

The Planning Board for the Town of Derry held a public hearing on Wednesday, June 17, 2009 at 7:00 p.m. at the Derry Municipal Center (3rd Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chair; Jan Choiniere, Secretary; **Brian Chirichiello, Council Representative**; Phil Picillo, Paul Hopfgarten, Members; Maureen Heard, Darryell Park, and Jessica Hodgeman, Alternates

Absent: Virginia Roach, John O'Connor, Gary Stenhouse, Randy Chase

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk

Mr. Granese called the meeting to order at 7:01 p.m. The meeting began with a salute to the flag. He introduced the staff and Board members present, and noted the location of emergency exits and agendas.

He elevated Maureen Heard to sit for Virginia Roach and Darryell Park to sit for John O'Connor.

Escrow

#09-17

Covey Run (Windsong Meadows)

Covey Run, LLC

31021, North High Street

The request is to authorize the Derry Department of Public Works to draft Letter of Credit 20001981 in the amount of \$248,823.90 on June 30, 2009.

Mr. Sioras advised this is just a precaution in the event the town does not receive the renewed Letter of Credit before June 30, 2009. The town rarely has to take this step. Mrs. Choiniere inquired how complete is the project? Mr. Sioras deferred to Robert Mackey the Code Enforcement Office. Mr. Mackey advised there are two buildings up and in the process of being sold. The foundation is in for the third building. The pavement has been installed and some landscaping is done. Phase II has not been started yet.

Mr. Picillo advised the correct term would be to "draw on" the Letter of Credit.

Motion by Picillo to change the language of the request to reflect "draw on Letter of Credit 20001981" and to approve the amended action. The motion was seconded by Choiniere.

The motion passed with Chirichiello abstained.

09-18
Reed Subdivision
Reed Asset Management
04065, 04065-001, 04065-002, 04065-003, Gulf Road

The request is to approve Release #2 for the above noted project in the amount of \$3985.20. The amount to retain is zero. This is the final release.

Motion by Hopfgarten, seconded by Choiniere to approve as presented. All voted in favor and the motion passed.

09-20
Woods of Derry II
Edward Cooper
03119, 33 Lawrence Road

The request is to establish Letter of Credit #1227, drawn on Bank of New England in the amount of \$125,100.29 for the above noted project. The expiration date will be June 15, 2011.

Mr. Picillo inquired if escrow had been established for this project previously? It has not. It was confirmed a letter of credit can be for two years. The plan has a second extension on the approval.

Motion by Hopfgarten, seconded by Choiniere to approve the establishment of the Letter of Credit as noted. The motion passed.

Minutes

The Board reviewed the minutes of the June 3, 2009 meeting.

Motion by Hopfgarten, seconded by Park to approve the minutes as written. The motion passed in the affirmative with Chirichiello abstained.

Correspondence

Mrs. Choiniere advised the Board is in receipt of the new edition of *Town and City*, the latest edition of *Knowing the Territory* has been sent to each LGC community and the Board is in receipt of an amended Letter of Credit for Gennaro Estates.

Other BusinessImpact Fee Workshop – sponsored by NHDOT/CTAP

Mr. Sioras reminded the Board and the viewing public of the upcoming Impact Fee presentation which will be held on June 24, 2009 at 7:00 p.m. in the 3rd floor meeting room. This event is sponsored by NH DOT's CTAP program. Bruce Mayberry, an expert on Impact Fees will be presenting. The Town Council and the Town Administrator have all been invited to attend. There is no Planning Board meeting scheduled that evening, but he hopes the Board members will attend.

Public Hearing**Proposed changes to the Town of Derry Zoning Ordinance**

Motion by Picillo, seconded by Choiniere to open the public hearing. The motion passed in the affirmative.

*Note: full text of the proposed changes is appended to this document.

To amend Article VI, Section 165-45.D.2., Medium High Density Residential (MHDR), to delete subparagraph "j" in its entirety.

Mr. Granese asked if there was any public input? There was none and the proposed amendment went back to the Board. Mr. Sioras indicated the first three proposed amendments arose out of issues the ZBA had with regard to home occupations and covenants.

Motion by Picillo to accept the proposed changes to Article VI, Section 165-45.D.2, Medium High Density Residential (MHDR), to strike item "j", and forward to Town Council for approval, seconded by Choiniere.

Picillo, Heard, Park, Hopfgarten, Choiniere and Granese voted in favor with Chirichiello abstained. The motion passed by a vote of 6-0-1.

To amend Article VI, Section 165-45.1.C.2, Medium High Density Residential District II (MHDR II), to delete subparagraph "j" in its entirety.

Mr. Granese asked if there was any public input? There was none and the proposed amendment went back to the Board.

Motion by Picillo to accept the proposed changes to Article VI, Section 165-45.1.C.2, Medium High Density Residential II (MHDRII), to delete subparagraph "j" in its entirety and forward to Town Council for approval, seconded by Park.

Picillo, Heard, Park, Hopfgarten, Choiniere and Granese voted in favor with Chirichiello abstained. The motion passed by a vote of 6-0-1

To amend Article VI, Section 165-46.B.2, Medium Density Residential District (MDR), to delete subparagraph "j" in its entirety.

Mr. Granese asked if there was any public input? There was none and the proposed amendment went back to the Board.

Motion by Choiniere to amend Article VI, Section 165.B.2, Medium Density Residential District (MDR), to delete subparagraph "j" in its entirety and forward to Town Council for approval, seconded by Picillo.

Picillo, Heard, Park, Hopfgarten, Choiniere and Granese voted in favor with Chirichiello abstained. The motion passed by a vote of 6-0-1

To amend Article II, Section 165-5, Definitions, to define the following terms: Livestock, Domestic Pets and Fowl.

Mr. Granese asked if there was any public input? There was none and the proposed amendment went back to the Board.

*Note: full text of the proposed changes is appended to this document.

Motion by Choiniere to accept the proposed changes to Article II, Section 165-5, Definitions, to define the following terms: Livestock, Domestic Pets and Fowl, and to forward to Town Council for approval, seconded by Picillo.

Picillo, Chirichiello, Heard, Park, Hopfgarten, Choiniere, and Granese all voted in favor and the motion passed unanimously.

To add Article XX, Livestock and add Sections 165-154 through 165-160, which contain the provisions of the article.

Mr. Granese asked if there was any public input? Robert McCulloch, 1 Squamscott, asked for clarification on Section 165-155, which states, "At no time shall a public nuisance be created or allowed to continue." What defines "public nuisance" and who regulates it? The Board deferred to Mr. Mackey.

Mr. Mackey stated that the definition of public nuisance would be something documented that affected a group of people or a neighborhood as opposed to one individual. If there is proof of a public nuisance, his office could take action.

There were no other public comments and the proposed amendment went back to the Board.

Motion by Choiniere to add Article XX, Livestock, and add Sections 165-154 through 165-160, which contain the provisions of the article and forward to Town Council for approval. The motion was seconded by Park.

Picillo, Chirichiello, Heard, Park, Hopfgarten, Choiniere, and Granese all voted in favor and the motion passed unanimously.

Motion by Chirichiello to close the public hearing, seconded by Choiniere. All voted in favor and the public hearing was closed.

Mr. Mackey departed the meeting.

Workshop – Proposed Zoning District Changes

Mr. Granese advised the Board would now be entering a workshop to discuss potential zoning district changes; this workshop would not be televised.

Mr. Sioras stated the Board had decided to hold off on the large zoning of roads and take up the 5 to 6 individual written requests. If the Board finds these acceptable, the changes can be put on the next agenda to be scheduled for a public hearing in August. Mrs. Robidoux has included in the packets, a map of the parcels in question and the surrounding area. Mr. Sioras added that they will hold off on the discussion of the March 23rd memo from Ginny Roach and will discuss those with other suggested changes in the fall. Copies of the suggested changes were available to the public.

The Board took a few minutes to review the material. Mr. Granese noted that although the Board does not normally entertain public comment during workshops, he would not mind hearing from those present who made the zoning change requests.

David Barka, 64 East Derry Road, advised his request was specific to 17 South Avenue. When the zoning was reviewed several years ago during the Main Street project and the work on the downtown, the town was concerned that residential development have office/retail on the first floor. The area was extended north and south of Broadway to South Avenue. Over the years, this proposed change has been discussed. He feels it has been proven the current regulation is overly restrictive and unreasonable. Prime commercial real estate in Derry is hard to develop, let alone along these secondary streets. He is

asking the Board to reconsider that portion of the Ordinance. He currently has 4 townhouses on 17 South Avenue. The density allows 18 units per acres. He can't utilize his property properly because he does not want to mix residential with commercial/retail uses. He does not feel a commercial/retail use on the first floor is compatible with families with small children in an area with a parking lot. Safety is an issue. On a main street, it would be fine.

Mr. Chirichiello asked if he wanted the zone changed to MHDR? Mr. Sioras felt it was more of a use issue and that Mr. Barka wants the requirement for the mixed uses removed from the Central Business District (CBD). CBD would remain on the frontage lots. Mr. Chirichiello asked if the change would be consistent with all of the properties in CBD? It would. Mr. Sioras explained that previously, the town wanted to protect Broadway from the Vet's Hall to the old Town Hall, and it created the Traditional Business Overlay District (TBOD). The intent was to build right to the sidewalk and have retail/office use on the first floor. The Board decided to extend that to the CBD after being divided over the decision.

Mr. Chirichiello noted South Ave currently has a mix of uses. He concern is that if the wording in the CBD section of the ordinance is changed, does that change 30024? Parcel 30026 could have office on the first floor. Mr. Sioras noted 30026 is located in the CBD not the TBOD, so it would not need retail on the first floor, if the changes were made. Mr. Hopfgarten noted TBOD is an overlay district which is just that. The underlying rules of CBD would still apply. If that is the case, would making changes create a conflict? Does the overlay district specify business must be on the first floor? Mr. Chirichiello said the TBOD has to do with setbacks. Mr. Hopfgarten said if the criteria were removed from the CBD it may need to be added to the TBOD.

Mr. Sioras read aloud Section 165049.A.2, with regard to the TBOD. He explained when there are conflicts between the CBD and the TBOD, it is clear the TBOD takes precedence.

Mr. Barka stated he was happy to do what works, but does not feel anyone will invest money into an effort that won't work. The Town can wish for commercial development on South Avenue, but it won't happen with new construction. The older businesses happened to just work out.

Mr. Chirichiello noted parcel 30023 is the bike path, which was created to spur economic development. Mr. Sioras advised what is shown on the handout was paved years ago.

Mr. Granese inquired if the zone is not changed, could Mr. Barka get a variance? Mr. Barka advised he tried to obtain a variance and was denied. Mr. Granese wondered how many people in the CBD would change? Mr. Chirichiello asked if anyone else had requested a change in this area? Mr. Park commented he did not have a problem with the proposed change, but if the Board is changing the

wording in the ordinance for a large area, the Board may unintentionally create a negative impact on the town as a whole. Mr. Chirichiello thought the request was to change the lot to MHDR. Mr. Park wondered if there was a way to do this without creating other issues? Mr. Sioras cautioned the Board cannot just change one lot because that would be spot zoning.

Mr. Hopfgarten inquired what is the situation currently in the CBD? Many parcels do not have residences on the first floor. He shares the concerns with removing the language for the district. But what does this look like? Many are residences now. It is possible the district could be split up. Mr. Sioras stated there has not been a lot of construction in that downtown area. Many of the businesses were already there. There is multi-family in the area – there is a mix of everything.

Mrs. Heard asked if there is anything with regard to the 4 dwelling unit requirement that can be changed to make it more user friendly without reconstructing the district? Mr. Sioras advised the 4 dwelling unit number is tied to the definition of multi-family. Mr. Hopfgarten suggested it may be the way the property is assessed and that when there are 4 units, the use becomes commercial. Mr. Park said he travels this area a lot but does not recall a lot of commercial use. Maybe the Board can look at the frontage lots along South Ave and create a different zone. Mrs. Choiniere agreed, adding that perhaps the MHDR could be extended.

It was noted parcel 27091 was residential. The south side of South Ave was always commercial. Mr. Sioras agreed the Board may want to look at the area and see if it was more appropriate to have South Ave in the MHDR. The parcels have the following uses: 30014 is an auto parts store; 30013 is a home; 27137 is a home; and 27136 used to be Buckley's Egg Express, which is commercial. The Board discussed potential changes further. Mr. Hopfgarten recalled when CBD was originally extended, the thought was to use full blocks. Much was born out of the geography of the land. He agrees it might be better to change some of the lots to MHDR, rather than changing the wording in the Zoning Ordinance. It sounds like the change could be made to several parcels. Mr. Sioras felt the changes would reflect what is there. For example, 27901 is an apartment, which could be rebuilt in kind because the CBD allows multi-family.

Mr. Sioras explained the difference between MDR and MHDR. The difference is the density allowed on the lots. Mr. Barka commented he did not intend to put 18 units on one acre. There is not much more opportunity for increased density in the CBD. The remaining undeveloped lots are small – a developer would have to purchase several and combine them to have an 18 unit high rise in the downtown. Things happen in zoning and then the town reacts when it is too late. There has not been too much done in the way of big housing complexes since the Fairways and Linlew Drive were constructed. He does not feel there is much more opportunity for big residential development.

Mr. Sioras noted that some residents want housing in the downtown and some do not. Mr. Chirichiello commented that if the town wants to decrease taxes, it needs business. Mr. Barka said there is not a whole lot of highly desirable property in the downtown. If it is feasible, people will redevelop the property with something new and modern that will attract a different type of family that in turn will patronize the downtown. The town should not want the old tenements. If things don't change, the area will slowly deteriorate. He thinks the town wanted this area to become commercial, but the commercial movement went to the area near Wal-Mart. It won't come back this way. There is enough of a struggle on the main street. Mr. Chirichiello commented the idea of CBD is to have a walkable downtown.

Mr. Granese confirmed the following lots will be placed on the agenda to discuss changing the zone at a public hearing: 27093, 27137, 30012, 30013, 27091, 30010, 30009, 30008 – change from CBD to MHDR. Parcels 30016 and 30015 would be left for bike path development.

George Reynolds of 134 Rockingham Road advised he has lived in Derry for 25 years. There are 2 duplexes across the street and he built his home in 1984. He owns parcel 05090. The lot had been allowed for a duplex, but he has a single family residence. He has been operating his business from the home for many years. Sometime ago, the lot was rezoned Office/Research and Development (ORD). They would like the lot rezoned to General Commercial (GC). He had plans to do different work out of his shop and he would be able to do that in a General Commercial zone. There is a lot of business along the By-Pass and the change seems like it would be in line with what is happening along Rockingham Road.

Mr. Granese asked what are the uses on the other properties in the zone? Mr. Sioras advised 05002 is the Robert Frost Farm, 05001 is vacant and owned by the State. Mr. Reynolds noted there are paths that lead from the state owned property to the Chisholm property behind it. The path eventually leads to Featherbed Lane. Parcel 05090-001 has a residential duplex. Parcel 03110 is the Chisholm property. Across the street is Rockingham Nursery. Mr. Sioras advised if the Board wants to change the zone of the property, the two parcels to the south should not be changed. Mr. Hopfgarten felt the two lots that would never be developed should be changed. Mr. Sioras commented if water and sewer are extended up Rockingham Road, parcel 05008 will be developed. Currently it is vacant. If the zone is changed, he felt the Board could remove ORD from this area. Mr. Reynolds noted that across from the Robert Frost Farm at Berry Road, the state owns the property as well.

Mr. Chirichiello understood what the Reynolds' wanted to do. General Commercial is an intense commercial use and he feels people would get upset if something like McDonald's was placed adjacent to Robert Frost Farm. General Commercial is the most intense commercial use. Mr. Picillo noted that currently,

that could happen on Lot 05008. Mr. Chirichiello agreed, but felt it had not happened because there is no water or sewer there. Mr. Sioras suggested the State may have anticipated that because they own the property across the street and around the Farm. Mr. Hopfgarten did not think it was likely something like a McDonald's would be considered until water and sewer come in; but even without it, the uses are still allowed. Mr. Picillo asked if the Board wanted to change 05002 and 05001, or skip them and rezone 05090 and 05090-001 and 03110? Mr. Granese did not want to do that if it affected the state or the Farm. He would be in favor of changing 05001, 05001, 05009, 05009-001 and 03110. Mr. Sioras said he would not change 03111 because that is a single family residence.

Mr. Chirichiello noted there is a business there now, what would Mr. Reynolds do if the zoning were changed? Mr. Reynolds indicated there has been some interest in his property, but when potential purchasers see it is zoned ORD, they lose interest. There has been some interest in establishing a retreat center or rehabilitation center – there are nice walking trails on the property.

Mr. Granese confirmed the following lots will be placed on the agenda to discuss changing the zone at a public hearing: 05002, 05001, 05090, 05090-001, 03110 – change from ORD to GC.

The Board reviewed the request from the owner of parcel 37112, which is the site of The Lobster Claw. Mr. Sioras noted the letter is self explanatory. When the Board last discussed the area of the rotary there was a concern that the Board should not change too much yet. Parcel 37111 is the site of the Mobil station. Many of the existing businesses predate zoning. There are no records of a site plan for the Getty station. He would suggest changing the zone on the parcels containing the Getty, Mobil and Lobster Claw, but not south of those parcels because of the brook. Perhaps the parcels north of the brook should be changed. This would include 37112, 37111, 37118, 37118-001 (this is not a second building – one is the station, one the pumps), and 37084-001, which is the drive up teller. The brook could be used as a natural line. He would hold off on the change to the Copeland property and the park adjacent. Parcel 37031 has an existing landscape business that has a special exception.

Mr. Granese confirmed the following lots will be placed on the agenda to discuss changing the zone at a public hearing: 37112, 37111, 37118, 37118-001, 37084-001, 37119, and 37119A. – change from MHDR and MDR to GC.

Mr. Sioras noted he is not advocating a new fire station, but if central station was ever moved to a different location, that could become a nice development. He does not see the golf course ever being rezoned because of restrictions on the property.

The Board reviewed the request to rezone parcels along Pinkerton Street. Parcel 36026 is a dentist office, 36037 has a retail use. Mr. Sioras was not certain if water and sewer were available to those lots. There are 2 properties with existing businesses which have special exceptions. The medical office predates the town records. Parcel 36035 is another dental office. The Board thought 36039 and 36038 were smaller, empty lots. Mr. Chirichiello noted the parcel requested to be changed (36038) is located across from Sunview; perhaps it could be changed to ORD? Mr. Sioras noted it is also adjacent to a bad intersection. He suggested looking at this again after the completion of the Master Plan. An office district would be very limited. Mr. Granese suggested having Mr. Ribiero attend in person to explain why he wanted this changed.

The Board decided to take no action on this request at this time.

The Board reviewed the request to change zoning along Windham Depot Road; the request was received from Maureen Rose. Mr. Sioras provided a brief history of the properties in this area. The land currently zoned Industrial I is what is commonly known as the Sybiak property. NH DOT now owns the property as part of the mitigation for the widening of I-93. The storage facility in Industrial V, which Ms. Rose would like changed, predates the zone and was intended to be non-residential. The only business is where there is Industrial I. Everything south is single family residential. Ms. Rose would like the Industrial V to be changed to MHDR.

Mr. Granese felt the property owner of the lot to be changed should come before the Board. It was noted that Ms. Rose is in the MHDR and would like neighboring lot, which is IND V changed. The storage facility is a conforming use and her proposal would make it non-conforming.

Mrs. Choiniere asked why are there three houses in the General Commercial zone? Mr. Sioras explained in the 1960's and 1970's single family was allowed. The zoning was cleaned up when Jeannette Lane was built. IND V has very limited uses, but IND I allows heavy industrial uses. Mr. Picillo said the Board would need to find out if there is a different owner to the south. Mr. Chirichiello commented that shrinking the zone would be spot zoning. The Board felt this request should be tabled. The owner of the property should request the change.

The proposed amendments will be prepared for review on the July 1st agenda to be scheduled for public hearing for August 5th.

The Board held a brief discussion with regard to the upcoming Impact Fee workshop. The town will need to decide if it wants an Impact Fee or Growth Management Ordinance. It is possible to have impact fees just for commercial and then a GMO for everything else. Mr. Mayberry will be discussing these types of issues next Wednesday.

Motion by Hopfgarten, seconded by Picillo to adjourn. The motion passed in favor and the meeting stood adjourned at 8:35 p.m.

Minutes prepared by Elizabeth Robidoux, Planning Clerk.

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 subsection 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.
- e. The home business use will not change the residential character of the dwelling, or the property;

- f. Not more than one sign or other advertising device will be displayed on the property, and it will not exceed three square feet in surface area;
 - g. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time;
 - h. 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;
 - i. Not more than one home business use will be conducted on the property; and
 - ~~j. The proposed home business will not, in any way, be contrary to any covenants or conditions contained in the deed of 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 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 subsection 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.
 - e. The home business use will not change the residential character of the dwelling, or the property;
 - f. Not more than one sign or other advertising device will be displayed on the property, and it will not exceed three square feet in surface area;
 - g. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time;
 - h. 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;
 - i. Not more than one home business use will be conducted on the property; and

~~j. The proposed home business will not, in any way, be contrary to any covenants or conditions contained in the deed of 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% percent of the finished living area of the dwelling.
- e. The home business use will not change the residential character of the dwelling, or the property;
- f. Not more than one sign or other advertising device will be displayed on the property, and it will not exceed three square feet in surface area;
- g. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time;
- h. 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;
- i. Not more than one home business use will be conducted on the property; and
- ~~j. The proposed home business will not, in any way, be contrary to any covenants or conditions contained in the deed of 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.

C. Single family detached dwellings, in conventional subdivisions

- 1. Minimum lot area
 - a. The minimum lot area required shall be one acre, or larger as shall be determined by the soils based lot size determination provisions of Chapter 170, Land Development Control Regulations.
 - b. This requirement shall not be applicable to any legally existing or approved lot containing at least 25,000 square feet and having a width of at least 125 feet at the 35-foot front setback line, and having frontage of

at least 125 feet, provided that said lot meets the requirements of the Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services. (Effective 11/21/03)

2. Minimum lot frontage: The minimum frontage required in this district shall be 125 feet. (Effective 11/21/03)
3. Minimum lot width. The minimum lot width required in this district shall be 125 feet at the thirty-five foot front setback line, or 125 feet at the front lot line.
4. Minimum yard depths: The minimum front yard shall be 35 feet; the minimum side and rear yards shall be 15 feet.

D. Manufactured housing subdivisions —

1. Housing types permitted. Manufactured housing subdivisions may contain manufactured and pre-site built housing, as defined in this chapter, as well as conventional site-built housing.
2. Limitation. Manufactured housing subdivisions shall be limited to single family detached dwellings.
3. Provisions. The area and dimensional requirements for individual lots within a manufactured housing subdivision shall be the same as those which apply to conventional single family subdivisions in this district. [See sub-section C.1, 2, and 3.
4. Manufactured housing construction standards
All manufactured housing units placed within a manufactured housing subdivision after the effective date of this chapter shall be certified as being constructed in accordance with the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974.

E. Campgrounds. Nothing herein shall prevent land from being utilized, maintained, or operated as a recreational campground, provided that the campground conforms to the regulations of the State of New Hampshire and meets the following requirements:

1. Operation. All campgrounds shall be permitted to operate only from May 1 through October 31.
2. Access. Access to the campgrounds shall be from a state highway. Before any campground can be constructed, entrance and exit roadways shall be established with the following minimum characteristics:
 - a. They shall be a minimum of 25 feet wide.
 - b. They shall be no closer than two 250 feet from any existing residence or center line of any existing residential curb cut, whichever is closer.

3. Sites and facilities. Campsites and facilities shall be no closer than 1,000 feet from an existing residence.
4. Buffer zone. Before any campground can be constructed, a buffer zone of 500 feet from the lot lines for the entire perimeter of the parcel shall be maintained in its natural state. In the absence of natural screening, additional buffer zone requirements may be imposed by the Planning Board.
5. Signs. Campground signs shall conform to a maximum size 10 square feet, and be limited to one sign for each entrance.
6. Plan review: Review and approval by the Planning Board shall be required in accordance with Chapter 170, Land Development Control Regulations.
7. Camping spaces. Each camping space shall:
 - a. Contain a minimum land area of 2,000 square feet, not including roads and access drives.
 - b. Have, as part of the two thousand square feet area, a minimum of 200 square feet for off-street parking.
 - c. Be at least 40 feet wide.
8. Service facilities. A service building, or buildings, for toilets and shower facilities shall be provided. No camping space shall be more than 500 feet from a service building.
9. State approval. Prior to the granting of an Occupancy Permit, written approval of the State Board of Health shall be furnished, certifying that all facilities for water supply, toilets, sewage disposal, and solid waste disposal comply with the State Board's requirements.
10. Accessory buildings.
 - a. Permitted accessory buildings in a campground shall be limited to the following:
 - i. An office for the manager and staff of the campground, and an office providing adequate first aid facilities, both of which may be in a dwelling or service building.
 - ii. A service building, not to exceed 1,500 square feet of gross floor space, which may contain equipment and supplies, recreation rooms, and a shop for convenience goods primarily for the occupants of the campground, provided that no advertising device is visible from a street or from adjacent lots.
 - iii. Service buildings to accommodate bathers at beach or pool sites.
 - b. Additional requirements may be imposed by the Planning Board for any other buildings or structures incidental to the recreational aspects of the campground, including commercial recreational facilities as defined in this chapter.

11. Nothing in this subsection E shall be construed to permit a sexually oriented business within a campground.

Proposed Livestock Ordinance

Amend Article II, Word Usage and Definitions, Section 165-5, Definitions, to add the following definitions:

Livestock includes, but is not limited to horses, dairy cows, beef animals, swine, sheep, goats, as well as domesticated strains of buffalo or bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus elephus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).

Domestic pets shall mean animals commonly kept as household pets such as dogs, cats, small caged animals, and birds (not including fowl) and caged reptiles.

Fowl means chickens, roosters, ducks, geese, guinea hens and peacocks.

Add **Article XX, Livestock**, and add the following Sections.

Reference is made to the Manual of Best Management Practices for Agriculture in New Hampshire, published by the New Hampshire Department of Agriculture, Markets and Food, most recent edition, a copy of which is available in the Code Enforcement Office.

Section 165-154 Livestock (excluding swine, sheep and goats) shall only be permitted on lots containing one or more acres. All buildings, pens, runs and enclosures (excluding pastures) shall be located a minimum of 20 feet from any property line. This lot and setback requirement also pertains to dog kennels. Fowl pens on lots containing two or less acres shall be required to have wire mesh or poly mesh roofs.

Section 165-155 At no time shall a public nuisance be created or allowed to continue.

Section 165-156 All such livestock or fowl shall be properly housed in structures designed to adequately provide shelter for the particular type of livestock or fowl being kept.

Section 165-157 All such livestock or fowl shall be properly enclosed. Fencing shall be adequate to prevent the livestock or fowl from escaping from and trespassing on public or private property

Section 165-158 Waste manure shall be stored or stockpiled at a minimum of 75 feet from wetlands, bodies of water, wells, drainage swales, and a minimum of

150 feet from abutting houses and in such a way to prevent runoff from reaching such areas. Manure cannot be stockpiled so as to create a nuisance or health hazard.

Section 165-159 Nothing herein is intended to allow a commercial use involving livestock or fowl within any zone unless it is already allowed as a permitted use or by special exception. Nothing in Article XX impacts lots where an agricultural use is already a permitted use.

Section 165-160 If any provision of this section governing livestock and fowl is found to be invalid by a court of competent jurisdiction, the remaining sections not effected thereby shall remain in full force and effect.