

# **ORDINANCE #2002-11**

An Ordinance Relative to the

## ***Amend Zoning Ordinance -***

## ***(New) Section VIII - Performance Overlay District***

First Reading: 07/15/02

Second Reading: 07/29/02

Adopted: 08/12/02

**WHEREAS** the Londonderry Planning Board, on June 12, 2002, adopted the provisions of a new Section VIII - Performance Overlay District and,

**WHEREAS** the Londonderry Town Council wishes to amend the Zoning Ordinance to reflect the Planning Board's action; and,

**WHEREAS** the Londonderry Town Council is desirous of maintaining its policies and municipal code through periodic update as administrative conditions require;

**NOW THEREFORE BE IT RESOLVED** by the Londonderry Town Council that the Municipal Code, Title III - Land Use Codes, Chapter I - Zoning Ordinance, is hereby revised by adding a new Section VIII - Performance Overlay District, a revised copy of which is attached, is hereby adopted.

John Silvestro - Chairman  
Town Council

( TOWN SEAL )

Marguerite Seymour - Town Clerk/Tax Collector

**A TRUE COPY ATTEST:**

***08/12/02 Londonderry Municipal Code Title III - Land Use Codes Adopted 8/12/02***

## **SECTION VIII - PERFORMANCE OVERLAY DISTRICT**

### **SECTION VIII — PERFORMANCE OVERLAY DISTRICT**

#### **801 AUTHORITY**

The section is enacted in pursuant to RSA 674:21, Innovative Land Use Controls, which provides the Statutory authority for the Town of Londonderry to provide Intensity and Use Incentives, Impact Zoning, Performance Standards, and the ability for the Planning Board to grant Conditional Use Permits. The Planning Board shall be solely responsible for the interpretation and administration of this ordinance, including the granting of all conditional use permits relative thereto. Any decision made by the Planning Board under this Performance Overlay District ordinance may be appealed directly to Superior Court in the same manner provided by RSA 677:15.

#### **802 PURPOSE AND INTENT**

A. Because the Town of Londonderry has experienced an increase in development along the Town's main traffic corridors (NH Rt. 28 and Rt. 102) and anticipates such growth will likely continue, because said development will generate growth related impacts (increased traffic congestion, infrastructure requirements, demand for public services, reduced aesthetics, etc.) utilizing the corridors, because traditional zoning techniques may not produce the type of development envisioned by the community through the Master Plan, and in order to implement the following objectives of the Town's most recently adopted Master Plan:

- 1. Guide the form of business development to occur in keeping with community objectives for compatible, appropriate development;**
- 2. Tune regulatory systems to encourage businesses or other high trip-generating uses to more efficiently use the circulation system;**
- 3. Regulating development to ensure that it can be supported by planned infrastructure, taking into consideration that required infrastructure must be appropriate to the context and must be supportive of environmental and community character concerns; and**
- 4. Include consideration of impact upon natural and cultural resources in review of development proposals**

The Town hereby adopts this overlay district to guide the development of land through the use of performance standards, incentives for quality development, and impact assessments to ensure the desired development pattern along the major traffic corridors of Londonderry. *Londonderry Municipal Code Title III - Land Use Codes Adopted 8/12/02*

## **SECTION VIII - PERFORMANCE OVERLAY DISTRICT**

### **SECTION VIII — PERFORMANCE OVERLAY DISTRICT**

#### **802 PURPOSE AND INTENT (Cont'd.)**

**B. The purpose of the Performance Overlay District is:**

- 1. To minimize adverse traffic impacts on the corridors and surrounding local roadways;**
- 2. To preserve the rural character of the district by providing for development that preserves appropriate open space and builds upon the landscaping design, and visual character standards of the Town's Site Plan Regulations;**
- 3. To minimize negative impacts to the environment such as water quality, air quality, prevention of noise pollution, light pollution, and to other important natural and cultural resources.**
- 4. To promote and attract high quality, diverse, and sustainable economic development to the district by utilizing performance standards and flexibility in the District.**
- 5. To protect the remaining aquifers within the Town of Londonderry.**
- 6. To provide an appropriate mix of uses for the areas abutting the natural complex formed by areas such as the Musquash Conservation Area, Kendall Pond area, Scobie Pond area, the Litchfield State Forest, etc.**

#### **803 DISTRICT DEFINED**

**A. The Performance Overlay District shall be described as including the lots identified on the “Performance Overlay Zone” Map and specifically as follows:**

On Tax Map 2: Lots 7, 8, 11, 12, 13, 16, 17, 19, 20, 21, 22, 22B, 23, 25, 26, 27, 28, 28A, 28-10, 28-11, 29B-5, 32, 34, 34-1, 34A, 35.

On Tax Map 3: Lots 130, 131, 131-1, 131-2, 132, 132A, 132B, 135, 136, 137, 148, 149, 150-1C, 153, 161

On Tax Map 6: Lots 30, 31, 32, 33A, 34, 35-1, 35-2, 35-10, 35-17, 35-19, 36, 41, 42-1, 49, 52, 53, 56, 56-1, 57, 59-1, 64, 65-1, 65A, 84.

**B. The term “overlay district” means a zoning district superimposed on one or more established zoning districts to impose supplemental requirements, restrictions, and performance standards on uses in the district.**

#### **804 CONFLICTS WITH UNDERLYING ZONING STANDARDS**

Because of the unique nature of the performance based incentives and regulations in this overlay district, the standards and requirements of this Section shall, unless otherwise stated in this Section, apply to all lots in the Overlay District, regardless of the underlying zoning district, except those zoned C-III at the time of passage of the POD by Town Council.

#### **805 USES PERMITTED**

**A. The Performance Overlay District allows for uses that are consistent with the purposes and intent of the overlay district. Because not all uses permitted in the underlying zones are consistent with the Performance Overlay, the uses permitted in the Overlay district are limited to those listed in Section 805.C, below. The uses permitted in the underlying zoning districts are not permitted, unless listed in 805.C or considered a use permitted by Conditional Use Permit, see Section 806.**

***Londonderry Municipal Code Title III - Land Use Codes Adopted 8/12/02***

## **SECTION VIII - PERFORMANCE OVERLAY DISTRICT**

### **805 USES PERMITTED (Cont'd.)**

- B. All uses permitted in the Performance Overlay District are subject to site plan review by the Planning Board. Prior to Planning Board approval of a proposal, the applicant must demonstrate, through the Impact Assessment requirements of Section 808, that the proposal will meet all of the appropriate performance standards of Section 807, the Site Plan Regulations, the Subdivision Regulations, and shall be consistent with the purpose and intent of the Overlay District in Section 802
- C. The following uses are permitted within the Performance Overlay District:
  - 1. **Business Center Development: A tract of land, buildings or structures planned as a whole and intended to include those uses allowed in this overlay district whether built at one time as a unit or in two or more construction stages;**
  - 2. **Professional offices including, but not limited to, dentists, doctors, lawyers, architects, real estate, and such uses normally considered as general offices;**
  - 3. **Restaurants, cafes, and similar establishments, with no drive-in windows;**
  - 4. **Retail stores or shops including clothing, appliance, hardware and department stores, automotive accessory, drug and variety stores, grocery stores and supermarkets;**
  - 5. **Computer services**
  - 6. **Religious Institutions/Places of worship and related facilities;**
  - 7. **Educational Institutions;**
  - 8. **Recreation areas (commercial and non-commercial);**
  - 9. **Elderly Housing & Assisted Living Facilities, as outlined in Section XIV**

### **806 CONDITIONAL USE PERMITS**

- 1. All uses permitted by Conditional Use Permit in the Performance Overlay District are subject to site plan review by the Planning Board. Prior to Planning Board approval of a Conditional Use Permit, the applicant must demonstrate, through the Impact Assessment requirements of Section 808, that the proposal will meet all of the appropriate performance standards of Section 807, the Site Plan Regulations, the Subdivision Regulations, and shall be consistent with the purpose and intent of the Overlay District in Section 802.
- 2. Prior to Planning Board action on any site plan or subdivision for a use requiring a Conditional Use Permit, the Board must have already granted the Conditional Use Permit. The Conditional Use Permit may be sought either separately or concurrently with Site Plan/Subdivision approval.
- 3. Uses Permitted by Conditional Use Permit

***Londonderry Municipal Code Title III - Land Use Codes Adopted 8/12/02***

**806 CONDITIONAL USE PERMITS (Cont'd.)**

4. Any use permitted in the underlying zoning district, which is not a permitted use in the Performance Overlay District;

**2. Warehouses and storage of non-explosive materials;**

**3. Daycare facilities;**

**D. Administration of Conditional Use Permits**

As provided for in RSA 674:21, Innovative Land Use Control, this Section of the zoning ordinance shall provide for the granting of conditional use permits, by the Planning Board, as follows:

**1. The Planning Board shall then vote either to approve a conditional use permit as presented, approve it with conditions, or deny it.**

**2. Prior to construction commencing on any use that is granted a conditional use permit, the applicant shall be required to submit a financial surety in accordance with Section 5.01 of the Subdivision Regulations or Section 6.01 of the Site Plan Regulations, whichever is applicable.**

**3. The applicant may also be assessed reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications, reviews by the Town's legal counsel, and any third party consultant as may be required by the Planning Board per section 2.01d of the Site Plan Regulations.**

**E. The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit in the Performance Overlay District. The applicant shall demonstrate that:**

**1. All performance criteria outlined in Section 807, as applicable to the application have been met;**

**2. The proposed use is consistent with the purpose and intent of the Performance Overlay District In weighing whether an applicant meets this criterion, the Planning Board must determine that the proposed conditional use clearly serves the purpose and intent of the Performance Overlay District to a greater extent than allowing for a permitted use;**

**3. Granting of the application would meet some public need or convenience;**

**4. Granting of the application is in the public interest;**

**5. The property in question is reasonably suited for the use requested, and the design of the site represents to the extent practicable preservation of natural resources, open space, and does not create a hazard to surface or underground water resources.**

***Londonderry Municipal Code Title III - Land Use Codes Adopted 8/12/02***

## 807 PERFORMANCE STANDARDS

### A. Dimensional Performance Standards

1. Table of Dimensional Performance Standards: In order to accomplish the goals of this ordinance, as well as fulfil the goals of the Master Plan, development within the Performance Overlay District is subject to the dimensional standards listed in Table 1, below.

**TABLE 1**

Property located on:	Min. Lot Size	Min. Lot Frontage	Max. Structure Height	Min. Front Setback (7)	Min Side Setback	Min. Rear Setback	Max. Impervious Cover
Arterial Road (as defined by appendix A), with public water and sewer	3 Acres	300 feet (1)(2)	45 feet	4.5 times the building height (4)(5)	equal to the building height or 20 feet (whichever is greater)	equal to the building height or 20 feet (whichever is greater)	55% (6)
Arterial Road without public water and without sewer	3 Acres (3)	300 feet (1)(2)	45 feet	4.5 times the building height (4)(5)	equal to the building height or 20 feet (whichever is greater)	equal to the building height or 20 feet (whichever is greater)	55% (6)
Non-Arterial Roads <b>OR</b> Arterial Road when "Shared access" is used, and with public water and sewer	1 Acre	100 feet (1)(2)	45 feet	4 times the building height (4)(5)	equal to the building height or 20 feet (whichever is greater)	equal to the building height or 20 feet (whichever is greater)	66% (6)
Non-Arterial Roads <b>OR</b> Arterial Road when "Shared access" is used, and without public water and without sewer	1.5 Acres (3)	150 feet (1)(2)	45 feet	4 times the building height (4)(5)	equal to the building height or 20 feet (whichever is greater)	equal to the building height or 20 feet (whichever is greater)	66% (6)

**Table 1 Footnotes:**

(1) Lots with Frontage along both Rt. 102 and a local road shall be accessed from the local road

(2) Minimum frontage requirement must be satisfied from the road providing access to the lot.

(3) Subject to NHDES lot sizing criteria if DES minimum lot size is greater than 3 acres/1.5 acres.

(4) May be reduced to 2 times the building height if all parking is located to the side or rear of the principal structure.

(5) At no time shall the minimum front setback be less than 50 feet along Rt. 102 and 30 feet along a local Road.

(6) May be increased by an amount equal to the area of easement dedicated for future widening of the arterial road (See section 807.A.3 on Incentive Bonuses)

(7) On lots with frontage on both an arterial and local road (double frontage), the front setback shall be measured from the property line adjacent to the arterial road.