

**Staff Report-
Planning Department
AGENDA ITEM
May 19, 2015**

AGENDA ITEM
15-54
Date 5-19-15
Public Hearing 6-2-15

TITLE: Proposed amendments to the Town of Derry Zoning Ordinance, specifically relating to special exception uses and covenants. The purpose of the amendments is to remove a conflict with RSA 356-B:5.

TOWN ADMINISTRATOR COMMENTS: I recommend that this Zoning amendment be approved. The Town should not be involved in the enforcement of deed restrictions or covenants. This has also been recommended by Town Attorney.

BACKGROUND: The Zoning Board of Adjustment requested the Planning Board amend in the Zoning Ordinance the section under the Special Exception provisions relating to covenants. Citizens can apply for a special exception for home occupations and in order to be granted approval they need to meet ten criteria. The last criterion has to do with not being contrary to covenants or conditions in the deed. The ZBA received a legal opinion several years ago that the ZBA should not be involved in what is essentially a private contract. The other issue is that occasionally covenants are very old and may not still be in effect. The proposed change removes that specific criterion from the three applicable sections of the Zoning Ordinance. The zoning application used for a special exception would be amended with this change.

DISCUSSION: The ZBA chairman presented this issue to the current Town Council and was recommended to begin the process again and pursue the zoning amendment.

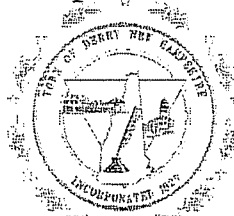
FISCAL IMPACT: NA.

RECOMMENDATION: Staff would recommend that Town Council approve and adopt the below referenced zoning amendments as unanimously approved by the Planning Board on April 15, 2015.

MOTION: To amend Article VI, District Provisions, Section 165-45.D.2.i, Medium High Density Residential, Section 165-45.1.C.2.i, Medium High Density Residential II, Section 165-46.B.2.i, Medium Density Residential.

Prepared by: George Sioras, Planning Director.

"Derry, New Hampshire's Place to Be"



PLANNING DEPARTMENT

CERTIFICATE

The Derry Planning Board hereby certifies to the Clerk of Council of the Derry Town Council that on **April 15, 2015**, the Planning Board, by unanimous vote during a duly notice public hearing, **APPROVED** the attached revision to the Derry Zoning Ordinance and is hereby forwarding said proposed revision for consideration by the Derry Town Council.

To amend Article VI, District Provisions, Section 165-45.D.2.i, Medium High Density Residential, Section 165-45.1.C.2.i, Medium High Density Residential II, Section 165-46.B.2.i, Medium Density Residential.

The purpose of the amendments is to remove a conflict with RSA 356-B:5.

Purpose of amendments: to remove a conflict with NH RSA 356-B:5.

To amend Article VI, District Provisions

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 dwellings.

Two-family dwellings.

Multi-family dwellings.

Accessory apartments (must also comply with the provisions of Section 165.25)

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 3,630 square feet per dwelling unit.

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 60 feet in height.

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:
 - 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 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.
 - 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 gross lot area shall be provided for recreation space.

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 (Effective 11/17/05)
 - International Building Code as amended by the State of New Hampshire and the Town of Derry;
 - International Plumbing Code as amended by the State of New Hampshire;
 - International Mechanical Code;
 - International Energy Conservation Code;
 - National Electrical Code (NFPA 70);
 - 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;

In addition the following codes and/or amendments are adopted by reference:

- International Residential Code;
- International Property Maintenance Code.

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 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 D.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;
- 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;
and
 - i. ~~The proposed home business use will not, in any way, be contrary to any covenants or conditions contained in the deed to 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:
- 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;
 - 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; and
 - i. ~~The proposed home business use will not, in any way, be contrary to any covenants or conditions contained in the deed to 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;
 - 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; and

- i. ~~The proposed home business use will not, in any way, be contrary to any covenants or conditions contained in the deed to 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.