statistical data for existing and approved and unbuilt residential housing, including those units eligible for building permits under Section 165-116A.

f. Recreation Facilities. Improved park, playground or play field, including public school site or conservation easement and/or dedicated open space land of one acre or more, suitable for recreational use (to include a playground or play field) for adults and children, dedicated to and accessible from the subdivision or development to which it is appurtenant or which it abuts; provided, however, that private facilities are owned and maintained by Associations of lot or unit owners whose responsibilities are set forth in documentation deemed adequate by the Planning Board.

Within or abutting the subdivision or development: 2 points

Within 1/2 mile of the intersection of the subdivision or development street with an existing Town road: 1 point.

Farther than 1/2 mile: zero points

g. Fire protection facilities:

1. Within 4 minutes response time from the closest municipal fire station:
   a. For high hazard occupancies: 1 point
   b. For medium and low hazard occupancies: 2 points.

2. Within 5 minutes' response time from the closest municipal fire station:

a. For high-hazard occupancies: zero points.
b. For medium hazard and low hazard occupancies: 1 point

3. Within 6 minutes' response time from the closest municipal fire station:
   a. For high hazard occupancies: zero points
   b. For medium hazard occupancies: zero points.
   c. For low hazard occupancies: 1 point.

4. For any occupancy within 1,000 feet of a Fire Department approved hydrant connected to the municipal water supply system or of an approved Fire suppression storage facility: 1 point

5. For any occupancy with access to appropriate fire suppression water storage and with installation of Residential sprinklers compliant with NFPA 13 R and 13 D or within 1,000 feet of a fire suppression storage cistern compliant with NFPA 1231: 1 point.

6. The following definitions pertain to this fire protection facilities sub-section:

HIGH HAZARD OCCUPANCY — An occupancy with any of the following characteristics:

a. Occupant load of 10 or more persons who may be physically impaired.

b. Buildings with more than 10,000 square feet on any floor

c. Buildings with 3 or more stories in height.

LOW HAZARD OCCUPANCY — An occupancy with any of the following characteristics:

a. Occupant load of less than 10 persons.

b. Buildings with less than 2,500 square feet on any floor.

MEDIUM HAZARD OCCUPANCY — An occupancy with any of the following characteristics:

a. Occupant load of 10 or more persons who are not physically impaired

b. Buildings with more than 2,500 square feet but less than 10,000 square feet on any floor.

h. Police protection. Minimum of one point is required.

| Number of Police Officers Per 1,000 Residents | | Points |
|---|---|---|
| 1. | 1.75 or greater | 2 points |
| 2. | 1.50 to 1.74 | 1 point |
| 3. | 1.49 or less | 0 points |

1. Based upon the density of development allowed pursuant to Chapter 170, Land Development Control Regulations and this chapter, the Planning Board shall determine whether to approve each application for special permit under its subdivision or site plan regulations. In connection with any such application, the Planning Board shall issue a finding specifying the number of dwelling units which it has approved in issuing the special permit. If any subdivision or site plan application does not attain the required number of development points at the time of such approval, however, no building permits may be issued on account of such approval except as allocable to the applicant's Basic Development Right described in Section 165-116A below, subject to the limitations otherwise set forth as to the timing and number of such building permit issuance in Sections 165-114 and 165-116A below.

### *Section 165-116 Basic Development Rights and Additional Development Rights*

Special permits shall be exercised in accordance with the following:

A. Thirty (30%) percent of the residential lots or units approved in the special permit pursuant to Section 165-115C.2 (but not to exceed 21 lots or units) shall be deemed to be units for which the Applicant shall be entitled to basic development right. The Planning Board may designate which lot/s shall be allocated to the basic development right so as to provide for orderly development of the project and to minimize its impact upon municipal facilities or services. In case computations hereunder result in fractional units, the number of units shall be rounded to the next lowest whole number.

1. Such basic development right shall entitle the applicant to building permits for up to 1/3 of the units covered by such basic development right in the year of plan approval or five units, whichever is greater. The remainder of such basic development right building permits shall be issued in equal installments in each of the next two succeeding years until the basic development right is exhausted (based upon the Town's fiscal year). Such basic development right may only be exercised if the subdivision or site plan meets all conditions of approval, including the posting of performance bond or other security as required by law or under Chapter 170, Land Development Control Regulations. The Planning Board, in establishing the performance bond or other security, may provide for phasing of such security in conjunction with the timing of the issuance of building permits under either this basic development right or the additional development right set forth in Sub-section B basic development right building

permits not applied for during such period may be subsequently issued in any year thereafter unless the provisions of Section 165-114 are applicable.

2. The applicant's basic development right shall be subject to and further limited by the provisions of any temporary permit limitation set forth in Section 165-114 herein and the right to exercise such basic development right shall be extended in such case until exhausted or until any temporary permit limitation has expired.

B. The balance of the applicant's special permit shall be allocated to the applicant's additional development right. Such right shall entitle the applicant to a building permit for each such residential unit only at such time as the development shall have the required number of points under Section 165-115C.2

1. As part of such Planning Board approval of the special permit, the Planning Board shall determine the year in which such additional development right shall be exercisable, based upon its finding as to that year the development would attain the required number of points under Section 165-115C.2. In making such determination the Planning Board shall consider the scheduled completion date of those capital improvements which it determines would be required in order to attain the requisite number of points as set forth in the Capital Improvement Plan then in effect. In the event any such capital improvements are completed in advance of the time schedule set forth in such Capital Improvement Plan, the Planning Board shall, upon request, review its finding and, if the requisite points are then available, advance the date when the additional development right shall be exercisable. Such additional development rights shall be vested at the time of Planning Board approval pursuant to Section165-115C.2 herein but shall not be exercisable until the time set forth above.

2. The Planning Board may, as part of such approval, require the phasing of such additional development rights at the time of exercise, depending upon the scope of the project and other off-site impacts or improvements required to accommodate the project. Such phasing may be required over a maximum three – year period in the discretion of the Planning Board.

2. Nothing herein shall limit the authority of the Planning Board contained in Section 165-114 to limit the issuance of building permits available under this sub-section B in times where temporary residential permit limitations under Section 165-114 above are in force.

## *Section 165-117 Capital Improvements Program*

A. Preparation and function.

1. The Planning Board has prepared a long-term Capital Improvements Program of municipal capital improvements based on recommendations

submitted by the departments and agencies of the Town, taking into account public facility needs indicated by the prospective development shown in the Master Plan of the Town and its Land Development Control Regulations in force and applicable. Such Capital Improvement Program has been based upon community facilities projected to meet the needs of Derry's build-out population as set forth in its Master Plan and will be submitted to the Town Council contemporaneously with this article.

2. To the extent that the Planning Board is required to make findings as to the adequacy of municipal facilities pursuant to Sections 165-114 and 165-115 herein, the Planning Board is hereby authorized to make such findings based upon the long-term Capital Improvement Plan adopted with this Growth Management article. Such long-term Capital Improvement Plan is a good-faith estimate of Derry's present and future capital needs and it has been adopted with due regard for Derry's projected ability to pay for such capital improvements.

B. Authority. The Planning Board is hereby empowered to prepare and amend such Capital Improvement Plan on an on-going basis pursuant to RSA 674:5 to 674:7. Such authority shall, and it hereby does include, all powers necessary to perform such function.

C. Review and report. The Planning Board shall review the long-term Capital Improvement Plan described in Sub-section A on an annual basis and make such amendment or update and report thereon as shall be appropriate. Such amendment or update and report shall be communicated to the Town Council and Town Administrator on or before January 1 of each year so as to enable the Town Administrator and the Town Council to consider the Planning Board's recommendations, if any, in the Town's annual budget-setting proceedings.

D. Effect of Article. This article is enacted pursuant to the revised Master Plan and Capital Improvements Program that have been prepared by the Planning Board. This article is subject to ongoing implementation, modification and amendment of the Capital Improvement Program, as well as any amendments to the Master Plan, and shall be reviewed at least each fourth year after its inception to determine whether changed conditions require its alteration. If the Capital Improvement Program is modified or altered, such modification shall apply to any applications for site plan or subdivision approval submitted after the date such modification is adopted by the Planning Board, but shall not affect plans which the Planning Board has approved or accepted jurisdiction of pursuant to RSA 676:4, (I)(b) as of the date of the adoption of such modification.

## *Section 165-118 Effect of Approval of Special Permit by Planning Board*

A. Vested Approval of Special Permit(s). If the Planning Board shall issue an approval of the application for residential subdivisionsite plan approval, the approval shall vest a present right for the residential developer to proceed with residential development of the land to the extent of the applicant's Basic Development Right in the year of subdivision approval, subject to the time limitations contained in Sections 165-114 and 165-116. Such approval shall also vest a right for the residential developer to

proceed with residential development as to the additional development right in such year as the proposed development meets or is projected to meet the required development point value set forth in Section 165-115C.1 and 2 above, as determined by the finding required in Section 165-116B above.

B. Developer options. For earlier or immediate development, a developer may advance the date of exercise of the additional development right by providing such public improvements as will bring the development within the required number of points required under Section 165-115C.1 and 2 above. Such improvements shall be secured by surety sufficient to cover the cost of the proposed improvement, the form, sufficiency and amount of which surety shall be determined by the Planning Board after recommendation from the Planning Director, the Public Works Director and approval as to form by the Town's legal counsel. The required improvements shall be in such form and done in such time and manner as the Planning Board shall approve.

C. Special permits assignable. All approved special permits vesting a present right to future development shall be fully assignable (as an appurtenance to the property to which they pertain) without restriction, except the right so assigned shall be subject to the conditions of the approval and of this article; provided also that any previously posted security for any required improvements is adequate and maintained by the assignee to the satisfaction of the Planning Board.

D. Alternative uses permitted. Nothing herein contained shall prevent any land from being immediately used for non- residential purposes if authorized by this chapter.

### *Section 165-119 Appeals*

Appeal of decisions of the Planning Board under this article shall be made to Superior Court pursuant to RSA 677:15.

### *Section 165-120 Special Permit Application Fee*

The fee ofr each special permit application pursuant to this article to the Planning Board shall be as set forth in Chapter 170 Land Development Control Regulations, payable at the time of said application, and is not refundable.

### *Section 165-121 Implementing Regulations*

**2**

To the extent deemed appropriate, the Planning Board may adopt regulations implementing this article pursuant to RSA 674:36, RSA 674:44, RSA 676:4, I(a) and (b), and RSA 676:4, II and III.

## ARTICLE XV ZONING BOARD OF ADJUSTMENT

### *Section 165-122 Appointment*

The Town Council shall appoint a Board of Adjustment pursuant to the provisions of RSA 673:1.

### *Section 165-123 Membership; Terms of Office*

The Board of Adjustment shall consist of five members, whose terms shall be for three years. When the Board is first organized, appointments shall be staggered so that no more than two appointments occur annually, except when required to fill vacancies. Said members shall be removable by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term.

### *Section 165-124 Rules of Procedure, Meetings and Minutes*

The Board shall adopt rules in accordance with the provisions of RSA 676:1. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question; and if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

### *Section 165-125 Appeals*

A. Appeals to the Board of Adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative official. Such appeal shall be taken within a reasonable time as prescribed by the rules of the Board by filing with the administrative official from whom the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The administrative official from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from wastaken.

B. An appeal stays all proceedings under the action appealed from, unless the administrative official from whom the appeal was taken certifies to the Board of Adjustment, after notice of appeal shall have been filed with him, that by reason ofthe facts stated in the certificate, a stay would, in his opinion, cause imminent peril tolife or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the administrative official from whom the appeal is taken on due cause shown.

C. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give the public notice thereof as well as notice to parties in interest, and decide the same within a reasonable time. Upon hearing any party may appear in person or by agent or attorney.

### *Section 165-126 Powers*

A. The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement hereof or of any ordinance adopted pursuant to RSA 674:16.

2. To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of this chapter will result in hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

B. In exercising the above-mentioned powers, such Board may, in conformity with the provision hereof, reverse or affirm, wholly or partly, or may modify the order,requirement, decision or determination appealed from and make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

C. The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this chapter. All special exceptions shall be made in harmony with the general purpose and intent of this chapter and shall be in accordance with the general or specific rules contained herein.

D. The concurring vote of three members of the Board shall be necessary to reverse anyaction of such administrative official or to decide in favor of the applicant on any matterupon which it is required to pass under this chapter.

### *Section 165-127 Disqualification of Member*

A. No member of the Board of Adjustment shall participate in deciding or shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.

B. When uncertainty arises as to the application of sub-section A, above, to a Board member in particular circumstances, the Board shall, upon the request of that member or another member of the Board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to, or at the

commencement of, any required public hearing. Such vote shall be advisory and non-binding, and may not be requested by persons other than Board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.

C. If a member shall be disqualified or unable to act in a particular case pending before the Board, the Chairman shall designate an alternate to act in her/his place.

## *Section 165-128 Motion for Rehearing*

A. Within 30 days after any order or decision of the Zoning Board of Adjustment, the Town Council, any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefore; and the Board of Adjustment may grant such rehearing if, in its opinion, good reason therefore is stated in the motion.

B. A motion for rehearing made under sub-section A of this Section shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Board of Adjustment shall be taken unless the appellant shall have made application for rehearing as provided for in Sub-section A of this section; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a Court unless the Court, for good cause shown, shall allow the appellant to specify additional grounds.

C. Upon the filing of a motion for rehearing, the Board of Adjustment shall, within **30** days, either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the Board of Adjustment may prescribe.

## *Section 165-129 Appeal From Decision on Motion for Rehearing*

Any person aggrieved by any order or decision of the Board of Adjustment may apply, by petition, to the Superior Court within 30 days after the date upon which the board voted to deny the motion for a rehearing in accordance with the requirements of RSA 677:4, setting forth that such decision or order is illegal or unreasonable, in whole or in part, and specifying the grounds upon which the same is claimed to be illegal or unreasonable. **(Effective 11/21/03)**

A. Burden of proof — In an appeal to the Court, the burden of proof shall be upon the party seeking to set aside any order or decision of the Zoning Board of Adjustmentto show that the order or decision is unlawful or unreasonable. All findings of the Zoning Board of Adjustment upon all facts properly before the Court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the Court is persuaded by the balance of probabilities, on the evidence before it, that said order or decision is unreasonable.

B. Certifying record — An order of the Court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof, as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.

C. Hearing — The Court may take evidence, or appoint a referee to take such evidence, as it may direct and report the same with his findings of fact and conclusion of law.

D. Restraining order — The filing of an appeal shall not stay proceedings upon the decision appealed from, but the Court may, on application and notice, for good cause shown, grant a restraining order.

E. Judgment — The Court shall direct the records in the matter appealed from to be laid before it, hear the evidence and make such order approving, modifying, or setting aside the decision appealed from as justice may require, and may make a new order as a substitute for the order of the Board.

F. Costs shall not be allowed against the municipality unless it appears to the Court that the Zoning Board of Adjustment acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

G. Priority — All proceedings under this section shall be entitled to a speedy hearing.

## ARTICLE XVI ENFORCEMENT

### *Section 165-130 Building Inspector*

The Town Council shall appoint, for a term of one year, a Building Inspector who, by his training and experience, is qualified to administer this chapter. The Building Inspector shall be the administrative officer of this chapter.

### *Section 165-131 Injunction or Other Legal Actions*

Upon any well-founded information that chapter, or the Town of Derry Building Code, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by the Code Enforcement Officer, Building Inspector, Planning Board, or Zoning Board of Adjustment is being violated, the Building Inspector shall, on his own initiative, take immediate steps to enforce the provisions of this chapter, Building Code, provision or specification of the application, plat or plan approved by or the requirement or condition of a permit or decision issued by the Building Inspector or the local land use board, by seeking an injunction in the Superior Court or any other legal action.

### *Section 165-132 Violations and Penalties*

Whoever violates any of the provisions of this chapter, or the Town of Derry Building Code, or any provision or specification of any application, plat or plan approved by, or any requirement or condition of a permit or decision issued by the Code Enforcement Officer, Building Inspector, or local land use board, shall be punishable upon conviction by a fine not exceeding $275 per day for each violation. **(Effective 11/21/03)**

## ARTICLE XVII IMPACT FEES (Effective 2/21/02)

### *Section 165-133 Statutory Authority; Purpose*

This article is enacted pursuant to RSA 674:16 and 674:21, and in order to:

A. Promote public health, safety, convenience, welfare, and prosperity;

B. Ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Derry, New Hampshire;

C. Assess an equitable share of the growth related cost of new and expanded capital facilities to all types of New Development in proportion to the facility demands created by that development;

D. Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

E. Provide for the harmonious development of the municipality and its environs;

F. Ensure the proper arrangement and coordination of streets; and,

G. Ensure streets of sufficient width to accommodate existing and prospective traffic.

### *Section 165-134 Authority of Planning Board; Applicability*

A. The Planning Board may, as a condition of approval of any new development, subdivision or site plan, and when consistent with applicable Board regulations, require a Fee Payer, as defined herein, to pay an impact fee for the fee payer's fair share of off-site improvements in order to help meet the need occasioned by that development for construction or improvement of capital facilities owned or operated by the Town or the Derry School District, including those facilities for which the Derry School District pays on a tuition basis, but which may be owned or operated by independent trustees.

B. The Planning Board is authorized by this article to conduct studies and to adopt an impact fee schedule, which sets forth the methodology and amount of the fee. The Planning Board is further authorized to periodically update the impact fee schedule.

C. Nothing in this section shall be construed to limit the existing authority of the Planning Board to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate the provisions of Article XIV, Growth Management, or other applicable ordinances and regulations.

D. Nothing in this section shall be construed to limit the Planning Board's authority to require off-site work to be performed by the fee payer, in lieu of paying an impact fee, or the board's authority to impose other conditions of approval. Nothing in this section shall be construed to affect fees, charges or impositions, other than Impact Fees, governed by or imposed by other statutes, town ordinances or regulations.

E. Nothing in this article shall be construed to limit the Planning Board's authority to require a fee payer to construct an off-site improvement that is

1. Necessitated by the new development itself and which would not otherwise be constructed by the Town (e.g. streets, turning lanes, curbs, sidewalks, street lights, street signs, traffic signals or other off-site improvements);

2. An offsite improvement which is necessitated by the proposed development but which would not be constructed by the Town, under its then-in-force capital improvement program within six years of the date of the new development application, or

3. An off-site improvement which is required by the New Hampshire Department of Transportation to be constructed by a developer in connection with a driveway or other permit for access to a state highway.

F. Applicability — The provisions of this article shall be applicable to applications for new developments filed after the effective date hereof as set forth below.

1. Impact fees may be required by the Planning Board as a condition of approval, as provided herein, for any application for new development that is exempt from the provisions of Article XIV - Growth Management; and

2. Impact fees may be required as a condition of approval, as provided herein, for applications for new development that are subject to Article XIV Growth Management, but subject to the following limitations. These limitations are intended to preclude any imposition of an Impact Fee for any new development as to which the delayed availability of development points is tied to the same off-site improvement(s) pursuant to Section 165-115C. Except as provided in sub-section E herein, impact fees may not be required for any off-site improvement(s) which must be completed before any special permits for the additional development rights are available to be issued.

## *Section 165-135 Definitions*

As used in this article, the following terms shall have the meanings indicated:

FEE PAYER — A person applying for the issuance of a building permit, subdivision or site plan approval, or other local land use decision which would create new

development. The word “developer” may be used interchangeably with “fee payer” as the context requires.

IMPACT FEE — A fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.

NEW DEVELOPMENT — The subdivision, building construction or other land use change which results in: a requirement for new or expanded capital facilities or the use of excess capacity in an existing capital facility previously funded by the Town. “New Development” shall include the conversion of a legal existing use or activity to another use or activity which results in a requirement for new or expanded capital facilities or the use of excess capacity in an existing capital facility previously funded by the Town.

OFFSITE IMPROVEMENT — A capital facility to be owned or operated by the municipality, whether or not constructed in whole or in part by impact fees or by the fee payer of a new development, or which is to be owned by the municipality upon completion, including and limited to water treatment and distribution facilities; waste water treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights of way; municipal office facilities; public school facilities; the municipality’s proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.

## *Section 165-136 Assessment Methodology*

A. Proportionality: The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

1. As to off-site improvements required under Section 165-134E, if the Planning Board shall determine that such section is applicable, the entire cost of the off-site improvement shall be the responsibility to the developerdevelopment benefiting therefrom; provided, however, if more than one development shall be benefited from such off-site improvement, the Planning Board may assess such other development part of the cost of such off-site improvement at the time such development shall come before the Planning Board for a permit or approval, based on the methodology of this section, and shall remit the same to the developer who has installed such off-site improvement at the time impact fee so

assessed is paid to the municipality, less any cost associated with making or collecting such assessment.

2. The Town of Derry's Master Plan and Capital Improvements Program have incorporated Town-wide plans for new or expanded capital facilities as defined in Section 165-135. To the extent that a capital facility is provided for therein, impact fees shall be based upon the actual or anticipated costs of the capital facility for which it is intended. Such Master Plan and Capital Improvements Program and the provisions of this article and Article XIV, Growth Management shall not, however, limit the ability of the Planning Board to require off-site improvements or impact fees where a need for capital facilities, not considered, in such Master Plan and Capital Improvements Program are necessitated in whole or in part by a new development.

3. Where an impact fee has been assessed, based on the implementation of a long-term program of improvements to or for capital facilities comprising a series of capital projects, and the Municipality has appropriated, within six years of the collection of that impact fee, its proportionate share of the cost (not including impact fees assessed to other fee payers) of a component project or projects of that program, that impact fee payment shall be deemed to be encumbered and legally bound to be spent for said project or projects and shall not be refunded, even if the entire long-term program is not completed within the same six year period.

B. Computation Methods:

1. To the extent that an Impact fee is assessed pursuant to Section 165-143E, the Impact Fee shall be determined according to the cost of the off-site improvement.

2. Until the Planning Board shall adopt an impact fee Schedule pursuant to Section 165-134B, the Planning Board may request such professional studies and other data of the fee payer, including data from experts retained by the Planning Board whose work shall be paid for by the fee payer, in order to determine the applicable impact fee to be assessed to the fee payer for any affected capital improvements described and the need for which is created for by the development in accordance with the proportionality computation described in Sub-section A of this section.

3. After the Planning Board shall have adopted an impact fee schedule pursuant to Section 165-134B, the impact fee to be assessed to any new development shall be determined in accordance with such impact fee schedule.

4. The impact fee schedule so adopted may include a standard assessment based upon an established measure of impact occasioned by the any new development or it may adopt a methodology by which an impact fee may be calculated for any new development.

C. Existing deficiencies*:* Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

## *Section 165-137 Administration*

**2**

A. Accounting — In accord with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Town Council, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.

B. Assessment — All impact fees imposed pursuant to this article shall be assessed to the fee payer prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, as determined by the Planning Board or its authorized agent. No building permit shall be issued until a fee payer provides adequate security in accordance with sub-section C of this section.

C. Security — In the interim between assessment and collection, the Planning Board may require the fee payer to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed impact fees.

D. Collection — Impact fees shall be collected as a condition for the issuance of a certificate of occupancy; provided, however, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town of Derry may advance the time of collection of the Impact Fee to the issuance of a building permit. Nothing in this section shall prevent the Planning Board and the assessed party from establishing an alternate, mutually acceptable schedule of payment or preventing the assessed party from undertaking the work itself.

E. <u>Refund</u> —

1. Any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected, shall be refunded, with any accrued interest, to the assessed party or successor in interest:

a. When the subdivision or site plan approval expires under the respective rules of the Planning Board, or under the terms of the decision, without having become vested under RSA 674:39, and without any extension being granted by the Planning Board; or

b. When such approval is revoked under RSA 676:4-a; or

c. Six years after its collection, or, if any extension of approval is granted by the Planning Board, six years after such extension is granted; or

d. Six years after its collection, whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the Town, and the Town Council has failed or refused to appropriate the Town's share of the capital improvement costs.

2. In the event of transfer of title to land from an owner who has paid an impact fee to a new owner, the parties to said conveyance shall be responsible for allocating any potential refund between themselves, as the Town shall only be responsible for paying over any statutorily required refund to the then-current property owner.

### *Section 165-138 Appeals*

In accordance with RSA 676:5, III, appeals of the decision of the Planning Board in administering this article may be made to Superior Court, as provided in RSA 677:15.

### *Section 165-139 Waiver*

A fee payer may request a full or partial waiver of Impact Fee payments from the Planning Board if the Board agrees to accept as equivalent value, proposed contributions of land, easements or other improvements. The value of on-site improvements, or of any off-site improvements which are required by the Planning Board as a result of subdivision or site plan review under Section 165-134E herein, shall not be considered eligible for waiver under this Article.

## ARTICLE XVIII AMENDMENTS; CONFLICTS; EFFECTIVE DATE

### *Section 165-140 Effective Date*

This article was adopted by the Town Council of the Town of Derry, New Hampshire, with an effective date of February 21, 2002.

### *Section 165-141 Amendments*

The regulations, restrictions and boundaries as set forth in this chapter may, from time-to-time, be amended or repealed as authorized by RSA 674:16 in accordance with the provisions of RSA 675:2, 4 and 5 and the Town Charter.

### *Section 165-142 Conflicting Provisions*

Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance, or other regulation, that provision which imposes the greater fee, restriction, or higher standard shall govern.

### *Section 165-143 Effective Date*

This chapter was adopted by the Town Council on January 5, 1993 and became effective on February 5, 1993. All other zoning ordinances or parts thereof and zoning maps that were in effect prior to February 5, 1993 are hereby repealed.

### *Section 165-144 Severability Clause* ***(Effective 5/15/03)***

Should any Chapter or provision of this zoning ordinance be declared by a court of competent jurisdiction to be unconstitutuional or invalid, such decision shall not affect the validity of this Chapter as a whole, or any part thereof other than the part so declared to be invalid.

## ARTICLE XIX INDEPENDENT ADULT COMMUNITY OVERLAY DISTRICT (Effective 07/07/2005)

### *Section 165-145 Authority and Purpose:*

The intent of the Town in permitting development pursuant to this Article is as follows:

1. To provide for residential developments that meet the growing needs of persons 55 years of age and older, including the need for quality housing, open space, recreational facilities or the desire to remain proximate to families and roots.

2. To encourage innovations in residential developments so that the growing demand for housing may be met by a greater variety in type, design and layout of dwellings, while conserving open space within such a development.

3. To recognize that developments housing older persons typically generate lower average rates of vehicular traffic, water usage and sewer usage than other types of residential developments, and have less impact upon the public school system and a lower average number of residents per dwelling unit.

4. To encourage flexibility in site planning which will respect and conserve natural resources, such as streams, ponds, floodplains, wooded areas, steep slopes, and other areas of significant beauty or importance to the environment.

5. To provide for patterns of development around the perimeter of a tract that are compatible with neighboring development while allowing greater flexibility within the interior of the tract.

The provisions of this Section are adopted pursuant to the authority of RSA 674:16 and RSA 674:21, and shall overlay and supplement the other regulations of the Town of Derry Zoning Ordinance for the purpose of establishing provisions under which independent adult community developments may be permitted by the Planning Board within certain zoning districts.

### *Section 165-146 Definitions*

As used in this Section, the following terms shall have the meanings indicated.

1. Independent Adult: Persons 55 years of age or older.

2. Independent Adult Community: A residential development of dwelling units and permitted accessory uses with the dwellings limited to occupancy by households that each include at least one person age 55 or older consistent with the Federal Fair Housing Act. Residents of an Independent Adult Community shall be limited by deed to households including at least one permanent resident age 55 or older, and shall prohibit occupancy by any person age 18 years or younger for more than ninety days in any calendar year.

3. Net Tract Area: Land which is buildable subject to the constraints of all applicable ordinances and regulations, excluding wetlands, land within the Groundwater

Resource Conservation District, Conservation Overlay District, and land with slopes greater than 25%.

### *Section 165-147 Location*

Independent Adult Community as defined herein may be permitted by the Planning Board in the:

Medium Density Residential District (MDR),
Low Medium Density Residential District (LMDR),
Low Density Residential District (LDR).

### *Section 165-148 Minimum Lot Requirements:*

Parcel(s) for which an Independent Adult Community is proposed shall conform to the following minimum requirements, in addition to the other provisions of the Section.

1. The parcel shall have a Net Tract Area of no less than four (4) contiguous acres;

2. All requirements of the underlying base zoning district apply to development within the overlay district, unless specific provisions of the overlay district ordinance specify otherwise.

### *Section 165-149 Density:*

The total number of dwelling units permitted in any Independent Adult Community development is based on the underlying zoning district and the total number of dwelling units that would otherwise be approved under a conventional subdivision development. The maximum permitted number of dwelling units is equal to the number of dwelling units that could be supported in a traditional subdivision of the same parcel(s) based on the provisions of the underlying base zoning district, except in areas that are serviced by both municipal water and sewer in which case the number of dwelling units shall be equal to no more 1.5 units times the number of dwelling units that could be supported in the base underlying zoning district. (Effective 7/5/07)

### *Section 165-150 General Development Standards:*

1. Occupancy of each unit shall be restricted to persons fifty-five (55+) years and older, with the following exceptions:
2. A spouse, partner or significant other under the age of fifty-five (55) or a resident aged fifty-five (55+) or older;
3. Allowable building types are single detached and townhouses.
4. Each dwelling unit shall have a minimum of 1400 square feet of space intended for human occupancy subject to the provisions of all ordinances, regulations and codes.
5. No building shall contain more than six (6) dwelling units. Buildings shall be either single detached dwellings or in the case of multi-unit buildings, townhouse

style with a minimum of 3 dwellings units. (The intent is to prohibit duplex/condex developments in this overlay district.) (**Effective 7/5/07)**

6. Where there will be more than one (1) building on a lot, buildings shall have a minimum horizontal separation of thirty-five (35) feet. The Planning Board may require a greater separation where topography, or other unique characteristics of the site or the development will affect the use of emergency equipment between buildings.
7. A minimum of fifty percent (50%) of the Net Tract Area shall be set aside for permanent open space and/or recreational use, and shall be protected by covenants, recorded with the plans, and deed restrictions.
8. No unit shall contain more than two (2) bedrooms.
9. A minimum of two (2) parking spaces shall be provided for each dwelling unit within the proposed development.
10. All utilities shall be underground utilities.
11. Common driveways for 2 to 3 dwelling units are permitted.
12. All units comply with NFPA 13D fire sprinkler.

### *Section 165-151 Design Standards*

Any project proposed under this Independent Adult Community Section shall be required to conform to the requirements of the Town of Derry Site Plan Regulations.

### *Section 165-152 Accessory Uses*

The following accessory uses to an Independent Adult Community are allowed:

1. a clubhouse which may consist of locker and shower rooms, spa, fitness center, lounges and similar facilities; and

2. recreational facilities such as a swimming pool and tennis court.

These accessory uses shall be specifically restricted to serve residents of the Independent Adult Community and their invited guests.

### *Section 165-153 Other Provisions*

1. Limitation on Number of Independent Adult Community Units: The Planning Board shall not accept for consideration any proposal which, if approved, would increase the total number of all independent adult units, approved since the adoption of this Article, above the number representing three percent (3%) of the total number of dwelling units within the Town as determined by the Tax Assessor.

2. Interpretation: To the extent that the specific requirements of this Independent Adult Community Section are inconsistent or at variance with any other requirements contained in the Zoning Ordinance, the requirements imposed herein shall govern and control an Independent Adult Community proposal. To the extent that specific requirements imposed herein are inconsistent with or at variance with the requirements of the State of New Hampshire or the requirements of the Federal Government with respect to the operation or construction of an independent adult community project, such State or Federal requirements shall supercede the requirements of this Ordinance.

3. Legal Documents Required: The Planning Board shall require such covenants or legal restrictions that it deems necessary to insure the intent of this ordinance, including documentation with respect to condominium land ownership. The Planning Board may, as appropriate, require review and approval of any such documents by legal counsel to insure that the form and substance of such documents is sufficient to achieve and preserve the requirements of this Section. The provision and review of any documents required hereunder shall be at the Applicant's expense.

a. Assurances of Independent Adult Residency: The Applicant shall provide deed restrictions, use limitations, covenants, or some other legally enforceable instrument, which shall permanently restrict occupancy of the housing facilities to persons who meet all applicable restrictions regarding age. The language of the restrictions and/or limitations must be specific and must correlate with current federal and state requirements for housing for persons 55 years of age or older under the Federal Fair Housing Act. Said assurances shall include provisions for:

i. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner(s) to provide housing for persons fifty-five (55) years of age or older; and

ii. Annual verification of compliance with the age restrictions by reliable surveys and affidavits. Notice of the results of the annual verification process is to be provided to the Code Enforcement Administrator.

b. Homeowners Association. The developer or Condominium Declarant shall ensure that a homeowners association be established in all independent adult community projects were a community water system**,** septic system or internal access drive(s) will be utilized. The covenants, deed requirements and legal restrictions of any documentation with respect to the establishment of a Homeowners Association shall be reviewed by legal counsel to insure the form and substance of such documentation is sufficient to achieve and preserve the requirements of this subsection 3b. **(Effective 7/5/07)**

c. Capital Reserve Fund. The developer or Condominium Declarant shall establish a capital reserve fund to be maintained by the homeowners association to cover the repair and/or replacement costs associated with the use of a community water system**,** septic system, and/or internal access drive(s) in any independent adult community project. Annual verification by affidavit shall be submitted to the Code Enforcement Administrator verifying that adequate capital reserves exist for the repair and/or replacement of these systems. **(Effective 7/5/07)**

## ARTICLE XX LIVESTOCK AND FOWL (Effective 09/10/2009, revised 06/20/2014)

Reference is made to the Manual of Best Management Practices for Agriculture in New Hampshire, published by the New Hampshire Department of Agriculture, Markets and Food, most recent edition, a copy of which is available in the Code Enforcement Office.

### *Section 165-154 Lot Requirements*

Livestock shall only be permitted on lots containing one or more acres. There is no lot minimum for fowl provided they are kept in compliance with the terms of this Article.

### *Section 165-154.1 Lot Setbacks (Effective 06/20/2014)*

All buildings, pens, kennels, runs and enclosures (excluding pastures), shall be located at a minimum of 20 feet from any property line.

### *Section 165-155 Nuisances Prohibited*

At no time shall a nuisance be created or allowed to continue.

### *Section 165-156 Shelter*

All such livestock or fowl shall be properly housed in structures designed to adequately provide shelter for the particular type of livestock or fowl being kept. Fowl pens shall have wire mesh or poly mesh roofs, or a suitable cover.

### *Section 165-157 Enclosures*

All such livestock or fowl shall be properly enclosed at all times. Areas, including kennels, shall be maintained to prevent accumulation of mud or feces/manure. Fencing shall be adequate to prevent the livestock or fowl from escaping from and trespassing on public or private property

### *Section 165-158 Wastes*

Waste cannot be stockpiled so as to create a nuisance or health hazard. Manure shall be stored at a minimum of 75 feet from wetlands, bodies of water, wells, drainage swales, and a minimum of 150 feet from abutting houses. Manure shall be stored in such a way as to prevent runoff from reaching such areas.

### *Section 165-159 Interpretation*

Nothing herein is intended to allow a commercial use involving livestock or fowl within any zone unless it is already allowed as a permitted use.

### *Section 165-160 Severability*

If any provision of this section governing livestock and fowl is found to be invalid by a court of competent jurisdiction, the remaining sections not affected thereby shall remain in full force and effect.

### *Section 165-161 Penalties* *(Effective 06/20/2014)*

Penalties are subject to the provisions found in Article XVI, Section 165-132, Violations and Penalties.

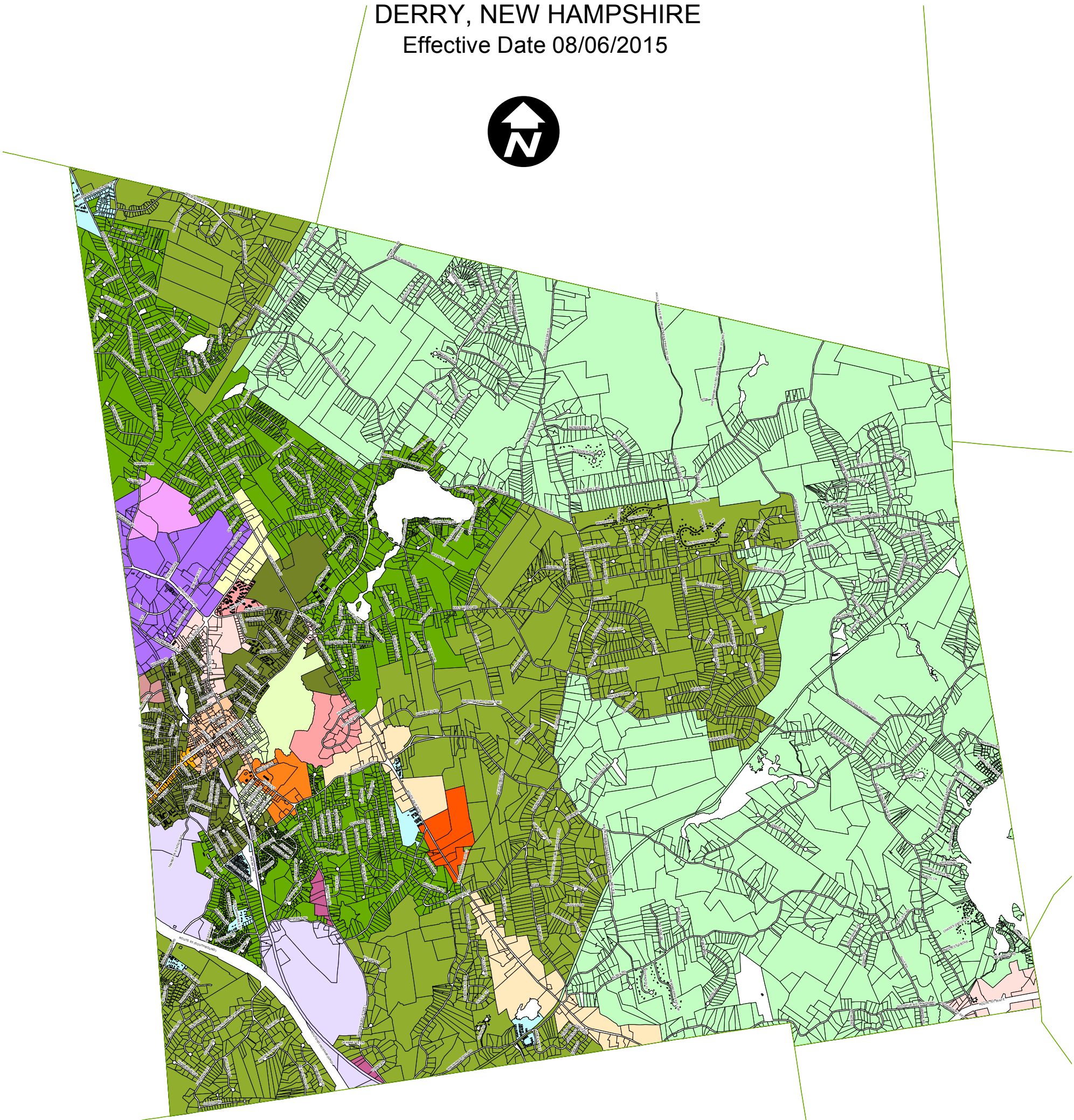
### *Section 165-162 Pre-Existing Non-Conforming Status* *(Effective 06/20/2014)*

Livestock on lots under the allowed limitations are considered a pre-existing, non-conforming use and are subject to the requirements of Article XIII, Section 165-106.

# ZONING

## DERRY, NEW HAMPSHIRE

Effective Date 08/06/2015



**Zones**

- IND1-INDUSTRIAL I
- IND II-INDUSTRIAL II
- IND III-INDUSTRIAL III
- IND IV-INDUSTRIAL IV
- IND V-INDUSTRIAL V
- IND VI-INDUSTRIAL VI
- LDR-LOW DENSITY RESIDENTIAL
- LMDR-LOW/MED DENSITY RESIDENTIAL
- MDR-MEDIUM DENSITY RESIDENTIAL
- MHDR II-MEDIUM HIGH DENSITY RESIDENTIAL
- MHDR-MEDIUM/HIGH DENSITY RESIDENTIAL
- GC-GENERAL COMMERCIAL
- GC2-GENERAL COMMERCIAL II
- GC3-GENERAL COMMERCIAL III
- GC4-GENERAL COMMECIAL IV
- CBD-CENTRAL BUSINESS DISTRICT
- MFR-MULTI-FAMILY RESIDENTIAL
- MHPD-MANUFACTURED HOUSING PARK DEVELOPMENT
- OBD-OFFICE BUSINESS DISTRICT
- OMB-OFFICE MEDICAL BUSINESS
- ORD-OFFICE RESEARCH AND DEVELOPMENT

**DERRY, NEW HAMPSHIRE**
**GEOGRAPHIC INFORMATION SYSTEM**

*A COOPERATIVE EFFORT OF THE FOLLOWING DEPARTMENTS: INFORMATION TECHNOLOGY, LAW, PLANNING, ASSESSING POLICE AND FIRE*

*Digital data contained within Derry, NH GIS (DGIS) represents the efforts of the Town of Derry to record information from various source materials. DGIS maintains a continuing program to identify and correct errors in those data. DGIS makes no claim as to the validity, reliability or to any implied uses of these data.*