

2022

Outdoor Dining Design Guidelines



Purpose

The Town of Derry recognizes the importance of outdoor dining to the success and vibrancy of its eating and drinking establishments. The Design Guidelines provide acceptable dimensions for dining area access, sidewalk and parking lot barriers, and the layout of outdoor service areas. The use of durable and high-quality outdoor furnishings and materials is encouraged to increase the safety and comfort of residents and visitors. The diagrams in this document illustrate examples of outdoor dining design; photographs and diagrams show acceptable furnishings.

Outdoor dining enhances the public realm and motivates town and regional residents to patronize Derry's eating establishments. Restaurant and café owners who offer outdoor dining shall comply with these guidelines, which are applicable in all zoning districts where restaurants are a permitted use.

Background

These Outdoor Dining Design Guidelines are promulgated in accordance with Chapter 134, Article II, of the Town of Derry Code of Ordinances. The Outdoor Dining Ordinance was adopted by the Town Council on June 02, 2020, with an effective date of July 02, 2020, and may be amended from time to time by Town Council resolution.

Application Procedure

1. Permit applications shall be submitted to the Planning Department for completeness review.
2. Permits are required on an annual basis and shall run from April 1 to October 15.
3. Applications will only be accepted by businesses licensed to serve food to the public.
4. The applicant must include an 8 ½ x 11 plan which details the following:
 - a. Lot lines and the orientation of the building on the lot
 - b. Dimensions of building and the lot
 - c. Street location, width, and curbing location
 - d. Access points and traffic circulation
 - e. Setback dimensions from sidewalk to building
 - f. Location of proposed outdoor dining area and its components
 - i. Total square feet of the dining area
 - ii. The number and location of tables and chairs, noting the separation distance between the tables and aisle widths

- iii. Location of equipment and accessories, including service station
 - iv. Location of pedestrian access points and sidewalk separation
 - v. Location of any ramps, fire hydrants, fire lanes, light poles, natural features, parking spaces, and trash receptacles
 - vi. Location of any proposed outdoor sanitary facilities
 - vii. Location of any proposed outdoor bar
 - viii. Location and dimension of barriers
 - ix. Drawings or photos of proposed barriers, umbrellas, tables, chairs
5. Provide a copy of the following licenses and permits:
- i. Food Service License
 - ii. State of New Hampshire Liquor License
 - iii. Code Enforcement – Certificate of Occupancy; to include permit inspections of the proposed barriers, signs, ramps, etc., and applicable life safety inspections
 - iv. Police Department – sign off for the liquor license
 - v. Fire Department – Life Safety review, amendment of Assembly Permit
 - vi. Health Department – amendment to current Food License
6. Submission of application fees (\$50.00).
7. Applicants shall indemnify and hold harmless the Town of Derry and shall also provide a certificate of insurance provided by a general liability carrier for the business owner on a primary and non-contributory basis, for a minimum amount of \$1,000,000 per claim and an aggregate of \$2,000,000, both of which shall name the Town of Derry and its employees, officials, agents, and volunteers as an additional insured.
8. The application shall be submitted to the Planning Department for preliminary review. Once deemed complete, the application will be forwarded to the individual departments for review.

Submission Checklist

- Permit application – submitted to Planning Department
- Plot Plan – 8.5 x 11 – site details with dimensions, showing seating, barriers, distances from buildings, sidewalks, streets, parking lots.
- Copies of Food Licenses, Liquor permits, Assembly Permits, Certificate of Occupancy

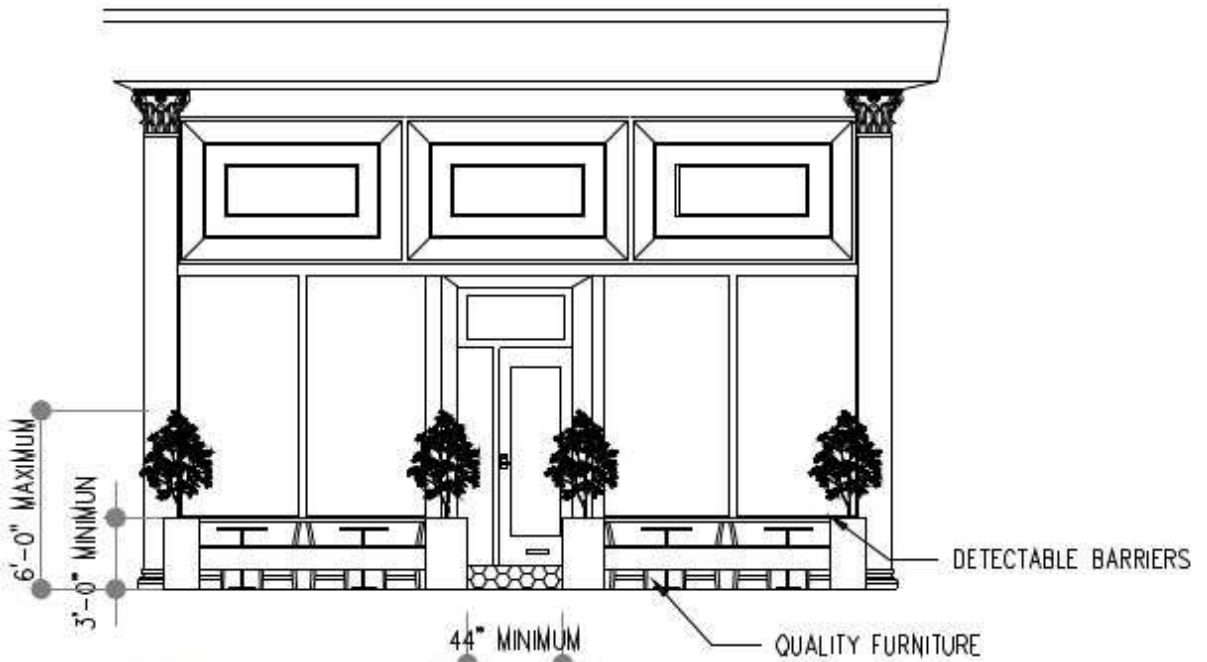
General Guidance

1. Applications for outdoor dining occurring on a private lot shall conform to this Ordinance with the exception that the annual permit shall be issued by the Town Administrator or his/her designee in accordance with the stipulations contained in this Ordinance. Permit applications are required for new or proposed expansions of outdoor dining areas. Outdoor dining areas previously approved by the Planning Board as part of site plan review do not require an annual permit. Permits on public ways are issued by the Town Council.
2. Permits are non-transferrable and shall be in effect from date of issuance and shall be renewed annually.
3. Outdoor dining is permitted during normal business hours, but no later than 10 pm
4. Non-transferrable permit must be posted in public view.

5. Outdoor dining area must be contiguous to licensed premises and maintained by business owner.
6. If outdoor cooking is to occur, the applicant shall comply with the applicable Life Safety and Health Code requirements.
7. Businesses are responsible for all trash and recycling receptacles and must keep area clear of all trash and food debris after close of business.
8. Outdoor dining materials and structures shall not damage sidewalks, curbing, street trees, light poles, trash containers or other public/private property.
9. Permanent fixtures such as awnings, require a separate building permit from the building/Code Enforcement Office.
10. Business owner agrees to comply with all laws, rules and regulations of the NH State Liquor Commission and all other local, state and federal laws. Approval of the Area Service Agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission
11. Dog friendly outdoor dining is permitted; please see Town of Derry Code, Chapter 55, Food Service Establishments, for the specific requirements and application guidelines.
12. The Town of Derry shall have the authority to deny, revoke or suspend the permit upon finding that any provision of this article, including the factors enumerated above, or conditions of approval will be or has been violated. The Town of Derry shall give notice of any such action to the permit holder in writing stating the action taken and reason therefore. The action may be effective immediately, but the applicant or permit holder may make a written request for a final hearing before the Town Council, which shall render a final decision concerning the permit. The Director of Public Works, after notice to the permit holder, may suspend the permit temporarily if the public interest requires use of the right-of-way for a public event, construction, repair, or any other purpose.
13. The Town shall be able to issue additional rules and regulations to the ordinance to the extent of their legal authority to do so. Any additional rules and regulations shall be made in furtherance of encouraging outdoor dining, pedestrian activity, neighborhood interaction, promoting a better aesthetic appearance, and creating increased local business through facilitating a more walkable town.
14. The number and location of Outdoor Dining areas shall be at the sole discretion of the Town Council, be in the public interest, and no entitlement is created by these rules and regulations.

Elements of a Good Seating Area¹

Elements of a typical outdoor dining area include barriers, planters, tables, chairs, umbrellas, menu display, heat lamps, and an access point. If wait service is not provided in the outdoor dining area, the eating establishment is required to supply a waste receptacle. If wait service is provided, the restaurant operator is not permitted to place a waste receptacle in the outdoor dining area.



Barriers

1. The barrier access point must be controlled by the restaurant establishment.
2. If alcohol is served, outdoor dining shall be separated from public pedestrian space on the adjacent public sidewalk by an enclosure on all four sides with an access point that is a minimum of 44" wide.
3. The perimeter of outdoor dining areas that extend more than 3 feet into the public right-of-way shall be enclosed by barriers that are durable, removable, and maintained in good condition.
4. Minimum height of barriers shall be 30 inches and maximum height shall be 36 inches.

¹ Used as reference throughout: https://nacto.org/duocs/usdg/Sidewalk_Cafe_Guidelines_richmond.pdf; https://www.alexandriava.gov/uploadedFiles/planning/info/outdoor_dining_design_guidelines.pdf

5. Per 2015 Life Safety Code, Existing Places of Assembly, §13.1.1.7, existing portions of the structure shall not be required to be modified, provided that both the following criteria are met:
 - a. The new construction has not diminished the fire safety features of the facility.
 - b. The new addition does not result in an increase in the required minimum number of separate means of egress in accordance with §7.4.1.2

Barrier Design

1. **Sectional barrier** (generally defined as rigid barrier segments that can be placed together to create a unified appearance) is a desirable solution for outdoor seating areas. The barrier is portable but cannot be easily shifted by patrons or pedestrians. Sectional barriers must be of metal (aluminum, steel, iron or similar) or of wood construction and must be of a dark color (either painted or stained).
2. **Rope or Chain Rails** are permitted if they meet the following guidelines. The rope or chain must have a minimum diameter of 1 inch in order to maintain detectability by the visually impaired. Vertical support posts (stanchions, bollards, etc.) must be constructed of wood or metal (aluminum, steel, iron or similar). The stanchion base must not be a tripping hazard. The base must be flat and measure no more than one half (1/2) inch above the sidewalk or parking lot surface. No domed stanchion bases are permitted.
3. **Any Barrier** must be freestanding, without any permanent or temporary attachments to the buildings, sidewalks, or other infrastructure.
4. **Fabric inserts** are not permitted to be used as part of a barrier.
5. **Chain link and other fencing** such as cyclone fencing, chicken wire or similar appurtenances is prohibited. Materials not specifically manufactured for fencing or pedestrian control (including but not limited to buckets, food containers, tires, tree stumps, vehicle parts, pallets, etc.) and not expressly permitted elsewhere in these Guidelines may not be used as components of a barrier.
6. **Height.** The highest point of a barrier (such as stanchion) must measure at least 36 inches in height, with the exception of planters.
7. **All barriers** must be detectable to visually impaired pedestrians who employ a cane for guidance. The bottom of the barriers must be no greater than 27 inches above the sidewalk surface.
8. **Access opening.** Any access opening in the barrier must measure no less than 44 inches in width.
9. **Planters** may be used in place of or in addition to other barrier designs. They can be used in places where barriers are not required, such as when the seating area extends less than 3 feet into the sidewalk.
10. **Planters** may not exceed a height of 36 inches above the sidewalk or parking lot (this pertains to the planters, not the plants within them). Plants, whether live or artificial, shall not exceed a height of 108 inches above the level of the sidewalk or parking lot.
11. **All Planters** shall have plants contained within them. If the plants die, they must be replaced, or the planters removed.
12. **Any barrier, planter or planting** shall not obstruct vehicular sight distance.

Seating Area

1. All tables, chairs, equipment, and accessories must be removed from public way prior to October 16, or at the discretion of Public Works with 24-hour notice
2. Umbrellas and canopies are permitted if they do not extend beyond the permitted area.
3. Outdoor service areas shall have overhead protection.
4. Heating devices are permitted with approval of Derry Fire Dept Prevention and Code Enforcement. The location of the devices should be noted on the plan submitted with the permit application.
5. All décor must be fire retardant and the following 2015 Life Safety Code for Existing Places of Assembly, §13.4.6.11, Flame Retardant Requirements, specifically §13.4.6.11.1. No décor not approved in site plan is allowed.
6. Only battery-operated candles are permitted.
7. Area must be sufficiently lighted. Extension cords are prohibited.
8. There shall be no smoking or vaping allowed in outdoor dining area.
9. No food, condiments or paper products shall be stored in outdoor dining area. The addition of an outdoor dining area does not grant approval to the business to exponentially increase indoor dining capacity. Compliance with NH RSA 155:18, Places of Assembly Permitting is required.
10. **Furnitures and fixtures** must not be secured to trees, lampposts, street signs, hydrants, or any other street infrastructure by means of ropes, chains or any other such devices, whether during restaurant operating hours or at times when the restaurant is closed.
11. **Tables** may be colored or of a natural unpainted material (i.e., wood, metal etc.). Tables are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color.
12. **Chairs** may be colored or of a natural unpainted material (i.e., wood, metal etc.). Chairs are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color. All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction and color.
13. To ensure effective pedestrian flow, all parts of any **umbrella** (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area. Any part of an umbrella used in an outdoor seating area may not exceed a height of 120" (10 feet) above the level of the sidewalk, in order to avoid causing an undue visual obstruction of other businesses. Umbrella fabric must be of a material suitable for outdoor use and must be canvas-type. No plastic fabrics, plastic/vinyl-laminated fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor seating area.

Access and Circulation

All outdoor dining areas must leave at least 5 feet of unobstructed pedestrian space. This 5 feet of pedestrian space must be clear of obstructions caused by trees, tree wells, posts, hydrants, or any other infrastructure. In addition, no part of an outdoor dining area (including plants) may extend into the 5-feet-unobstructed zone. If a perimeter enclosure is used, adequate space must be provided within the enclosed outdoor dining area to permit movement of patrons and waitstaff. Waitstaff may not serve patrons from beyond the perimeter enclosure.

Signs

Signage is permitted within outside dining areas only with a valid sign permit. No extra or additional signage is permitted solely as a result of an establishment's participation in this outdoor dining program.

Diagrams and Pictures

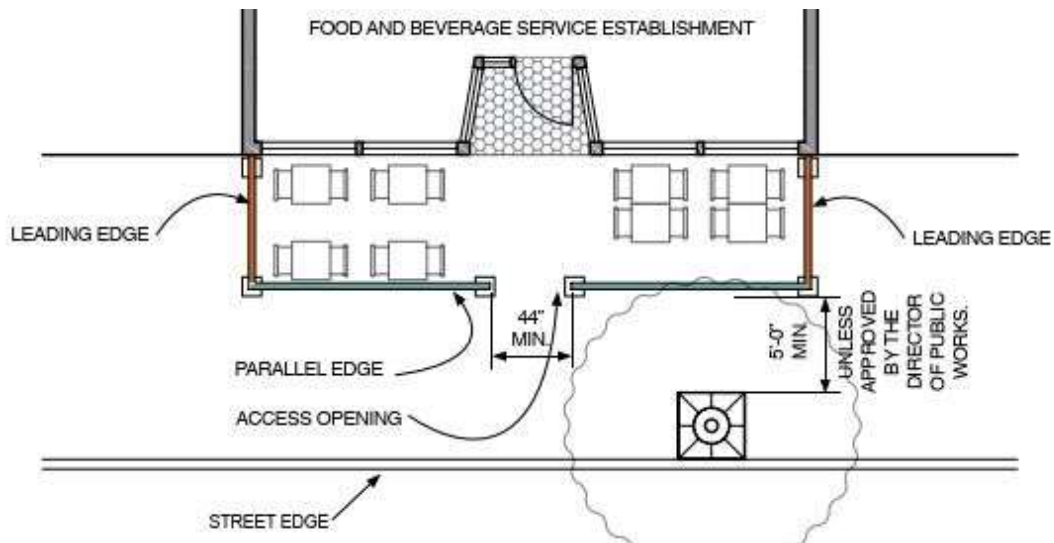
Barrier Design

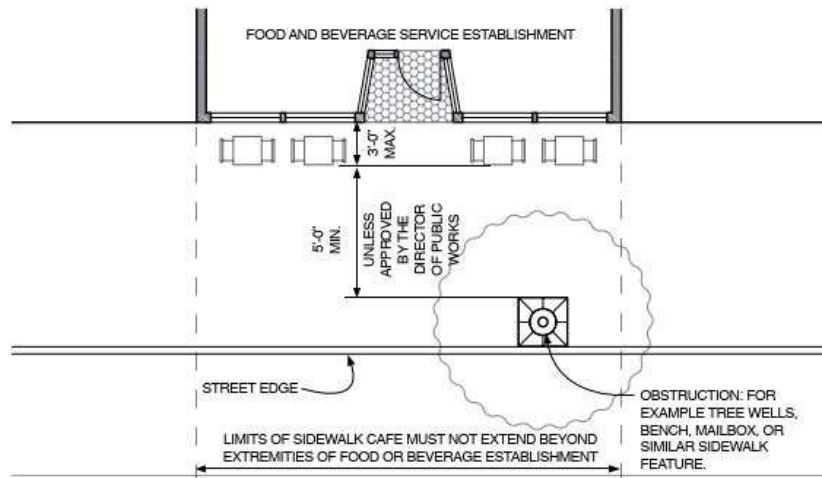
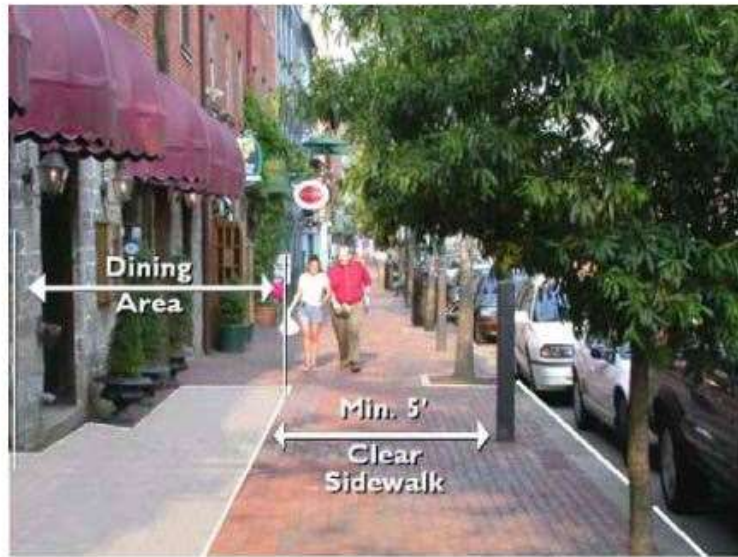


Planters



Enclosure Distances





Seating

