

CITY OF CONCORD

In the year of our Lord two thousand and twenty-four

AN ORDINANCE amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Zoning Ordinance

The City of Concord ordains as follows:

SECTION I: Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-2 Zoning Districts and Allowable Uses, Section 28-2-2, Zoning Districts Established, by amending paragraph (b), Purposes of the Established Districts, subparagraphs (10) and (12) as follows:

28-2-2 – Zoning Districts Established.

(b) Purposes of the Established Districts. The Base Districts are established for the purposes so stated hereinafter. A statement of purpose for each Overlay District is included in Article 28-3, Overlay Districts, of this ordinance.

(10) The Central Business Performance (CBP) District is established to encompass the traditional downtowns of Concord and Penacook, incorporating a wide range of uses including retail, restaurant, service, entertainment, cultural, lodging, office, governmental, and high density residential uses as well as mixed use developments. The majority of uses are housed within architecturally significant 19th century structures in a pedestrian-oriented area, with little or no on-site parking, and parking is generally provided in structures and on the street. New buildings and additions to existing buildings in downtown Concord shall be designed in such a manner as to not obstruct views of the State House Dome, or exceed the maximum height limit, unless a Conditional Use Permit has otherwise been approved by the Planning Board.

(12) The Opportunity Corridor Performance (OCP) District is established for the economic redevelopment of under utilized urban properties located between downtown Concord's Central Business Performance (CBP) District and Interstate 93, as well as in other former brownfield locations in the City. The range of permissible uses, including retail, restaurant, service, and office, are intended to reinforce, but not compete with the CBP District as a retail, office, and government center. High density residential uses may be allowed immediately adjacent to the CBP Districts in downtown Concord and Penacook. Development design standards for buildings and signs in the District should improve the visual character of the City as seen from the highway, provide an inviting entryway to the City's historic downtowns, and incorporate screening for adjacent neighborhoods. New buildings and additions to existing buildings in the OCP District adjacent to downtown Concord shall be designed in such a manner as to not obstruct

Commented [WM1]: No changes proposed; language below was adopted by City Council on 08/12/2024.

views of the State House Dome, or exceed the maximum height limit, unless a Conditional Use Permit has otherwise been approved by the Planning Board.

SECTION II: Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-4, Development Design Standards, Section 28-4-1, Dimensional Standards, by amending paragraph (g), Applicability to Performance Districts, subparagraphs (2) and (5) as follows:

28-4-1 – Dimensional Standards.

(g) Applicability to Performance Districts.

(2) Within the Central Business and Opportunity Corridor Performance Districts, a building, structure, or sign shall not obstruct the views of the State House Dome as can be seen from a passenger vehicle in the northbound lanes of Interstate 93 between Exit 12 at South Main Street and Exit 14 at Loudon Road, in the southbound lanes of Interstate 93 between the bridge over the Merrimack River south of Exit 16 and Exit 14 at Loudon Road, and in the westbound lanes of Interstate 393 between Exit 1 at Fort Eddy Road and the interchange of Interstates 93 and 393, unless a Conditional Use Permit has been approved by the Planning Board for any obstruction pursuant to Section 28-9-4(b), Conditional Use Permits, of this ordinance, and Architectural Design Review has been approved in accordance with Section 28-9-4(f) of this ordinance. An applicant for a conditional use permit shall provide **adequate technical evaluations and other documentation**, including scaled architectural renderings and photographic simulations demonstrating the extent of the proposed obstruction from multiple vantage points within the aforementioned Interstate 93 and Interstate 393 viewsheds, in order for the Planning Board to make a finding that the proposed obstruction meets the following conditions:

- a. Buildings or structures shall only obstruct the view of the State House Dome to the minimum extent necessary to accomplish the development program as approved by the Planning Board;
- b. The design of buildings or structures which obstruct the view of the State House Dome shall provide a positive contribution to the architectural character of the Downtown Central Business District and Opportunity Corridor, as well as to the visual image of the City's skyline as determined by the Planning Board; and,
- c. The design of buildings or structures within the Central Business Performance District which obstruct the view of the State House Dome shall be built to incorporate recommendations set forth in the Architectural Design Guidelines and the Main Street Design Guide, as adopted and amended. Unless otherwise approved by the Planning Board in conjunction with the Planning Board's conditional use permit approval, buildings and structures shall conform with Article 28-5-48, g, of this Ordinance; and, with no front yard setback and with the front wall of the building being located at the front lot line or street right-of-way line for the

Commented [WM2]: Staff Comment: In her 08/06/2024 letter, Liz Hengen suggested that "development program" be defined term in the Zoning Ordinance. Staff has crafted a definition. See proposed amendment to Glossary later herein.

Commented [WM3]: Staff Comment: In her 08/06/2024 letter, Liz Hengen suggested the following:
1. Insert reference to 2018 Main Street Design Guidelines.
2.2. Add a definition of visual image.
Staff response:
A. Reference to design guidelines has been added in part "c".
B. A definition of "visual image" in the zoning ordinance is unnecessary. Staff notes that the Zoning Ordinance currently states in the introduction of the Glossary section under "Words and Phrases Not Defined. Words and phrases not defined in this Section but defined in other Codes and Ordinances of the City or by State Statute will have meanings as defined by those Codes and Ordinances or Statutes unless a contrary intention clearly appears. Words not otherwise defined shall have their common meaning." Staff recommends the Board rely on common definition of "visual image" as it is a self-evident concept. This term has also existed in the ordinance since 2001.

Commented [WM4]: Staff response to Liz Hengen's comments in 08/06/2024 Letter to City Council:
1. Reference to the Architectural Design Guidelines and Main Street Design Guidelines has been added per Ms. Hengen's suggestion.
2. Additionally, staff proposes deleting language and replacing with reference to Article 28-5-48 of the Zoning Ordinance which addresses building to front lot lines and building step at heights 65' or taller. Staff is also proposing clarifications for 28-5-48, which are included further on in this document. Doing so will avoid having multiple similar, but slightly different provisions, in the zoning ordinance pertaining to 10' setback at 65' height in the Central Business Performance Zone.

ground floor and all stories above the ground floor to a height of sixty five (65) feet above street level. For each story of a building for which the floor level is at an elevation of more than sixty five (65) feet above street level, the front wall of those stories shall be set back a minimum of ten (10) feet from the front lot line or street right of way line.

- d. **Unless otherwise approved by the Planning Board in conjunction with a conditional use permit,** the design of buildings or structures within the Opportunity Corridor Performance District which obstruct the view of the State House Dome, and for which a Conditional Use Permit has been granted to exceed the maximum 45' height limitation in accordance with Article 28-4-1(g)(5), each story of a building for which the floor level is at an elevation of more than sixty-five (65) feet above street level, the front, side, and rear walls of those stories shall be set back 10' from the exterior wall of those portions of the building located below 65'.
- e. Buildings or structures which obstruct the view of the State House Dome shall achieve one of the following public benefits for the community:
- i. Results in the use or reuse of real estate which will enhance the vitality or vibrancy of the Downtown Central Business District or Opportunity Corridor to an extent greater than that could otherwise be achieved if the view of the Dome was not obstructed; or,
 - ii. Results in the removal of slums, or blight, or the cleanup and redevelopment of a property contaminated with hazardous materials (i.e. brownfield site), or results in an economically viable redevelopment of an underutilized property or building which could not otherwise be achieved if the view of the State House Dome was not obstructed; or
 - iii. Expands the supply of housing units within the Downtown Central Business District or Opportunity Corridor by at least 10 dwelling units.

In issuing a conditional use permit, the Planning Board may, **upon its consideration of applicable design review guidelines, including the Architectural Design Guidelines and the Main Street Design Guide as adopted and amended,** attach conditions to the permit including but not limited to requirements related to location, **size, scale,** mass, height, color, **and materials, and other architectural design details** of a building or structure which will obstruct the State House Dome.

Commented [WM5]: Creates parity in the Opportunity Corridor Performance district with flexibility proposed for building step at 65' in the Central Business Performance District here and in 28-5-48, g, as noted later in this document.

Commented [WM6]: Staff response to Liz Hengen's comments in 08/06/2024 Letter to City Council: Ms. Hengen requested that the City create definitions of "vitality" and "vibrancy" in the Zoning Ordinance. Staff disagrees with this suggestion, believing it to be unnecessary. Staff notes that the Zoning Ordinance currently states within the introduction of the Glossary section: **"Words and Phrases Not Defined. Words and phrases not defined in this Section but defined in other Codes and Ordinances of the City or by State Statute will have meanings as defined by those Codes and Ordinances or Statutes unless a contrary intention clearly appears. Words not otherwise defined shall have their common meaning."** Staff recommends the Board rely on common definition of "vibrancy" and "vitality", as they are self-evident concepts and the Board may rely upon their "common meaning".

Commented [WM7]: Staff comment. In her 08/06/2024 letter, Ms. Hengen suggested reference be made to 2018 Main Street Design Guidelines. Staff notes the City has other architectural guidelines which govern development. As such, staff proposed the attached language.

(5) Buildings or structures within that portion of the Opportunity Corridor Performance (OCP) District, which lies easterly of Storrs Street between Loudon Road and an easterly extension of Hills Avenue, may exceed the maximum height restrictions as specified in Section 28-4-1(h), Table of Dimensional Regulations, of this ordinance upon the granting of a conditional use permit pursuant to Section 28-9-4(b), Conditional Use Permits, of this ordinance, and Architectural Design Review has been approved in accordance with Section 28-9-4(f) of this ordinance. An applicant for a conditional use permit shall provide adequate *technical evaluations and other documentation* in order for the Planning Board to make a finding that the proposed additional height of the *building or appurtenant* structure meets the following conditions:

- a. Buildings or structures shall exceed the height limit only to the minimum extent necessary to accomplish the development program as approved by the Planning Board, and in no case shall any building or structure exceed of a height of eighty (80) feet;
- b. Buildings or structures which exceed the height limit shall be designed to minimize shadow impacts and impacts to solar access to public parks and open space, and on adjacent buildings and properties, to the extent feasible to accomplish the development program as approved by the Planning Board;
- c. *The design of buildings or structures which exceed the height limit shall respect the surrounding vernacular architecture and make a positive contribution to the architectural character of the City's skyline as determined by the Planning Board. Additionally, the design of buildings and structures which exceed the height limit shall respect the view of the State House Dome unless a conditional use permit to obstruct the view of the State House Dome has otherwise been approved by the Planning Board in accordance with Article 28-4-1(g)(2). The design of buildings or structures which exceed the height limit shall respect the surrounding vernacular architecture, views of the State House Dome unless a Conditional Use Permit permitting obstruction of the view of the State House Dome has otherwise been approved by the Planning Board in accordance with Article 28-4-1(g)(2), and the City's skyline;*
- d. Buildings or structures which exceed the height limit shall be designed to minimize impacts to views of the Merrimack River valley from the Central Business Performance (CBP) District, to the extent feasible to accomplish the development program as approved by the Planning Board; and
- e. *That the applicant has demonstrated to the satisfaction of the City Engineer that buildings or structures exceeding the height limit shall have adequate potable water pressure for fire suppression and domestic use. The design of buildings or structures which exceed the height limit shall provide a positive contribution to the architectural character of the Downtown and to visual image of the City's skyline.*
- f. *Unless otherwise approved by the Planning Board in conjunction with a conditional use permit, the design of buildings or structures shall ensure that*

Commented [WM8]: Note limited geography. Provision has existed since Zoning Ordinance was adopted in November 2001.

Commented [WM9]: Establishes 45' height limit in OCP District.

Commented [WM10]: Added to clarify, as well as make consistent with provisions of the Dome Obstruction Ordinance.

Commented [WM11]: Staff Comment: See proposed definition in Glossary section later in this document in response to Ms. Hengen's comments in her 08/06/2024 letter.

Commented [WM12]: 11/14/2024 Revised by staff for improved readability per Liz Hengen / Brent Todd's suggestions.

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Commented [WM13]: Duplicates language in "c" above thus deleted. Replaced with language to require adequate water pressure.

Commented [WM14]: The section addresses property in the Opportunity Corridor Performance District (OCP). This proposed amendment creates parity with concepts in 28-5-48, g, herein which will allow for flexibility for this requirement in the Central Business Performance District (CBP), and creates flexibility for the Board & applicant.

each story of a building or structure for which the floor level is at an elevation of more than sixty-five (65) feet above street level, that the front, side, and rear walls of those stories shall be set back 10' from the exterior wall of those portions of the building or structure located below 65' of elevation.

In issuing a conditional use permit, the Planning Board may, upon its consideration of applicable design review guidelines, including the Architectural Design Guidelines and the Main Street Design Guide as adopted and amended, attach conditions to the permit including but not limited to requirements related to location, size, scale, mass, height, color, ~~and~~ materials, and other architectural details of a building or structure which will exceed the height limit.

Commented [WM15]: Staff comment. Revised to address suggestions in Liz Hengen's 08/06/2024 Letter

SECTION III: Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-4, Development Design Standards, by amending Section 28-4-1, Dimensional Standards, to create a new provision as follows:

28-4-1 – Dimensional Standards.

(g) Applicability to Performance Districts.

(6) Buildings or structures within that portion of the Central Business Performance (CBP) District which lies westerly of Storrs Street and easterly of State Street may exceed the maximum height restrictions as specified in Section 28-4-1(h), Table of Dimensional Regulations, of this ordinance upon the granting of a conditional use permit pursuant to Section 28-9-4(b), Conditional Use Permits, of this ordinance, and Architectural Design Review approval in accordance with Section 28-9-4(f) of this ordinance. An applicant for a conditional use permit shall provide adequate technical evaluations and other documentation in order for the Planning Board to make a finding that the proposed additional height of the building or appurtenant structure meets the following conditions:

Commented [WM16]: Staff comment: There has been some confusion as to where in the Central Business Performance District this provision applies; specifically, whether this includes the CBP District in Penacook. Staff notes that description expressly excludes those portions of Central Business Performance District located in Penacook Village. Hence, no additional revisions are needed.

Commented [WM17]: Establishes 80' Height Limit in CBP District

Commented [WM18]: Makes consistent with Dome Obstruction and CUP for Height in Opportunity Corridor District.
Gives the Board maximum flexibility to request information / evaluations from applicant so Board can make an informed decision.
Negates the need to expressly state a structural engineer's report or financial pro forma from the applicant as suggested by Liz Hengen in her 08/06/2024 letter for cases involving demolition and replacement of existing buildings.

a. Buildings or structures shall exceed the height limit only to the minimum extent necessary to accomplish the development program as approved by the Planning Board, and in no case shall any building or structure exceed a height of ninety (90) feet from average grade as calculated in Section 28-4-1(f).

~~a-b.~~ Notwithstanding subsection "a" above, no building or structure shall exceed a height of ninety (90) feet from the elevation of South Main Street if located, or proposed to be located, in the Central Business Performance District westerly of South Main Street, between Pleasant Street and Concord Street;

Commented [WM19]: Staff Comment: Added to clarify intent as discussed during City Council public hearing on August 12, 2024. Provision addresses topographic issue whereby Main Street is approximately 1 story below State Street, and potential for habitable space being taller than 90'.

~~b-c.~~ Buildings or structures which exceed the height limit shall be designed to minimize shadow impacts and impacts to solar access to public parks and open space, and on adjacent buildings and properties, to the extent feasible to accomplish the development program as approved by the Planning Board;

~~e-d.~~ The design of buildings or structures which exceed the height limit shall respect the surrounding vernacular architecture and make a positive

contribution to the architectural character of the City's skyline as determined by the Planning Board. Additionally, the design of buildings and structures which exceed the height limit shall respect the view of the State House Dome unless a conditional use permit to obstruct the view of the State House Dome has otherwise been approved by the Planning Board in accordance with Article 28-4-1(g)(2). ~~The design of buildings or structures which exceed the height limit shall provide a positive contribution to the architectural character of the Downtown and to the visual image of the City's skyline as determined by the Planning Board;~~

~~d.e. Unless otherwise approved by the Planning Board in conjunction with a conditional use permit, the design of buildings or structures which exceed the height limit shall be built to conform with Article 28-5-48, g of this Ordinance; with no front yard setback and with the front wall of the building being located at the front lot line or street right-of-way line for the ground floor and all stories above the ground floor to a height of sixty five (65) feet above street level. For each story of a building for which the floor level is at an elevation of more than sixty five (65) feet above street level, the front wall of those stories shall be set back a minimum of ten (10) feet from the front lot line or street right-of-way line.~~

e.f. That the applicant has demonstrated to the satisfaction of the City Engineer that buildings or structures exceeding the height limit shall have adequate potable water pressure for fire suppression and domestic use;

f.g. That the applicant has demonstrated to the satisfaction of the Fire Chief that buildings or structures exceeding the height limit can be served by the City's tower ladder fire apparatus;

g.h. That the buildings or structures which exceed the height limit shall be directly adjacent to at least one building or structure that is three (3) stories or more in height located on the same side of the street as the subject property for which the conditional use permit has been applied;

h.i. That the buildings or structures which exceed the height limit shall not be located at properties that have more than 15' of frontage on North State Street or South State Street, or be in those portions of the Central Business Performance District located westerly of North State Street;

i.j. Buildings or structures which seek to exceed the maximum height limit shall achieve one of the following public benefits for the community:

- i. -Results in the use or reuse of real estate which will enhance the vitality or vibrancy of the Downtown Central Business District to an extent greater than what would otherwise be achieved within the maximum height limitation; or,
- ii. -Results in the removal of slums, or blight, or the cleanup and redevelopment of a property contaminated with hazardous materials (i.e.

Commented [WM20]: 11/14/2024 Revised for improved readability per Liz Hengen / Brent Todd's suggestions. Is consistent with same provision for the OCP District

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Commented [WM21]: See proposed revised language for 28-5-4, g, later in this document.

The intent of this revision is to minimize confusion associated with having similar, but not identical, provisions in the Zoning Ordinance. Hence staff recommends deleting struck through language and adding cross reference to 28-5-48, g, which addresses building to front lot lines and building step at 65' elevation.

Creates parity with provisions for Dome Obstruction CUP.

Commented [WM22]: Staff Comment:

In her 08/06/2024 letter, Ms. Hengen felt this language is unclear. Staff believes the language is clear.

The provision states that any property located within the Central Business Performance District is eligible to apply for a conditional use permit to go from 80' to 90' except those properties which 1) have more than 15' of frontage on North / South State or 2) are located in the CBP District westerly of North State Street (which are former Riverbend properties in the vicinity of Blake Street).

These provisions are meant to protect residential neighborhoods abutting State Street and community character by preventing 90' tall buildings adjacent to those located westerly of State Street in the CU and CVP Districts which are generally 1-2.5 stories tall.

Concurrently, staff wanted to make sure those properties with dual frontage on Main Street (such as the Eagles Club and Capitol Center for the Arts) could potentially access this conditional use permit to promote future redevelopment, or to assist the CCA with becoming more compliant with height requirements set forth in the Zoning Ordinance.

Staff recommends no change.

brownfield site), or results in the economically viable redevelopment of an underutilized property which could not otherwise be achieved; or

- iii. -Expands the supply of housing units within the Downtown Central Business District by at least 10 dwelling units.

- k. For applications involving the demolition and replacement of existing structures, that the applicant has sufficiently demonstrated, and the Planning Board has determined:

OPTION #1 (STAFF PROPOSAL)

- i. The existing building or structure is not a viable candidate for preservation, rehabilitation, and adaptive reuse due to the building's or structure's condition, characteristics, or other circumstances;
- ii. The demolition of the existing building or structure will not result in a significant adverse impact on the historical, cultural, or architectural resources in the community. The Planning Board may require the Applicant provide to the Planning Board, at the Applicant's expense, reports, documents, or evaluations of the subject property prepared by one or more qualified professional(s) selected by the Applicant, or other parties acceptable to the Planning Board, to assist the Planning Board with its review of the Applicant's project and evaluation of its potential impacts upon historic, cultural and architectural resources.

OPTION #2 (LIZ HENGEN PROPOSAL)

- i. The structure(s) to be demolished is not eligible for, or listed on, the State or National Register of Historic Places, either individually or as a contributing property within a historic district, as determined by a qualified preservation consultant; or,
 - ii. Rehabilitation of the structure to be demolished constitutes a financial hardship for the applicant due to its condition as demonstrated by a written report prepared by a qualified structural engineer accompanied by the project's pro forma.
- i. The replacement building or structure will achieve all of the following public benefits:
 - 1. Results in the use or reuse of real estate which will enhance the vitality or vibrancy of the Downtown Central Business District to an extent greater than what would otherwise be achieved within the maximum height limitation, and if the existing building was otherwise preserved and renovated; and,
 - 2. The vitality or vibrancy resulting from the replacement building or structure will be to a greater degree than if the existing building or structure was otherwise preserved and renovated; and,

Commented [WM23]: Staff notes that the opening paragraph of section of the Ordinance requires "applicant to provide adequate technical evaluations and other documentation in order for the Planning Board to make a finding". Language gives the Board maximum flexibility to seek whatever studies / evaluations it deems necessary for applicant to satisfy requirement & for Board to make an informed decision.
Thus, Ms. Hengen's suggested edits are not necessary.

Commented [WM24]: Mimics provisions of RSA 79-E; provides sufficient protections while maintaining reasonable flexibility for the Board. Reiterates that the Board may require whatever studies it may need from and Applicant to evaluate these criteria in "k" above.

Commented [WM25]: This language is problematic. Staff notes that the E&P Hotel, which is to be demolished as part of the Phenix Hall Project, is listed on the National Register. In October 2023, the Heritage Commission unanimously determined that demolition of the E&P Hotel would have no significant negative impact on historic, architectural, or cultural resources.

This provision would have been problematic for other redevelopment projects in Downtown if they sought the height CUP including the following as they were either on, or determined eligible for, the National Register of Historic Places:

- 32 South Main Street (Former NH Employment Security Building)
- 11 South Main Street (Former Sears Block now the Hotel Concord)

Commented [WM26]: This language is problematic.

Not all buildings which are appropriate candidates for redevelopment under this provision are structurally deficient.

The Legal Department does not recommend that the Board require financial pro formas for land use permits. (Land Use permits are different than RSA 79-E Tax Incentive Program)

3. Results in the removal of slums, or blight, or the cleanup and redevelopment of a property contaminated with hazardous materials (i.e. brownfield site), or results in the ~~economically~~-viable redevelopment of an underutilized property which could not otherwise be achieved if the existing building was otherwise preserved; and,
4. Expands the supply of housing units within the Downtown Central Business District by at least 10 additional units.

ii. ~~That the existing building or structure is not a viable candidate for preservation and adaptive reuse due to the building or structure's condition, characteristics, or circumstances.~~

In issuing a conditional use permit, the Planning Board may, upon its consideration of applicable design review guidelines, including the Architectural Design Guidelines and the Main Street Design Guide as adopted and amended, attach conditions to the permit including but not limited to requirements related to location, size, scale, mass, height, color, ~~and~~ materials, and other architectural details of a building or structure which will exceed the height limit.

SECTION IV: Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-5, Supplemental Standards, by amending Section 28-5-48, Central Business Performance (CBP) District Standards, as follows:

28-5-48 – Central Business Performance (CBP) District Standards.

The following standards shall apply to principal and accessory uses within the CBP District:

- (a) *Multifamily Dwellings.* Multifamily dwellings are permitted in the CBP District provided that, unless a Conditional Use Permit has been approved by the Planning Board in accordance with Section 28-9-4(b) of this Ordinance, such dwelling units are located on or above the second story of a building, and further provided that the first floor of a building is used for a permitted principal nonresidential use in accordance with Section 28-4-5(e) ~~(5)(4)~~ of this Ordinance.
- (b) *Off-street Parking Requirements, Off-Street Loading Requirements, and Off-Street Loading Area for Refuse Containers.* The requirements for off-street parking, off-street loading areas, and off-street loading area for refuse containers are not applicable to the CBP District in accordance with Section 28-7-12(a)(1), of this Ordinance.
- (c) *Parking Lots and Structures.* Unless a Conditional Use Permit has been approved by the Planning Board in accordance with Section 28-9-4(b) of this Ordinance, Parking lots shall not be permitted within one hundred (100) feet of North and South Main Streets and Storrs Street in the CBP District in accordance with Section 28-7-12(a)(2), of this Ordinance. Parking structures located on North Main Street, South Main Street, North State Street, South State Street, Pleasant Street, or Storrs Street shall accommodate permitted principal non-residential uses at street level, and shall meet certain architectural design standards, in accordance with Section 28-5-21, Parking Structures, of this Ordinance

Commented [WM27]: Original language; relocated to, & expanded upon, in j, i in Option #1 above.

Commented [WM28]: Amendments required so may rely on 25-5-48 for provisions pertaining to 10' building step at 65' elevation or higher in Central Business Performance District rather than having separate, slightly different language as originally approved 28-4-1, g, 6 (i.e. the recently adopted conditional use permit for height exceedance in CBP District) as well as the Dome Obstruction Ordinance. Other potential housekeeping amendments also suggested as Board is reviewing this Section.

Commented [WM29]: While the Board is considering changes to this section 28-5-48, staff suggests this potential amendment which is intended to give the Planning Board control of this issue rather than Zoning Board of Adjustment. Ordinance citation is corrected. If Board wishes to pursue, should also make parallel amendment in 28-4-5(e)(5) Case in Point: Residential units at Kearsarge Building at 5-7 South State Street, which required variances.

Commented [WM30]: While the Board is considering changes to this section 28-5-48, staff suggests this potential amendment which is intended to give the Planning Board control of this issue rather than Zoning Board of Adjustment. Case in point: Surface parking lot at new Isabella Apartments at 32 South Main Street, which required several variances.

- (d) *Driveway Access.* No new driveway access is allowed to either North or South Main Street in the CPB District in accordance with Section 28-7-12(a)(2), of this Ordinance.
- (e) *Dimensional Regulations.* There are no minimum yard requirements, no maximum lot coverage, and no minimum lot size requirement in the CBP District. There is a minimum lot frontage requirement of twenty-two (22) feet and a maximum height limit of eighty (80) feet in the CBP District unless a conditional use permit has been approved by the Planning Board in accordance with 28-4-1(g)(6) of this Ordinance. These dimensional standards are in accordance with Section 29-4-1(h), Table of Dimensional Regulations, of this Ordinance.
- (f) *Views of the State House Dome.* View of the State House Dome from the I-93 and I-393 corridor shall not be obstructed by a building, structure, or sign in the CBP District unless a Conditional Use Permit has been approved by the Planning Board ~~of~~ in accordance with Section 28-4-1(g)(2) ~~3~~, this Ordinance.

Commented [WM31]: Housekeeping amendment. This references the that portion of the Zoning Ordinance which grants applicants the ability to secure a Conditional Use Permit to exceed the 80' height limit up to 90' in the Central Business Performance District

Commented [WM32]: Housekeeping amendment to recognize newly enacted provision for Conditional Use Permits to obstruct the State House Dome on 08/12/2024 by City Council.

(g) Build To Lines. Unless a Conditional Use Permit has otherwise been approved by the Planning Board in accordance with Section 28-9-4(b) of this Ordinance, Except as otherwise specified herein, those portions of buildings located directly along Blake Street, Capitol Street, Center Street, Concord Street, Depot Street, Dixon Avenue, Dubois Avenue, Fayette Street, Hills Avenue, North Main Street, South Main Street, North State Street, South State Street, Park Street, Pleasant Street, Pleasant Street Extension, School Street, Storrs Street, Railroad Avenue, Theatre Street, Thompson Street, Village Street, and Warren Street, School Street, and Storrs Street shall be built with no front yard setback and with the front wall of the building being located at the front lot line or street right-of-way line for the ground floor and all stories above the ground floor to a height of sixty-five (65) feet above street level. Unless a Conditional Use Permit has otherwise been approved by the Planning Board in accordance with 28-9-4(b) of this Ordinance, For each story of a building for which the floor level is at an elevation of more than sixty-five (65) feet above street level, the front wall of those stories being located directly along the frontage of the aforementioned streets listed above shall be set back a minimum of ten (10) feet from the front lot line or street right-of-way line. Unless a Conditional Use Permit has otherwise been approved by the Planning Board in accordance with Section 28-9-4(b) of this Ordinance, all buildings located within the Central Business Performance District shall occupy a minimum of eighty (80) percent of the length of the front lot line. Upon the granting of a conditional use permit pursuant to Section 28-9-4(b), Conditional Use Permits, of this Ordinance, buildings may be set back from the front lot line or street right-of-way line behind a widened sidewalk, or set back in part to allow for outdoor or covered public plazas or pedestrian access ways, or private arcades, terraces, or balconies.

- (1) An applicant for a conditional use permit for a widened sidewalk or public plaza space shall provide adequate documentation in order for the Planning Board to make a finding that the proposed improvements will be of adequate size to accommodate public use of the same, will be of a design that will enhance the public use and enjoyment of the space, and will not adversely impact adjacent public and private property or public safety. In no event shall a public plaza space occupy more than twenty (20) percent of the street frontage of a property.
- (2) An applicant for a conditional use permit for private arcades, terraces, or balconies shall provide adequate documentation in order for the Planning Board to make a finding that the proposed improvements will occupy no more than the minimum space necessary to accomplish the purposes of the private improvements, that the improvements will provide a positive contribution to the overall urban design of the streetscape, that the improvements will enhance the land uses proposed to occupy the ground floor of the building, and that the improvements will enhance the pedestrian activity in the adjacent public way.

Commented [WM33]: Housekeeping amendment recognizing Conditional Use Permit for Dome Obstructions adopted in August.

As noted previously in comments concerning edits to 28-4-1, (g), (6); Rather than create completely new and additional provisions governing 10' building step (recess) at an elevation of 65' in the Central Business Performance District, staff proposes revising this provision which has existed in the Ordinance since November 2001.

Staff recommends expanding list of streets governed by this provision. Was previously just N. Main, S. Main, Pleasant, Pleasant Ext, School, Storrs, Village & Warren. This approach will grant flexibility, while addressing design concerns in Downtown, such as recently approved CATCH Neighborhood Housing Project which was approved with a front set back and no building step above 65' as such requirements did not exist for properties located on North State Street at the time of their application.

Further clarifies which specific walls / portions of a building must comply with 10' building step / recess at 65' height. The provision will be only limited to those portions of buildings which directly front on the listed streets.

This provision applies to all buildings which are taller than 65', whether they are constructed to 80' (as currently permitted by right) or 90' respectively (as permitted by Conditional Use Permit) in the Central Business Performance District.

Staff also recommends adding conditional use permit language here to give the Planning Board flexibility to encourage creative design, as well as to give the Planning Board control of this issue rather than Zoning Board of Adjustment.

(h) **Building Entrances at Street Level. Unless a Conditional Use Permit has otherwise been approved by the Planning Board in accordance with Section 28-9-4(b) of this Ordinance.** No door providing entry to or exit from a building shall swing into, open or otherwise intrude into the public sidewalk **or public plaza.** Building entrances shall be recessed into the facade to allow for ingress and egress under cover, and to allow the swing of a door to occur outside of the street right-of-way.

Commented [WM34]: While the Board is considering changes to this section 28-5-48, staff suggests this potential amendment which is intended to give the Planning Board control of this issue rather than Zoning Board of Adjustment.
Case in Point: O's Steak and Seafood entrance from City's South Main Street Plaza

(i) **Ground Floor Occupancy and Transparency. Unless a Conditional Use Permit has otherwise been approved by the Planning Board in accordance with Section 28-9-4(b) of this Ordinance.** A high level of ground floor transparency shall be provided along North Main Street, South Main Street, **Storrs Street,** Pleasant Street, Pleasant Street Extension, Village Street, and Warren Street, as well as in Eagle Square and Bicentennial Square in the CBP District, in order to encourage and maintain a high level of pedestrian activity in the City's downtowns. Traditional storefront window patterns shall be preserved and enhanced. A minimum of sixty (60) percent of the length of the front of a building at ground level shall be glazed or transparent to the inside along said street frontages. A minimum of sixty (60) percent of the occupancy of a building at the ground level shall be comprised of uses which include the sales of goods and provision of services and entertainment to customers who come to the building to obtain the goods, services, and entertainment.

Commented [WM35]: While the Board is considering changes to this section 28-5-48, staff suggests this potential amendment which is intended to give the Planning Board control of this issue rather than Zoning Board of Adjustment.

Commented [WM36]: Added per Planning Board discussion on October 16, 2024 at the request of Jeff Santacruz

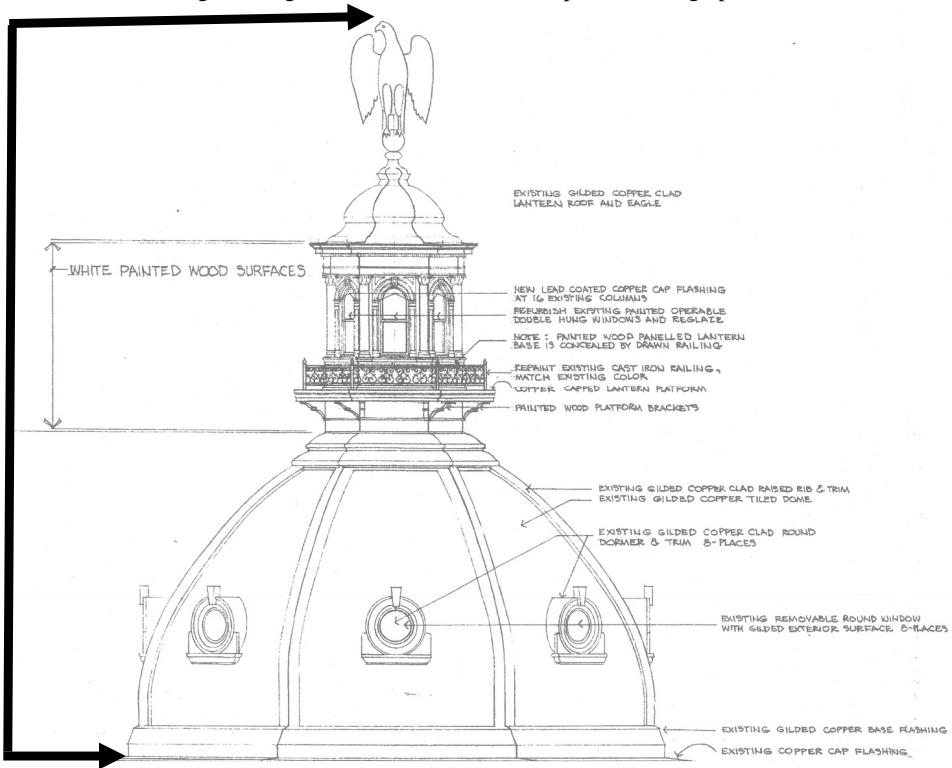
SECTION V: Amend the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Glossary, by adding the following defined term:

Development Program: The development plan for a lot, or lots, as proposed by an applicant for a Planning Board development permit or approval, including proposed buildings and structures, or modifications thereto, as well as proposed uses and square footages allotted for said proposed uses of said lot(s), buildings, and structures, together with associated on-site and off-site improvements, all as approved by the Planning Board.

Commented [WM37]: Case in point: New Isabella Apartments at 32 South Main Street. Again, propose amendment gives Planning Board the authority to review and approve this instead of the Planning Board. This is a design issue which should be controlled by the Planning Board and regulated by a Conditional Use Permit rather than the Zoning Board using the Variance process.

Commented [WM38]: Staff Comment: This definition was added per Liz Hengen's request in her 08/06/2024 letter. The term "lot" is defined in the Zoning Ordinance; hence that term is used here rather than "property" or "parcel".

State House Dome: The portion of the State House structure located on top of the drum and encompasses the circular base of the gilded hemispherical structure to the top of the head of the gilded eagle on the lantern roof, as depicted in the graphic below.



SECTION V: This ordinance shall take effect on adoption.

Explanation: Matter removed from the current ordinance appears in ~~struck through~~. New items are shown in ***bold italic*** font.