

Town of Derry

"Derry, New Hampshire's Place to Be"

LEGAL NOTICE

The Planning Board for the Town of Derry will hold a public hearing on **Wednesday, DECEMBER 18, 2019, at 7:00 p.m.** at the Derry Municipal Center, 14 Manning Street, to review the following proposed amendments to the Town of Derry Zoning Ordinance.

To discuss proposed changes to Article II, Word Usage and Definitions, Section 165-5, Definitions, to add terms and definitions relating to sports wagering and to discuss amendments to Article IV, District Provisions, Section 165-32, General Commercial, Section 165-32.3, General Commercial IV and Section 165-42, Industrial IV District to amend the permitted uses.

The Board will also discuss proposed amendments to the Town of Derry Land Development Control Regulations, Article XIV, Architectural Design Regulations, Section 170-84.A.1, Various Sections of the Town, to add a new district; Section 170-85.C, General Requirements; and to add a new Section 170-86.1, Design Elements Specific to the West Running Brook District.

Full text of the amendments is available at the Office of the Town Clerk, 14 Manning Street, the Derry Public Library at 64 East Broadway, and the Planning Department at 14 Manning Street. The proposed amendments may also be viewed online at <http://www.derrynh.org/planning-board>.

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Derry Municipal Center

Derry Public Library & Taylor Library (by e-mail)

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Website: www.derry-nh.org

ARTICLE II WORD USAGE AND DEFINITIONS

Section 165-5 Definitions

MOBILE SPORTS WAGERING PLATFORM – A combination of hardware, software, and data networks used to manage, administer, record, and/or control sports wagers.

SPORTS BOOK – the business of accepting wagers on any sports event by any system or method of wagering.

SPORTS WAGER – cash or cash equivalent paid by an individual to participate in sports wagering

SPORTS WAGERING – wagering on any sporting events or any portion thereof, or on the individual performance statistics of athletes participating in a sports event, or combination of sports events, by any system or method of wagering, including but not limited to in person communication and electronic communication through Internet websites accessed via a mobile device or computer and mobile device application. The term sports wagering shall include, but not be limited to, single game bets, teaser bets, parlays, over-under bets, money line bets, pools, exchange wagering, in game wagering, in-play bets, proposition bets, and straight bets.

TIER I SPORTS WAGER – a sports wager that is placed before the start of the sports event and is determined solely by the final score or final outcome of that single sports event.

TIER II SPORTS WAGER – in-play sports wager

TIER III SPORTS WAGER – a sports wager that is neither a tier I or tier II wager

ARTICLE VI DISTRICT PROVISIONS

Section 165-32 GC - General Commercial District

A. Permitted Uses. (Revised 07/19/2013, rev 06/21/2019)

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 accommodations
- f. Clinic
- g. Commercial 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. Medical Office

- v. Office
- w. Professional Office
- x. Any public use or use by a semipublic agency for which the activities are primarily non-profit in nature.
- y. Public/Private Educational Facility
- z. Radio Broadcasting and receiving stations, excluding wireless communication towers
- aa. Restaurant
- bb. Retail Sales Establishment
- ~~cc.~~ 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.
- ~~cc.~~dd. Sports Wagering

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

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, excluding 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.

gg.hh. Sports Wagering

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

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
1. Wireless communications facilities
2. Restaurant
3. Restaurant, Drive in
4. Commercial Service Establishment
5. Indoor Commercial Recreational Facility

6. Professional Office
7. Hotel
8. Industrial Establishment
9. Industrial Establishment, Light
10. Automobile Repair Facility/Garage

11. Automobile Service Station

~~11.~~12. Sports Wagering

ARTICLE XIV – ARCHITECTURAL DESIGN REVIEW REGULATIONS (Effective 7/20/05)

Section 170-80 Findings

A. The Town of Derry Planning Board finds that:

1. Our Town contains a historic downtown area, multiple commercial and industrial districts, attractive residential neighborhoods, beautiful rural landscape replete with unique natural and cultural resources, an excellent architectural tradition, a colorful history, and much visual appeal.
2. Preserving and enhancing these features is integral to maintaining the character and identity of our community.
3. Building designs which are indifferent to the traditions of our Town and region, aggressively seek the attention of passing motorists, do not consider the quality of the pedestrian environment, or are erected at the lowest possible cost without due concern for aesthetics, harm the character of our community, depress property values, and impair our quality of life.
4. While subjectivity and judgment is invariably part of reviewing architectural designs there are universal principles of good design.
5. Well-crafted design standards can promote building design that is functional, economical, attractive, and harmonious. Quality development and sustainable economic development are not mutually exclusive; rather, they are interdependent.

Section 170-81 Adoption

This article is adopted pursuant to the Town of Derry Master Plan and New Hampshire Revised Statutes Annotated sections 674:16 (Grant of Power), 674:21 (Innovative Land Use Controls) and 674:44 (Site Plan Review Regulations).

Section 170-82 Purpose

A. The purpose of the Architectural Design Regulations is to:

1. Provide for high quality architecture that respects universal design principles, enhances the appearance of Derry, reinforces pedestrian character where appropriate, and is sensitive to neighboring buildings, its own site, the broader setting, and natural and cultural resources.
2. Protect and enhance the positive visual qualities of Derry's downtown, residential neighborhoods, commercial corridors, industrial parks, and scenic and rural landscapes.
3. Encourage design which is compatible with the commonly recognized traditional character of Derry and New England.
4. Enhance property values and foster civic pride.
5. Minimize potential aesthetic conflicts between residential and nonresidential uses and between single family and multifamily uses.

- B. Adherence to these regulations should not be burdensome and they are not intended to stifle creativity or variety. On the contrary, the regulations will likely encourage more thoughtful approaches to building design. There is much flexibility embodied in the regulations and many ways of meeting the objectives. It is hoped that they will be useful for design professionals and applicants seeking to produce quality designs respectful of place and context.

Section 170-83 Applicability

- A. Architectural design review is required as part of Site Plan Review for all nonresidential structures and for all multifamily residential structures, as authorized in Chapter 165 of the Town of Derry Zoning Ordinances. This includes all new construction, building additions, and alterations to buildings if those alterations would affect the exterior appearance of the building. All applicable development must conform to these Regulations as reasonably interpreted and applied by the Planning Board.
- B. Architectural design review is not conducted for routine repair or maintenance of structures, any work on the interior of a building, any existing structures for which no exterior alterations are proposed, and modifications solely for the purpose of providing safe means of egress or access in order to meet requirements of the various building codes or safety codes, as may be adopted by the State of New Hampshire and the Town of Derry, from time to time.

Section 170-84 Various Sections Of The Town

- A. Various sections of the Town differ from one another in character and in appropriate architectural treatment. The level of architectural design regulation compliance required for each zoning district is listed below, as may be authorized in Chapter 165 of the Town of Derry Zoning Ordinances:

1. VERY HIGH Level of Compliance with Regulations:

- a. CBD/TBOD. These districts encompass the downtown area and are highly sensitive because of the importance and challenge of maintaining a pleasing pedestrian environment.

This is the Central Business District, which includes the areas north and south of Broadway, with Rollins Street and Lenox Road on the north, Maple and Central Streets on the west, Marlboro Road and Park Avenue on the east, down Birch Street to South Avenue on the south, back to Central Street. As one travels closer to the core areas traditionally the buildings are taller, closer to the sidewalk, built of more substantial materials, and more elaborate in design and detailing. This is the Traditional Business Overlay District that have frontage lots along East and West Broadway from Maple Street to Crystal Avenue and Birch Street.

- b. WRB This district is bounded to the north by the lots now or formerly known as 2 and 4 Humphrey Road and 45 South Main Street, to the south, the frontage lots along South Main Street and Rockingham Road to include 120 Rockingham Road and 139 Rockingham Road, and to the east, the frontage lots on Rockingham Road beginning at 92 and 123 Rockingham Road, but excluding 2 Brady Ave, ending at and including 74 Rockingham Road and 109 Rockingham Road.

This district was created to retain the unique character that differs from the other commercial districts given its proximity to the historic West Running Brook.

2. HIGH Level of Compliance with Regulations:

a. RESIDENTIAL DISTRICTS. MFR / MHDR / CBD. These areas include Multi-Family Residential Districts as well as multi-family uses in the Downtown Central Business District and multi-family development in some of the older high density residential neighborhoods close to the traditional core downtown area.

b. OBD / OMBD. These areas are architecturally sensitive because some older neighborhoods that are zoned for mixed use have been harmed by incompatible multi-family and non-residential development. These are transitional districts, and as such the new non-residential components shall respect the character and nature of the existing residential uses. New development shall blend in with the traditional character of these neighborhoods in order not to diminish property values and the small scale pedestrian nature of these areas.

These districts include the Office/Business District along West Broadway from the Londonderry Town Line to Maple Street, the Office/Medical/Business District which is the area along Birch St. adjacent to Parkland Hospital to Shute's Corner.

c. NEIGHBORHOOD COMMERCIAL. This district would allow for limited retail sales in the residential districts in the outlying areas of town, primarily in the Medium, Low-Medium and Low Density Residential Districts.

3. MEDIUM HIGH Level of Compliance with Regulations:

a. GC / GC-II / IND-II / IND-IV. It is important to enhance the quality of commercial development and light industrial along these corridors. All serve as gateways to our Town, carry high levels of traffic, and are the most prominent areas of the Town. On the other hand, an intensive automobile oriented and big box/small box character is already established in many areas. This district includes different areas of town. It includes the Route 28 (Rockingham Road) corridor, Ryan's Hill south to the Windham Town Line, the Webster's Corner area (Island Pond/Rockingham Road intersection), Crystal Ave up to Ross' Corner, Folsom Rd, By-Pass 28 and Tsienneto Road. It also includes the Route 28 (Manchester Road) corridor.

b. IND-I / IND-III / IND-IV / IND-V / IND-VI / ORD. Derry seeks to enhance the quality of its industrial parks. These areas include Industrial Parks, Office/Research Districts, office / light industrial districts and the Windham Road area, Ash Street Extension area, the area behind Ashleigh Drive and the area of A Street, B Street and Franklin Street.

Section 170-85 General Requirements

A. An application is considered to meet the design requirements of the Architectural Design Regulations if the Planning Board, in its judgment, determines that the application overall demonstrates substantial compliance with these Regulations. In reviewing plans under these Regulations, the Planning Board shall take into account

the level of expected compliance based on the zoning district in which the development is to occur, as defined in Section 170-84, the nature of the surrounding uses, style of the surrounding buildings, and special features of historic, cultural or community interest in the vicinity of the development.

- B. The regulations contained herein do not expect to foresee all possible building situations. Decisions concerning such unforeseen will be made with these regulations in mind. Where the Planning Board finds unnecessary hardship may result from strict compliance with these regulations with respect to a particular tract of land, the Board may modify or waive these regulations so that substantial justice may be done and the public interest secured, provided that:
 - 1. the waiver shall not have the effect of nullifying the intent and purpose of these regulations;
 - 2. the Planning Board requires such conditions as will, in its judgment, secure the objectives of the regulations which are waived;
 - 3. the waiver is requested in writing;
 - 4. the waiver is based on evidence presented to the Board by the applicant;
 - 5. the Planning Board formally votes on such waiver; and
 - 6. the waiver is noted on the final approved plan.
- C. Subject to specific architectural design requirements set forth in other sections of the ordinance, no particular architectural style is stipulated, and innovative, contemporary, and distinctive designs are encouraged, provided they are respectful of general design principles, and fit within the architectural context of the neighborhood.
- D. Buildings shall be compatible with traditional New England architecture. They shall be articulated to express an architectural integrity and design continuity.
- E. While the use of a traditional architectural vernacular (gables, porticos, belt-courses, etc.) is desirable, designers are encouraged to use this vocabulary in creative ways.
- F. It is recognized that many national and regional chain businesses seek to build a standard design across the country or region without regard to local conditions. However, the Planning Board will evaluate all proposed designs for their compatibility with our own local community character and for conformance with the goals of these Regulations. It shall be the obligation of the applicants to develop designs that are compatible with our community character; the Town need not make adjustments to accommodate these template designs.
- G. Use of false or partial mansard roofs, unconventionally shaped roofs, overly bright colors, disproportionately sized building elements, crudeness of features, or a general plastic feel of the building, is not appropriate.
- H. Buildings shall possess an overall integrity. Architectural details shall not give the impression of being tacked on but rather shall be integral to the overall design.
- I. The reuse of existing structures that have special architectural, historical, cultural, or contextual value by the applicant is strongly encouraged.
- J. Modifications and additions to existing buildings shall be harmonious with the character of the building.

- K. Building design shall be consistent with other features of the site - signage, landscaping, lighting, fencing, outbuildings, etc.
- L. Signage shall reflect the architectural character of the building.

Section 170-86 Design Elements

- A. Proposed designs will be evaluated on how well the project's theme, site design and building design is integrated into its neighborhood and the project's consistency with Derry's Master Plan. A Checklist of Design Elements is available to facilitate a consistent and orderly evaluation of a project. The applicant is encouraged to use the checklist throughout the project's design process and in the presentation of that project to the Planning Board.
- B. The Design Elements Checklist includes two sections, Site and Building, based on the assumption that good design starts with site development and evolves into an integrated design plan for the proposed construction.
- C. The Site portion of the Design Elements Checklist addresses various elements such as setbacks, alignment with the street, relative spacing with respect to other structures and the use of and integration with natural features. Buildings shall not be oriented at odd angles to the street unless this is already the prevailing pattern in the area or if it is dictated by strong topographic or site consideration.
- D. Site development shall address the quality of the streetscape and pedestrian friendly access especially in those districts that encourage village or downtown environments. Way-finding for both vehicles and pedestrians should not be dependent on just signage; there should be a natural progression defined by landscape, pathways and building forms that attract the user to the project. Buildings shall be brought to the front of the site with parking and service elements away from the street frontage. Lighting and landscape should enhance the spirit of the project, and advertising signage should be in proportion to the site and buildings.
- E. The building's orientation to the lot boundaries and to the streets, shall be considered in the overall design. This pattern reinforces the streetscape.
- F. The Building portion of the Design Elements Checklist addresses:
 - 1. Building Scale and Proportion. Building elevations, scale, massing and the proportional relationship between structures can compliment or detract from the architectural character of the surrounding area. The scale and proportion of proposed buildings shall take into consideration the scale and proportion of buildings as evidenced in the development pattern of the surrounding area. Visual conflicts between properties shall be minimized.
 - 2. Massing. The physical bulk or mass of buildings, particularly larger and elongated ones, can either enhance or detract from the architectural character of the community. Structures should be carefully designed to break up their mass into smaller visual components providing human scale, variation and depth.

3. Roof. Rooflines can provide visual interest and help to reduce the apparent mass of a building. Traditional roofline types such as gabled, hipped, and gambrel that are evidenced in Derry's architectural heritage are strongly encouraged. Type, shape, pitch, and direction of roofs shall be considered in the design. Extensive areas of visible pitched roof should be broken up with dormers, cross gables, cupolas, chimneys, parapets, balustrades, and towers. Multi-story buildings (three or more stories) are encouraged to have an interesting roof line that can include a pitched roof, some appropriate cornice or parapet detail or a combination of both. An unadorned flat roof is not acceptable in the areas where a high degree of compliance with these regulations is required.
4. Building façade. Much attention shall be given to create an attractive building façade that relates to the function of the building. Broad expanses of blank walls are inappropriate. Traditionally, the parts of a facade that might be embellished, or at least articulated in some fashion include:
 - a. A horizontal *base* where the building meets the ground (such as a different treatment for the foundation or water table)
 - b. A horizontal *top* where the building's roof meets the sky (such as a projecting cornice with brackets for a flat roof or an articulated pitched roof)
 - c. Horizontal sections (such as a belt course between stories or a change of material from the first to the upper stories)
 - d. The building's corners (such as corner boards or quoins, a material or texture change)
 - e. Vertical articulation in the middle (such as pilasters) the enhancement of the *door/entry* (such as a portico)
 - f. The areas around the *windows* (such as window trim, lintels and sills). Depth shall be created for the facade through use of projecting or recessed sections, bay windows, or arcades and porches.
5. Fenestration. Windows are an integral part of a building's facade and shall be incorporated on all building elevations, regardless of style, to humanize the building by giving it scale.
 - a. If the building has traditional lines, windows shall follow the proportions typical of that style, where they tend to be more vertical rather than squat. In less traditional styles, window patterns need to be in proportion to the façade. In all cases, windows and doors shall establish an orderly, balanced pattern and rhythm that makes the building inviting.
 - b. In pedestrian oriented downtown, use of large picture type windows for retail uses on the first floor is strongly encouraged. In residential areas and on upper floors of downtown buildings use of multiple panes of glass (or the appearance of multiple panes) rather than picture type windows is preferred. Windows abutting the street or

sidewalk in downtown areas shall have a low window sill in relation to the street or sidewalk in order to create an open effect inviting to the pedestrian.

- c. Shutters, where appropriate, shall be sized properly for the window openings, approximately one half the width of the opening, otherwise they shall not be used.
6. Entrance. The entrance is a primary element in defining a building. Articulation of that entrance is encouraged through use of a portico, canopy, sidelights or other devices scaled to the building façade. There shall be a primary entrance, located on the façade facing the street or the façade which the well designed site plan identifies as the front façade. In those zones where there is significant pedestrian traffic this entrance must also have a direct relation to the path of pedestrian travel. Use of a usable front porch on multi-family residential buildings is also encouraged.
7. Materials. The use of natural materials or materials that appear natural is preferred. Materials should be high quality and durable. Wood (clapboard and shingle), brick, stone, and terra cotta are the preferred materials, although fabricated materials which effectively imitate the character of these materials are also acceptable. Conventional vinyl and aluminum siding arranged in a horizontal clapboard pattern is acceptable but not preferred. If these materials are used, the construction details that hide the J-trim joints are recommended. Vinyl and aluminum siding use is inappropriate in downtown areas. The use of fiber reinforced stucco, block, textured block, and split block are discouraged, except in Industrial Districts.

Sheet plastic, sheet fiberglass, T-111 plywood, pecky shingles (shakes), simulated brick, and similar materials shall not be used. Use of highly reflective plastic or metal surfaces is inappropriate. Prefabricated metal wall panels and undressed concrete/cinder block shall not be used except in industrial park areas. When these materials are used in industrial park areas it is preferable to minimize the area over which they are used, minimize their use on front facades, and to combine their use with other materials, such as installing metal walls over a foundation of textured block.
8. Color. Subtle colors are appropriate on larger, plain buildings, whereas smaller buildings with more detailing can more effectively incorporate brighter colors. Bright colors should be limited to accent areas. High intensity colors, metallic colors, or fluorescent colors should not be used.
9. Lighting. Use of low key, low intensity wall pack or spot type lighting, or lighting of signage on buildings is appropriate. Use of lighting to highlight the building in a prominent manner, such as brightly illuminated roof fins or neon tube lighting is discouraged. Unless otherwise approved by the Planning Board, all pole mounted lighting fixtures shall be fed electricity by the use of underground electrical lines installed in accordance with applicable electrical code. Proposed exterior lighting fixtures shall provide for a level of illumination appropriate for the proposed use or uses. Illumination patterns proposed shall be such that all sites subject to these regulations will enjoy an adequate level of lighting to insure user safety and security. However, care shall be taken to avoid lighting patterns and intensities which "over light" a

site, creating nuisance and glare at abutting properties, public streets and the neighborhood in general. . All lighting plans shall be subject to review and approval by the Planning Board.

Section 170-86.1 Design Elements Specific to West Running Brook District

- A. **General.** The following architectural design standards shall apply to all structures.
- B. **Buildings: Scale and Style.** Buildings in new developments and those located on lots intended for substantial redevelopment shall relate in size and scale in alignment with the purpose of the district, which is to maintain the historic character of the West Running Brook area. Buildings shall reflect a continuity of treatment consistent with new development in the district specifically in relation to building scale and architecture. Structures located at an elevation of 250 to 300 feet above sea level shall not be taller than 5 stories, exclusive of attics. Structures located at an elevation of 301 to 350 feet above sea level shall not be taller than 4 stories, exclusive of attics. Structures located at an elevation of 351 to 500 feet above sea level shall be no taller than 3 stories, exclusive of attics. Structures located at an elevation above 500 feet above sea level shall be no taller than 2 stories, exclusive of attics. A “story” as defined for this district are limited to 10 feet in height.
- C. **Corner Lots.** Buildings on corner lots shall be considered significant structures, given that they have at least two front facades visibly exposed to the street.
- D. **Walls and Planes.** Commercial buildings, including but not limited to those used for retail uses, shall avoid long, monotonous uninterrupted walls or roof planes. Offsets including projections, recesses, and changes in floor level shall be used in order to add architectural interest and variety, and to relieve the visual effect of a simple, long wall. Similarly, roof-line offsets shall be provided, in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. Flat roofs should be avoided in favor of pitched roofs.
- E. **Facades Facing Public Streets.** Buildings with more than one façade facing a public street or internal open space shall be required to provide multiple front façade treatments. The architectural treatment of the front façade shall be continued, in its major features, around all visibly exposed sides of a building. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors, and details. Bland wall or service area treatment of side and or rear elevations visible from the public viewshed is discouraged.
- F. **Roofs.** Gable roofs with a minimum pitch of $\frac{9}{12}$ should be used to the greatest extent possible. Where hipped roofs are used, it is recommended that the minimum pitch be $\frac{6}{12}$. Both gable and hipped roofs should provide overhanging eaves on all sides that extend a minimum of one foot beyond the building wall. Flat roofs should be avoided on one-story buildings, but may be used on buildings with a minimum of two stories, provided that all visibly exposed walls shall have an articulated cornice that projects horizontally from the vertical building wall plane. Any roof top mechanics should be out of view of pedestrian traffic.

G. Windows/Fenestration. Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building, and appropriate to the setting. Windows shall be vertically proportioned wherever possible. To the extent possible, upper story windows shall be vertically aligned with the location of windows and doors on the ground level, including storefront or display windows. Blank, windowless walls are not permitted.