



AGENDA ITEM #: #19-104
COUNCIL MTG OF: September 3, 2019
FROM: Dave Caron, Town Administrator
OFFERED BY: Planning Department
PREPARED BY: George Sioras, Planning Director
SUBJECT: Revisions to the Derry Zoning Ordinance

STAFF REPORT
Public Hearing 9-17-19

INTRODUCTION:

To amend Article VI, District Provisions, Section 165-34, Office Business District, to amend the permitted uses, limitations, parking requirements, and maximum lot coverage.

TOWN ADMINISTRATOR COMMENTS

The Town Council is urged to schedule a public hearing on September 17, 2019 and thereafter adopt Ordinance #2019-009 which provides for revised uses and other requirements in the Office Business District.

BACKGROUND

Over the last three years both the Derry Town Council and Planning Board worked on their respective Goals and requested staff to review the permitted uses in the existing Industrial and Commercial Districts. The above referenced zoning amendment continues the ongoing steps in meeting those Goals. Per the recent expansion of the Office Business District, which are the frontage parcels located along West Broadway from the Londonderry town line to the Downtown, staff and the Planning Board also reviewed the permitted uses and criteria for development in this district.

DISCUSSION

The purpose of the amendment is to expand the permitted uses in the Office Business District and the criteria for future development. This district is also designated as an Opportunity Zone as designated by the Federal government and the Governor's office to stimulate economic activity and redevelopment and investment opportunities.

FISCAL IMPACT New development as well as redevelopment will see an expansion of the Town tax base and additional revenues.

NA.

RECOMMENDED ACTION BY COUNCIL

Staff recommends that the Town Council approve the attached revision to the Derry Zoning Ordinance as APPROVED by the Derry Planning Board on August 7, 2019.

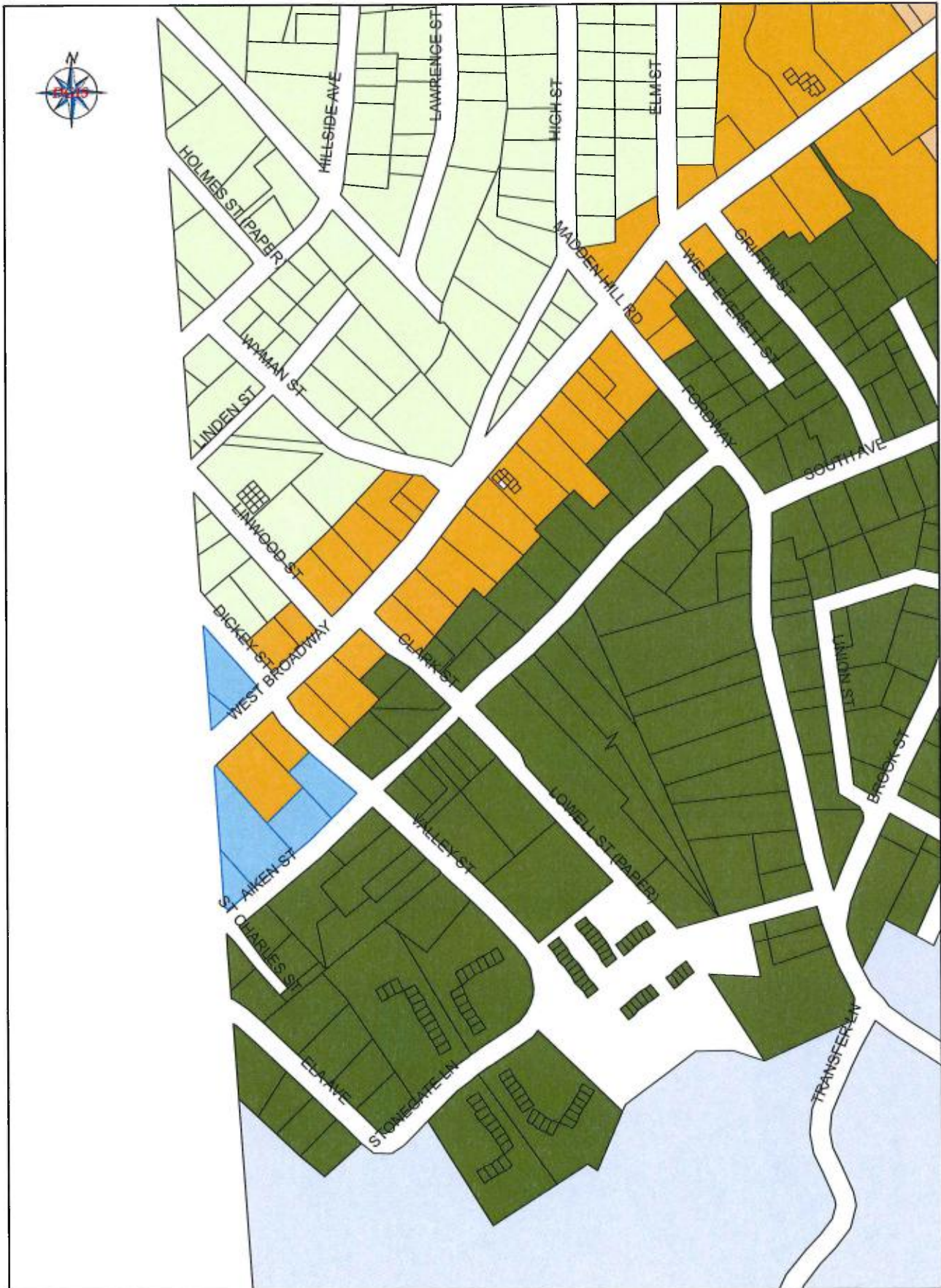
RECOMMENDED MOTION

At the September 17, 2019 Council Meeting, I MOVE THAT THE TOWN COUNCIL <adopt Ordinance #2019-009> as follows ... *[Read the Ordinance]*




* * * * *

Proposed OBD Expansion



07.17.2019

 Lots to Add to Office Business District

ARTICLE VI DISTRICT PROVISIONS

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~~
 1. Bank
 2. Bed and Breakfast
 3. Brew Pub
 4. Commercial Performing Fine Arts Schools and Studios
 5. Commercial Service Establishment
 6. Daycare
 7. Dwelling, Multi-Family as per Section 165-49.B.1
 8. Dwelling, Single Family Detached
 9. Home Occupation/Business
 10. Industrial Establishment, Light
 11. Laboratory (Medical/Dental)
 12. Laboratory, Research, Experimental, Testing
 13. Medical Office
 14. Microbrewery
 15. Multi-Unit Commercial Establishment
 16. Office
 17. Professional Office
 18. Research and Development Facility
 19. Research Lab
 20. Restaurant
 21. Retail Sales Establishment as provided in Subsection D

C. Prohibited uses. Land use activities which are not specifically listed are considered 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 ~~4,000~~5,000 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.~~ The exterior of the existing structure shall retain 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: 35-20 feet from the edge of the street right-of-way.;
- Side and rear yards: 15 feet each from the property line.
5. Height Restrictions - no taller than 3 stories

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~~Parking. (Effective 1/21/05)

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

~~2.1.~~ 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 minimum 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 (See Subsection H for buffer zone provisions).

~~3. 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;~~

~~4. Non-residential Use — Off-street parking shall be provided in accordance with Chapter 170, Land Development Control Regulations;~~

~~5. 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;~~

~~6.2.~~ No off-street parking will be allowed on the lot any closer than 25 feet from the street right-of-way line;

~~7. No parking will be allowed within the designated buffer zone;~~

~~5. 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 minimum 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~~85% 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)