

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, April 07, 2021, at 7:00 p.m.** at the Derry Municipal Center, 14 Manning Street, to review the following amendment. This meeting will be in person and virtual.

The Planning Board for the Town of Derry will hold a public hearing to discuss proposed changes to the following section of the Town of Derry Zoning Ordinance: Article III, General Provisions, to add a new Section 165-28.2, Solar Energy Systems.

Planning Board for the Town of Derry will hold a public hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, Subsection B, Permitted Uses, Subsection C, Area and Dimensional Requirements, and Subsection G, Parking Requirements. The Planning Board will also discuss proposed amendments to the Town of Derry Land Development Control Regulations, Article XI, Design and Construction Standards, Section 170-63, Parking Requirements.

Full text of the proposed amendments are 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>**

POSTED: MARCH 23, 2021

Derry Municipal Center

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

Union Leader for publication, March 26, 2021

14 Manning Street . Derry, New Hampshire 03038 . Tel 603.432.6110. Fax 603.432.6109
Website: www.derry-nh.org

Chapter 165, Zoning

ARTICLE III

Section 165-28.2 Solar Energy Systems (Effective XX/XX/202X)

- A. This chapter is adopted in accordance with RSA 674:17, I (j), and the purposes outlined in RSA 672:1, III-a, as amended. The purpose of this ordinance is to permit the building of distributed generation resources using renewable energy, while protecting the public's health, safety, and welfare. The Town intends to promote the State and national goals of developing clean, safe, and renewable energy resources in accordance with New Hampshire's Ten Year State Energy Strategy that includes national security and economic and environmental sustainability.
- B. Word Usage and Definitions. For the purpose of this chapter, certain terms or words herein shall be interpreted as follows: the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular. The words "shall" and "will" are mandatory; the word "may" is permissive.

ADVERSE NOISE IMPACTS - Disturbance and noise above 60 decibels at the property line.

GLARE – The effect produced by light that exceeds the Index of Refraction, which is equal to 1.3, including the loss of visual performance or discomfort produced by an intensity of light in the visual field that is greater than the intensity of light to which the eyes are adapted.

GROUND-MOUNTED – A solar collection system and associated mounted hardware that is affixed to or placed upon the ground (such as ballasted systems) including but not limited to fixed, passive, or active tracking racking systems.

RATED NAMEPLATE CAPACITY – Maximum rated alternating current ("AC") output of solar collection system based on the design output.

RESIDENTIAL/SMALL BUSINESS SOLAR – Any ground mounted or roof mounted solar collection system primarily for on-site residential use, and consisting of one or more free-standing, ground or roof mounted, solar arrays or modules, or solar related equipment, intending to primarily reduce on-site consumption of utility power and with a rated nameplate.

ROOF MOUNTED – A solar collection system that is structurally mounted to the roof of a building or other permitted structure, including limited accessory equipment associated with the system which may be ground mounted.

SHARED/COMMUNITY SOLAR ENERGY SYSTEM – A solar energy system that serves a group of local energy users situated on one or more separate lots, which

are not necessarily contiguous. These systems may be connected to privately-owned distribution lines or utility-owned distribution or transmission lines. Users are typically connected to the shared system through a group net metering agreement, power purchasing agreement, or other similar agreement or method.

SOLAR ACCESS – The ability of one property to continue to receive sunlight across property lines without obstruction from another’s property (buildings, foliage or other impediment). Solar access is calculated using a sun path diagram.

SOLAR COLLECTION SYSTEM - Includes all equipment required to harvest solar energy to generate electricity. The Solar Collection System includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Solar Collection Systems include only equipment up to (but not including) the stage that connection is made to the utility grid or site service point.

SOLAR LAND COVERAGE - Is defined exclusively for the purposes of calculating the footprint of the land area occupied by the components of a solar array. The Solar Land Coverage is the land area that encompasses all components of the solar collection system including but not limited to mounting equipment, panels, and ancillary components of the system. This definition does not include access roads or fencing and is not to be interpreted as a measurement of impervious surface.

SOLAR PANEL – That part or portion of a solar energy system containing one or more receptive cells or modules, the purpose of which is to convert solar energy for use including but not limited to space heating or cooling, for water heating and/or for electricity.

C. General Provisions. The following general provisions shall apply to Residential/Small Business Solar Collection Systems.

1. Location and Size.

- a. Solar panels exceeding eighteen (18) square feet in area are not permitted in any front yard, or on any face of a building or structure facing a street unless integrated with the ordinary construction of said building or structure, except roof mounted solar panels as set forth below.
- b. Ground mounted solar panels, larger than eighteen (18) square feet, shall be located in a side or rear yard only, not to exceed twenty-five (25) feet in height above the ground and shall be reasonably screened from adjacent properties by fencing or a combination of evergreen and deciduous plantings. A ten foot access shall be provided on one side of the fence array for emergency access. Gates shall have an emergency key box (“Knox Box[®]”).
- c. Roof -mounted solar panels. Permitted roof-mounted solar panels shall include integrated solar panels as the surface layer of the roof structure with no additional apparent change in relief or projection (the preferred installation), or separate flush-mounted solar panels attached to the roof. An engineer will be required to review the roof structure and provide a report saying it will support the array prior to permitting the installation

or indicating what modifications must be performed to make the roof viable to support the array.

- d. Separate flush-mounted solar panels installed on a building or structure with a sloped roof surface shall not project vertically above the peak of the roof to which it is attached, or project vertically more than ten (10) feet above a flat roof installation. Total height, including panel angles must comply with NFPA 1, Section 11.12.2.2.1, Fire Accessways.
- e. Solar Collection systems of up to and including 15kW and less than 900 square feet of solar land coverage shall be allowed as a right, requiring only compliance with setbacks and no more than 18 square feet may be located in the front yard. A building permit and electrical inspection, by a licensed master electrician, is required to ensure compliance with electrical and building code provisions.

D. Specific Solar System Requirements and Exemptions

1. Any Solar Collection System must meet all setback and height regulations of the Town of Derry.
2. Any Solar Collection System must meet all State and Federal requirements.
3. The applicant must provide notice of the expected output (kW). This information must be provided with the Building Permit application.
4. If connected to a utility, copies of the utility approval must be provided for solar arrays both less than and greater than 15kW.
5. For a roof-mounted solar array and ground mounted arrays of 15kW AC or less, no further review is required.
6. For free-standing, ground-mounted solar array greater than 15kW AC, the process shall be as follows:
 - a. Application for site plan review to the Planning Board is required.
 - b. The Planning Board, at its option, may require the applicant to submit an analysis of potential glare and other nuisances caused by the installation and require the applicant to take steps to mitigate, as appropriate.

- E. Decommissioning. Each Solar Collection System and all solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by the system owner and/or operator, or upon termination of the useful life of same. The Solar Collection System shall be presumed to be abandoned if no electricity is generated by such solar collector for a period of twelve (12) continuous months. An escrow/removal bond, such as those assessed for tower removal, may be required by the Planning Board or Public Works.

F. Solar Ready Zoning

1. Solar Ready Zoning should be considered as one among multiple considerations in planning new developments.
 2. New structures are encouraged, to the extent possible and insofar as practical, to be situated on the lot to take advantage of solar access, including the orientation of proposed buildings with respect to sun angles, the shading and windscreen potential of existing and proposed vegetation on and off the site, and the impact of solar access to adjacent uses and properties.
 3. To permit maximum solar access to proposed lots and future buildings, where reasonably feasible and where consistent with other appropriate design considerations, new streets are encouraged to be located in such a way as to encourage building siting with the maximum exposure of roof and wall area to the sun.
 4. Derry town tree-planting programs are encouraged to take into account the impact of street trees on the solar access of surrounding properties and, where possible, efforts made to avoid shading possible locations of solar collectors.
 5. Developers submitting applications for residential subdivision approval or site plan approval, are encouraged to take into consideration whether the proposed construction would block access to sunlight between the hours of 10:00 a.m. and 4:00 p.m. Eastern Standard Time for existing ground-mount, pole-mount, or roof-mounted solar energy collectors or for solar energy collectors.
- G. Shared Community Solar Energy System. Together with the requirements detailed above, the application must include a certified copy of the agreement of all principals involved with the collaboration, detailing the intended management of the system, the ongoing financial requirements, and the procedure regarding the change of ownership or withdrawal of any principals.
- H. Municipal Systems. All solar collection systems for municipal use are exempt from land use regulations pursuant to RSA 674:54.

ARTICLE VI DISTRICT PROVISIONS

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, 07/17/2019)

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~~ Residential units shall be a minimum of 800-750 square feet per unit limited to one or two bedroom units, with the exception of:

~~b.a.~~ studio units which are allowed to be 400 square feet in size. The number of studio units shall be limited to 5% of the total allowable number of units for a single project.

~~b.~~ Residential use shall not be permitted below the second floor. (Revised 07/16/2015, rev 05/02/2019)

- c. Minimum lot area shall be 20,000 square feet. Density shall not exceed 40 dwelling units per acre.
- d. No building or structure within this district shall be higher than 350 feet above sea level in elevation. (Revised 07/16/2015)
- e. Conversion: Existing structures may be converted for multi-unit residential uses, provided that the lot and the structure meet the minimum standards for this the TBOD 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.
- e.f. All multiunit residential developments shall meet with the Planning Board for a non-binding conceptual discussion prior to scheduling a meeting with the Technical Review Committee, or the submission of a formal application to the Board.

- 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.

C. Area and dimensional requirements

- 1. Minimum Lot Area.
 - A With public sewer: 7,500 square feet.
 - ~~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 conjunction with mixed use. Parking shall be provided on the basis of one space per bedroom, with a minimum of ~~three~~ 1.5 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.

Land Development Control Regulations Article XI, Design and Construction Standards

Section 170-63 Parking Requirements

A. General parking requirements.

1. No non-residential or multi-family residential site or structure shall be erected, enlarged, or subject to a change of use unless such site conforms with off-street parking requirements contained within this section.
2. All on site parking spaces, service or delivery aisles, interior drives, aisles and vehicular access ways shall be setback a minimum of 10 feet from all side and rear property lines and a minimum of 15 feet from all front property lines in all zoning districts of the Town of Derry except within the Central Business District. Within the Central Business District setback dimensions shall be five feet from all property lines.
3. All parking facilities shall be designed and constructed in compliance with all applicable provisions of the Americans with Disabilities Act (ADA).
4. Required off street parking facilities shall be provided on the same lot as the principal use or uses they are intended to serve except within the Central Business District and the Traditional Business Overlay District. Within the CBD and TBOD parking may be met with a combination of both public and private on and off street parking.
5. All required parking spaces, aisles and drives shall be paved and constructed in accordance with the requirements of this Section.
6. A curbed, raised and landscaped island, a minimum of 15 feet in width, shall be provided where parking spaces, service or delivery aisles, interior access drives, aisles and vehicular access ways abut a public street in all zoning districts of the Town of Derry except within the Central Business District and Traditional Business Overlay District.
7. A curbed, raised and landscaped island, a minimum of 10 feet in width shall be provided between groupings of twenty or more parking spaces in all zoning districts within the Town of Derry.
8. A minimum of 5% of the interior area of any proposed parking area and aisles shall be provided as interior landscaped green space in all parking lots containing more than 20-parking spaces.
9. All parking areas serving non-residential uses shall be illuminated to a minimum of a 1/2 foot candle during hours of operation of said non-residential use.

- B. A parking plan shall be developed for each property proposed for multifamily development in the Traditional Business Overlay District, and the parking plan shall be submitted as part of the conceptual discussion with the Planning Board. The expected demand on parking spaces may be modified based on the unique characteristics of the individual structure or use and the characteristics of mixed uses which operate at different times during the day. The plan shall identify how the expected parking demand can be met utilizing on site surface parking, parking to be made available within the building, public

parking available in on street spaces, or in parking garages or parking lots. The parking analysis may also consider the availability of public or private satellite parking structures.

C. Parking Density Requirements.

1. All non-residential and multi-family residential sites shall provide on-site parking facilities meeting the requirements of this section. Non-residential sites within the CBD and TBOD are allowed to utilize off site parking as stipulated in LDCR Section 170-63.B.4.
2. Where the computation of required parking density results in a fractional number of spaces, the required number of spaces shall be rounded upwards to the nearest whole number (I.e. a computed density of 39.2 or 39.8 spaces results in a requirement for 40 spaces).
3. In cases where a single site is comprised of varying uses, parking requirements for each use shall be calculated in accordance with the requirements of this Section and the total number of required parking spaces shall be the sum of requirements for each individual use.
4. Parking density requirements by use:
 - a. Multi-family dwellings, including independent adult communities — (Effective 2/21/07, amended 5/6/2015)
1.5 spaces per bedroom with a minimum of two spaces per dwelling unit.
In the TBOD, parking for multifamily shall be 1 space per bedroom with a minimum of 1.5 spaces per dwelling unit.
 - b. Elderly housing: 1.5 spaces per dwelling unit
 - c. Hospitals: 3 spaces per bed
 - d. Convalescent or nursing home: 1 space per two beds
 - e. Congregate Care Facilities, Assisted Living Facilities —
There shall be 0.5 parking spaces per unit plus 1 parking space per employee. (Effective 2/21/07)
 - f. Hotel, motel or inn: 1.25 spaces per room, plus one space per 50 square feet of function, meeting, or conference space
 - g. Retail store, shopping center, supermarket, grocery store or bank:
1 space for each 300 square feet of gross floor area
 - h. Service establishments: 1 space for each 250 square feet of gross floor area
 - i. Churches, theaters, and other places of assembly: 1 space for each 3 seats

- j. Restaurants, eat-in: 1 space for each three seats plus one space for each employee of the largest shift
- k. Cocktail lounges in restaurants, Bars & Nightclubs: 1 space for each 2 seats plus one space for each employee of the largest shift.
- l. Restaurant, fast food or take out: 1 space per 60 square feet of gross floor area, plus one space per employee of the largest shift.
- m. Bowling alley: 4 spaces for each alley
- n. Day care facility: 2 spaces for each employee plus appropriate off-street area for drop-off and pickup of children.
- o. Funeral home: 12 spaces for each chapel
- p. Gasoline station: 1 space per fueling position plus one space per employee of the largest shift
- q. Community center: 1 space per 150 square feet of gross floor area
- r. Membership clubs: 1 space per 150 square feet of gross floor area
- s. Office: 1 space per 300 feet of gross floor area
- t. Professional offices: 1 space per 250 square feet of gross floor area
- u. Medical offices and Health Service Facilities: 1 space per 200 square feet of gross floor area.
- v. Warehouses: 1 space per 1,200 square feet of gross floor area
- w. Wholesaling: 1 space per 500 square feet of gross floor area
- x. Manufacturing: 1 space per 500 square feet of gross floor area
- y. Uses not listed: Subject to determination by Planning Board