ZONING ORDINANCE & BUILDING CODE

TOWN OF MERRIMACK
[Revised October 27, 2016]

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SECTION 1 - PURPOSE AND DEFINITIONS *[revised 9/10/15]*

1.01 Purposes

This ordinance shall be known as the Zoning Ordinance and Building Code. To promote the health, safety, convenience and general welfare of the Town of Merrimack and to make it an attractive place in which to live, the following ordinance and building code is hereby enacted by the voters of said Town of Merrimack.

1.02 Other Definitions Found at Other Locations in This Ordinance

A. Certain terms and words are also defined at Section 2.02.8 *Flood Hazard Conservation District*, Page 28.

B. Certain terms and words are also defined at Section 2.02.11 *Aquifer Conservation District*, page 42.

C. Certain terms and words are also defined at Section 17.04 *Signs*, page 126.

D. Certain terms and words are also defined at Section 2.02.12 *Shoreland Protection District*, page 49.

1.03 - Definitions

A. For the purposes of this ordinance, certain terms and words are hereby defined.

1. Abutter: Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board or Zoning Board of Adjustment.

2. Accessory Dwelling Unit: A second dwelling which is contained within an existing or proposed single family detached dwelling unit that is clearly incidental and subordinate in extent, use and purpose to the principal dwelling.

3. Accessory Use: A subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.

4. Airport/helicopter/aircraft: An area of land or water providing certain specified facilities and services for use in connection with air transportation which could be used as a site for landing and taking-off of aircraft. Aircraft means any engine powered contrivance for air transportation.

Section 1.03 Definitions (cont):

5. Alternative Treatment Center: An "alternative treatment center" as defined in RSA 126-X:l, I, namely, a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers.

   a) Alternative Treatment Center (Cultivation Location Only): A “cultivation location" as defmed in RSA 126-X:l, IV, namely, a locked and enclosed site under the control of an alternative treatment center where cannabis is cultivated, secured with one or more locks or other security devices in accordance with RSA 126-X and the Department of Health and Human Service's administrative rules.

   b) Alternative Treatment Center (Non-Cultivation Location): An alternative treatment center operated in accordance with RSA 126-X and the Department of Health and Human Services administrative rules that has a separate location for the cultivation of cannabis.

6. Appeal: A process whereby any person, officer, department, board or bureau aggrieved by a decision of the Planning & Zoning Administrator or Building Official may appeal to the Zoning Board of Adjustment where such matter is within the board's power and shall file a Notice of Appeal specifying the grounds therefore, and shall include the process whereby any adverse decisions by the Zoning Board of Adjustment are further appealed to the Superior Court.

7. Aquifer: Those areas designated as having high, medium, and low potential to yield water which appear on state-wide mapping prepared by the U.S. Geological Survey (USGS) entitled "Availability of Groundwater in the lower Merrimack River Basin Southern N.H." by John E. Cotton, 1977, or as most recently published by USGS..

8. Building Official: An appointed official whose primary responsibility is to enforce the Building Code of the Town of Merrimack.

9. Certificate of Occupancy: A statement signed by the Building Official setting forth that a building or structure or any portion thereof complies with the zoning and building ordinance; that a building, structure or parcel of land may lawfully be employed for specified uses; or both.

10. Certified Soil Scientist: a person who, by reason of special knowledge of pedological principles acquired professional education and practical experience, as specified in RSA 310-A:84, I & II, is qualified to identify, classify, and prepare soil maps according to the standards of the National Cooperative Soil Survey, or standards adopted by the New Hampshire Department of Environmental Services, or standards adopted by the board, and who has been duly certified by the authorized state board of natural sciences.

Section 1.03 - Definitions (continued)

11. Certified Wetland Scientist: a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified in RSA 310-A:84, II-a & II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor and who has been duly certified by the authorized state board of natural sciences.

12. Change of Use: The change in the use of land and/or building(s) to another use.

13. Community Development Director: The chief administrator of the Community Development Department.

14. Conservation Commission: A seven member municipal body appointed by the Town Council for the proper utilization and protection of natural resources and for the protection of water-shed resources within the Town of Merrimack.

15. District, Overlay: A special district or zone which addresses special land use circumstances and/or environmental safeguards and is superimposed over the underlying existing zoning districts. Permitted uses in the underlying zoning district shall continue subject to compliance with the regulations of the overlay zone or district.

16. District or Zone: A geographical section or sections of the Town for which the regulations and provisions governing the use of buildings and land are uniform for each class of use permitted therein and where certain uses of land may be permitted, permitted or denied pursuant to municipal review or prohibited.

17. Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

18. Expansion/Alteration: As applied to a building or structure, means a change or rearrangement in the structural parts or in the means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

19. Family: One or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.

Section 1.03 - Definitions (continued)

20. Family Day Care Home: An occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except the children who are 10 years of age or older. In addition to the 6 children, up to three children attending a full day school program may also be cared for up to five hours per day on school days and all day during school holidays.

21. Farms, Agriculture, Farming: As defined in RSA 21:34-a and amendments thereto, the word "farm" shall mean any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. The words "agriculture" and "farming" shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.

22. Floor Area, Gross: For the purpose of determining required parking spaces, the gross floor area is the total floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns and other similar features.

23. Floor Area, Net: For the purpose of determining required parking spaces, the net floor area is total floor area within the perimeter of the inside walls of the building deducting for interior walls, hallways, stairs, closets, storage and similar features including other areas such a those for the preparation of food and drink, restrooms and waiting rooms.

24. Floor Area of Building: The total number of square feet of floor area of all stories in a building, excluding cellars, unfinished attics, uncovered steps and uncovered porches. All horizontal measurements shall be made between exterior faces of walls.

25. Frontage: The length of the lot line connecting the side lot lines which borders on a Class V or better highway (excepting the F.E. Everett Turnpike and other Limited Access Highways as defined in RSA 230:44 (as may be amended from time to time)), or a street on a subdivision plat approved by the Planning Board, or land designed to become a Class V or better highway.

Section 1.03 - Definitions (continued)

26. Hazardous or Toxic Materials or Liquids: Materials or liquids that pose a threat present or future to the environment, whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with Section 3001 of the Resource Conservation and Recovery Act of 1976.

27. Home Occupation: A non-residential use carried on within a residence or its accessory buildings, which use is clearly incidental and secondary to the principal use of the property as a residence and does not change the character thereof.

28. Home Owner: The owner of record of any land and residential and accessory structures located thereon.

29. Junk: Unregistered motor vehicles no longer intended or in condition for legal use on the public highways; used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material which has been a part, or intended to be a part, of any motor vehicle; or any machinery, scrap metal or other worn out, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to same use. Junk shall also include any worn out or discarded materials including but not necessarily limited to construction material, household wastes, including garbage, discarded appliances, and discarded consumer electronic devices. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered junk.

30. Junk Yard: Any space more than 200 square feet in area, whether inside or outside a building, used for storage, keeping, processing, salvaging or abandonment of junk.

31. Junk Yard, Commercial: Any junk yard which is operated for profit, whether said profit is derived from the storage, reconditioning, conversion, or sale of junk, or otherwise.

32. Lot Depth: Lot depth shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

33. Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements for corner lots and double frontage lots, all sides of a lot adjacent to streets shall be considered frontage.

34. Lot Line, Rear: The lot line or lines generally opposite or parallel to the front lot line, except in a double frontage lot. If the rear lot line is less than 10 feet long or the lot comes to a point at the rear, said rear lot line is assumed to be a line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

Section 1.03 – Definitions (continued)

35. Lot of Record: A lot held under separate ownership from the adjacent lots or a lot shown to be a separate and distinct numbered lot of record by a plan of lots which has been recorded.

36. Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. The terms "mobile home" or "trailer", as these may appear in this ordinance, should be understood to mean "manufactured housing" as defined herein.

37. Manufactured Housing Park: A parcel of land containing at least five acres, upon which one or more manufactured homes are parked or intended to be parked for living purposes.

38. Multiple (Multi) family dwelling: A building containing three (3) or more dwelling units.

39. Non-Conforming Lot: A lot lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the regulations of the district in which it is located.

40. Non-Conforming Use: A use of a building or of land lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the use regulations of the district in which it is located.

41. Nonprofit Organization: Nonprofit organization shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation organized and operated exclusively for religious, cultural, charitable, scientific, recreational, literary, agricultural, or educational purposes, or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association, and an organization exempt from taxation under Section 501 (c) of the Internal Revenue Code of 1986 organized or incorporated in this state or another state of having a principal place of business in this state or in another state.

42. Parking Space, Off-Street: A rectangular area, not less than 9 X 18.5 feet forming a parking stall within or without a structure, not located in any public right-of-way.

43. Planning Board: A seven member legislative body charged with the duty to prepare and amend the Town of Merrimack Master Plan, prepare and amend a capital improvements program, the formulation of proposed amendments to the Merrimack Zoning Ordinance, and the review and approval of subdivision plans and site plans, and other duties as set forth in RSA 674:1.

Section 1.03 - Definitions (continued)

44. Planning & Zoning Administrator: An appointed official whose responsibilities include administration and enforcement the zoning ordinance of the Town of Merrimack.

45. Public Hearing: A publicly advertised meeting of an official legislative or quasi-judicial body conducting Town business during which the public is allowed to give testimony concerning issues under consideration.

46. Public Land and Institutions: All publicly owned land and facilities such as schools, parks and conservation land, museums, libraries, administration and maintenance building and grounds, police and fire stations, utility sites and utility rights-of-way and easements.

47. Restaurant: An establishment whose principal business is selling food and beverages in a ready-to-consume state whether said food and beverages are consumed on or off the premises.

    a) Restaurant, carry-out; An establishment which sells food and beverages in a ready-to-consume state where no provisions are made for consumption on the premises.

    b) Restaurant, combination: An establishment which sells food and beverages in a ready-to-consume state which may be either consumed on or taken off of the premises.

    c) Restaurant, drive-in: An establishment which sells food and beverages in a ready-to-consume state primarily for consumption on the premises by persons in parked motor vehicles.

    d) Restaurant, sit-down: An establishment which sells food and beverages in a ready-to-consume state primarily to persons who are seated within the building or outside on the premises.

48. Seasonal Building or Structure: A building or structure, usually but not always a dwelling unit, which was originally designed to be occupied only during the warm months of the year, not during winter; such a structure may not have been originally built with insulation or any permanent, central heating system; such a structure, when originally constructed, may not have had a septic system designed for year round use. (Reference 9.02.E)

Section 1.03 - Definitions (continued)

49. Self-Storage Facility: A building, group of buildings or other facility having compartments, rooms, spaces, containers or other type of units that are individually leased, rented, sold or otherwise contracted for, by customers for the storage of non-toxic, non-explosive personal or business goods or property, and where the facility owner/operator has limited access to the units. For purposes of this Ordinance, "self-storage facility" shall be considered synonymous with self-storage warehouse, self-service storage facility, mini-warehouse or mini-storage.

50. Setback, Front Yard: Open space extending across the full width of lot between the front lot line and nearest line of the principal building or any enclosed portion thereof. The depth of such yard shall be the shortest horizontal distance between the front lot line and the nearest point of the building or any enclosed portion thereof.

51. Setback, Rear Yard: Open space extending across the full width of lot between the rear line of the lot and the nearest line of the building or any enclosed portion thereof. The depth of such yard is the shortest horizontal distance between the rear lot line and the nearest point of the building. When the rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the depth of the rear yard is measured to an assumed rear lot line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

52. Setback, Side Yard: Open space between the side lot line, and the nearest line of the principal buildings, or any enclosed portion thereof, extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front lot line and/or rear lot line. The width of a side yard shall be the shortest distance between the side lot line and the nearest point of the principal building or any enclosed portion thereof.

53. Setback, Yard: A required open space on a lot unoccupied and unobstructed by any principal structure or portion thereof, except for such projections into any required open space as are expressly permitted herein.

54. Special Exception: Uses authorized under the Zoning Ordinance subject to appropriate conditions and safeguards as set forth in the ordinance as may be approved by the Zoning Board of Adjustment. Applicants for a special exception need not prove hardship but must comply with all other applicable zoning laws and any conditions for approval imposed by the Zoning Board.

55. Street: Class V Highway or better, as defined in RSA 229:5(VI).

56. Structural Alterations: Any change in the supporting members of a building or structure, such as walls, columns, beams or girders.

Section 1.03 - Definitions (continued)

57. Structure: Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.

58. Travel Trailer: A mobile home designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer's permanent identification "Travel Trailer" thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed forty-five hundred (4500) pounds, or being of any weight provided its overall length does not exceed twenty-eight (28) feet.

59. Variance: A grant of permission by the Zoning Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of the zoning laws, could not otherwise legally be done.

60. Wetlands: "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

61. Zoning Board of Adjustment: A quasi-judicial body which hears and decides matters relating to the application of the zoning ordinance and considers appeals from the decisions of the Planning & Zoning Administrator and Building Official and considers variance and special exception applications.

Zosctn1

SECTION 2 - ESTABLISHMENT OF DISTRICTS *[revised 10/27/16]*

2.01 - The Town of Merrimack is hereby divided into twelve districts:

R. Residential District
C-1. Limited Commercial District
C-2. General Commercial District
I-1 Industrial District
I-2. Industrial District
I-3. Industrial District
W. Wetland Conservation District
F. Flood Hazard Conservation District
E. Elderly Zoning District
PRD. Planned Residential District
A. Aquifer Conservation District
SP. Shoreland Protection District

The location and boundaries of districts are and shall be as shown on the Zoning Map, the Wetlands Conservation District Map, the Flood Hazard Conservation District Map, the Soils Limitation District Photo Maps, the Elderly Zoning District Map, and the Planned Residential District Map which are hereby declared to be a part of this ordinance.

2.01.1 - <u>Industrial District - Metes and Bounds, I-1, I-2, I-3</u>

A. From Souhegan River North to Bedford line from Merrimack River to 200 feet west of the railroad tracks and the extension of the industrial zone in the area of the B&M Railroad at the northerly side of the Souhegan River as mapped [including all of Tax Map Parcels 6D-1/75 except for that portion of the parcel south and west of the southwesterly property line of Tax Map Parcel 6D-1/76 and north and west of a line drawn from the southwestern corner of Tax Map Parcel 6D-1/76 to a point at a jog in the southwesterly boundary line of Tax Map Parcel 6D-1/75, said point being approximately 249 feet east of the Front Street Right-of-Way, and all of Tax Map Parcels 6D-1/76, 6E-2/60 and 6E-2/61 but excluding all of Tax Map Parcels 6D-1/69 and 75-4, 6E-1/5, 7, 8, 9, 10, 10-1, 11, 12, 13, 38, 37, 36, 35, 34, 33 and 6E-2/39.

B. Beginning at a point at the intersection of the westerly right-of-way line of Camp Sargent Road and the southerly right-of-way line of Continental Boulevard; thence

1. Westerly along the said southerly right-of-way line of Continental Boulevard, a distance of seven hundred ninety (790) feet, more or less, to a point at the most westerly corner of Lot 4D/54-4 and the most northerly corner of Lot 3D/3; thence

2. Southeasterly along the southwesterly line of said line of said Lot 4D/54-4 and Lot 4D/53 and the northeasterly line of said Lot 3D/3, a distance of three hundred sixty-nine (369) feet, more or less, to a point on the westerly line of Lot 3D/18; thence

Section 2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3 (continued)

3. Southerly and southwesterly along the northwesterly lot lines of Lots 3D/18, 3D/16, 3D/14, 3D/13, 3D/12, 3D/10, 3D/9, 3D/8, 3D/7, 3D/6-1, 3D/6, 3C/102-2, 3C/102, 3C/102-1, 3C/101, and 3C/100, a distance of two thousand seven hundred ninety-eight (2798) feet, more or less, to a point on the easterly right-of-way line of said Continental Boulevard; thence

4. Southwesterly, crossing said Continental Boulevard, and through Lot 3C/85, a distance of two hundred twenty-one (221) feet, more or less, to a point at the southeasterly corner of Lot 3C/82-1 and the northeasterly corner of Lot 3C/82; thence

5. Northerly along the easterly line of said Lot 3C/82-1, a distance of thirty (30) feet, more or less, to a point at the northeasterly corner of said Lot 3C/82-1; thence

6. Westerly along the northerly line of said Lot 3C/82-1 and Lot 3C/80, a distance of two hundred eleven (211) feet, more or less, to a point at the northwesterly corner of said Lot 3C/80 and on the southeasterly line of Lot 3C/76; thence

7. Northeasterly along the southeasterly line of said Lot 3C/76 and Lot 3C/76-1, a distance of two thousand eight hundred forty-one (2841) feet, more or less, to a point at the center line of Naticook Brook; thence

8. Northeasterly along the said center line of Naticook Brook, a distance of nine hundred twenty-three (923) feet, more or less, to a point on the southerly right-of-way line of Amherst Road; thence

9. Easterly and southeasterly along the said southerly right-of-way line of Amherst Road, a distance of one thousand twenty-two (1022) feet, more or less, to the point of beginning.

Shown on a plan entitled Town of Merrimack Official Zoning Map Amendment, Industrial District "C", Continental Boulevard, Merrimack, N.H., Scale 1" = 200' plus or minus, Adopted May, 1995.

C. The premises bounded on the south by the northerly line of Pine Wood Acres, so-called, Reeds Ferry; on the east by the Merrimack River; on the north by the southerly line of the New England Power Company right of way, (which southerly line is located eighty-three and 5/10 [83.5] feet southerly of, and measured at a right angle with, the center line of the southerly line of transmission towers located in said right of way); and on the west by the center line of the Daniel Webster Highway. Within said area, no building shall be constructed or used for industrial or commercial purposes if such building is situated within two hundred (200) feet of the boundary of an adjoining residential district, within which residences are constructed within two hundred (200) feet of the boundary line between such districts.

Section 2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3 (continued)

D. From Souhegan River south to easterly extension of the access road and underpass to the F.E. Everett Turnpike Toll Gate, from Merrimack River west to 200 feet east of Daniel Webster Highway; and from easterly extension of the access road and underpass to the F.E. Everett Turnpike Toll Gate south to Nashua line from Merrimack River west to F.E. Everett Turnpike thence northerly along turnpike to Toll Gate thence easterly to point of beginning.

E. Certain parcels in the Congress Park subdivision fronting on Columbia Circle, west of D.W.Highway, including Tax Map Parcels 4D-3/7, 8, 10, 12, 13, 14, 16, 18, 19, 21, 22, 24, 25, & 26.

EXCEPTION: The area bounded from Route 3 easterly along the center line of Wright Avenue to the B&M right-of-way, thence southerly along the B&M right-of-way to a point along the center line of Greeley Street to Route Three, thence northerly along the center line of Route Three to the center line of Wright Avenue.

Industrial I-2 District

F. The boundaries of the Industrial District I-2 are as follows:

1. Beginning at a point on the westerly side of the F.E. Everett Turnpike and 50' northerly of Thornton Road West, thence; westerly parallel to said Thornton Road West to land of Robert MacKay, thence; northwesterly 510' along land of MacKay to a corner, thence; westerly crossing land of MacKay to the northeasterly corner of land of Fred Mears, thence; westerly by land of Fred Mears to land of Joseph Demers, thence; northerly and westerly by land of Demers to land of Pennichuck Water Works, thence; westerly and northwesterly by land of Pennichuck Water Works to the easterly corner of Merrimack School District land, said point being approximately 2134' southeasterly from Camp Sargent Road, thence; northerly on a straight line by land of Meadowcrest Corporation to a corner, said corner meaning and intending to be 1500' easterly of Camp Sargent Road and 1000' southerly from the nearest corner of Sargent Acres subdivision, thence; southeasterly on a straight line along land of Meadowcrest Corporation to a corner, said corner meaning and intending to be 1500' easterly of Camp Sargent Road and 1000' southerly from the nearest corner of Sargent Acres subdivision, thence; southeasterly on a straight line along of Meadowcrest Corporation to a point on the westerly side of F.E. Everett Turnpike, said point being 4200' northerly from Thornton Road West, thence; southerly by the F.E. Everett Turnpike to the point of beginning.

2. The premises to the west the of western boundary of the F.E. Everett Turnpike right-of-way, north of the centerline of the Industrial Drive right-of way, east of the eastern boundary of the Camp Sargent Road right-of-way, south and east of the Sargent Acres Subdivision and south of the Public Service Company of New Hampshire Power Easement; including Tax Map Parcels 3C/191-1, 3D/28 and that portion of 3D/27 south of the Public Service Company of New Hampshire Power Line Easement.

Section 2.01.1- Industrial District - Metes and Bounds, I-1, I-2, and I-3 (continued)

(a) Buffer Zone: Beginning at a point on the easterly side of Camp Sargent Road, one hundred (100) feet southerly and westerly from the southwestern corner of Tax Map Parcel 3C/190; thence, easterly and southerly a distance of approximately eleven hundred twenty-five (1,125) feet, parallel to Spruce Street; thence, thirteen hundred seventy-five feet, more or less, northeasterly, to the peak elevation point of the unnamed hill west of Douglas Street (376 feet aMSL;) thence, northerly, a distance of one thousand twenty-five (1,025) feet, more or less, to a point at the southern boundary of the Public Service Company of New Hampshire Power Easement, one hundred (100) feet east of the northeastern corner of Tax Map Parcel 3C/109; thence, westerly to the northeastern corner of Tax Map Parcel 3C/109; thence, southerly along the rear lot lines of Tax Map Parcels 3C/109 and 110; thence westerly along the southern lot line of Tax Map Parcel 3C/111; thence, southeasterly along the rear lot lines of Tax Map Parcels 3C/129 through 132; thence, westerly along the southern lot line of Tax Map Parcel 3C/132 to the northeast corner of Tax Map Parcel 3C/133; thence, southerly along the rear lot lines of Tax Map Parcels 3C/133 and 134; thence, southerly to the northeastern corner of Tax Map Parcel 135; thence southerly and westerly along the rear lot lines of Tax Map Parcels 3C/135 through 140 to the northeastern corner of Tax Map Parcel 3C/141; thence, southerly along the eastern lot line of Tax Map Parcel 3C/141; thence, westerly along a line following the rear lot lines of Tax Map Parcels 3C/141, 142, 163, 164, 181, 182 and 190 to the easterly side of Camp Sargent Road; thence, southerly along the easterly side of Camp Sargent Road to the point of beginning.

Industrial I-3 District

G. The boundaries of the Industrial District I-3 are as follows: Beginning at a point on the northwesterly side of Continental Boulevard, said point being the southerly corner of a parcel of land belonging to the Town of Merrimack, New Hampshire, thence;

1. Southeasterly by a curve to the left having a radius of 1945.86', a distance of 184.99' to a stone bound set, thence;
2. S 36° 40' 34" W a distance of 1680.47' along the westerly side of said Continental Boulevard to a stone bound set, thence;
3. N 53° 19' 26" W a distance of 286.33' to an iron pin found at the land of the Merrimack Village District, thence;
4. N 00° 02' 26" E a distance of 111.36' to an iron pin found, thence;
5. N 10° 22' 09" W a distance of 118.47' to an iron pin found, thence;
6. N 43° 20' 22" W a distance of 144.39' to an iron pin found, thence;
7. N 25° 03' 04" W a distance of 179.67' to an iron pin found, thence;
8. N 01° 00' 22" W a distance of 322.73' to a concrete bound found on the southerly side of Greens Pond Road. The proceeding five courses were all by land of Merrimack Village District, thence;

Section I-3 - Industrial District - Metes and Bounds I-1, I-2, I-3 (continued)

9. N 11° 35' 48" W a distance of 50.00' across Greens Pond Road to a point, thence;
10. S 78° 24' 12" W a distance of 136.30' to the beginning to a curve to the left, thence
11. Westerly by said curve to the left having a radius of 422.77' a distance of 110.52' to a point, thence;
12. S 63° 25' 32" W a distance of 175.45' to the beginning of a curve to the right, thence;
13. Westerly and northwesterly by said curve to the right, having a radius of 185.06' a distance of 175.42' to a point, thence;
14. N 61° 21' 35" W a distance of 54.51' to a point, thence;
15. Generally northeasterly along land of Merrimack Village District and Naticook Brook, a distance 2776' to a point at the land of the Town of Merrimack Water District, thence;
16. S 11° 45' 24" E a distance of 980.69' to the northerly side of said Greens Pond Road, thence;
17. S 25° 30' 41" E a distance of 50.00' across said Greens Pond Road to a point, thence;
18. N 64° 29' 19" E a distance of 280.00' to a stone bound at the northwest corner of the land of the Town of Merrimack, thence;
19. S 10° 52' 44" E a distance of 139.30' to a point, thence;
20. S 47° 52' 36" E a distance of 150.00' to the point of beginning.

This tract of land is shown as two lots on the Town of Merrimack Assessor's sheets and that portion of Greens Pond Road that lies between these two tracts. (See Map Attached, or Official Zoning Map in Planning Department).

2.01.2 - Limited Commercial District

Boundaries as defined by the Zoning Map which is hereby incorporated by reference.

2.01.3 - General Commercial District

Boundaries as defined by the Zoning Map which is hereby incorporated by reference.

2.01.4 - Residential District

Balance of the Town including the area bounded from Route Three easterly along the center line of Wright Avenue to the B&M right-of-way, thence southerly along the B&M right-of-way to a point along the center line of Greeley Street to Route Three, thence northerly along the center line of Route Three to the center line of Wright Avenue with the exclusion of Tax Map Parcels 4D-4/50, 54, 55, 56, 57, 58, 59, 60, and 4D-1/003.

2.01.5 - Wetlands Conservation District

As defined in Section 2.02.7. Hereafter no land shall be used or occupied and no building or structures shall be erected, altered, used or occupied except in conformity with the regulations herein established for the district in which such land, building or structure is located.

2.01.6 - Flood Hazard Conservation District

Delineation: The Flood Hazard Conservation District is hereby determined to be the flood hazard areas designated by the Federal Insurance Administration, through on-site mapping of elevations in the flood hazard areas of the Town of Merrimack, dated September 25, 2009. The Flood Hazard Conservation District as herein defined is shown in the Flood Insurance Study and on a map designated as the Flood Insurance Rate Maps of the County of Hillsborough, New Hampshire. These maps are adopted by reference and declared a part of this section.

In all cases where the Flood Hazard Conservation District is super-imposed over another zoning district in the Town of Merrimack, New Hampshire, that district whose regulations are the more restrictive shall apply.

2.01.7 - Elderly Zoning District

Boundaries: Any development for the elderly shall be located within a one (1) mile radius from the intersection of the D.W. Highway and Baboosic Lake Road or within a two (2) mile radius of the intersection of the DW Highway and Baboosic Lake Road east of the turnpike.

2.01.8 - Planned Residential District

Boundaries: Boundaries are defined by the Zoning Map which is adopted as a part of this ordinance.

2.01.9 - Aquifer Conservation District

Location: The Aquifer Conservation District includes those areas shown on the Map entitled Town of Merrimack Aquifer Conservation District, dated December 1996 prepared by the Nashua Regional Planning Commission based upon the Department of Interior U.S. Geological Survey study entitled Hydrology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area, South Central New Hampshire, 1987, and on the Map entitled Surficial Geology and Wellhead Protection Areas Delineated for Merrimack Village District Wells MVD-1 Through MVD-&, dated January 1996, prepared by Emory & Garrett Groundwater, Inc. The Aquifer Conservation District is subdivided into two areas:

Section 2.01.9 - Aquifer Conservation District (continued)

1. Wellhead Protection Areas.
2. Balance of the Aquifer District.
3. The Balance of the Watershed

The Aquifer Conservation District maps are hereby declared to be a part of this ordinance and is incorporated by reference.

2.02 - Permitted Uses - All Districts

A. Permitted Uses - General: All uses set forth below are permitted in all zoning districts.

1. Streets, road and other access ways including foot, bicycle, horse paths and bridges and nature trials.

2. Farming, gardening, nursery, forestry, harvesting, grazing and other similar agricultural activities. The change of land to one or more agricultural uses as defined herein or expansion of an existing agricultural use shall be subject to nonresidential site plan review by the Planning Board.

3. Wildlife refuges, nature study and conservation areas and other activities designed to conserve soil, water, plants and wildlife.

4. Water impoundments and wells, drainage ways, streams, creeks and other paths of water runoff including the maintenance and operation of water control and supply devices such as dams, weirs and splash boards.

5. Excavation of sand and gravel providing all activities are conducted in accordance with an approved Earth Removal Permit issued pursuant to Section 14 of this ordinance.

6. Public Lands and Institutions.

7. The use or operation of equipment, vehicles or aircraft, including aircraft take offs and landings, for the purpose of emergency response, medical necessity, public safety, emergency landing, media coverage, building construction, equipment installation or political campaigning.

8. The installation of solar, wind, or other renewable energy systems designed to provide energy primarily for on-site use, and the building of any structures necessary for the collection of renewable energy provided that all applicable health and life and safety codes and requirements are adhered to and subject to any applicable building setback or height restrictions.

Section 2.02 - Permitted Uses - All Districts (continued)

B. General Prohibitions:

1. No use of any kind shall be permitted in any district, if it in any way would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibrations, noise, light, or other objectionable features or if it would be hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.

2. The underground storage of petroleum, refined petroleum products and organic solvents except with suitable secondary barriers and automatic alarm systems approved by the Planning Board is prohibited in every district. For the purpose of this regulation, storage in basement or cellar spaces shall not be considered as underground storage. This regulation shall apply to all new and replacement storage facilities constructed after the date of its adoption.

   a) The underground storage of petroleum, refined petroleum products and organic solvents referred to in (2) above is not intended to include Liquified Petroleum Gas (LPG).

Section 2.02.1 - District R, Residential - Permitted Uses

A. Only the following uses are permitted in the residential district.

1. Residential uses and customary secondary accessory uses and structures. Note: aircraft takeoffs and landings on private land by the owner of such land or by a person who resides on such land are not valid and permitted accessory uses.

2. Home Occupations: Except as provided in 3 below, requests to conduct home occupations as set forth in this section must comply with the criteria listed below and receive permission from the Planning Board after a public hearing.

   a) No more than one person who is not a resident of the premises is employed therein;

   b) Off-street parking can be provided as specified in Section 18;

   c) There is no external evidence of the occupation or office other than a sign limited to two (2) square feet.

   d) No more than 25% of the inhabitable floor area of the dwelling is utilized by the occupation or office.

   e) Such use shall be personal to the owner of the premises or the occupant with the permission from the owner and shall not survive a transfer of title of the real estate or be transferable to a new occupant.

Section 2.02.1 - District R - Permitted Uses (continued)

f) Home Occupations shall be deemed to include professional offices, such as that of a doctor, dentist, lawyer, accountant, engineer, architect, and the business offices of a variety of similar occupations. They shall also include occupations such as dressmaking, cooking limited to items for off-premise consumption, home crafts, hairdressing and barbering limited to one chair, and family day care homes in accordance with RSA 170-E:2 IV (a).

g) Home occupations expressly do not include commercial kennels, the parking or storage of tractor trailers, auto repair or small engine repair or maintenance, welding, or other uses which involve the visible storage on the property of automobiles or the parts thereof.

h) A contractor or other tradesman may store building materials or construction equipment on his premises only within existing structures.

3. Home Occupations which meet all of the criteria listed below are not subject to site plan review and approval by the Planning Board.

a) There is no external evidence of the occupation or office.

b) There is no individual employed on the premises who is not a resident.

c) The dwelling meets off-street parking requirements Section 18.

d) There are no visitors, customers or solicitations for individuals to visit the premises to conduct business.

e) There is no business sign of any type.

f) No more than 25% of the inhabitable floor area of the dwelling is utilized by the occupation or office.

g) Delivery of goods and materials is limited to step-vans and similar vehicles customarily associated with residential deliveries. No more than two (2) deliveries are permitted daily.

4. To increase housing alternatives while maintaining neighborhood aesthetics and quality, attached accessory dwelling units (ADU) are permitted on any property containing an owner-occupied single-family dwelling, provided that the applicant meets the criteria set forth below:

a) A maximum of one (1) ADU per property is permitted. An ADU shall not be permitted on property where more than one primary dwelling unit (PDU) currently exists;

b) The ADU is contained within or will be an addition to an existing or proposed single family detached dwelling;

Section 2.02.1 - District R - Permitted Uses (continued)

c) Exterior alterations, enlargements, or extensions of the PDU are permitted in order to accommodate the ADU. However, no such change is permitted which would alter the appearance of the PDU to look like a duplex or any other multi-family structure (i.e., the house should not look like it was designed to house more than one family). The construction of any exterior accessways which are required for access to the ADU shall be located to the side or rear of the building whenever possible. The ADU shall also be designed to remain functionally dependent on the PDU and shall not have provisions for separate utilities, garages, driveways, and other similar amenities;

d) The ADU shall contain no more than two bedrooms;

e) The ADU shall not exceed 1,000 square feet in area;

f) The ADU shall be connected internally to the PDU;

g) The property owner must occupy one of the two dwelling units;

h) One parking space for the ADU shall be provided in addition to any parking for the PDU;

i) The PDU, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy; and

j) Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

5. Co-location of a new telecommunication antenna on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower, is also disguised through the use of camouflage or the color of the antenna(s) blends with the existing structure or surroundings if camouflage was not required with the tower approval. A building permit shall be required.

Section 2.02.1 - District R - Permitted Uses (continued)

B. Special Exceptions: The Zoning Board of Adjustment may grant a special exception for the following use of lands within the residential district:

1. Churches, provided that it finds that all of the following conditions are met:

   a) The specific site is an appropriate location for such a use or uses in terms of overall community development.

   b) The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighboring area.

   c) There will be no nuisance or serious hazard to vehicles or pedestrians.

   d) That an adequate parking area is provided for motor vehicles on the premises.

   e) A buffer shall be erected and maintained to screen existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.

   f) The use as developed will be restricted for church purposes only. No commercial use of a church within the residential zone will be allowed.

2. Telecommunication Towers, provided that it finds that all of the following conditions are met:

   a) The applicant shall meet the approval criteria set forth in a-e of B.1 above.

   b) The applicant meets the criteria set forth in section 2.02.4.B.22.a (New Towers).

   c) Proposed towers shall be disguised through the use of camouflage technologies such as trees, flagpoles, steeples, etc.

   d) Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, and potential interference which would make co-location impractical.

3. Co-location on Existing Non-Tower Structures, provided that it finds that all of the following conditions are met:

   a) The applicant shall meet the approval criteria set forth in a-e of B.1 above.

   b) The applicant meets the criteria set forth in section 2.02.4.B.22.c.

   c) Proposed telecommunications antenna(s) shall be disguised through the use of camouflage technologies.

Section 2.02.1 - District R - Permitted Uses (continued)

C. Conditional Use Permits:

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Detached Accessory Dwelling Units (ADU's) in the R District.

2. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for a Detached ADU:

   a) A maximum of one (1) ADU per property is permitted. An ADU shall not be permitted on property where more than one primary dwelling unit (PDU) currently exists;

   b) The Detached ADU shall be located only in the side or rear yard of the property;

   c) The Detached ADU shall not exceed 50% of the size of the Principal Dwelling Unit (PDU) or 1,000 square feet in size, whichever is smaller;

   d) Lots seeking a Detached ADU shall be comprised of at least 125% of the minimum lot area as required by Section 3.02.A, Table 1;

   e) A Detached ADU shall not contain more than two bedrooms;

   f) The property owner must occupy one of the two dwelling units;

   g) One parking space for the ADU shall be provided in addition to any parking for the PDU;

   h) The PDU, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy;

   i) Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

2.02.2- District C-1, Limited Commercial - Permitted Uses

A. This district is intended to permit commercial uses in areas on streets with high traffic volumes which now have a mixture of residential and non-residential uses but where the trend has been conversion to commercial use. These areas are typified by small lots and are frequently abutted on the rear by attractive residential neighborhoods.

The intent is to permit limited commercial use while buffering residential neighborhoods from disturbance and disruption.

B. Only the following uses are permitted in the limited commercial district:

1. Stores for the sale of retail goods or performance of personal services except those specifically excluded below;

2. Business and professional offices;

3. Specifically excluded are the following: banks, automotive related uses of all kinds, hotels, and motels, and "big box", single user retail stores greater than 75,000 square feet.

C. Special Exceptions:

1. The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the limited commercial district C-1:

a) Restaurants,

b) Cafes,

c) Residential (other than a Planned Unit Development), and

d) Accessory uses as defined herein;

2. Provided that it finds that all of the following conditions are met:

a) The specific site is an appropriate location for such a use or uses in terms of overall community development.

b) The use as developed will not adversely affect the neighborhood.

c) There will be no nuisance or serious hazard to vehicles or pedestrians.

d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)

D. Conditional Use Permits:

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) within the C-1 District.

2. Purpose & Intent: The purpose of this Section is to implement NH RSA 126-X, authorizing the use of therapeutic cannabis and to regulate the locations and operations of Alternative Treatment Center uses, so as to promote and protect the public health, safety, and welfare of the residents of Merrimack. The intent of this Section is to:

   a) Provide for the safe sale and distribution of therapeutic cannabis to patients who qualify to obtain, possess, and use cannabis for medical purposes under RSA 126-X and as managed by the New Hampshire Department of Health & Human Services; and

   b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, building safety, neighborhood and patient safety, security for the business and its personnel and other health safety concerns.

3. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location):

   a) An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone; and

   b) The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited; and

   c) The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers; and

   d) The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department; and

   e) The use of cannabis on the premises is prohibited; and

   f) The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located.

Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)

E. A buffer shall be erected and maintained to screen between commercial and existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.

2.02.3 - District C-2, General Commercial - Permitted Uses

A. In recognition of the demand created by Merrimack's strategic location and continuing growth, commercial areas are hereby designated allowing for the establishment of retail businesses.

A criterion in their location must be readily accessible to high traffic volume carrying facilities to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements as well. The primary function of this district use would be to serve a regional and/or local shopping and service need.

B. Only the following uses are permitted in the general commercial district. Such uses shall be primarily conducted inside a building:

1. Stores for sale of goods at retail or performance of regional customary personal services, or services clearly incidental to retail sales including services and construction materials, but no fabrication or manufacturing except incidental to, and on the same premises with, such retail sales, provided such incidental fabrication is conducted entirely within a building and does not occupy more than 20% of the floor area used for business purposes. Specifically excluded are “big box”, single user retail stores greater than 75,000 square feet.

2. Business, professional, or banking offices.

3. Research and Development on lots of five (5) acres or more located in Commercial Parks of five or more lots.

4. Restaurant, cafe, or other place serving food or beverages.

5. Parking lot areas for transient motor vehicles, but not for storage of new or used motor vehicles for sale or hire.

6. Hotel/motel.

7. Churches.

8. Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

C. Special Exceptions:

1. The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the general commercial district C-2:

   a) Accessory uses as defined herein,

   b) Residential (other than a Planned Unit Development),

   c) Public Facilities,

   d) Sale or storage of used and new cars,

   e) Commercial recreation and entertainment, and

   f) Gasoline and automobile service and repair stations;

   Provided that it finds that all of the following conditions are met:

   1) The specific site is an appropriate location for such a use or uses in terms of overall community development,

   2) The use as developed will not adversely affect the neighborhood,

   3) There will be no nuisance or serious hazard to vehicles or pedestrians, and

   4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

2. The Zoning Board of Adjustment may grant a special exception for Telecommunication Towers within the general commercial district C-2.

   Provided that it finds that all of the following conditions are met:

   a) The applicant shall meet the conditions set forth in a-d of C.1 above.

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

b) The applicant meets the following criteria:

1) Towers shall be set back from the property line by a distance equal to the height of the tower. The Planning Board may permit a lesser setback where alternative protections to abutting properties are provided by way of easement, covenant or other adequate deed restriction or where the proposed tower is designed in full compliance with all applicable building codes and building/construction plans submitted to the building inspector are certified and stamped by a

licensed structural engineer prior to the issuance of a building permit. Prior to the issuance of a Building Permit, the tower design and plans shall be reviewed by a structural engineer designated by the Town.

2) Accessory facilities must satisfy the minimum zoning district setback requirements.

3) Towers shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness.

4) For security purposes, towers and ancillary facilities shall be enclosed by a minimum six (6) foot fence.

5) All utility buildings and structures accessory to a tower shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

6) Any proposed communications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three (3) additional users if the tower is over 100 feet in height or for at least one (1) additional user if the tower is less than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

7) Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers. d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessar; e) failure to file the required biannual inspection report with the Community Development Department within the specified time-frame shall constitute sufficient grounds to cause the bond to be called.

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

8) Permit Required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board.

c) Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, potential interference, and co-location costs which would make co-location impractical.

D. Conditional Use Permit: Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) and Self-Storage Facilities within the C 2 District.

1. Alternative Treatment Centers (Non-Cultivation Location): Subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

2. Self Storage Facilities

a) Purpose & Intent: Self-Storage Facilities have characteristics in common with both commercial uses and industrial uses. This subsection provides regulations to appropriately site Self-Storage Facilities in the C-2 District while maintaining the desired character and function of those zones. In general, Self-Storage Facilities generate low levels of vehicular and pedestrian activity and typically do not contribute to the vitality of a commercial area compared to other commercial uses. Historically self-storage facilities have visually resembled industrial facilities, but some trends in the industry have featured designs compatible with higher quality commercial development. If designed appropriately as stand-alone structures that emulate the exterior architecture of residential or multi-family residential or as components located within larger commercial/ office developments, Self-Storage Facilities may be located without adversely impacting the intent of the C-2 District or surrounding neighborhoods, provided the criteria below are satisfied.

b) The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Self-Storage Facilities:

1) Granting of the application would meet some public need or convenience;
2) Granting of the application is in the public interest;
3) The property in question is reasonably suited for the use requested;
4) The use requested would not have a substantial adverse effect on the rights of the owners of surrounding properties;
5) There must be appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure public safety and to avoid traffic congestion;

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

6) Electrical service to storage units shall be for lighting and climate control only. No electrical outlets are permitted inside individual storage units. Lighting fixtures and switches shall be of a secure design that will not allow tapping the fixtures for other purposes;
7) If the facility abuts residentially zoned property, the facility loading bays, docks or doors shall not be visible from the residential property or from public rights-of-way;
8) In order to promote visual compatibility with commercial development allowed in commercial zones, Self-Storage Facility buildings shall incorporate appropriate landscaping/screening and architectural and design features common to commercial and/or multifamily development. (Examples of such architectural and design features include: massing; proportion; facade modulation; exterior building materials and detailing; varied roofline; pedestrian scale; fenestration; repetition; etc.).

E. General Requirements:

Site Plan Review: In each case where a building or use is proposed in this district other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with its subdivision and/or site review regulations. Such Board shall determine that all requirements of this ordinance have been met, and buffer protection provided to adjacent residential uses and, after holding a public hearing on each application, shall approve, approve with modifications, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such actions in its records.

2.02.4 - District I-1 & I-2, Industrial - Permitted Uses

A. District Objectives

These districts allow for the establishment of manufacturing employment opportunities in the community and takes into consideration truck access and the availability of utilities. Research and development and other high density activities should be concentrated in this area.
Any permitted industrial or commercial use of which no land, building, structure, or equipment, or ancillary appendages shall be used for any purpose which would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibration, noise, light, or other objectionable features or hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.

B. The following uses only are permitted in the Industrial District I-1:

1. Manufacturing Industries,
2. Warehouse and Wholesale Uses,
3. Office Uses Greater than 10,000 Square Feet,
4. Public Utilities,
5. Churches,
6. Gasoline Stations,
7. Enclosed Service and Repair, including Automotive Vehicles,
8. Machinery and Transportation Equipment, Sales, Service and Repair,
9. Freight and Trucking Terminals, Offices, and Brokers,
10. Contractors Yards,
11. Parking Garages,
12. Animal Hospital, Veterinary Clinics, provided at least 200 feet of side and rear yards are provided from any residential district,
13. Research & Testing Laboratory
14. Fuel Storage and Distribution (Bulk).
15. Printing Establishment,
16. Contract Cleaning Establishment,
17. Industrial Supply Establishment,

Section 2.02.4 - District I-1 & I-2 - Permitted Uses (continued)

18. Support Uses to an Industrial District:

    a) Restaurants,

    b) Branch Banks,

    c) Offices,

    d) Hotel/Motel,

    e) Daycare

19. Breweries and Bottling Facilities,

20. Athletic fields and indoor or outdoor skating facilities.

21. Self-Storage Facilities

22. Telecommunication Towers, Co-location on Existing Towers, and Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:

    a. New Towers

        1) Towers shall be set back from the property line by a distance equal to the height of the tower. The Planning Board may permit a lesser setback where alternative protections to abutting properties are provided by way of easement, covenant or other adequate deed restriction or where the proposed tower is designed in full compliance with all applicable building codes and building/construction plans submitted to the building inspector are certified and stamped by a licensed structural engineer prior to the issuance of a building permit. Prior to the issuance of a Building Permit, the tower design and plans shall be reviewed by a structural engineer designated by the Town.

        2) Accessory facilities must satisfy the minimum zoning district setback requirements.

        3) Towers shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness.

        4) For security purposes, towers and ancillary facilities shall be enclosed by a minimum six (6) foot fence.

        5) All utility buildings and structures accessory to a tower shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

Section 2.02.4 - District I-1 & I-2 - Permitted Uses (continued)

6) Any proposed communications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three (3) additional users if the tower is over 100 feet in height or for at least one (1) additional user if the tower is less than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

7) Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers; d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessary; e) failure to file the required biannual inspection report with the Community Development Department within the specified time-frame shall constitute sufficient grounds to cause the bond to be called.

8) Permit Required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board.

b. Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.

c. Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:

1) Installing an antenna(s) on an existing structure other than a tower, such as a building, water tank, light fixture, or utility pole, is permitted, without Planning Board review, so long as the additional antenna(s) is no more than 20 feet higher than the existing structure and the color of the antenna(s) blends with the existing structure or surroundings.

2) Accessory facilities must satisfy the minimum zoning district setback requirements of section 3.02.

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

3) The antenna(s) and supporting electrical and mechanical equipment shall be a neutral color that is the same as the color as the supporting structure so as to make the antenna(s) and related equipment as visually unobtrusive as possible.

4) All utility buildings and structures accessory to the antenna(s) shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

C. Alternative Treatment Centers Permitted in the I-1 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-1 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

D. Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit

Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for mixed uses on parcels in the I-1 District consisting of a minimum of 50 acres provided there is compliance with the terms of this section.

1. Purpose

The purpose of this section is to permit mixed uses which allow the creative integration of industrial, commercial and residential housing developments based on a master site development plan that permits flexibility in the design and integration of the permitted uses contained therein. The permitted mixed uses are intended to be complementary, so as to provide for the appropriate use of the land, fiscally beneficial development, the efficient provision of public services, and expanded opportunities for a diversity of residential development outside the traditional residential districts.

Conditional Use Permits are limited to single consolidated tracts of land situated in the I-1 Industrial District that:

a. Are a minimum of 50 acres in size;
b. Are serviced by municipal sewer;
c. Are serviced by the Merrimack Village District or Pennichuck Water Works;
d. Have 500 (five hundred) feet of continuous frontage on the State maintained portions of Daniel Webster Highway located south of Star Drive to the Nashua City Line, or north of Bedford Road to the Bedford Town Line.

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

2. Permitted Uses

Uses which may be permitted by Conditional Use Permit, provided the provisions of this Section are satisfied, include only:

a. Uses permitted within the (I-1) Industrial District (per Section 2.02.4.B);
b. Uses permitted within the (C-2) General Commercial District (per Section 2.02.3.B 1 through 7), but with no restriction as to size;
c. Uses permitted within the Elderly Zoning District (per Section 2.02.9) subject to the residential density calculation requirements of Section 15.04;
d. Residential Uses as permitted within the Planned Unit Development District (per Section 15);
e. Public and private open space and recreation, public facilities, and commercial recreation uses.

Residential density calculations under C and D above shall be based upon that portion of the parcel being set aside for residential use, and shall not include land proposed for the uses referenced in A, B, or E.

3. Master Site Development Plan Required

The applicant shall prepare and submit, for review and possible approval by the Planning Board, a Master Site Development Plan for the mixed use development of the parcel. The Master Site Development Plan shall include, at a minimum:

a. The location, type, and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;
b. The proposed provisions for utilities, access roads, parking, and public and private ways;
c. Areas proposed to be permanently dedicated for public or private open space or other public purpose;
d. Proposed buffers between uses and adjacent properties in accordance with the provisions of Section 2.02.4.C.5 of this Ordinance;
e. Proposed phasing of the overall site development including the general sequence in which related public and private improvements will be accomplished;
f. In the event the development site is not comprised of a single parcel, the master site development plan shall detail the manner in which multiple parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.

4. Dimensional Requirements

In general, the mixed use development shall be required to comply with the provisions of Section 3.02, provided however that:

a. Proposed Industrial (I-1) uses and lots shall be controlled by the notes and dimensional requirements of Section 3.02;

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

b. Proposed General Commercial (C-2) uses and lots shall be controlled by the notes and dimensional requirements of Section 3.02;

c. Proposed Elderly Housing uses and lots shall be controlled by the dimensional requirements of Section 2.02.9;

d. Proposed Planned Unit Development uses and lots shall be controlled by the requirements of Section 15;

e. The Planning Board may in its sole discretion require more or less stringent dimensional requirements than those referenced above to facilitate the integration and connections between mixed use areas being developed, and to provide reasonable buffering and separation between proposed residential, commercial and industrial uses.

5. Criteria for Granting a Conditional Use Permit

In order to obtain a Conditional Use Permit from the Planning Board, the applicant must demonstrate to the satisfaction of the Planning Board that the following criteria are met by the proposed development:

a. The property in question is reasonably suited for the proposed use(s) and will not create undue hazard or excessive expenditure of public funds to insure that public health and safety are maintained throughout and following the development of the parcel;

b. The applicant shall demonstrate, to the satisfaction of the Board, that the development will generate a net positive fiscal impact for the Town. The Planning Board may require preparation and review of a fiscal impact assessment to demonstrate compliance with this requirement;

c. The proposed development shall include provisions, satisfactory to the Planning Board, to insure that current and future municipal service capacity for police, fire, public works, general government, recreation, and school services and facilities within the community will not be adversely affected by the development. The Planning Board may require preparation and review of a municipal service capacity impact assessment to demonstrate compliance with this requirement;

d. The proposed mixed use development shall not create an undue hazard or nuisance for vehicular or pedestrian traffic; shall include adequate provisions for safe and efficient traffic access, circulation and parking; and shall promote pedestrian and public transportation linkages within and between sites to the maximum practical extent. The Planning Board may require preparation and review of a traffic impact assessment to demonstrate compliance with this requirement;

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

e. Adequate and appropriate public infrastructure shall be provided to ensure the proper operation of the proposed mixed uses. The Planning Board may require that portions of the project be designed so as to complete any street or utility systems in the vicinity of the subject parcels consistent with projected town plans for such improvements;

f. The proposed development must comply with all applicable federal, state, and local environmental laws, including all appropriate sections of the Town's zoning ordinance and subdivision regulations;

g. Adequate buffers, satisfactory to the Planning Board, shall be provided along the development parcel's perimeter boundaries, and along proposed boundaries of parcels interior to the mixed use development. Buffers and landscaping shall reflect the need for appropriate separation and transitions between adjoining industrial, commercial and residential uses;

h. The proposed development plan shall provide for a continuity of open space throughout development. Open space and other recreational areas within the development shall be related to projected town plans for such improvements, and should not be limited to trails and paths, although these are desirable features of the design;

i. The proposed development must demonstrate compliance with the architectural design criteria contained in Section 12.04.3 of the Merrimack Subdivision Regulations pertaining to "Transitional Districts", provided that the Planning Board may permit the Applicant to utilize Merrimack Subdivision Regulations Section 12.04.2 "Industrial Design District" criteria for exclusively industrial facilities within the development;

j. The proposed development will not result in unreasonable impacts to adjoining properties or uses, by way of light, noise, pollution, visual blight, odor, vibration or other nuisance. The Planning Board may require preparation and review of such studies or assessments as it may deem necessary to demonstrate compliance with this requirement;

k. The proposed development addresses, to the satisfaction of the Planning Board, the general design criteria of Section 15.03.D.3 a) through g).

6. General Requirements

a. Any applicant proposing to develop land under this Section shall first apply to the Planning Board for a Conditional Use Permit approval, pursuant to the terms of this Section. The applicant may be assessed reasonable fees to cover the costs of special investigative studies and/or review of documents required to facilitate the Board's determination(s) regarding the criteria to be met, and to cover the costs of review by the Board's legal counsel and/or any third party consultants;

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

b. Following the conclusion of its review of the proposal the Planning Board may approve, approve with modification, or disapprove the application for Conditional Use Permit;

c. The Planning Board shall require, as a condition of its approval of any Conditional Use Permit, the execution of a Development Agreement or other similar instrument specifying: the phasing, timing and sequence of the improvements contained within the development; the performance guarantees relating thereto; and any other such development-related information the Board deems necessary to insure the successful completion of the development as proposed and approved;

d. In each case where a Conditional Use Permit has been granted, the applicant must subsequently obtain subdivision approval for the platting of individual lot(s) and/or site plan approval(s) for buildings or sites within the mixed use development in accordance with the Town of Merrimack Subdivision and Site Plan Review Regulations;

e. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to implement this Section of the Zoning Ordinance, and such regulations and standards shall be adopted prior to the Board taking action on any application under this Section.

7. Conditional Use Permit – Validity Period

If, after a conditional use permit has been approved by the Planning Board, such approval is not acted upon within a period of two (2) years from the date of the approval, then such approval shall be null and void. Actions sufficient to vest an approval for a conditional use permit include Planning Board site plan or subdivision approval, issuance of a building permit, or a Certificate of Occupancy issued by the Community Development Department where no Planning Board approval or building permit is required.

However, should any site plan or subdivision approval or building permit expire unused after the conclusion of the two-year validity period provided for herein, any conditional use permit granted as a precondition to said site plan or subdivision approval or permit shall become void as well.

Any application to extend the two-year validity period shall demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the permit granted within two years.

Any renewal/extension application shall be filed with the Planning Board no sooner than 90 days, nor later than 30 days, prior to the conditional use permit expiration.

The Planning Board may, in its sole discretion, grant such extension of the above validity period as it deems warranted.

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

D. The following uses only are permitted in the Industrial District I-2:

1. Light Manufacturing Industries,

2. Warehouse and Wholesale Uses,

3. Office Uses Greater than 10,000 Square Feet,

4. Churches,

5. Parking Garages,

6. Printing Establishment,

7. Support Uses to an Industrial District:
   a) Restaurants,
   b) Branch Banks,
   c) Offices,
   d) Hotel/Motel

8. Telecommunication Towers, Co-location on Existing Towers, and Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:

   a) New Towers, provided the applicant meets the criteria set forth in section 2.02.4.B.21.A (New Towers).

   b) Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.

   c) Co-location on Existing Non-Tower Structures, provided the applicant meets the criteria set forth in section 2.02.4.B.21.C (Co-location on Existing Non-Tower Structures). A building permit shall be required.

9. Outlet Village Shops permitted by Conditional Use Permit.

   a) Outlet Village Shops shall be defined as a collection of buildings arranged in a configuration consisting of multiple adjacent buildings having a center courtyard and connecting walkways in which no single building exceeds 120,000 square feet of gross floor area and no single shop shall exceed 40,000 square feet of gross floor area, and in which are located clothing, appliance, housewares, electronics, hardware and furniture outlet or similar shops, together with accessory and supporting restaurants, which restaurant total gross floor area shall not exceed 15% of the total gross floor area of the Outlet Village Shops. The total gross floor area of the Outlet Village Shops may not exceed 650,000 square feet within the I-2 District in total.

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

b) As provided in RSA 674:21, Innovative Land Use Controls, this section of the Zoning Ordinance provides for the granting of conditional use permits, by the Planning Board, as follows:

1) The Planning Board shall vote either to approve a conditional use permit as presented, approve it with conditions or deny it.
2) The applicant shall be required to apply for and obtain a site plan approval, in accordance with the site plan regulations of the Town of Merrimack.
3) The applicant shall be required to submit a financial surety in accordance with the subdivision regulations and site plan regulations of the Town of Merrimack prior to commencing construction of any building.
4) The applicant may be assessed reasonable fees to cover the costs of special investigation studies and/or review of documents required by particular applications, reviews by Town's legal counsel and any third party consultant, as may be required by the Planning Board pursuant to the site plan regulations of the Town of Merrimack.
5) The applicant shall be required to submit an economic or fiscal impact analysis reflecting the impact of the proposed use upon the Town's infrastructure, facilities, support services and taxes.
6) The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit hereunder:

(i) the proposed location for the Outlet Village Shops must be readily accessible to high traffic volume carrying facilities, and sited to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements. The primary function of this district use would be to serve a regional and/or local shopping and service need;
(ii) the proposed use is consistent with the objectives of Section 2.02.3.B.1 and the second paragraph of Section 2.02.4 of the Town of Merrimack Zoning Ordinance. Specifically excluded are "big box" single user retail stores greater than 75,000 square feet;
(iii) the property in question is reasonably suited for the use requested, and does not create a hazard to surface or underground water resources;
(iv) the property in question shall be specifically located for readily available access to the F. E. Everett Turnpike;
(v) the proposed use will not result in unreasonable impacts by way of increased noise, visual blight, odor or other nuisance to other uses within the zoning district or adjoining land uses;
(vi) granting the permit is in accord with the general purpose of the Zoning Ordinance as set forth in Section 1.01;

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

(vii) the proposed use will have a high tax value and will contribute significantly to the tax base of the Town of Merrimack as contemplated by the Economic Development and Future Land Use and Recommendations Chapters of the Master Plan Update, 2002;

(viii) The proposed use shall demonstrate a significant economic and fiscal benefit to the Town in the judgment of the Board.

7) The Outlet Village Shops shall have the following density, dimensional and parking requirements:

(i) minimum lot area - 100 acres;

(ii) minimum landscaped buffer, consisting of dense plantings of suitable trees and shrubbery or naturally occurring trees and shrubbery supplemented by additional plantings as may be required by the Planning Board from a residential district - 100 feet;

(iii) minimum building setback from a residential use - 300 feet;

(iv) minimum percentage of open space - 30%;

(v) minimum parking ratio - 5.5 spaces per 1,000 square feet of gross leasable area;

(vi) buffer zone - no construction or improvements shall be made within the Buffer Zone within the I-2 District as defined in Section 2.01.1.F.2(a) of the Zoning Ordinance.

8) The Outlet Village Shops shall have a comprehensive sign program including ground mounted pylon signs, directional signs and building mounted signs. Notwithstanding the terms and provisions regarding signs incorporated elsewhere within the Zoning Ordinance, the sign program shall be of a nature and magnitude as may be determined by the Planning Board in its sole discretion to be reasonably necessary and appropriate given the location and setting of the proposed use to be approved at the time of the approval of the site plan for the proposed use.

9) Whenever the provisions of this subsection conflict with any other provisions of the Zoning Ordinance, the provisions of this subsection shall apply.

10) The Board shall adopt such standards and regulations as it may deem necessary in order to implement this section of the Zoning Ordinance, and such regulations and standards shall be adopted prior to the Board taking action on any application under this section of the Zoning Ordinance.

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

E. Special Exceptions

The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the Industrial Districts I-1 & I-2:

1. Accessory uses as defined herein.

2. Other industrial uses except waste disposal sites and dumps, upon the approval by the Board of Adjustment such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses, shall be permitted. This may include the conversion of existing residential uses to commercial or industrial uses as are allowed and provided for in paragraph B. of this section.

3. On-site caretakers lodges or residences.

4. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1, Special Exceptions, Section 2.02.1 District R, Residential Zone.

F. Alternative Treatment Centers Permitted in the I-2 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-2 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

G. General Requirements

Site Plan Review: In each case where a building or use is proposed in these districts other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with Subdivision Regulations. The Planning Board shall determine that all requirements of this Ordinance have been met, including appropriate conditions and safeguards with respect to the adequacy of traffic access, circulation and parking, landscaping and screening. After holding a public hearing on each application, the Planning Board shall approve, approve with modification, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such action in its records.

2.02.5 - District I-3, Industrial - Permitted Uses

A. District Objectives

This district shall allow for establishment of manufacturing employment opportunities in the community and take into consideration the proximity of the town water supply wells and established residential uses adjacent to this district.

Section 2.02.5 - District I-3, Industrial - Permitted Uses (continued)

Development in this district shall take cognizance of the need to protect the quality of the Merrimack Village District wells by assuring that the well areas are not deprived of natural replenishment and that foreign materials (salts, oils, etc.) are not introduced into the ground water.

With respect to any permitted industrial or commercial use, no land, building, structure, or equipment shall be used for any purpose which would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibration, noise, or other objectionable features or hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to make proper evaluation, according to the above criteria, of any proposed use.

B. General Requirements

Site Plan Review: In each case where a building or use is proposed in this district other than a single-family residence the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with its Subdivision Regulations. The Planning Board shall determine that all requirements of this ordinance have been met, including appropriate conditions and safe-guards with respect to the adequacy of traffic access, circulation, parking, landscaping and screening.

After holding a public hearing on each application, the Planning Board shall approve, approve with modification, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such action in its records.

C. The following uses only are permitted in the Industrial District I-3:

1. Light manufacturing industries (i.e. electronics, light mechanical assembly, etc.)

2. Research and Development.

3. Offices.

4. Telecommunication Towers, Co-location on Existing Towers, and Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:

   a) New Towers, provided the applicant meets the criteria set forth in section 2.02.4.B.21.A (New towers).

   b) Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.

   c) Co-location on Existing Non-Tower Structures, provided the applicant meets the criteria set forth in section 2.02.4.B.21.C (Co-location on Existing Non-Tower Structures). A building permit shall be required.

Section 2.02.5 - District I-3, Industrial - Permitted Uses (continued)

D. Special Exceptions

1. Accessory uses as defined herein.

2. Other industrial uses upon the approval by the Board of Adjustment upon finding that such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses shall be permitted.

3. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1 Special Exceptions, Section 2.02.1, District R, Residential Zone.

2.02.6 – Sexually Oriented Businesses

A. Purpose and intent. It is the purpose of this section to establish reasonable and uniform regulations to prevent the inappropriate location and concentration of sexually oriented businesses within the Town of Merrimack. It is the intent to promote the health, safety and general welfare of the citizens of the Town of Merrimack. It is the intent of this section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the inappropriate location and concentration of sexually oriented businesses. The provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is not the intent nor effect of this article to condone or legitimize the distribution of obscene material.

B. Definition. A sexually oriented business is any place of business at which any of the following activities is conducted:

1. Adult bookstore or adult video store. A business that devotes more than fifteen (15) percent of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of the following:

   a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMS or other forms of visual or audio representations which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1; or,
   b) Instruments, devices or paraphernalia which are designed for use in connection with “sexual conduct” as defined in RSA 571-B:1, other than birth control devices.

   An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than fifteen (15) percent of the total floor area of the establishment to the sale of books and periodicals.

Section 2.02.6 – Sexually Oriented Businesses (continued)

2. Adult motion picture theater. An establishment with the capacity of five (5) or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1, for observation by patrons. For purposes of this section, substantial portion of the total portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any fifty-six (56) consecutive day period.

3. Adult motion picture arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

4. Adult drive-in theater. An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time of the images being presented for observation by patrons is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

5. Adult cabaret. A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

6. Adult motel. A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

7. Adult theater. A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

Section 2.02.6 – Sexually Oriented Businesses (continued)

8. Nude model studio. A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration of such display is characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

9. Sexual encounter center. A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (a) or (b) is characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

C. Prohibited locations. In addition to any use, restriction or prohibition contained in section 2.02.1 through 2.02.5 of this ordinance, no sexually oriented businesses, as defined above, shall be permitted:

1. Within 1000 feet of another sexually oriented business which is either existing at the time of the effective date of this amendment or one for which a building permit has been applied for, and no sexually oriented business shall be permitted within a building, premise, structure or other facility that contains another sexually oriented business;

2. Within 1000 feet of a Residential zoning district boundary line (Note: Planned Residential District is considered a residential district);

3. Within 1000 feet of a Church, place of worship, parish house, convent, library, public, parochial or private school, kindergarten, licensed day care and/or day nursery, State approved day care center, public sports/recreation park, or recreational facility where minors may congregate such as, but not limited to, the YMCA;

4. Within 1000 feet of a Town boundary line.

D. Measure of distance. The distancing requirements above shall be measured in a straight line, without regard to intervening structures, from the property line of any site above (unless otherwise specified) to the closest exterior wall of the sexually oriented business.

E. Additional reasonable regulations. The Planning Board is empowered to review and approve permit applications for sexually oriented businesses, and to impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and on to public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics consistently with the "Town of Merrimack Subdivision Regulations", and to avoid site development layout which may result in negative environmental impacts and to insure that any signage and any displays of merchandise visible to the general public are in conformity with RSA 571-B.

Section 2.02.6 – Sexually Oriented Businesses (continued)

F. Severability. The invalidity of any section or provision of this section shall not invalidate of any other section or provision thereof.

2.02.7 - District W, Wetlands Conservation District - Permitted Uses

A. No Construction permitted except as noted below under Permitted Uses.

1. The Wetlands Conservation District : in the Town of Merrimack is hereby determined to consist of three areas: (1) Wetland Soils – Those areas meeting the definition of wetland soils as defined in section 2.02.7.A.1(a) below; (2) Wetlands - Those areas meeting the definition of a wetland(s) as defined in Section 2.02.7.A.1(b), below; (3) and Buffer Areas - All buffer areas established under Section 2.02.7.A.7 of this Ordinance.

a) Wetland Soils – The wetland soils in the Town of Merrimack are those areas delineated as poorly drained or very poorly drained soils identified by the U.S. Department of Agriculture, Soil Conservation Service, through field mapping surveys completed in 1971 and shown on its field mapping photographic sheets for the Town of Merrimack, New Hampshire. The soil types which the Soil Conservation Service has determined in its field mapping surveys to be poorly drained or very poorly drained soils shall include the following (a detailed explanation of soil types is included in the Hillsborough County Soil Handbook which is on file with the Planning Board and in the office of the Soil Conservation Service, Milford, N.H.):

Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

Published Soil Symbol	Old Soil Symbol	Published Soil Name
Rp	5, 5-A-1, 5G	Rippowam fine sandy loam
Sm	6, 6-A-1, 6G	Saco Variant silt loam
Rp	7, 7-A-1	Rippowam fine sandy loam
So	15, 15-A-1	Scarboro mucky loamy sand
Sr	48	Scarboro stony mucky loamy sand
BoA	95, 195-A-1	Borohemist, nearly level
Sn	116, 116-A	Saugatuck loamy sand
Gw	195	Greenwood mucky peat
BpA	197	Borohemist, ponded
PiA	214A, 214-A-1	Pipestone loamy sand, 0-3% slopes
Gw	295	Greenwood mucky peat
Cu	395	Chocorua mucky peat
Cu	495	Chocorua mucky peat
PiA	514, 514-A, 514-A-1	Pipestone loamy sand, 0-3% slopes
Bg	533, 533-A	Binghamville silt loam
LtA	546, 546-A-1	Leicester-Walpole complex, 0-3% slopes
LvA	547, 547-A-1	Leicester-Walpole complex, 0-3% slopes
Sr	549, 549-A-1	Scarboro stony mucky loamy sand
PiB	214B, 214-B-1	Pipestone loamy sand, 3-8% slopes
LtB	546B	Leicester-Walpole Complex stony, 3-8% slopes
LvB	547-B, 547-B-1	Leicester-Walpole Complex stony, 3-8% slopes
ReB	647B	Ridgebury loam, 3-8% slopes

b) Wetlands : areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under natural conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Three technical criteria: hydric soils, hydrophytic vegetation and wetland hydrology under natural conditions are required for the positive identification of a wetland. Wetlands generally include, but are not limited to, swamps, marshes, bogs and similar areas. Where on-site delineation is required wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetland hydrology, in accordance with the techniques outlined in the Corps of Engineers, Wetlands Delineation Manual (Technical Report Y-87-1, January 1987) and field indicators for identifying Hydric Soils in New England (Version 2) NEIWPCC July 1998 (as these may be amended from time to time).
Where differences arise between the SCS mapped soils and the on-site wetlands delineation of soils based on the above manual, the procedures of Section 2.02.7.A.5, below shall be followed.

Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

c) Buffer Areas: are those areas immediately adjacent to Wetlands as defined in 2.02.7.A.7 of this Ordinance.

2. Purpose: In the interest of public health, convenience, safety and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high water tables:

a) To prevent the development of structures and other land uses on or adjacent to wetlands that would contribute to pollution of surface and ground water.

b) To prevent the destruction and degradation of natural wetlands that provide flood protection.

c) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which arise because of inharmonious use of wetlands and adjacent upland areas.

d) To encourage those uses that can be appropriately and safely located in and around wetland areas.

3. Permitted Uses: Any use that does not result in the erection of any structure or alter the surface configuration by the addition of fill or by dredging and that is otherwise permitted by the zoning ordinance.

a) Forestry-tree farming;

b) Agriculture;

c) Water impoundments and well supplies;

d) Drainage ways, streams, creeks, or other paths of normal runoff water;

e) Wildlife refuge;

f) Parks and such recreation uses as are consistent with the purpose and intentions of Section 2.02.7(A)(2);

g) Conservation areas and nature trails;

h) Open space as permitted by subdivision regulations and other sections of this ordinance.

i) Streets, roads, and other access ways if essential to the productive use of land not so zoned;

Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

j) Utility rights of way easements including power lines and pipe lines.

4. Special Exceptions: Special exceptions for the undertaking of a use not otherwise permitted in the Wetland Conservation District, which may include the erection of a structure; dredging, filling, draining, or otherwise altering the surface configuration of the land, may be granted by the Board of Adjustment, if it can be shown that such proposed use will not conflict with the purpose and intentions of Section 2.02.7(A)(2).

   Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by a Certified Wetland Scientist of the environmental effects of such proposed use upon the wetlands in question.

5. Incorrectly Designated Soils:

   a) In the event an area is incorrectly designated as being poorly drained or very poorly drained soils on the Town of Merrimack Wetland Conservation District Map, the Planning Board shall adjust such boundary or area upon submission of the following:

      1) A detailed topographic layout of the subdivision and/or area prepared by a registered land surveyor.

      2) A revised soils map of the subdivision and/or area prepared by the Soils Conservation Service and/or evidence submitted by a soils scientist qualified in soils classification including a written report of his on-site inspection.

      3) The soil boundary as shown on the photo map shall be overlaid on the plat as outlined in Section 4.04 of the subdivision regulations and the newly proposed boundary location shall be indicated on the same plat by a broken line.

   b) The Planning Board shall reserve the right to withhold action on such plat pending the results of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove the final plat within 90 days of submission or such further time as deemed necessary, but not to exceed an additional 90 days.

   c) The final boundary location shall be confirmed and/or determined by the Planning Board.

   d) Reference is made to the Soils Redefinition procedure policy statement which may be obtained from the Planning Department.

6. Building Setbacks: all buildings or structures for which building permits are required shall be setback a distance of not less than forty (40) feet from any wetland area as defined in this ordinance.

Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

7. Buffer Requirements:

a) Buffer: a naturally vegetated upland area adjacent to a wetland, more specifically defined as the area within a specified distance from the edge of a wetland.

b) Applicability: all residential and nonresidential development proposals submitted to the Planning Board for subdivision or nonresidential site plan approval after the effective date of this section (March, 2000) shall provide for a buffer of not less than twenty-five (25) feet from all applicable wetland areas. Applicable wetland areas include all naturally occurring jurisdictional wetlands, as defined herein, with a contiguous area of 3,000 square feet or more, and all jurisdictional wetlands adjacent to any surface water body, river, or stream listed in Section 2.02.12(C) (Shoreland Protection District) of this Ordinance. Upon designation of a wetland buffer area on any plat or plan approved by the Planning Board, said buffer area shall thereafter become a part of the Wetlands Conservation District as defined and described in Section 2.02.7(A).(1) of this ordinance.

c) Exceptions: the buffer requirement noted above shall not apply to minor lot line adjustments, consolidation plans or voluntary mergers of nonconforming lots not intended for development purposes or for waivers from nonresidential site plan review applications related to changes, alterations or modifications of previously approved, developed sites.

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses

A. Boundaries

The Flood Hazard Conservation (F) District includes all Special Flood Hazard Areas designated by the Federal Emergency Management Agency (FEMA), in its "Flood Insurance Study for the County of Hillsborough, New Hampshire"; with an effective date of September 25, 2009, together with the associated Flood Insurance Rate Maps dated September 25, 2009. Pursuant to RSA 674:56, by resolution of the Merrimack Town Council these documents are adopted by reference and declared to be a part of the Merrimack Zoning Ordinance and Building Code and are hereby incorporated by reference. In all cases where the Flood Hazard Conservation District is super-imposed over another zoning district in the Town of Merrimack, New Hampshire, that district whose regulations are the more restrictive shall apply.

B. Definitions

The following definitions shall apply only to this Floodplain Development Ordinance and shall not be affected by the provisions of any other ordinance of the Town of Merrimack.

1. A Zone: (see "Base Flood" and "Area of Special Flood Hazard")

Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

2. Area of Special Flood Hazard: Land in the flood plain within the Town of Merrimack subject to a 1 percent or greater chance of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map.

3. Base Flood (100-year Flood): The flood having a one-percent chance of being equaled or exceeded in any given year.

4. Basement: Any area of a Building having its floor subgrade on all sides.

5. Building: (see Structure.)

6. Development: Any man-made change to improved or unimproved real estate, including but not limited to Buildings or other Structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.

7. FEMA: The Federal Emergency Management Agency.

8. Flood Elevation Study: An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

9. Flood or Flooding: means a general and temporary condition of partial or complete inundation of normally dry land areas from:

   a) the overflow of inland waters.

   b) the unusual and rapid accumulation or runoff of surface waters from any source.

10. Flood Insurance Rate Map (FIRM): An official map incorporated with this Ordinance, upon which FEMA has delineated both the Special Flood Hazard Areas and the risk premium zones.

11. Flood Insurance Study: (see "Flood Elevation study".)

12. Flood Plain or Flood-prone area: means a land area susceptible to being inundated by water from any source (see definition of "Flood" or "Flooding").

13. Floodproofing: Any combination of structural and non-structural additions, changes, or adjustments to Structures which reduce or eliminate potential flood damage to real estate or improved real property, water and sanitary facilities, structures, and contents.

14. Floodway: (see "Regulatory Floodway").

15. Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a Structure.

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

16. Historic Structure: Any structure that is:

    a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

    b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

    c) Individually listed on a state inventory of historic plain states with historic preservation programs which have been approved by the Secretary of the Interior; or

    d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

        1) By an approved state program as determined by the Secretary of the Interior, or

        2) Directly by the Secretary of the Interior in states without approved programs.

17. Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the Structure in violation of applicable non-elevation design requirements of this Ordinance.

18. Manufactured Housing/Manufactured Home: Pursuant to RSA 674:31, any Structure, transportable in one or more sections, which in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a Dwelling Unit with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. The terms "mobile home" or "trailer", as these may appear in this *Floodplain* Ordinance, should be understood to mean "manufactured housing" as defined under RSA 21:46. For floodplain management purposes, the term “Manufactured Home” includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes Manufactured Homes located in a Manufactured Home Park or Subdivision, which is a parcel (or contiguous parcels) of land divided into two or more Manufactured Home lots for rent or sale.

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

19. Mean Sea Level: The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood elevations shown on the community's Flood Insurance Rate Map are referenced.

20. New Construction: For the purposes of determining flood insurance rates, Structures for which the start of construction commenced on or after the effective date of an initial FIRM, or after December 31, 1974, whichever is later, and includes any subsequent improvements to such Structures. For floodplain management purposes, new construction means Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the Town of Merrimack and includes any subsequent improvements to such Structures.

21. Person: Includes any individual or group of individuals, corporations, partnership, association, or any other organized group of Persons, including State and local governments and agencies thereof.

22. Recreational Vehicle/Travel Trailer: A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less, when measured at the largest horizontal projection; (c) designed to be selfpropelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

23. Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than a designated height.

24. Shaded Zone X: Areas of 0.2 percent annual chance of flood; areas of 1 percent annual chance of flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1 percent annual chance of flood.

25. Special flood hazard area: (See "Area of Special Flood Hazard").

27. Structure: for floodplain management purposes, a walled and roofed Building, including a gas or liquid storage tank, that is principally above ground, as well as a Manufactured Home.

28. Substantial Damage: Damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before damaged condition would equal or exceed 50 percent of the market value of the Structure before the damage occurred.

29. Substantial Improvement: Any combination of repairs, reconstruction, alteration, or improvements to a Structure in which the cumulative cost equals or exceeds fifty percent of the market value of the Structure. The market value of the Structure should equal: (a) the appraised value prior to the start of the initial repair or improvement, or (b) in the case of damage, the value of the Structure prior to the damage occurring. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the Building commences, whether or not that alteration affects the external dimensions of the structure. This term includes

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

Structures which have incurred Substantial Damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a Structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "Historic Structure", provided that the alteration will not preclude the structure's continued designation as a "Historic Structure".

30. Violation: For floodplain management purposes, the word Violation means the failure of a Structure or other Development to be fully compliant with the Town of Merrimack's Flood Hazard Conservation (F) District Ordinance. A Structure or other Development without an elevation certificate, other certifications, or other evidence of compliance required in 44CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in Violation until such time as that documentation is provided.

31. Water surface elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

Part 1 - 100 Year Flood Hazard Area (A Zones)

A. Purpose:

1. To prevent unwise use of lands susceptible to flooding within Special Flood Hazard Areas (100 Year Flood Hazard Areas/A Zones) and to promote sound orderly Development of the Town's resources, and to reduce future flood damage, financial loss, suffering and loss of life.

2. To prevent the Development of residential, commercial and industrial Buildings, and other land uses in Special Flood Hazard Areas which would impede the natural water flow or result in an increase in flood levels during flood periods.

3. To prevent the destruction and inappropriate use of flood-prone land.

4. To prevent unnecessary or excessive expenses on the part of the Town to provide and maintain essential services and utilities which arise because of inharmonious use of lands within Special Flood Hazard Area.

5. To prevent culverting, damming, dredging or obstructing such as to impede or obstruct natural water flow during its maximum flood level.

6. To prevent the building of public facilities such as schools, hospitals, fire, police departments or other similarly related agencies except those necessary for the public health, safety, and welfare, whereupon such uses shall otherwise remain in full conformance with applicable Federal requirements.

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

B. Restrictions: 100 YEAR FLOOD HAZARD AREA ("A ZONES")

1. To prohibit New Construction, and to prohibit the use of fill or encroachments within the designated Floodway that would cause any increase in the Base Flood level, except where the effect of flood heights is fully offset by stream improvements.

2. To control filling of those Special Flood Hazard Areas except to prevent additional erosion by use of a suitable material to minimize reoccurrence.

3. To prohibit the removal of soil and other natural objects within Special Flood Hazard Areas or Floodway, except as otherwise permitted in, Paragraph .C. Permitted Use: 100 Year Flood Hazard Area (“A Zones”) and Paragraph D. Certification.

4. Existing nonconforming uses in the Floodway shall not be expanded, but may be modified, altered, or repaired to incorporate Flood-Proofing measure, provided such measures do not raise the Base Flood elevation.

5. All industrial chemicals or materials hazardous to public health, welfare, or safety during flood conditions shall be stored in flood proof Structures or above the Base Flood elevation.

C. PERMITTED USES: 100 Year Flood Hazard Area ("A Zones")

Any use that does not result in the erection of any new permanent principle Structure or alter the surface configuration by the removal of soil or addition of fill or dredging and is otherwise permitted by this Zoning Ordinance such as but not limited to:

1. Forestry - Tree Farming;

2. Agriculture;

3. Water impoundments and well supplies;

4. Drainage Ways - streams, creeks, or other paths of normal run-off water;

5. Wildlife Refuge;

6. Parks and such recreation uses as are consistent with the Purpose of this Section;

7. Conservation Areas and nature trails;

8. Open space as permitted by this ordinance;

9. Streets, roads, and other access ways if essential to the productive use of land not so zoned, constructed utilizing methods and practices that minimize or prevent flood damage. Adequate drainage shall be provided to eliminate exposure to flood hazards. Methods employed shall be adequate to withstand flood depths, pressures, velocities, impact and uplift forces;

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

10. Utility right of way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned, which shall be located and constructed to minimize or eliminate flood damage. Flood Proofing methods employed shall be adequate to withstand flood depths, pressures, velocities, impact and uplift forces.

11. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, Substantial Improvements, and other Development are allowed within the Floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the Base Flood discharge.

12. Until a Regulatory Floodway is designated along watercourses, no new construction, Substantial Improvements, or other Development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed Development, when combined with all existing and anticipated Development, will not increase the Water Surface Elevation of the Base Flood more than one foot at any point within the community.

13. In Zone A the Building Official shall obtain, review, and reasonably utilize any Floodway data available from Federal, State, or other sources as criteria for requiring that all Development meet the following Floodway requirement:

    "No encroachments, including fill, New Construction, Substantial Improvements, and other Development are allowed within the Floodway that would result in any increase in flood levels within the community during the Base Flood discharge."

D. CERTIFICATION:

Certification, documented evidence and plans shall be provided by a Licensed Professional Engineer that the proposed encroachments permitted in Paragraphs C.9 and C.10 above shall not result in any increase in flood levels, during occurrence of the Base Flood. Such records and plans shall indicate the specific elevation (in relation to mean sea level) at which such permitted uses have been designed and Flood Proofed. Such records shall be maintained with the office of the Building Official.

E. BUILDING PERMITS - 100 YEAR FLOOD HAZARD AREA ("A ZONES")

1. All proposed Development in any Special Flood Hazard Area shall require a Permit. Building Permit applications for proposed construction or other Substantial Improvements shall be reviewed by the Zoning Administrator and the Building Official, or their designated representatives, prior to the issuance of such a Permit to assure that:
   a) Proposed repair, uses of construction materials and utility equipment are resistant to flood damage and uses, construction methods and practices that will minimize flood damages, and that all Substantial Improvements constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designated and/or located so as to prevent water from entering or accumulating within the components during conditions or flooding.

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

b) The applicant(s) shall certify to the Building Official that all necessary permits have been obtained from those government agencies from which approval is required by federal or State Law.

c) New and replacement water supply and/or sanitary sewage systems are designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters. On-site waste disposal systems must be located to avoid impairment to them or contamination from them during flooding.

d) Certification is provided by a Licensed Professional Engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

e) Proposed building sites will be reasonably safe from Flooding. If a proposed Building site is in a location that has a flood hazard, any proposed New Construction or Substantial Improvement (including prefabricated and mobile homes) must be designed (or modified) and anchored to prevent floatation, collapse, or lateral movement of the structure, and, if in the A Zone, Manufactured Homes must be anchored and elevated on a permanent foundation.

f) In special flood hazard areas the Building Official shall determine the 100- year flood elevation in the following order of precedence according to the data available:

1) In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.

2) In Zone A the Building Official shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

g) The Building Official's 100-year flood elevation determination will be used as criteria for requiring in Zones A and AE that:

1) All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation.

2) That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:

a) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

c) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

3) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

4) All recreational vehicles placed on sites within Zones A and AE shall either:

a) be on the site for fewer than 180 consecutive days;

b) be fully licensed and ready for highway use; or

c) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.

5) For all new construction or substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:

a) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;

b) the area is not a basement;

c) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

2. Sanctions:

Any Person, firm, or corporation violating the provision of this Floodplain Ordinance shall be subject to the provisions of Section 10 Penalties & Violations of the Merrimack Zoning Ordinance and Building Code, and each day's neglect to obtain such a Permit shall constitute a separate offense.

3. The Building Official shall:

Obtain and maintain a record for the determination of applicable flood insurance risk premium rates within all areas having flood hazard identified within the "A Zones" of the Flood Insurance Rate Map, any certificates of Flood-Proofing, and information on the elevation (in relation to mean sea level) of the level of lowest floor (including basement), of all new or substantially improved Structures, and include whether or not such Structures contain a basement, and if the Structure has been Flood Proofed, including also the elevation (in relation to mean sea level) to which the Structure was Flood Proofed. This information shall be furnished by the applicant.
In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Official, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Official, including notice of all scheduled hearings before the Wetlands Bureau.

PART 2 – 500 YEAR FLOOD HAZARD AREA (Shaded ZONE X")

A. Purpose:

To prevent unwise use of lands susceptible to flooding within Shaded Zone X areas; to promote sound and orderly Development of the Town's land resources; and to reduce future flood damage, financial loss, and undue suffering.

B. Restrictions:

1. To restrict and regulate the Development of residential, commercial and industrial Buildings, and other land uses in Shaded Zone X areas which could impede the flow of water during flood periods.

2. To prevent the destruction and inappropriate use of flood - prone land within Shaded Zone X areas.

3. To prevent unnecessary or excessive public expenditures to provide and maintain essential services and utilities which arise because of inharmonious use of land within these areas.

4. To control the removal of soil and other natural objects in Shaded Zone X areas, except those which are incidental to and in connection with the construction of a Building.

Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

5. To prevent culverting, damming or obstructing so as to impede or obstruct water flow, or result in an increase in flood elevation during flood periods.

6. To control filling of those Flood Hazard Areas, except to prevent additional erosion by use of a suitable material to minimize reoccurrence.

7. To control filling or encroachments within designated Shaded Zone X areas that would impair their ability to carry and discharge the water, except where the effect of flood elevations are fully offset by stream improvements; incidental to, and in connection with, the construction of a Building or other Development of land.

8. All industrial chemicals or materials hazardous to public health, welfare, or safety during flood conditions shall be stored in flood proof Structures or at elevations higher than the 500 year flood elevation shown in the flood profiles of the Flood Insurance Study.

C. Permitted Uses – (Shaded Zone X)
Any use, which is otherwise permitted in conformance with this Ordinance, which does not result in altering the surface configuration by the addition of fill or dredging, except as may be otherwise permitted in this Section.

1. All subdivision proposals and other proposed new Developments within Shaded Zone X areas shall be reviewed by the Planning Board and shall conform to the provisions of this Ordinance and the Subdivision Regulations of the Town of Merrimack to assure:

   a) All such proposals are consistent with the need to minimize flood damage. Include with such proposals Base Flood Elevation Data.

   b) All plans for public utilities and facilities such as sewer, gas, electrical, or water systems are located or elevated and constructed to minimize or eliminate flood damage.

   c) Adequate drainage is provided so as to reduce exposure to flood hazards.

   d) New or replacement water supply systems and/or sanitary sewer systems shall be designated to minimize or eliminate infiltration of flood waters into the system and discharges from the system into the flood waters. On-site waste disposal systems shall be so located so as to avoid impairment of them or contamination from them during flooding.

   e) Residential, commercial and industrial Structures so located within Shaded Zone X areas, shall be constructed of such that the lowest floor (including basement) must be Flood Proofed with walls substantially impermeable to the passage of water and capable of resisting hydrostatic loads, or shall not be located below the maximum elevation of the flood level.

   f) Streets, roads and other access ways shall be constructed utilizing methods and practices adequate to withstand flood depths, pressures, velocities, impact and uplift forces.

Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

g) Down stream improvements: When a proposed use is determined to adversely impact or affect down stream lands, facilities, or Structures either public or private, the Planning Board shall exercise the right to require that down stream improvements shall be made and/or require that all necessary deeded easements be secured.

D. Certification:

The Planning Board shall require written certification supported by sufficient data by a Licensed Professional Engineer that the uses permitted in Shaded Zone X areas are in conformance with the provisions of this Ordinance and to insure that no adverse impacts downstream shall occur.

Part 3 - Variances

A. Variances for undertaking of uses not otherwise permitted within Special Flood Hazard Areas (A Zones) may be granted by the Zoning Board of Adjustment if each of the following can be demonstrated:

1. Meet those general variance criteria ; set forth in Section 8.09

2. The granting of the Variance will not result in increased flood elevations, additional threats to public safety, extraordinary public expense, nuisance, cause fraud upon or victimization of the public, or conflict with other local Laws and Ordinances.

B. Variances shall not be issued within a Special Flood Hazard Area if an increase in flood elevations will result during the Base Flood.

C. Variances may be issued for New Construction and Substantial Improvements on an existing lot of ½ acre or less in area contiguous to and surrounded by lots with existing Structures constructed below the Base Flood Elevation, in conformance with procedures outlined with this Section.

D. Variances shall be issued only upon a determination by the Zoning Board of Adjustment, that the Variance requested is the minimum necessary, considering the flood hazard, to afford relief.

E. That the requirements of RSA 674:33 shall be fulfilled.

F. The Chairman of the Zoning Board of Adjustment, in any instance where a Variance of the Ordinance may be granted shall, on behalf of the community, notify the applicant in writing that issuance of the Variance to construct a Structure below the Base Flood elevation may result in increased premium rates for flood insurance; and such construction may cause risk to life and property. Such notification shall be maintained with a record of all Variance actions.

2.02.9 - Elderly Zoning District - E, Permitted Uses, Standards

A. Purpose: The regulations in this section have been established for the purpose of encouraging the construction of housing suitable for the occupancy by elderly persons including congregate care, nursing home and other assisted living facilities, while ensuring compliance with local planning standards, land use policies, good building design and the requirements for the health, safety and

2.02.9 - Elderly Zoning District - E, Permitted Uses, Standards (continued)

general welfare of the inhabitants of the Town.

B. General Standards: Except as otherwise provided for in this section, all housing for the elderly shall conform to the following standards:

1. Dwelling units shall require public sewage and public water.

2. Dwelling unit density shall not be greater than 8 dwelling units per actual acre (43,560 square feet).

3. Each dwelling unit shall have no more than two bedrooms, and shall be specifically designed for occupancy by the elderly providing for such things as emergency lighting, exits, fire safety equipment, and adequate structural design features to permit handicapped accessibility such as handicap ramps, etc.

4. Housing developments for the elderly shall be exempt from the provisions of Section 3.02. Table of Lot and Yard Regulations.

5. The occupancy of units within the development shall be limited to family units in which the head of household or spouse is at least 55 years old.

6. The minimum tract area shall be three (3) acres and the tract shall have at least 100 feet of frontage on a public road.

7. The design and site layout of the development shall maximize the privacy of the dwelling units, preserve the natural character of land where feasible, provide for the appropriate separation of parking and living areas as determined by the specific use, and consider such factors as orientation, energy usage, view, etc.

8. The development shall, where possible, make provision for on or off-site pedestrian access to the various community facilities in the Town Center.

9. Housing for the elderly shall be exempted from the minimum floor area requirement found in Section 11.06 of the Zoning Ordinance. The minimum floor area requirement for housing for the elderly shall be 400 square feet.

10. The development shall be landscaped so as to enhance its compatibility with the Town with emphasis given to the use of existing natural features where possible.

11. Emergency vehicle access shall be provided to all structures within the elderly zoning district.

12. Nursing home and other assisted living facilities that do not provide for separate individual dwelling units are exempt from the density requirements of subsection 2, above.

13. Nursing home and other assisted living facilities may be occupied by sick, injured, disabled or terminally ill individuals.

2.02.9 - Elderly Zoning District - E, Permitted Uses, Standards (continued)

C. Procedure and Criteria:

The procedure and criteria for reviewing application for housing developments for the elderly shall follow the provisions of the Town of Merrimack Subdivision Regulations Section 4.06 Final Plat.

1. The Planning Board shall review all applications for housing developments for the elderly according to the above procedures and approve or disapprove such applications and require such covenants or legal restrictions they deem necessary to insure the intent of the ordinance.

2. Submission of the proposal along with abutting property owners' names and addresses shall be in accordance with the Town of Merrimack Subdivision Regulations in order to provide for timely notification to abutters of public hearing to review said proposal.

3. A Performance Bond and other legal data shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans and the subdivision regulations of the Town of Merrimack as adopted or hereafter amended.

D. Definitions

1. Assisted Living Facility: residential facilities that provide communal life-care support facilities and services that may include housekeeping, medical services, recreation, social activities, social services, transportation and other similar support services and facilities.

2. Congregate Care Facility: a residential facility for occupancy by elderly couples or individuals that provides for individual dwelling units with facilities and services that may include housekeeping, meals, limited medical/nursing care, recreation, social activities and other similar services.

3. Nursing Home: a residential health-care facility that provides nursing, medical and custodial care for individuals who for reasons of advanced age, chronic illness, injury or disability are unable to care for themselves.

2.02.10 - Planned Residential District - PRD, - Permitted Uses

A. Planned Residential Development is intended to provide an opportunity for higher density residential development in areas served by public water and public sewer and with good highway access. Planned residential development may include compatible non- residential development.

B. This district is established to encourage the establishment of Planning Unit Developments (PUD) on lots meeting the requirements established in Section 15 of this ordinance.

C. Where lot size is not sufficient to meet the requirements for Planning Unit Development the land may be developed in accordance with the underlying zone shown on the Zoning Map.

D. See Section 15 of this ordinance for further information regarding permitted uses and standards.

2.02.11 - Aquifer Conservation District - A

A. Purpose: The Aquifer Conservation District is created to protect, preserve and maintain the existing potential groundwater supply and recharge areas within known aquifer and wellhead areas from adverse impacts that may result from inappropriate development or land use practices.

B. Location: The Aquifer Conservation District includes those areas shown on the Map entitled Town of Merrimack Aquifer Conservation District, dated December 1996 prepared by the Nashua Regional Planning Commission based upon the Department of Interior U.S. Geological Survey study entitled Hydrology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area, South Central New Hampshire, 1987, and on the Map entitled Surficial Geology and Wellhead Protection Areas Delineated for Merrimack Village District Wells MVD-1 Through MVD-7, dated January 1996, prepared by Emery & Garrett Groundwater, Inc. The Aquifer Conservation District is subdivided into two areas:

1. Wellhead Protection Areas.
2. Balance of the Aquifer District.

The Aquifer Conservation District maps are hereby declared to be a part of this ordinance and are incorporated by reference.

C. **Definitions:**

1. Aquifer: Areas of permeable deposits of rock or sand and gravel containing significant amounts of potentially recoverable water whereby a combination of transmissivity, saturated thickness and specific capacity the area can be expected to yield at least 200 gallons per minute to a large diameter well.

2. Hazardous Waste: Shall be as defined in the N.H. Code of Administrative Rules Chapter He-p 1901.03 (v).

3. Impervious: The quality of any material or structure which substantially restricts the penetration of surface water or rainfall into the soil.

4. Leachable Wastes: Waste materials including without limitation solids, sewage sludge and agricultural residue which may release water-borne contaminants to the surrounding environment.

5. Mining of Land: The removal or relocation of geological materials for the purpose of extracting topsoil, sand or gravel, metallic ores or bedrock.

6. Process Waters: Liquids used in cooling or in the manufacturing process which contact raw materials, products, wastes or machinery and which because of that contact contain toxic of hazardous substances or do not meet State and Federal drinking water standards.

7. Radioactive Material: Any of the materials which have a concentration which exceeds the limits set forth in Appendix B, Table II or 10 CFR Part 20 (Standards for Protection Against Radiation).

8. Recharge Area: Areas of the permeable deposits which are hydraulically connected to

and up gradient of aquifer areas.

9. Solid Waste: Useless, unwanted, or discarded material with insufficient liquid content to be free flowing, including, without limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.

10. Toxic or Hazardous Materials: Shall be defined in the N.H. Code of Administrative Rules Chapter He-p 1901.03 (v).

D. **Permitted Uses**:

The uses permitted in the Aquifer Conservation District shall in all cases be subject to the zoning regulations of the Town of Merrimack as defined in Sections 1 through 18 of this ordinance. In cases of conflict between permitted uses of this district and permitted defined elsewhere in this ordinance, the more restrictive use shall apply.

1. Permitted Uses, All Areas:

   a) All uses permitted in the underlying zoning district except as specifically restricted or prohibited herein.

   b) Farming, commercial gardening, nursery, forestry, harvesting and grazing in accordance with all applicable chapters of RSA title XL and best management practices developed, administered and enforced by the New Hampshire Department of Agriculture, Markets and Food.

2. Prohibited Uses, Wellhead Protection Areas: The following uses shall not be permitted in Wellhead Protection Areas:

   a) Disposal of solid waste.

   b) Subsurface storage of petroleum and other refined petroleum products within one thousand feet (1000') of an existing municipal well, however, subsurface storage of petroleum and other refined petroleum products is permitted in locations more than one thousand feet (1000') from an existing municipal well provided that such storage is in containment with suitable secondary barriers and with automatic alarm systems.

   c) Disposal of liquid or leachable wastes except one or two family residential subsurface disposal systems or equivalent domestic waste water disposal system.

   d) Industrial uses which discharge contact type process waters on site. Non-contact cooling water is permitted.

   e) Use of outside un-enclosed storage of road salt.

   f) Dumping of snow containing deicing chemicals brought from outside the Wellhead Protection Areas.

Section 2.02.11 - Aquifer Conservation District - A (continued)

g) Commercial animal feedlots.

h) Mining of land except incidental to a permitted use.

i) On site disposal or processing for recycling of hazardous or toxic materials.

j) Junk and salvage yards.

k) Bulk storage of toxic material for resale or distribution.

l) The siting or operation of a wastewater or septage lagoon.

m) Gasoline and automobile service stations, including auto body repair.

n) Sale, storage, lease, or rental of used and new cars or other motorized vehicles.

3. Regulated Uses, All Aquifer Areas: The following uses shall be permitted in Aquifer Areas only in accordance with the Standards for Development in the Aquifer Conservation District adopted by the Merrimack Planning Board in accordance with N.H.R.S.A.674:35 through 674:44 and 675:6 through 676:9 which pertains to the Planning Board's authority and responsibilities.

a) Storage of petroleum and other refined petroleum products and regulated substances in reportable quantities.

b) Heliports and airports, including aircraft fueling, deicing and maintenance.

c) Recharge of surface runoff water into the aquifer.

d) Dumping of snow containing deicing chemicals brought from outside the Aquifer area.

e) Commercial animal feedlots.

f) Mining of land other than incidental to a permitted uses.

g) Automotive service and repair shops, junk and salvage yards.

h) Bulk storage of toxic materials for resale or distribution.

i) Underground brush and stump dumps.

j) Trucking and bus terminals.

k) Car Washes.

l) Metalworking shops including but not limited to machine shops, metal plating, heat treating, smelting and jewelry making shops.

Section 2.02.11 - Aquifer Conservation District - A (continued)

m) Siting or operation of wastewater septage lagoon.

E. Administration:

All subdivision proposals, site plan applications, or any change of use, alterations or expansion of an existing use, uses and changes in use within the Aquifer Conservation District shall be reviewed by the Planning Board and shall conform to the provisions of this ordinance and other applicable regulations of the Town of Merrimack and further shall assure that:

1. All such proposals are consistent with the need to protect the groundwater of the Town of Merrimack and adjacent communities.

2. All sanitary sewer systems are designed to minimize or eliminate leakage or discharges from the system into the groundwater.

3. On site waste disposal systems are located so as to avoid or minimize groundwater contamination.

4. Streets, roads, and parking areas are constructed so that direct application of road salt is not required for winter safety, and so that runoff from such uses is channeled to avoid or minimize groundwater contamination.

5. Written approval of the State of New Hampshire Water Supply and Pollution Control Commission has been obtained where applicable.

F. Conservation Commission Review: The Conservation Commission shall review, within a reasonable time, each plan for development in the Aquifer Conservation District relative to the potential impact of such development plans on the Town's groundwater resources in accordance with the Town's Standards for Development in the Aquifer Conservation District and may make a recommendation to the Planning Board to approve, approve with conditions and/or recommendations, or disapprove the plan, with reasons for disapproval.

G. Merrimack Village District Review: The Merrimack Village District, its agent or designee shall review, within a reasonable time, each plan for development within the Wellhead Protection Areas of the Aquifer Conservation District relative to the potential impact of such development plans on the Town's public water supply in accordance with the Town's Standards for Development in the Aquifer Conservation District and may make a recommendation to the Planning Board to approve, approve with conditions and/or recommendations, or disapprove the plan, with reasons for disapproval.

H. Incorrectly Designated Zones: When the actual boundary of the Aquifer Conservation District is in dispute by any owner or abutter actually affected by said boundary, the Planning Board, at the owner/abutter's expense and request, may engage a professional geologist or hydrologist to determine more accurately the precise boundary of said Aquifer Conservation District, and shall submit to the Planning Board his findings, including:

1. A detailed topographic layout of the subdivision and/or area to be developed prepared by a registered land surveyor.

Section 2.02.11 - Aquifer Conservation District - A (continued)

2. A revised soils map of the subdivision and/or area prepared by a soils scientist qualified in hydrologic studies including a written report of his on-site field inspection and test boring data.

3. The aquifer boundary as shown on the Town of Merrimack Aquifer Conservation District Map shall be overlaid on the plat as outlined in Section 4.04 of the subdivision regulations and the newly proposed boundary location shall be indicated on the same plat by a broken line.

The Planning Board may adjust the boundary or area designation based thereon.

The precise boundary of said Aquifer Conservation District shall be as determined by the Planning Board.

2.02.12 - Shoreland Protection District - SP

The Town of Merrimack hereby declares that it will enforce the New Hampshire Minimum Shoreland Protection Standards as defined by RSA 483-B:9.

A. Authority

This ordinance is adopted pursuant to RSA 674:16 and in accordance with RSA 483-B:8 (Shoreland Protection Act).

B. Purpose

The conservation of shorelands adjacent to public waters within the town of Merrimack, and other surface waters as specified herein, is essential for the protection of town's drinking water supply, wildlife habitats, recreational resources and the natural and scenic beauty of the town. This ordinance is intended to establish minimum standards for the use, subdivision and development of shorelands adjacent to such surface waters for the purpose of minimizing or eliminating potential threats to these water resources due to non-point pollutant sources, erosion and sedimentation, flooding and inappropriate development or redevelopment.

C. Location

The Shoreland Protection District is an overlay district that includes all land located within two-hundred and fifty (250) feet of the reference line of the following surface waters and water ways and all areas within the one-hundred (100) year floodplain adjacent to said surface waters and water ways. The terms “surface waters” and “waterways” as used herein are those surface waters and waterways as identified by New Hampshire Administrative Rule ENV-Wq 1401.02 (a)-(e) and include, but are not necessarily limited to, the following:

1. Baboosic Brook
2. Baboosic Lake
3. Bowers Pond

2.02.12 - Shoreland Protection District - SP (Continued)

4. Greens Pond
5. Harris Pond
6. Holts Pond
7. Horseshoe Pond
8. Merrimack River
9. Naticook Lake
10. Pennichuck Brook
11. Pennichuck Pond
12. Retention Pond B
13. Souhegan River
14. Stump Pond
15. Supply Pond

The above list of applicable water bodies and watercourses is provided for illustrative purposes only. If there is a conflict between the list contained herein and the jurisdictional waters and waterways defined by the above-referenced Administrative Rule, the above-referenced Administrative Rule shall control.

D. NH DES Approval Required

Any Subdivision or Site Plan, which takes place wholly or partially in the Shoreland Protection District, shall obtain approval from the New Hampshire Department of Environmental Services (NH DES) in accordance with NH RSA 483-B. This approval shall be obtained prior to final approval of the subdivision or site plan by the Planning Board. Prior to making application to the NH DES for a permit, applicants are encouraged to hold a Pre-Submission Hearing with the Planning Board.

Section 2.02.13 - TOWN CENTER OVERLAY DISTRICT

A. Purpose: To create a Town Center Overlay Zoning District intended to implement the overall goals of the Town Center Plan by encouraging an appropriate mixture of land uses, transportation corridor, and forms of development.

B. Boundaries: The Boundaries of the Town Center Overlay District are defined on the Zoning Map which is hereby incorporated by reference.

C. Permitted Uses: All uses permitted in any underlying zone except as specifically provided for or prohibited herein.

1. Notwithstanding any contrary use provisions in any underlying zoning district, residential uses are permitted anywhere within the Town Center Overlay District.

D. Special Exceptions:

1. Notwithstanding any contrary provisions in any underlying zoning district, the Zoning Board of Adjustment may grant a special exception for the following uses of land anywhere within the Town Center Overlay District:

Section 2.02.13 – Town Center Overlay District (continued)

a) preschools, nursery schools, kindergarten, primary or secondary schools, technical or trade schools and institutions of higher learning;

b) day care centers;

c) professional offices including medical, dental, legal, architectural, engineering real estate, accounting, insurance services and related services or facilities;

d) churches, temples, synagogues, mosques and other houses of worship and related facilities and services, and

e) meeting halls or lodges and related accessory facilities for private membership clubs, fraternal organizations, unions, professional associations and other similar organizations.

Provided that the following conditions are met:

a) the site is an appropriate location for the proposed use in accordance with the Town Center Plan;

b) the proposed use would not result in significantly increased hazards to vehicles or pedestrians by way of traffic congestion, ingress or egress;

c) the proposed use would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight or other nuisance, and

d) the proposed use is designed in harmony with the overall goals of the Town Center Plan with respect to building, transportation corridor, and site design and arrangement.

Note: The granting of a special exception based upon the above noted conditions does not negate, supersede or substitute for any necessary approvals or applicable regulations required under the Planning Board's Subdivisions and Nonresidential Site Plan Review Regulations.

2. A special exception from the Zoning Board of Adjustment is required for the following uses of land within the Town Center Overlay District in accordance with the criteria outlined in Section 2.02.13 D, above, provided that the proposed use is a permitted use in the underlying zoning district:

a) automotive service and repair facilities;

b) gas stations;

c) drive-through food service establishments;

d) new or used vehicle dealerships;

e) freight & trucking terminals;

Section 2.02.13 – Town Center Overlay District (continued)

f) contractors yards;

g) fuel storage and distribution (bulk).

E. Dimensional Requirements: Notwithstanding the dimensional requirements contained in Section 3.02 of the zoning ordinance, the following dimensional requirements shall apply to buildings for any use or combination of uses permitted in the Town Center Overlay District.

1. Minimum Lot Area - Existing Lots: any existing lot of record may be used for any use or combination of uses permitted within the Town Center Overlay District provided that all other applicable requirements are adhered to.

2. Minimum Lot Area - New Lots: 20,000 square feet.

3. Frontage: 125 feet.

4. Setbacks - Buildings:

a) Front Yard - 30 feet.

b) Side Yard - 15 feet.

c) Rear Yard - 40 feet.

d) Lot Depth - 125 feet.

5. Setbacks - Other:

a) no site improvements, except for access ways, parking areas, fencing, ground signs, utility lines, landscaping and lighting fixtures may be located within required front yard setbacks as established under E, 4 (a) above;

b) ground signs shall be setback not less than 10 feet from the front property line.

6. Special Exceptions: The Zoning Board of Adjustment may grant a special exception for additions, alterations or improvements to existing buildings or sites that do not conform to the minimum dimensional requirements set forth in this section where it can be shown that the proposed additions, alterations or improvements:

a) would serve to promote the reuse, restoration, rehabilitation or otherwise enhance an historic building or structure or any other potentially historic building or structure identified in the *Historic Resources Inventory* component of the *Town Center Plan*;

b) are for a use currently permitted within the Town Center Overlay District;

c) would not result in significantly increased hazards to vehicles or pedestrians or impair or impede emergency vehicle access or the provision of emergency

Section 2.02.13 – Town Center Overlay District (continued)

services or the planned improvements to the transportation corridor;

d) would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight or other nuisance;

e) would serve to enhance the overall goals of the Town Center Plan, and

f) adequate provisions for parking and other necessary support facilities are provided.

Note: The granting of a special exception based upon the above noted conditions does not negate, supersede or substitute for any necessary approvals or applicable regulations required under the Planning Board's Subdivisions and Nonresidential Site Plan Review Regulations.

F. Residential Density Calculations

1. Where residential development is proposed in accordance with the requirements of Sections 3.02, 3.08 or 15 of the Zoning Ordinance, the following types of land may be used to satisfy minimum density or open space requirements:

a) on-site open space, recreation or conservation land;

b) lot yard areas or common areas, including private streets or ways and parking areas, and

c) off-site conservation/recreation land, subject to Planning Board approval, within parcels specifically proposed to be dedicated to conservation and/or recreational use in the Town Center Plan.

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SECTION 3 - LOT AND YARD REGULATIONS *[revised 5/14/15]*

3.01 The Regulations pertaining to minimum lot sizes, minimum frontages, minimum depths, minimum front yard setbacks, minimum side yard setbacks, and minimum rear yard setbacks shall be as set forth in the Table of Lot and Yard regulations, subject to the further provisions of this ordinance.

3.02 **Section 3.02 - Table of Lot and Yard Regulations - Minimum Required Yard Setback to Building Line.**

A. Regarding all lots on which a septic system is to be constructed to accommodate residential wastes, the severe, moderate, or slight non-wetland soils area must be contiguous, not a number of variously-sized pockets whose total area meets the 100,000 square foot, 80,000 square foot, or 40,000 square foot requirement. All principal residential buildings and septic systems, if any, shall be located within a minimum contiguous non-wetland area. Lots with public water and sewerage shall contain not less than 20,000 square feet of contiguous non-wetland soils. Wetland swales, less than three (3) feet in width, passing between adjacent non-wetland parcels, while not being counted as non-wetland soils, shall not be considered as interruptions to contiguous parcels for the purpose of this regulation.

District (See Note 1)	Area Sq Ft.	Frontage Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.

(See 3.02.5 for modification of zoning when multiple soils occur within lot.)

R-1 Residential District, Severe Soils Limitations and all areas defined by the Zoning Map which is hereby incorporated by reference.

Single Family Residence	100,000	250	300	50	30	60
Two Family Residence	Not permitted					
Multiple Family Residence	Not permitted					

Excludes wetland and flood hazard soils governed by other provisions in this ordinance.

R-2 Moderate Soils Limitations Residential District

Single Family Residence	80,000	200	200	50	30	60
Two Family Residence	Not permitted					
Multiple Family Residence	Not permitted					

Excludes wetland and flood hazard soils governed by other provisions in this ordinance.

Section 3.02 - Table of Lot and Yard Regulations - Minimum Required Yard Setback to Building Line (continued)

District (See Note 1)	Area Sq Ft.	Frontage Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.
R-3 Slight Soils Limitations Residential District						
Single Family Residence	40,000	150	150	30	20	60
Two Family Residence	80,000	200	200	50	20	60
Multiple Family Residence (See Note 2)	Not permitted					

Excludes wetland and flood hazard soils governed by other provisions in this ordinance.

R-4 Residential District with public water & public sewerage (See Note 4)						
Single Family Residence	40,000	150	150	30	20	60
Two Family Residence	80,000	200	200	50	20	60
Multiple Family Residence (See Note 2)	40,000 Per family dwelling unit.	200	200	50	50	60

Note: Private swimming pools and their appurtenances shall not be located less than twelve (12) feet from any rear or side property line or within the front yard setback required for buildings.

C-1 and C-2 - Limited and General Commercial (See Note 6)	20,000	125	125	30	20	40
C-1 and C-2 - Residential Uses (See Note 6)	(See requirements under District R)					
I-1 - Industrial Building (See Notes 3 & 8)	-	-	-	50	20	30
I-1 - Commercial Building	(See requirements under Districts C-1 & C-2)					
I-1 - Residential uses	(See requirements under District R Minimum setback of 50' (feet) from Route 3 (Daniel Webster Highway).					

Section 3.02 - Table of Lot & Yard Regulations - Minimum Required Yard Setback to Building Line (continued.)

District (See Note 1)	Area Sq Ft.	Frontage Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.
I-2 Industrial District (See Notes 5 & 9)						
I-3 Industrial District (See Note 7)	1,000,000	1,000	500	200	200	200

Note 1: District R - Residential; District C - Commercial; District I - Industrial (See Section 2.01)

Note 2: Must have public water and public sewerage and be limited to those areas of the Town of Merrimack east of the F.E. Everett Turnpike.

Note 3: All yard setbacks to building line shall be a minimum of 75 feet from the Camp Sargent Road and the Amherst Road, 75 feet from the property line along the F.E. Everett Turnpike, and 100 feet from the Daniel Webster Highway; 50 feet of this 100 feet along the Daniel Webster Highway shall be a minimum setback for all parking area, signs and other site improvements except landscaping and access ways, such 50' minimum setback to provide for a landscaped buffer zone. This setback to apply to that section of the Industrial zone from easterly extension of the access road and underpass to the F.E. Everett Turnpike Toll Gate south to Nashua line, from Merrimack River west to F.E. Everett Turnpike thence northerly along turnpike to Toll Gate thence easterly to point of beginning.

Note 4: The criteria of Residential Districts R-1, R-2, and or R-3 shall not apply when R-4 provisions are met, except for that portion of the R-1 District shown on the Zoning Map.

Note 5: All development within the Industrial District I-2 shall be serviced by public water and public sewerage. The only industrial access to the Industrial District I-2 except from or across the F.E.Everett Turnpike shall be from Continental Boulevard extended and such entrance shall be within an area beginning 1000 feet south of the intersection of Spruce Street and Camp Sargent Road and extending southerly to a point no closer than 1000 feet northerly from the intersection of Ingham Road and Camp Sargent Road.

Note 6: Minimum setback of 50 feet from Route 3/D.W. Highway 20 feet of this setback shall be a minimum setback for all parking area, signs, and other site improvements except landscaping and access ways, such 20 feet minimum setbacks to provide a buffer zone.

Section 3.02 - Table of Lot & Yard Regulations - Minimum Required Yard Setback to Building Line (continued)

Note 7: In this district all yard setbacks to building lines, parking areas or other site improvements, except landscaping and access ways, shall be a minimum of 100 feet. Yard setbacks to building lines shall be a minimum of 200 feet from Camp Sargent Road and Tallant Road. One hundred (100) feet of this 200 feet shall be a minimum setback for all parking areas, and other site improvements except landscaping, entrance signs and access ways. The 100 feet setback shall be landscaped and regraded to provide a buffer zone completely around the perimeter of the district. All development within Industrial District I-3 shall be serviced by public water and public sewerage.

Note 8: Within that portion of the Industrial District I-1, as described in Section 2.01.1(c), no building shall be constructed or used for industrial or commercial purposes if such building is situated within two-hundred (200) feet of the boundary of an adjoining residential district, within which residences are constructed within two hundred (200) feet of the boundary line between such districts.

Note 9: Within that portion of the Industrial I-2 District described in Section 2.01.1-F.2, no building shall be constructed or used for commercial or industrial purposes within two-hundred (200) feet of an adjoining Residential District. No parking areas, signs or other site improvements, except for landscaping, access ways and utilities, shall be located within one-hundred (100) feet of any adjoining Residential District or within the area of the buffer zone described in Section 2.01.1-F.2(a).

3.02.1 - Residential Land Use District

A. Purpose: The regulations of the residential land use, soils limitation districts are intended to guide the uses of those areas or tracts of land for residential purposes relative to their capabilities and limitations and to discourage such uses which would:

1. Contribute to pollution of aquifers, surface and ground water, and their recharge through the introduction of sewage or other contaminants.

2. Cause the misuse of sensitive lands within the community.

3. Give cause for unnecessary or excessive expenses to the Town to provide and/or maintain essential services and utilities which arise from inharmonious use of such lands.

B. To provide for a method of correction by the Planning Board whenever soils or their boundaries appear to be inaccurately classified and to encourage those uses which can be appropriately and safely located within those districts.

3.02.1 - Residential Land Use District (continued)

C. Soils limitation districts are based on soil characteristics relative to sanitary systems. For further description of individual soils refer to "SOIL SURVEY OF HILLSBOROUGH COUNTY NEW HAMPSHIRE, EASTERN PART, (TABLE 10); Published by the United States Department of Agriculture, Soil Conservation Service in cooperation with The New Hampshire Agricultural Experiment Station, Issued October 1981; also refer to the Soil Limitation District Photo Maps, on file in the Planning and Building Department.

3.02.2 - Soil Types To Sanitary Facilities

A. Slight limitations:

Published Soil Symbol	Old Soil Symbol	Published Soil Name
CaB	42-B-2	Canton fine sandy loam, 0-8% slopes

B. Moderate limitations:

Published Soil Symbol	Old Soil Symbol	Published Soil Name
CaC	42-C-2	Canton fine sandy loam, 8-15% slopes
CmB	43B, 43-B-1, 63B, 63-B-1	Canton stony fine sandy loam, 3-8% slopes
CmC	43C, 43-C-1, 43B, 43-B-1, 63B, 63C, 63-C-1	Canton stony fine sandy loam, 8-15% slopes

C. Severe limitations:

Published Soil Symbol	Old Soil Symbol	Published Soil Name
HsA	12-A, 12-A-1	Hinckley loamy sand, 0-3% slopes
HsB	12-B-2	Hinckley loamy sand, 3-8% slopes
HsC	12-C-2	Hinckley loamy sand, 8-15% slopes
AgA	24A	Agawam fine sandy loam, 0-3% slopes
AgB	24-B-2	Agawam fine sandy loam, 3-8% slopes
WdA	26A, 26-A-1	Windsor loamy sand, 0-3% slopes
WdB	26-B-2	Windsor loamy sand, 3-8% slopes
WdC	24-C-2, 26-C-2-2	Windsor loamy sand, 8-15% slopes

Section 3.02.2 - Soil Types To Sanitary Facilities (continued)

WdD	26-D-2	Windsor loamy sand, 15-35% slopes
WoB	29-B-2	Woodbridge loam, 3-8% slopes
CpB	40-B-2	Chatfield-Hollis-Canton complex, 3-8% slopes
CpC	40-C-2, 60-C-2	Chatfield-Hollis-Canton complex, 8-15% slopes
CsB	41B, 41-B-1	Chatfield-Hollis complex, 3-8% slopes
CsC	41C, 41-C-1, 41RC, 41-R-C-1, 61C, 61-C-1	Chatfield-Hollis complex, 8-15% slopes
CtD	41D, 41-D-1, 61D-61-D-1, 61E, 61-E-1, 61RD, 61-R-D-1, 61RE, 61-R-E-1	Chatfield-Hollis-Rock outcrop complex, 15-35% slopes
CaD	42-D-2	Canton fine sandy loam, 15-25% slopes
CmD	43D, 43-D-1, 63D, 63-D-1	Canton stony fine sandy loam, 15-25% slopes
CmE	43E, 43-E-1	Canton stony fine sandy loam, 25-35% slopes
CnC	43RC, 43-R-C-1, 63RC	Canton very stony fine sandy loam, 8-15% slopes
CnD	43,43-R-D-1	Canton very stony fine sandy loam, 15-35% slopes
MoB	44-B-2	Montauk fine sandy loam 3-8% slopes
SsA	46A, 46-A-1	Scituate fine sandy loam, 0-3% slopes
SsB	46-B-2	Scituate fine sandy loam, 3-8% slopes
StA	47A, 47-A-1	Scituate stony fine sandy loam, 0-3% slopes
StB	47B, 47-B-1, 69B	Scituate stony fine sandy loam, 3-8% slopes
StC	47C, 47-C-1	Scituate stony fine sandy loam 8-15% slopes
PbB	66-B-2	Paxton fine sandy loam, 3-8% slopes
PbC	66-C-2	Paxton fine sandy loam, 8-15% slopes
PfB	67B, 67-B-1	Paxton stony fine sandy loam, 3-8% slopes
PfC	67C, 67-C-1	Paxton stony fine sandy loam, 8-15% slopes
PfD	67D, 67-D-1	Paxton stony fine sandy loam, 15-25% slopes
WvB	129A, 129-A-1, 129B, 129-B-1	Woodbridge stony loam, 3-8% slopes
DeA	313A, 313-A-1	Deerfield loamy fine sand, 0-3% slopes
PeB	313B, 313-B-1	Deerfield loamy fine sand, 3-8% slopes
PhB	460-B-2	Pennichuck channery fine sandy loam, 3-8% slopes
PhC	460-C-2	Pennichuck channery fine sandy loam, 8-15% slopes

Section 3.02.2 - Soil Types To Sanitary Facilities (continued)

PhD	460-D-2	Pennichuck channery fine sandy loam, 15-25% slopes
NnA	513A, 513-A-1	Ninigret very fine sandy loam, 0-3% slopes
BaA	532	Belgrade silt loam, 0-3% slopes
BaB	532B	Belgrade silt loam, 3-8% slopes
HsD	612-D-2	Hinckley loamy sand, 15-35% slopes

D. Ungraded soils

Map symbols Uda (299)-Udipsanments, nearly level, Pr(G.P.)-Pits, Gravel, Ur(no old symbol)-Urban land, and Pr(sand pit)-Pits, gravel shall be subject to review by the Planning Board for appropriate grading upon presentation of evidence or a plan of a restored site suitable for development; such proposed site shall also be accompanied by compaction test data.

3.02.3 - Boundaries

For the purposes of this ordinance, soil boundaries shall be determined by the scale distance from the nearest visible prominent town road as shown on the aerial photo maps, to the nearest 1/32 inch (31 ft.).

3.02.4 - Location of On-Site Disposal Fields

An on-site disposal field shall not be located less than 20' from any property line. All on-site disposal systems in every zoning district shall be placed in the least severe soil on the lot, or as determined by the Building Official. Existing septic systems which have failed or need to be replaced which do not meet the existing 20' setback requirement may be replaced in the current location provided the septic system is not enlarged nor encroaches further into the setback requirement and is approved by the New Hampshire Department of Environmental Services.

3.02.5 - Multiple Soil Districts Within Lots

Whenever two or more soils types shall be present on an individual lot within a subdivision proposed to the Planning Board for approval, the following criteria shall govern:

R-2 District regulations are permitted when 45,000 or more contiguous square feet shall be moderate and/or slight soils within the lot area.

R-3 District regulations are permitted when 25,000 or more contiguous square feet shall be slight soils within the lot area.

Wetland conservation district soils shall not be used in calculating the total lot areas in R-1,

3.02.5 - Multiple Soil Districts Within Lots (continued)

R-2, and R-3 Districts. Lots in the R-4 District shall contain not less than 20,000 square feet of contiguous non-wetland soils.

3.02.6 - Soil District Boundary Designated By Slope

A. Whenever a plat is submitted showing a soil district boundary as designated by slope conditions and such boundary is different from the boundary designated on the photo map, the Planning Board shall adjust such boundary upon submission of the following:

1. A detailed topographic layout of the subdivision and the proposed lots prepared by a registered land surveyor, and accompanied with a written statement of his findings.

2. Such layout shall conform to the requirements of Section 4.05 of the subdivision regulations for preliminary plats and Section 4.06 for final plats.

3. The soil boundary as shown on the photo map shall be overlayed on the plat as proposed in Section 4.04 of the subdivision regulations, and the newly proposed boundary location shall be indicated on the same plat by a broken line along the nearest contour line determining the beginning of the slope.

B. The Planning Board shall reserve the right to withhold action on such plat pending the results of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove the final plat within 90 days of submission.

C. The final boundary location shall be confirmed and/or determined by the Planning Board.

3.02.7 - Soils District Boundary Designated By Soil Classification

A. Whenever a plat is submitted showing a soil district boundary that is designated by soil classification and such boundary differs from the boundary designated on the photo map, the Planning Board shall adjust such boundary upon submission of the following:

1. A detailed topographic layout of the subdivision and the proposed lots prepared by a registered land surveyor.

2. A revised soils map of the Town of Merrimack prepared by the Soils Conservation Service and/or evidence submitted by a soils scientist qualified in soils classification including a written report of his on-site field inspection.

3. The soil boundary as shown on the photo map shall be overlayed on the plat as proposed in Section 4.04 of the subdivision regulations, and the newly proposed boundary location shall be indicated on the same plat by a broken line.

B. The Planning Board shall reserve the right to withhold action on such plat pending the results

3.02.7 - Soils District Boundary Designated By Soil Classification (continued)

of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove the final plat within 90 days of submission.

C. The final boundary location shall be confirmed and/or determined by the Planning Board.

3.03 - Reserved

3.04 - Lot or Yard Size Reduction

No conforming lot or open space on the lot (yard setback) shall be reduced in size or separated in ownership if by such action it shall become nonconforming nor shall any nonconforming lot be reduced in size or otherwise altered if by such action it shall become less conforming.

3.05 - Nonconforming Lots

Notwithstanding the minimum lot area, frontage and depth requirement set forth in Section 3.02 of this ordinance, a single-family residence may be constructed on a lot which does not comply with the said requirements, provided:

1. It shall meet the following yard setback requirements: front - 30 feet, side - 15 feet, and rear - 40 feet

3.06 - Lots Without Public Sewerage

Notwithstanding compliance of any lot with the requirements set forth in Section 3.02 or Section 3.05, no residence shall be constructed on any lot which is not served by public sewerage facilities unless private sewage disposal system absorption area requirements can be and are met to the satisfaction of the Building Official, said area requirements to be determined by the Building Official in accordance with the provisions contained in NH Administrative Code WS1000.

3.07 - Previously Approved Permits

Any structure or portion thereof for which a valid building permit was obtained and which was legally occupied before November 1, 1977, shall be considered to be in compliance with the minimum yard setback requirements of Section 3.02. Any additions or other construction which have taken place after November 1, 1977, must comply with all requirements of Section 3.02 and are therefore not exempted by this subsection.

3.08 - Cluster Residential Development

Single family, two-family, or four-unit townhouse development in a cluster concept shall be exempt from the provisions of Section 3.02 Table of Lot & Yard Regulations - Minimum Required, but subject to the following conditions:

1. The purpose of cluster development, and to which purposes any such development must adhere, are the following:

   a) To promote the conservation of the natural environment, and the development of community uses in harmony with the natural features of the land.

   b) To establish living areas within the Town that provide for a balance of community needs, such as a diversity of housing opportunities, adequate recreation and open space areas, easy accessibility to these and other community facilities, and pedestrian and vehicular safety.

   c) To provide for an efficient use of land, streets, and utility systems.

   d) To stimulate new approaches to land and community development.

2. Cluster development shall be permitted in any district in which conventional residential development is permitted, except for that portion of the R-1 District shown on the Zoning Map.

3. The tract of single or consolidated ownership at the time of application shall be at least 15 acres in size and shall be subject to approval by the Planning Board under the Planning Enabling Legislation-Regulation of Subdivisions of land whether or not land is to be subdivided.

4. The maximum number of dwelling units permitted in any cluster open space development shall be determined by utilizing a density of 40,000 square feet of land area per dwelling unit. For the purpose of this section, the maximum buildable area to be used in determining the maximum number of dwelling units permitted shall exclude all wetland soils and 100 year flood plain areas as defined elsewhere in this ordinance and all land with slopes greater than 25 percent and land encumbered with overhead electric power line easements.

Section 3.08-Cluster Residential Development (continued)

5. The residential net density within the developed area shall not exceed 8 dwelling units per acre.

6. Cluster developments shall not be required to conform to the minimum frontage, setback, and lot sizes required in the zoning ordinance, but shall be so designed and constructed as to achieve the purposes of cluster development set forth in 3.08.l. Single family cluster developments shall have a minimum building setback from any property line of five (5) feet.

7. The following uses shall be permitted: one-family, two-family, four-unit townhouse dwellings, membership club for exclusive use of the residents of the cluster open space.

8. The development shall be served by public water (Merrimack Village District and/or Pennichuck Water Works) and public sewer (Town of Merrimack and/or City of Nashua Waste Water Treatment facilities).

9. A cluster development shall have a 100' landscaped buffer to provide an adequate division of transition from abutting land uses.

10. All parking within the cluster development shall be provided in paved off-street locations at a ratio of not less than 2 spaces per dwelling unit.

11. Emergency vehicle access shall be provided to all structures within the cluster development.

12. At least 50 percent of the total tract area exclusive of public rights-of-way shall be set aside as common land covenanted to be maintained as permanent "open space" in private, public, or cooperative nonprofit ownership, as shall be designed by the cluster development applicant. Any public dedication of common land shall be on a voluntary basis and in no event may be imposed upon an applicant. Any proposal for public dedication of common land in a cluster development shall be subject to acceptance by the Town of Merrimack.

13. Open space within a cluster development shall be protected by recreation and conservation easements and shall be conveyed to the property owners to be maintained as permanent open space or shall be permanently protected in other suitable ways so as to guarantee the following:

    a) The continued use of such land for the intended purposes;

    b) Continuity of proper maintenance for those portions of the open space land requiring maintenance;

Section 3.08-Cluster Residential Development (continued)

c) The availability of funds required for such maintenance;

d) Recovery for loss sustained as a result of casualty, condemnation or otherwise;

e) A homeowners' association of tenancy-in-common or similar form of ownership, that the membership and obligation of the residents of the cluster development be automatic upon conveyance of title or lease to individual dwelling units. Homeowners association, tenancy-in-common or similar form of ownership shall include lien provisions and shall be subject to review and approval by the Planning Board.

f) Current Use Limitation: For purposes of this cluster residential development option, the common land areas, open space areas and natural areas in an approved development are considered to be part of the residential use of such development and shall not be considered to be "open space land", "farmland", "forest and", "wetlands", "recreation land", "floodplain", or "wild land" within the meaning of RSA 79-A except where such consists of actively operated farmland classified as "prime" or "of statewide importance" by the Hillsborough County Conservation District.

The Planning Board shall require, as a condition for approval of a cluster residential development, that all deeds transferring any interest in the real property included in said development specify that the common and natural areas in said development are acknowledged to be part of the residential use and do not qualify for "current use" real estate tax appraisal and assessment under Chapter 79-A.

14. Such common land shall be restricted to open space recreational uses such as tot lot, park, swimming pool, tennis court, playground, playfield, golf course, or conservation area.

15. Such common land shall have suitable access to a street.

16. The cluster development plan shall show the layout of all roads and shall differentiate between collector roads which move traffic into and/or through the development, and local roads which provide access to the individual dwelling units. All collector roads shall be built to the town subdivision requirements for new public roads, and shall be offered to the town for public acceptance. Town road requirements may be modified by the Planning Board for local roads where deemed applicable. Private roads shall be built as hard-surfaced roads to standards approved by the Planning Board and Road Commissioners, and may remain in private ownership.

Section 3.08-Cluster Residential Development (continued)

17. A site plan for the entire tract at a scale of 1"=100' and the developed portion at 1"= 50' shall be prepared by either a professional land planner, registered architect, registered professional engineer or registered land surveyor. In all cases the site plan must bear the seal of a registered professional engineer and registered land surveyor. The site plan shall be submitted in accordance with the subdivision regulations for the Town of Merrimack and the location of parks and open space shall be shown on the plan.

18. An integral part of the Cluster Residential Development submission requires the preparation and presentation to the Planning Board, by the developer, of the proposed articles of association or incorporation which establishes the Homeowners Association as well as the Condominium Declaration. Said documents must be approved, in writing, by the Planning Board prior to the granting of approval, but only after legal review by Town Counsel. The cost of such legal review shall be born by the developer. Any proposed changes in such Articles of Association or the Condominium Declaration shall require the prior written approval of the Planning Board.

19. An interest in the Common Area shall be allocated to each unit in Cluster Residential Development; each unit owner shall assume, and be obligated for, annual real estate taxes assessed by the Town on said fee simple unit ownership as well as the interest of each unit in the Common Area.

    The Common Area shall be allocated as an appurtenance to each unit and shall be taxable only as such by relevant taxing authority, and shall not be deemed to be separate property of the Association for the purpose of taxation.

20. The review of any cluster development conducted by the Planning Board under these regulations shall ascertain that adequate provisions have been made by the owner or his authorized agent for the following:

    a) Traffic circulation and access including adequacy of adjacent streets, entrances and exits, traffic flow, sight distances, curb cuts, turning lanes, and existing or recommended traffic signalization.

    b) Pedestrian safety and access.

    c) Off-Street parking and loading.

    d) Emergency vehicle access.

    e) Storm water drainage based upon a minimum of a 25-year storm frequency, utilizing on-site absorption and/or positive outfall.

Section 3.08-Cluster Residential Development (continued)

f) Recreation facilities.

g) Water Supply and wastewater disposal.

h) Environmental factors such as protection against pollution, noise, odor, and the protection of natural land features.

i) Landscaping in keeping with the general character of the surrounding areas.

j) Signing and exterior lighting.

k) Submission of proposal along with abutting property owners' names and addresses shall be in accordance with the Town of Merrimack, Subdivision Regulations in order to provide for timely notification to abutters of public hearing to review said proposal.

l) In addition, the Planning Board shall review the plan to assure compliance with the provisions of the standards set forth in these regulations, and other town regulations and ordinances. The Planning Board shall also ascertain that the plan minimizes the encroachment of the cluster development upon neighboring land uses.

21. A performance bond and other legal document shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans and the subdivision regulations of the Town of Merrimack as adopted or hereafter amended.

22. Amendments to an approved plan. The owner, his agent or his successors or assigns will make no alterations or additions to or deletions from the approved Cluster Development Plan except as approved in advance by the Planning Board. All requests for changes to the approved plan shall be made in writing to the Board and shall be accompanied by such documents as the Planning Board shall deem necessary to explain the requested change. The Board shall determine if the requested change is minor or major in nature.

a) Minor Change: A minor change shall be one which respects the approved plan's basic land allocations in terms of use and intensity, the type and variety of facilities and dwelling units being provided, and/or the timing for providing these facilities, but shall not include any increase in the overall density of the development. The Board may hold a public hearing on the proposed change with proper notification to all abutters, including those of the original proposed development as well as any additional ones which may have been created by development activity within the development itself. The Board shall then act to approve or disapprove with written notification

Section 3.08-Cluster Residential Development (continued)

to the owner of its action. Any approved changes involving changes in any lot boundaries shall be recorded as a subdivision change in the Registry of Deeds.

b) Major Change: Any requested change which the Board determines does not qualify as minor change shall be required to be submitted as a separate cluster development plan in accordance with these regulations and procedures.

23. The Planning Board shall adopt such procedures as part of the subdivision regulations as it may deem necessary in order to insure sufficient public review of any cluster proposal and to insure compliance with these and other Town ordinances and regulations.

24. Sanitary Facilities At Public Swimming Pools

Any multi-family residential development, including Planned Unit Developments (PUD) or cluster residential developments as described in this ordinance, wherein dwelling units are served by a swimming pool, the pool area shall be equipped with customary lavatory facilities; i.e., toilets, showers.

3.09 - Special Exceptions

The Zoning Board of Adjustment may grant a special exception for additions, alterations or improvements to buildings or structures built before June 29, 1953 that do not conform to the minimum setback requirements set forth in this section or for any building or structure built after June 29, 1953 that was in compliance with applicable setback requirements at the time of construction, but that has been rendered nonconforming due to a subsequent change in the Zoning Ordinance where it can be shown that the proposed additions, alterations or improvements satisfy all of the following:

1) are for a use currently permitted within the Zoning district;

2) are ordinarily and customarily associated with the existing building and/or use;

3) would serve to promote the reuse, restoration, rehabilitation or otherwise enhance an existing building or structure, especially an historic or potentially historic building or structure;

4) would not result in increased hazards to vehicles or pedestrians; impair or impede emergency vehicle access or the provision of emergency services, or encroach on planned right of way corridors.

3.09 - Special Exceptions (continued)

5) would not result in unreasonable impacts to abutting properties by way of increased noise, visual blight, odor or other nuisance;

6) adequate parking and other necessary support facilities would be provided for the existing building or structure as well as for the proposed addition, alteration or improvement;

7) the proposed improvement would have been allowed by right prior to adoption of the zoning ordinance provision at issue; and

8) the proposed improvement cannot reasonably be constructed in a differing way or in a differing portion of the property so as to comply with existing setback requirements.

End3

SECTION 4 – MANUFACTURED HOUSING UNITS, MANFACTURED HOUSING PARKS, AND MANUFACTURED HOUSING SUBDIVISIONS

4.01 – Manufactured Housing Units

After the effective date of this section, no manufactured housing units shall be located otherwise than in a manufactured housing park or manufactured housing subdivision except as specifically provided in this section. A manufactured housing unit lawfully existing on the effective date of this section on land out of a manufactured housing park or manufactured housing subdivision, or a replacement hereof if such manufactured housing unit is destroyed by fire or casualty and its replacement is located on the land within 180 days after such fire or casualty may be maintained as a non-conforming use, provided that when such use shall have been discontinued by the removal of such manufactured housing unit or its replacement from the land, the use of such land shall thereafter conform to the provisions of this ordinance. An unoccupied travel trailer registered for use on the highways of this state may be parked on land owned by the owner of the travel trailer, provided that the location or condition of such travel trailer is not detrimental to the neighborhood or to property in the vicinity.

4.02 – Manufactured Housing Parks

A. No manufactured housing park shall be established or operated without approval from the Planning Board of a plan which clearly defines the area of the proposed park, as well as all manufactured housing unit sites, all utilities, and such other requirements as shall be required by the subdivision regulations of the Town of Merrimack as may be adopted from time to time.

1. Manufactured housing parks shall consist of a minimum of six (6) lots and are permitted in any residential zone provided that all requirements pertain to single family houses are met.

2. Each lot must contain not less than 30,000 square feet and shall have a depth of a least 150 feet and a frontage of at least 100 feet on a public or private street having a width of at least 50 feet, with town water and town sewerage.

3. No lot shall contain more than one manufactured housing unit. No manufactured housing unit shall be placed closer than 150 feet to an existing residence.

4. Each lot shall be clearly marked.

5. Front yard setbacks shall be at least 20 feet. Rear yard setbacks shall be at least 10 feet. Side yard setbacks shall be at least 10 feet.

6. No principal building shall be located in a manufactured housing park except manufactured housing units and laundry, recreation, or other buildings maintained in connection with the operation of the manufactured housing park or subdivision.

Section 4.02 – Manufactured Housing Parks (continued)

7. **Ordinary and customary accessory structures and additions including sheds, porches, decks and car ports, are permitted provided that all applicable setback and building code requirements are met.**

8. The proposed manufactured housing park will be effectively screened by the use of the existing natural features of the landscape and/or added landscaping.

4.03 – Manufactured Housing Subdivisions

A. Manufactured housing subdivisions, consisting of a minimum of six (6) lots, are permitted in any residential zone provided that all requirements, which pertain to single-family houses, are met. Cluster Development provisions may be applied to manufactured housing subdivisions.

B. If a plat is submitted with a request for approval for a manufactured housing subdivision and such plat is approved, the plat shall bear the legend that it is "approved for manufactured housing units".

C. The manufactured housing subdivision will be effectively screened by the use of the existing natural features of the landscape and/or added landscaping.

Zosctn4

SECTION 5 - JUNKYARDS *[revised 5/14/15]*

5.01 - Residential District

No junk other than junk located in a commercial junk yard licensed in accordance with Section 5.03 shall be placed or maintained in a residential district except in compliance with Section 5.04 and in accordance with the following conditions:

1. The aggregate area of any lot occupied by junk shall not exceed 200 square feet.

2. No junk shall be located within 150 feet of any highway or within 150 feet of any dwelling on abutting property.

5.02 - Commercial and Industrial Districts

No junk shall be placed or maintained in a commercial or industrial district except in compliance with Section 5.04 and in accordance with the following conditions:

1. No junk shall be located within 30 feet of any highway.

2. No junkyard shall be permitted unless licensed by the Town Council after first having received a recommendation from the Planning Board, and provision is made for monitoring wells of surface and subsurface groundwater at suitable locations for the purpose of testing for contamination by hazardous and toxic substances, and provision is made for authority for the Town to enter upon junkyard sites with proper notification for the purpose of obtaining surface and subsurface groundwater samples.

5.03 - Licensing

Commercial Junk Yards lawfully existing on the effective date of this Section in a residential district may, upon application therefore, be licensed by the Town Council; provided, that such license shall be subject to the following conditions:

1. No junk shall be maintained within 30 feet of any highway.

2. The area occupied by junk at any time shall not exceed by more than 10% the area occupied by junk on the effective date of this Section.

3. The provisions of Section 5.04 are complied with.

4. Provision is made for monitoring wells of surface and subsurface groundwater at suitable locations for the purpose of testing for contamination by hazardous and toxic substances, and

Section 5 - Junkyards (continued)

5. Provision is made for authority for the Town to enter upon junkyard sites with proper notification for the purpose of obtaining surface and subsurface groundwater samples.

6. Certification of compliance with best management practices established by the NH Department of Environmental Services in accordance with RSA 236:115.

5.04 - Screening of Junk

Any junk permitted by Sections 5.01, 5.02, 5.03 to be maintained on any lot shall be effectively screened from view from any highway and from abutting premises by a solid wall or fence.

5.05 - Timing

A period of six months from the date of adoption of this Section shall be provided for junk existing on said date either to be removed or to be brought into compliance with the provisions hereof; except that this Section shall not be deemed to affect the junk yard licensing requirements of Section 5.02, and 5.03 (Adopted November 10, 1964).

5.06 - Renewal of License

Pursuant to RSA 236:121, junkyard licenses shall expire on June 30th of each year. Junkyard licenses shall be renewed thereafter upon payment of an annual license fee to the Town of Merrimack in the amount of One Hundred Twenty-Five Dollars ($125.00). Junkyard licenses shall be renewed without a hearing if all provisions of this ordinance and RSA 236:111 et seq. have been complied with during the license period. At the discretion of the Town of Merrimack, appropriate investigations of each licensee may be conducted prior to the issuance of a renewed junkyard license including, but not limited to, the testing of surface and subsurface waters for contamination by hazardous or toxic substances.

Zosctn5

SECTION 6 - BUILDING INSPECTOR *[revised 5/14/15]*

6.01 Appointment

For the purposes of this ordinance, the Town Building Official shall be appointed in accordance with the procedures outlined in the Town's Personnel Policy (as most recently adopted by the Town), and shall perform the duties of his/her office as designed in the various provisions of this ordinance and shall make inspections of all buildings in process of building or reconstruction and report all violations to the appropriate Town Staff, Boards/Commissions, and Town Council as applicable.

6.02 Enforcing Authority

A. The duty of administering and enforcing the provisions of Section 11 of this Ordinance is hereby conferred upon the Town Building Official or his/her duly authorized agent.

B. The duty of enforcing the provisions of this ordinance is hereby conferred upon the Planning & Zoning Administrator and the Town Building Official, or their duly authorized agents, as appropriate to their jurisdictions. The Building Inspector is authorized to issue cease and desist orders whenever he/she becomes aware of violations of this ordinance.

6.03 Building Permits

Any person before commencing work on the erection or alteration of any building or structure must first obtain a permit duly granted for such erection or alteration by the Building Inspector. Before a permit shall be issued by the Town Building Official, he/she shall determine whether the proposed construction or alterations conforms to all the conditions of this ordinance.

6.04 Excavation

No excavation for foundation nor the erection, construction or structural alteration of any structure or part of any structure shall be undertaken until a permit shall have been issued by the Town Building Official. No such permit shall be issued before application has been made for a certificate of occupancy.

6.05 Scale Drawings - Plats

All applications for building permits shall be accompanied by a plat in duplicate drawn to scale showing the actual dimensions of each lot to be built upon. The size and location of each building to be erected upon each lot and such other information as may be necessary to enable the Town Building Official to determine the proposed structure and use of land will conform to the provisions of this ordinance.

Section 6 - Building Inspector (continued)

6.06 Appearance

No permit, shall be issued unless the proposed structure will present a reasonable appearance and will be in keeping with the neighborhood and unless the building is to be finished on the exterior in a permanent manner.

6.07 Occupancy

No vacant land shall be occupied or used and no structure hereafter erected, structurally altered or changed in use until a certificate of occupancy shall have been issued by the Building Inspector.

6.08 Certificate of Occupancy- New Construction Buildings

A certificate of occupancy either for the whole or a part of a new building or for alteration of an existing building shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building or part shall have been completed in conformity with the provisions of this ordinance.

6.09 Certificate of Occupancy- Vacant Land & Changes in Use

A certificate of occupancy for the use or occupancy of vacant land or for a change in the use of the land or for a change in the use of an existing building shall be applied for and issued before any such land shall be occupied or used or such land or building changed in use and such certificate shall be issued with ten days after application has been made providing such proposed use is in conformity with the provisions of this ordinance.

6.10 Records

A record of all certificates of occupancy shall be kept on file in the office of the Building Inspector and a copy shall be furnished on request to any person having a proprietary or tenancy interest in the building or land affected.

6.11 Reserved

6.12 Antennas, Satellite Dishes

The erection of antennas and/or satellite receiving dishes having a height of over 8 feet (including supporting pedestal or tower) shall be subject to the provisions of Section 6.03 and shall not be located within the building setbacks set out in Section 3.02 Table of Lot and Yard Regulations - Minimum Required Yard Setback to Building Line.

SECTION 7 – PLANNING & ZONING ADMINISTRATOR *[revised 5/14/15]*

7.01 - Appointment

For the purpose of this ordinance, the Planning & Zoning Administrator shall be appointed in accordance with the procedures outlined in the Town's Personnel Policy (as most recently adopted by the Town), who shall perform the duties of his/her office as designed in the various provisions of this ordinance and report all violations to the appropriate Town Staff, Boards/Commissions, and Town Council as applicable.

7.02 - Duties

The duty of administering and interpreting the provisions of this ordinance is hereby conferred upon the Planning & Zoning Administrator or his/her duly authorized agent.

7.03 - Record

A record shall be kept of all interpretations of this ordinance made by the Planning & Zoning Administrator; this record shall be a public document to insure consistency in the application of this ordinance.

Note: Refer to 6.02(B) for Planning & Zoning Administrator as enforcing provisions of Zoning Ordinance.

zosctn7

SECTION 8 - ZONING BOARD OF ADJUSTMENT *[revised 5/14/15]*

8.01 - Appointment

The Zoning Board of Adjustment shall be composed of five (5) members who shall be appointed as follows:
Upon passage and approval of this ordinance, one (1) member shall be appointed to serve for a term of five years, one (1) member for four years, and one (1) member for three years, one (1) member for two years and one (1) member for one year. Thereafter each member shall be appointed for a term ending five years from the date of expiration of the term of his predecessor and a person appointed to fill a vacancy shall be appointed for the unexpired term. Each member of the Board shall hold office until a successor is appointed and qualified unless sooner removed. The members of the Zoning Board of Adjustment shall be appointed by the Town Council.

8.02 - Meetings

Meetings of the Zoning Board of Adjustment shall be held upon the call of the Chairman. All meetings shall be opened to the public and the Board shall adopt its own rules of procedure and shall keep a record of its proceedings showing the vote, indicating such fact and shall keep records of its examinations and other official actions. Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in the Community Development Department and become a matter of public record.

8.03 - Appeal Procedures

A. Appeals from the decision of the Planning & Zoning Administrator or Building Inspector can be made to the Zoning Board of Adjustment by any person aggrieved or by an officer, department, board, or bureau of the municipality affected by any decision of the Planning & Zoning Administrator or Building Inspector. The appellant shall file with the Planning & Zoning Administrator or Building Inspector and with the Zoning Board of Adjustment a notice of appeal specifying the grounds thereof. Such appeal should be taken within a reasonable time as provided by the rules of the Board. The Planning & Zoning Administrator or Building Inspector shall transmit forthwith to the Board all the papers constituting the records upon which the action appealed from was taken.

B. The Board shall hear and decide appeals de novo and review on appeal any order, requirements, decision or determination made by the Building Inspector in the enforcement or application of this ordinance and upon such appeal may in accordance with the provisions of this ordinance reverse or affirm, wholly or partly or may modify any such order, requirements, decision or determination. The concurring vote of three (3) members of the Board shall be necessary to reverse or modify any order, requirement, decision or determination of the administrative officer or to decide in favor of the appellant on any matter upon which it is required to pass or to effect any variance from the strict applications of the provisions of this ordinance.

C. The Board shall hear and decide appeals for variances, equitable waivers of dimensional requirements, and special exceptions and review on appeal any order, decision and determination made by the Building Inspector in the enforcement or application of this ordinance and upon such appeal made in accordance with the provisions of this ordinance, reverse or affirm wholly or partly or may modify any such order, decision or determination. The concurring vote of three (3) members of the Board shall be necessary to reverse or modify any order, decision or determination of the Building Inspector or to decide in favor of the appellant on any matter upon which it is required to pass or to effect any variance from the strict applications of the provisions of this ordinance.

D. The Board shall fix a reasonable time for the hearing of an appeal taken with the time specified by its rules and before any hearing is given either on an appeal or an application for variance, equitable waiver of dimensional requirements, or special exceptions in the Zoning Ordinance, notice shall be given to all the abutting property owners and also notice shall be given publication in a newspaper published with circulation in the Town of Merrimack in accordance with the requirements of RSA 676:7. The costs of notice shall be paid by the appellant or applicant to the Community Development Department. Said costs shall be paid before the notices can be sent and placed in the paper and action taken by the Board on any appeal or application for variance, equitable waiver of dimensional requirements, or special exceptions.

8.04 - Variance - Special Exception Validity Period

In accordance with RSA 674:33(I-a) and RSA 674:33(IV), variances and special exceptions shall be valid if exercised within 2 years from the date of final approval, or as further extended by the Board for good cause, provided that no such variance or special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance or special exception. Actions sufficient to vest an approval for a variance or special exception include Planning Board site plan or subdivision approval, issuance of a building permit, or occupancy of the subject property as evidenced by a Certificate of Occupancy issued by the Community Development Department where no Planning Board approval or building permit is required. However, should any site plan or subdivision approval or building permit expire unused after the conclusion of the two-year validity period provided for herein, any variance or special exception granted as a precondition to said site plan or subdivision approval or permit shall become void as well. Any application to extend the two-year validity period shall demonstrate to the satisfaction of the Zoning Board of Adjustment that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the permit granted within two years. Any renewal/extension application shall be filed no sooner than 90 days prior to the date of expiration, and no later than 30 days prior to the variance or special exception expiration.

8.05 - Conditions

In granting variances, the Board, if it deems it proper to the carrying out of the intent and purpose of this ordinance, may impose such reasonable and additional stipulations and conditions as will in its judgment better fulfill the purpose of this ordinance.

8.06 – Statutory Criteria for Granting of Variances

The requirements of RSA 674:33(I)(b), as most recently adopted by the State of New Hampshire, must be determined to be satisfied by the Board in order to grant any variance.

8.07 - Fees

The Zoning Board of Adjustment may establish a schedule of fees which are reasonably necessary to cover the expense of public notification, administrative processing of applications, technical and staff support, and other reasonable costs which are incurred by the Zoning Board in the exercise of its duties. Prior to the adoption of a schedule of fees or any amendments thereto, the Zoning Board shall cause to be published a notice of public hearing and hold a public hearing consistent with RSA 675:7 and any amendments thereto.

Zosctn8

SECTION 9 - NON-CONFORMING USES *[revised 5/14/15]*

9.01 - Continuance of Use

The lawful use of land, buildings or structures existing at the time of the adoption of this ordinance or of the amendment thereto, although such use does not conform to the provisions hereof, may be continued.

9.02 - Non-Conforming Use of Buildings or Structures

A. A building or structure, the use of which does not conform to the use regulations for the district in which it is situated, shall not be enlarged or extended unless the use therein is changed to a conforming use.

B. Such building or structure shall not be structurally altered or reconstructed, unless such alterations are required by an authorized public officer for health or safety reasons. However, such maintenance and repair work as required to keep the building or structure in safe condition shall be permitted.

C. A non-conforming use of a building or structure may be changed to another non-conforming use of the same classification providing that such new use would not be more objectionable or result in a substantial change in the use's affect on adjacent properties.

D. If any non-conforming use of a building or structure ceases for any reason for a continuous period of more than one year, or is changed to a conforming use, or if the building or structure in which such use is conducted or maintained is moved for any distance whatsoever for any reason, then any future use of such building or structure and the land on which it is located shall be in conformity with all provisions of this ordinance for the district in which it is located.

E. Nothing contained in this Section shall authorize the conversion, extension, or enlargement of an existing seasonal building or structure for year round use. (See 1.03.46)

9.03 - Non-Conforming Use of Land

Where no structure is involved, the non-conforming use of land may be continued provided that:

A. Such non-conforming use shall not be enlarged or increased, nor shall it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of this ordinance.

B. Such non-conforming use shall not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such non-conforming use.

Section 9.03 - Non-Conforming Uses - Non-conforming Use of Land (continued)

C. No non-conforming use of land shall be changed to another non-conforming use.

D. If any non-conforming use of land, or any portion thereof, ceases for any reason whatsoever for a continuous period of more than one year, or is changed to a conforming use, any future use of such land shall be in conformity with all provisions of this ordinance.

E. Nothing in this Section is intended to negate the provisions of Sections 2.01.5, 2.01.6, 2.02.6, 3.05, and 14.

9.04 - Non-Conformity Other than Use

A building or structure which is conforming in use, but does not conform to the height, yard, building coverage, parking or similar dimensional requirements of this ordinance, shall not be considered to be non-conforming within the meaning of Section 9.01 of this ordinance. However, no permit shall be issued nor shall any changes be made on such building or structure that will result in the increase or expansion of any such non-conformity.

Zosctn9

SECTION 10 - PENALTIES AND VIOLATIONS

10.01 - Violations

Upon information that the provisions of this Ordinance are being violated, the Building Inspector or other local official with the authority to enforce the provisions of this Ordinance shall take immediate steps to enforce the provisions of this ordinance as provided in Chapter 676:17 of the Revised Statutes Annotated of the State of New Hampshire.

10.02 - Penalty for Violation

Any person, who violates any of the provisions of the Town of Merrimack Zoning Ordinance, Building Code, Non-Residential Site Plan Review Regulations, Subdivision Regulations, or any provision or specification of any application, plat or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority thereof shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty not to exceed $275 for the first offense and $550 for subsequent offenses for each day that such violation is found to continue after the conviction date or after the date on which the violator received written notice from the Town of Merrimack that the violator is in violation, whichever date is earlier.

Zosctn10

SECTION 11 -ADOPTION OF CODES

11.01 Enforcement of State Building Code.

Pursuant to RSA 674:51 (I), the Town of Merrimack hereby declares it will enforce the New Hampshire State Building Code. For structures other than one and two family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height, the Town of Merrimack will enforce the current provisions of the State Building Code as promulgated pursuant to RSA 155-A:1, as may be amended from time to time.

11.02 Additions, Insertions, Deletions and Changes to the International Building Code, First Edition, 2000

11.02.1 Amend Section 101.1 Title.

Insert "Town of Merrimack, NH"

11.02.2 Delete Section 103.1 and replace with the following:

Section 103.1 Enforcement Agency:

The Code Enforcement Division of the Community Development Department shall enforce the provisions of this code.

11.02.3 Add new Section 105.2.4 as follows:

Permits are not required for "ordinary" repairs, as determined by the Building Official.

11.02.4 Amend Section 108.2 Schedule of Permit Fees

A Schedule of Permit Fees shall be established by the Building Official. A public hearing shall be held not less than thirty (30) days prior to the implementation of any new fee schedule or any amendment thereto.

11.02.5 Add Section 110.1.1 as follows:

New multiple family structures and residential condominium structures:

No new multiple family residential structures nor residential condominium units shall be occupied until the owner thereof shall have received an occupancy permit for:

1. the building in which such multiple family dwellings are located, and/or
2. individual units of a residential condominium structure, or a multiple family structure, or a structure containing residential condominium units provided:
   a) all walls and partitions are covered with sheetrock, or other approved finishing material;
   b) all floors shall be in condition ready for finished flooring
   c) all plumbing and electrical wiring shall be complete, except for the

installation of finished fixtures
All fire protection requirements shall be complete, tested and accepted by Merrimack Fire Department.

11.02.6 **Appeals**: Delete Section 112.1 in entirety and replace with the following:

Section 112.1 Appeals:

The Zoning Board of Adjustment of the Town of Merrimack shall act as the Board of Appeals according to the regulations and procedures set forth in the Zoning Ordinance of the Town of Merrimack.

11.02.6.1 Section 112.1.1 Court Review:

Any person aggrieved by the decision of the Zoning Board of Adjustment, or any officer, department, board or bureau of the municipality may appeal to the Hillsborough County Superior Court within such time and under such conditions as are set forth by the New Hampshire Revised Statutes Annotated.

11.02.7 Delete Section 113.4 Violation Penalties and substitute in lieu thereof the following:

Section 113.4 Violation Penalties:

Any person who shall violate a provision of this Code or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of a certificate issued under the provision of the Code, shall be subject to the criminal and civil fines and penalties pursuant to Section 10 of the Town of Merrimack Zoning Ordinance and Building Code.

11.02.8 Delete Section 114.3 Unlawful Continuance and substitute in lieu thereof the following:

Section 114.3 Unlawful Continuance:

Any person who shall continue any work in or about the structure after having been served with a Stop Work Order, except such work as he is directed to perform to remove a violation or unsafe condition, shall be subject to the criminal and civil fines and penalties pursuant to Section 10 of the Town of Merrimack Zoning Ordinance and Building Code.

11.02.9 Add Section 415.7.3.3.3.1 Placement:

All outside liquefied petroleum gas storage containers for commercial or industrial use of 500 gallons or more liquid full water capacity shall be located on: a reinforced concrete pad of a minimum thickness of six inches; or located on masonry non-combustible structure supports (lintels) with 4" to 6" of crushed

stone spread over polyethylene ground sheeting; or other suitable material approved by the Building Official and extending a minimum of twelve inches beyond the dimensions of each container.

11.02.9.1 Add Section 415.7.3.3.3.2 Tank Protection:

Each such container shall be enclosed with a chain link fence at a minimum height of seventy-two inches and secured by a gate or such other type suitable device, which may be approved by the Building Official to protect the container and its contents from all safety and health hazards,

11.02.10 Add New Section 708.10

Multiple single family dwelling units containing superimposed occupancies shall be separated by a continuous two-hour fire resistant wall assembly so that no more than 12 units are between wall assemblies. Such assemblies shall extend vertically from the basement floor to the underside of the roof sheathing and horizontally to the interior of the exterior sheathing.

11.02.11 Add New Section 903.2.16

Where required: Approved Automatic Sprinkler Systems in new buildings and structures shall be provided in the locations described below:

1. In locations indicated in Sections 903.2.1 through 903.2.15,
2. In all buildings and structures of use groups R1, R2, and R3
3. Where required by this code
    - 3.1 In all new buildings or structures
    - 3.2 In all existing structures undergoing expansion to multi-family dwelling
    - 3.3 In all existing multi-family dwelling units undergoing alterations, renovations, or reconstruction valued at 75% or more as determined by the equalized assessed valuation of the structure.

The sprinkler design and installation shall comply with the provisions of the current edition of N.F.P.A. (National Fire Protection Association) Codes No.13, "Standard for the installation of sprinkler systems", and No.13D, "Sprinkler systems - one and two family dwellings" or No.13R respectively, as may be amended from time to time, and receive certification from the Merrimack Fire Department for compliance with this section prior to the issuance of any occupancy permit for any dwelling unit situated within any building hereunder.

Add Exception: Detached single family and duplex dwellings of Use Group R-3 and R-4.

11.02.12 Add New Section 903.6 Domestic Residential Systems:

Use of sprinkler systems in residential, business, mercantile and assembly

occupancies

1. This section applies to multi family residential, business, mercantile and assembly occupancies. (Multi family residential is defined as three or more dwelling units).

2. In buildings or structures as described in Section 903, a combination fire protection sprinkler system shall be a minimum requirement (a combination fire protection system for the purposes of this section means that the sprinkler system and the domestic water system utilize the same (common) service water supply pipe to the premises).

3. Requirements of Use Groups:

   a) Multi-family - New multi-family buildings or structures regardless of the form of ownership (i.e., rental, condominium, etc.) and fire wall separation (may not be classified independently) that are not required elsewhere in this code to have a commercial or industrial type fire sprinkler suppression system in accordance with the most recent edition of N.F.P.A. (National Fire Protection Association) No.13- "Standards for the installation of sprinkler systems", or existing structures undergoing major alterations or expansion such that it increases the number of individual residential units to three or more, or existing structures undergoing substantial rehabilitation, alteration or expansion which exceeds fifty (50) percent of the gross floor area. Installation of the combination fire protection sprinkler system shall be in accordance with Section 4, "System design and installation requirements".

   b) Business assembly and Mercantile - new business, assembly and/or mercantile buildings or structures (classified as light and ordinary hazards group 1 & 2 structures by N.F.P.A., National Fire Protection Association, No. 13) regardless of the form of ownership (i.e.,. rental, condominium, etc.) and fire wall separation (may not be classified independently) that are not required elsewhere in this code to have a commercial or industrial type fire suppression system in accordance with the most recent edition of N.F.P.A (National Fire Protection Association, No.13), "Standards for the installation of Sprinkler Systems" or existing structures undergoing substantial rehabilitation, alteration or expansion which exceeds fifty (50) percent of the gross floor area. Installation of the combination fire protection sprinkler system shall be in accordance with Section 4, "system design and installation requirements".

4. System Design and Installation Requirements:

   a) All sprinklers shall be Underwriters Laboratories listed residential fast response for residential use and Underwriters Laboratories listed residential-commercial fast response for business, mercantile and assembly.

b) Only listed and approved Factory Mutual or Underwriters Laboratories materials shall be used in sprinkler systems

Exception: Listing may be waived for tanks, pumps, hangers, water low detection devices, flow water valves, check valve and gauges.

c) All systems shall be tested for leakage as follows:

(1.1) Hydrostatically tested prior to sprinkler head and dry wall installation in accordance with N.F.P.A. 13, "Standard for the Installation of Sprinkler Systems," if Fire Department connection required.

(2.2) Tested for leakage at normal operating water pressure prior to dry wall installation if not required to be hydrostatically tested.

(3.3) Tested for leakage at normal operating water pressure after sprinkler head installation.

d) Water Supply

(1.1) General provisions. Every automatic sprinkler system shall have at least one automatic water supply. When stored water is used as the sole source of supply for residential applications only, the minimum quantity shall equal the water demand rate times 10 minutes. All other applications (light and ordinary hazard) shall require at least 30 minutes of water quantity.

(2.2) Multipurpose piping system.
A piping system serving both sprinkler and domestic needs shall be acceptable when:

(aa) Residential Use: In common water supply connections serving more than one dwelling unit, five gallons per minute is added to the sprinkler demand in addition to any domestic demand so as to determine the size of common piping and the size of the total water supply requirements.

(bb) Business, Mercantile and Assembly: Common water supply connections serving the structure shall be calculated in accordance with the domestic demand in addition to the sprinkler demand.

(3.3) Valves and Drains.
Each system shall have the components as per Figure 1, a single control valve arranged to shut off both the domestic and sprinkler systems, and a separate shut off valve for the domestic system only.

Exception: The sprinkler system piping may have a separate control valve where supervised by one of the following methods:

(aa) Central station, proprietary, or remote station alarm service.

(bb) Local alarm service which will cause the sounding of an audible signal at a constantly attended point, or

(cc) Locking the valves open.

(4.4) Piping.
Pipe or tube and fittings used in sprinkler systems shall be of materials listed for such applications by Factory Mutual and/or Underwriters Laboratories. The chemical properties, physical properties and dimensions of the materials shall be designed to withstand a working pressure of not less than 175 psi.

Joints for the connection of copper tube shall be brazed.

Exception: Soldered joints (95-5 only) may be used for wet-pipe copper tube systems only.

(5.5) Piping Support
Piping shall be supported from structural members. This code contemplates support methods comparable to those used in accordance with the most recent edition of the International Plumbing Code. Piping laid on open joists or rafters shall be secured to minimize lateral movement.

(6.6) Sprinklers.
Residential: Listed residential sprinklers shall be used. The sprinklers shall be fusing temperatures not less than 35 degrees F above maximum expected ambient temperature.

Mercantile, business and assembly: Listed residential or fast response commercial type sprinklers with a wall spray pattern shall be used. The sprinklers shall have fusing temperatures not less than 35 degrees F above maximum expected ambient temperature. Operated or damaged sprinklers shall be replaced with sprinkler having the same performance characteristics as original equipment.

(7.7) Painting and Ornamental Finishes:
Sprinkler frames may be factory painted or enameled as ornamental finish in accordance with the requirements of 3.4.4.8. Otherwise, sprinklers shall not be painted and any sprinklers which have been painted, except for factory applied coatings, shall replaced with new listed sprinklers.

(8.8) Ornamental finishes shall not be applied to sprinkler by anyone other than the sprinkler manufacturer and only sprinklers listed with such finishes shall be used.

(9.9)1.Alarms:
Local water flow alarms shall be provided on all sprinkler systems. An accepted water flow switch, bell and/or horn-strobe combination shall be installed. Equipment shall be in accordance with Figure (1).

e) System Design

(1.1) Design Discharge: The system shall provide a discharge of not less than 18 gallons per minute to any single operating sprinkler and not less than 13 gallons per minute to the number of design sprinklers. If the design discharge area is to be increased, the discharge per sprinkler shall meet the criteria as outlined in each manufacturers specification sheet.

(2.2) Number of Design Sprinklers: The number of design sprinklers shall include all sprinklers within a compartment, to a maximum of four sprinklers. Calculations must be provided to show the following:

Sprinkler flow at highest elevation, most hydraulically remote sprinkler from water supply within the building.

(aa) For rooms or areas with no more than 1 and 2 sprinklers, calculate to flow 1 and 2 sprinklers.

(bb) For rooms or areas with 3 sprinklers, calculate to flow 3 sprinklers.

(cc) For rooms or areas with 4 or more sprinkler calculate to flow 4 sprinklers.

(dd) Single family, two family and town house condominiums with separate individual sprinkler systems shall follow the design criteria of Item 1.1 above.

The definition of compartment for use in determining the number of design sprinklers is ‘space completely enclosed by walls and a ceiling’. The compartment enclosure may have openings to an adjoining space if the openings have a minimum lintel depth of 8 inches from the ceiling.

(3.3) Water Demand: The water demand for the system shall be determined by multiplying the design discharge by the number of design sprinklers.

(4.4) Sprinkler Coverage:

(aa) Residential sprinklers shall be spaced so that the maximum area protected by a single sprinkler does not exceed 144 square feet or in accordance with the manufacturers design criteria.

The maximum distance between sprinklers shall not exceed 12 feet on or between pipelines and the maximum distance to a wall or partition shall not exceed 6 feet. The minimum distance between sprinklers within a compartment shall be 8 feet. Greater coverage may be achieved if Underwriters Laboratories listed as such.

The minimum operating pressure of any sprinkler shall be in accordance with the listing information of the sprinkler, and shall provide the minimum flow rates as specified previously.

Application rates, design areas, areas of coverage, and minimum design pressures other than those specified may be used with special sprinklers which have been listed for such specific residential installation conditions.

(bb) Mercantile, assembly and business shall comply with above or with the listing requirements for fast response commercial sprinkler heads.

f) Position of Sprinklers

(1.1) Pendent sprinklers shall be positioned so that the deflectors are within 1 to 4 inches from the ceiling.

Exception: Special residential and fast response sprinklers shall be installed in accordance with the listing limitations.

(2.2) Sidewall sprinklers shall be positioned in accordance with the listing limitations.

Dropped escutcheons shall be used if sprinkler is obstructed by light fixtures or beams. The installer may use additional sprinklers for areas where obstructions block spray pattern.

When ceiling fans are used, sprinklers shall be located so that the fan blade does not interfere with the spray pattern. Relocation of sprinkler shall still conform to spacing requirements. Rooms exceeding 9x9 feet with ceiling fans shall have a minimum of 2 sprinklers.

g) System Types

(1.1) Wet-pipe systems. A wet pipe system shall be used when all piping is installed in areas not subject to freezing. No anti-freeze solution or any other type of additive shall be allowed in any combination sprinkler system.

(2.2) Dry-pipe systems. Where system piping is located in unheated areas subject to freezing, a dry-pipe system shall be used. Only copper tubing with brazed fittings and steel tubing shall be used in dry-pipe

systems.

h) Pipe Sizing

(1.1) Piping shall be designed in accordance with (e)(1.) and (e)(2.). If more than one design discharge is required, the pipe sizing procedure shall be repeated for each design discharge.

Exception: When piping is sized hydraulically, calculations shall be made in accordance with the methods described in N.F.P.A. 13, Standard for the installation of sprinkler systems.

(2.2) Minimum pipe size shall be 3/4" for copper, blazemaster, and polybutelene, and 1" for steel.

(3.3) To size piping for systems connected to a city water supply, the following approximate method is acceptable:

(aa) Establish system flow rate in accordance (e).

(bb) Determine water pressure in the street.

(cc) Select pipe sizes.

(dd) Deduct meter pressure losses if any.

(ee) Deduct pressure loss for elevation. (Building height above street in feet x .434 psi).

(ff) Deduct pressure losses from city main to control valve (manifold assembly including backflow prevention) by the total lengths of pipe in feet.

(gg) Deduct pressure losses for piping within building by the total length in feet of each size of pipe between the control valve (manifold assembly) and the farthest sprinkler.

(hh) Deduct valve and fitting pressure losses. Count the valves and fittings from the control valve to the highest-hydraulically most remote point. Determine the equivalent length for each valve and fitting and add these values to obtain the total equivalent length for each pipe size. Multiply the equivalent length for each size by the factors for the pipe used and total these values.

(ii) In multi-level buildings, steps A thru G shall be repeated to size piping for each floor.

(jj) If the remaining pressure is less than the operating pressure

established by the testing laboratory for the sprinkler being used, a redesign is necessary. If this pressure is higher than required, smaller piping may be used when justified by calculations.

(kk) The remaining piping shall be sized the same as the piping to the farthest sprinkler unless smaller sizes are justified by calculations.

(4.4) To size piping for systems with an elevated tank, pump or pump tank combination, determine the pressure at the water supply outlet and proceed through steps (c), (g), (h), (i), (j), (k), of 3.

(5.5) Piping configurations. Piping configurations may be looped, gridded, straight run or combinations thereof.

(6.6) When a dead-end system is used, the sprinkler system shall be isolated from the domestic water system by not less than a dual action spring loaded check valve or equivalent that conforms to ASSE Standard 1024, and provides the flow requirement of the system without exceeding the allowable pressure drop of the standard or the system, whichever is less. The system components as indicated previously shall be a mandatory requirement and all parts thereof shall be acceptable to the Administrative Authority. The mandatory pressure reducing valve (as part of the system components) shall be regulated at 125 psi. A Watts W.T.S. 530C50 or equivalent, reseating pressure relief valve shall be used on all domestic sprinkler systems. Backflow prevention devices used shall be State of N.H. W.S. and P.C. approved devices and be testable.

Exceptions*:*

1. One check valve may be omitted when a back flow (dual check valve assembly) is required by the local water jurisdiction.

2. A back flow (dual check valve assembly) shall be required in all instances where a fire department connection is installed. (Note: Where the structure would normally not require a back flow preventer but a fire department connection is required, the dual check valves may be omitted where the back flow preventor is installed in place thereof).

3. In low pressure areas only, where residual pressure or flow GPM's do not meet minimum requirements, one head must flow minimum 18 GPM with a 41 PSI residual; two heads must flow minimum 30 GPM's with a 30 PSI residual, unless otherwise Underwriters Laboratories listed. A circulating system may be used. The terminal end of the

sprinkler supply shall be tied directly into the supply to a regularly used water closet or other approved fixture. Branch lines shall not exceed 25 feet on any circulating system. The dual check valves (two in series) requirement is waived on such systems.

(7.7) If the sprinkler system is designed for more than one living unit, all shut-off's in the system shall be secured with lock and key in the open position. A sign on the valves should read "Fire Department should be notified when valves are turned off and when turned back on." All shut off's shall be readily accessible at all times.

(8.8) If the sprinkler system is designed for mercantile, assembly or business, then the requirement of 7. shall also apply.

(9.9) If the sprinkler system is designed for more than one unit, and separate electric service is used for each unit, the alarm switch with bell (horn-strobe) shall be on the "house electric meter." Where Townhouse type condominiums are constructed, a fire resistive construction of at least one hour shall be utilized between each living unit with a separate riser, flow switch (system components) and outside bell (horn-strobe) installed.

Exception: A single system-riser may be utilized where: No.1. Access is provided to all control valves for fire services and, No.2. All system piping, sprinkler heads, valves and components are controlled under the authority of the condominium association and is included as such with the Article Covenants. A copy of the Article Covenants shall be forwarded containing this information to the Merrimack Fire Department.

(10.10) A supply line to the sprinkler system shall be tapped off the water service line at a point that would be downstream (customer side of meter) of any back flow preventor the water purveyor might subsequently require in the service line to contain the domestic system from the public mains.

(11.11) All mechanical rooms (furnace, water heater, etc.) shall have 200 to 212 degree standard sprinklers.

(12.12) All spacing of sprinklers, in relation to obstruction such as fireplaces and heaters, shall be to the sprinkler manufacturer's requirements.

(13.13) All sprinkler piping in unheated areas shall be protected from freezing. Where attached garages are unheated, a dry pendent type commercial sprinkler head shall be used where the sprinkler piping is to remain wet at all times.

(14.14) All commercial (assembly, mercantile and business) structures shall be required to have an acceptable 1 ½ inch fire department connection in an easily accessible location. All residential structures with 20 or more sprinkler heads on a single type system shall be required to have an acceptable 1 ½ inch fire department connection in an easily accessible location.

i) Location of Sprinklers: Sprinklers shall be installed in all areas.

Exceptions:

1. Sprinklers may be omitted from bathrooms not exceeding 55 square feet with non combustible plumbing fixtures.

2. Sprinklers may be omitted from small closets where the least dimension does not exceed 3 feet and the area does not exceed 24 square feet and the walls and ceiling are surfaced with noncombustible materials.

3. Sprinklers may be omitted from open attached porches, carports and similar structures.

4. Sprinklers may be omitted from attics and crawl spaces, which are not used or intended for living purposes or storage.

5. Sprinklers may be omitted from entrance foyers, which are not the only means of egress.

j) All condominiums shall have the following wording in the recorded Declaration of Covenants and a copy of the document shall be provided to the Merrimack Fire Department.

"Sprinkler System. In the event that any unit should be equipped with a sprinkler system, nothing shall be hung from the sprinkler comprising a part of the system, nor shall any such sprinklers, wiring, or components be painted, covered, or otherwise changed, tampered with or altered."

"Prior to any alteration, amendment, modification or change thereof, he/they will submit such alteration, amendment, modification or change to the

Merrimack Fire Department for approval and agrees to comply with all domestic sprinkler requirements of said Fire Prevention office".

k) The installer of domestic sprinkler systems shall attend a familiarization seminar presented by the Merrimack Fire Department. This seminar is mandatory for all prospective domestic sprinkler installers. Prior to the installation of any sprinkler system within the Town of Merrimack a set of detailed plans shall be forwarded to the Fire Prevention office prior to the issuance of a permit.

l) The sprinkler installer shall certify the flow and PSI requirement at the highest elevation condition farthest from sprinkler water supply in the building. Certification of flow and leakage tests shall be acceptable to the Merrimack Fire Department.

m) Prior to the occupancy of any structure utilizing a domestic-residential sprinkler system, a certificate of occupancy must be issued by the Building Inspection department with a sign off from the Merrimack Fire Department.

5. Levels of Protection

a) The responsibility for properly maintaining a sprinkler system is the obligation of the owner or manager who shall understand the sprinkler system operation.

(1.1) Any sprinkler heads located in areas subject to damage shall be protected with a cage or other acceptable device.

(2.2) Refer to Appendix A for additional information.

b) When a tank is used for domestic and fire protection purposes, a low water alarm actuated when the water level falls below 110 percent of the minimum quantity as required per the discharge design and domestic usage requirements.

c) Decorative painting of a residential sprinkler is not to be confused with the temperature identification colors as referenced in 3-16.6 of NFPA 13-1983, Standard for the Installation of Sprinkler Systems.

d) Alarms connected to the water flow devices shall be of sufficient intensity to be clearly audible in all bedrooms over background noise levels with all intervening doors closed. The test of audibility level shall be conducted with all household equipment which may be in operation at night in full operation. Examples of such equipment are window air

conditioners and room humidifiers.

e) The following table shall provide guidance for location of sprinklers near ceiling obstructions. Where beams, light fixtures, sloped ceilings and other obstructions occur, additional sprinklers may be necessary to achieve proper response and distribution. Guidance may be obtained from the manufacturer.

Maximum Distance from Sprinkler Deflector to Bottom of Ceiling Obstruction

Distance from sprinkler to Side of Ceiling Obstruction	Maximum Distance from Sprinkler to Bottom of Ceiling Obstruction
6 in. or less	Not permitted
6 in. to less than 1 ft.	0 in.
1 ft. to less than 2 ft.	1 in.
2 ft. to less than 2 ft. 6 in.	2 in.
2 ft. 6 in. to less than 3 ft.	3 in.
3 ft. to less than 3 ft. 6 in.	4 in.
3 ft. 6 in. to less than 4 ft.	6 in.
4 ft. to less than 4 ft. 6 in.	7 in.
4 ft. 6 in. to less than 5 ft.	9 in.
5 ft. to less than 5 ft. 6 in.	11 in.
5 ft. 6 in. to less than 6 ft.	14 in.

f) Definition - As indicated throughout this Section, light and ordinary hazard structures shall follow the criteria as defined in the current N.F.P.A. 13, Standard for the Installation of Sprinkler Systems.

g) When approved plastic piping is used in domestic sprinkler systems, all threaded fittings used for testing purposes shall be of CPVC, PVC or Copper. (No black iron nipples shall be used on plastic female fittings for testing purposes).

h) All sprinkler head threads are to receive either a coating of Teflon liquid dope (acceptable to the plastic being utilized) or a second wrapping of Teflon tape prior to installation.

i) All domestic sprinkler systems may be installed by certified personnel (certified by Merrimack Fire Dept.) without special licensing, (i.e.,. licensed plumber, licensed sprinkler installer). However, the final connection to the water supply shall be completed by licensed master plumber who has also been certified by the New Hampshire Bureau of Fire Prevention.

j) At least three spare sprinklers of each type utilized, temperature rating and orifice size used the system shall be kept on the premises. When

fused sprinklers are replaced by the owner, fire department or others, care shall be taken to assure that the replacement sprinkler has the same operating characteristics.

k) Items required on drawing for domestic sprinklers:

(1.1) Sprinkled under Merrimack Fire Department sprinkler requirements.

(2.2) Layout indicating head location, pipe layout, location of cut off, tie in, switch, bell; location of commode if used for circulating; location of bleeder valve and line; 1 ½" fire department connection.

(3.3) Description notes: Fill out blanks and attach A through T to all drawings.

(aa) Type of head: ( ) pendent ( ) sidewall ( ) both
( ) Other _____

(bb) Type of pipe: ( ) Copper ( ) _____

(cc) Type of fastening of pipe: _____

(dd) Type of back flow prevention used:_____

(ee) Size of main line from street: _____

(ff) Size of main sprinkler line: _____

(gg) Size of Branch line: _____

(hh) Type & degree of heads in mechanical room: _____

(ii) Note: No branch lines are to exceed 25' on circulating system.

(jj) Flow test of sprinkler system to be certified before dry wall.

(kk) Copy of hydraulic calculations to be provided.

(ll) Calculations to be based on GPM flow test highest elevation worst condition.

(mm) If separate calculations for each group of buildings, note on drawings and calculations.

(nn) Pipe in attic shall be laid as close as possible to ceiling.

(oo) Escutcheons shall be used when heads are near light fixtures or beams so that spray pattern is not obstructed or 2 heads shall be used.

(pp) Any changes in these drawings or in the event any unfinished

rooms are contemplated, all changes shall be submitted for approval.

(qq) Mechanical rooms to have 200 to 212 degrees F. commercial type sprinkler heads.

(rr) No exposed piping to sprinkled areas.

(ss) Piping to be protected from freezing.

(tt) All sprinkler drops are to be screwed in place with no nails utilized.

l) Required items for valves and manifold assembly.

KEY (Figure 1)

(1.) Incoming water supply from street line or other.

(2.) Gate valve, meter assembly, back flow preventer, as required by local water purveyor.

(3.) Pipe "T" (tee).

(4.) Domestic supply.

(5.) Union with Iron Pipe standard.

(6.) One quarter turn full port gate valve. (Iron pipe standard).

(7.) Watts 601 (Iron pipe standard) testable check valve or equivalent. Note: a double valve assembly (back flow preventer) will be required where a fire department connection is utilized.

(8.) McConnell & Miller PS4-3F series flow switch or equivalent.

(9.) Drains to be piped outside structure.

(10.) Pressure relief valve to be Watts 530C50 with ½ inch fittings or equivalent.

(11.) Cross connection.

(12.) Pressure gauge to be rated at least 25 P.S.I. over static pressure.

(13.) Manifold assembly.

(14.) Century 1 ½ inch swivel fire department connection or equivalent. (Iron Pipe

Thread)

(15.) To sprinkler system piping and sprinkler heads.

(16.) Nipple length to extend five pipe diameters.

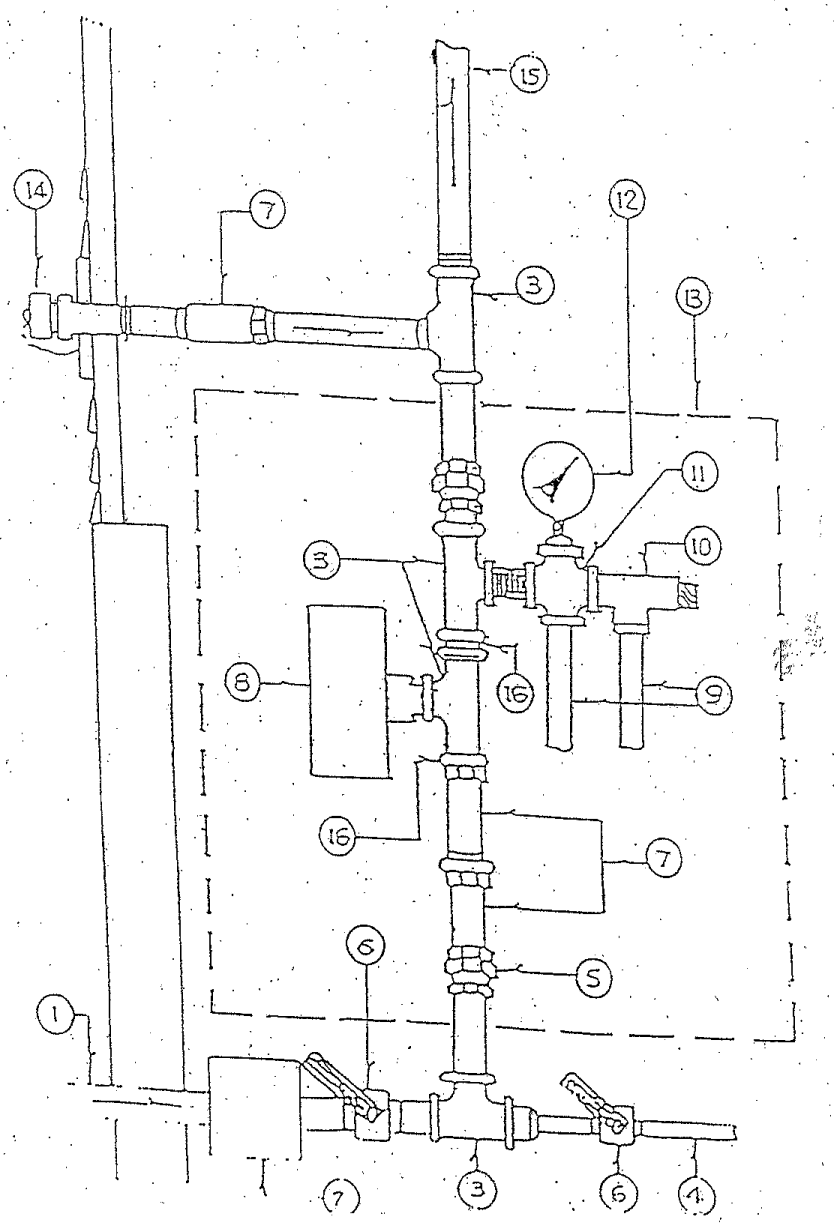


FIGURE 1

The specific requirements of this code may be modified by the Merrimack Fire Department to allow alternative arrangements that will secure as nearly equivalent safety to life from fire as practical, but in no case shall the modification afford less safety to life than compliance with the provisions as set forth in this Section.

APPENDIX A

A minimum monthly maintenance program should include the following:

(1.1) Visually inspect all sprinklers to ensure against obstruction of spray.

(2.2) Inspect all valves to assure that they are open.

(3.3) Test all water flow devices.

(4.4) The alarm system, if installed, should be tested.

(5.5) Pumps, where employed, should be operated.

(6.6) The pressure of air used with dry systems should be checked.

(7.7) Water level in tanks should be checked.

(8.8) Care should be taken to see that sprinklers are not painted either at the time of installation or during subsequent redecoration. When painting sprinkler piping or painting in areas next to sprinklers, the sprinklers may be protected by covering with a bag which should be removed immediately after painting has been finished.

11.02.13 Add new Section 1004.2.1 Exit Door Requirements:

Multi family structures and row houses shall have not less than two independent exit doors serving each dwelling unit. Multiple family dwellings with superimposed units shall have not less than two independent exit doors serving each story. Where mixed designs occur, exit doorways shall be approved by the Building Official

11.02.14 Add Section 2702.4 Materials:

No aluminum or copper-clad aluminum conductors shall be used within the Town of Merrimack.

a) Exception: Aluminum conductors are permitted for service entrance and between main disconnect and sub-panel only.

Add Section 2703.1.1 Fees:

Fees for electrical permits shall be established by the Building Official. Not less

than thirty (30) days prior to the implementation of any fee schedule or any subsequent amendment to the fee schedule under this section, the Building Official shall publish notice of same and shall conduct a public hearing.

11.02.15 Add Section 2903: Plumbing Systems:

The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the plumbing code adopted by the Town of Merrimack except sections that may be at variance with the Town Sewer Ordinance and the State of New Hampshire Plumbing Code.

Delete Section 3102 and replace with the following:

11.02.16 Section 3102 Bonds And Liability Insurance

Section 3102 Filing: A person shall not erect, install, remove, rehang or maintain over public property any sign for which a permit is required under the provision of this code until an approved bond shall have been filed in the sum of $150,000 per person and $500,000 per occurrence as herein required or until an insurance policy shall have been filed for public liability in the amount of $150,000 per person and $500,000 per occurrence.

Section 3102.2 Conditions: Such bond or insurance policy shall protect and save the jurisdiction harmless from any and all claims or demands for damages by reason of any negligence of the sign hanger, contractor or agents, or by any reasons of defects in the construction, or damages resulting from the collapse, failure or combustion of the sign or parts thereof.

Section 3102.3 Notice of Cancellation: The obligation herein specified shall remain in force and effect during the life of every sign and shall not be canceled by the principal or surety until after a 30-day notice to the building official.

Delete Section 1301.1 and insert the following:

11.02.17 Section 1301.1 Other Standards:

Buildings shall be designed and constructed in compliance with the energy code listed in Chapter 35 and the New Hampshire Energy Code ("New Hampshire RSA Chapter 155-D").

11.03 Adoption of International Residential Code (IRC)

That a certain document, one copy of which is one file with the Town Clerk and not less than 1 copy is one file in the Community Development Department of the Town of Merrimack, New Hampshire, being marked and designated as the 2000 International Residential Code for One and Two Family Dwellings, including Appendix Chapters A, B, C, E, F, G, H, J, and L, as published by the International Code Council, Inc., be and is hereby adopted as the

Residential Building Code for the Town of Merrimack, New Hampshire, for regulating and governing the construction, alteration, movement, enlargement, replacement, repair, equipment, location, removal and demolition of detached one and two family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with separate means of egress as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Residential Building Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 11.04 of this ordinance.

11.04 Amendments to the International Residential Code (IRC) 2000

11.04.1 R101.1 Insert 'Town of Merrimack, New Hampshire'

11.4.2 Amend R105.2 (Item #1, under "Building") to read as follow:
1. One-story detached accessory structures, provided the floor area does not exceed 160 square feet. (14.86 m^2)."

11.04.3 Amend R103.1 as follows:

Enforcement Agency: The Code Enforcement Division of the Community Development Department shall enforce the provisions of this code.

11.04.4 Section 112.1 Appeals

The Zoning Board of Adjustment of the Town of Merrimack shall act as the Board of Appeals according to the regulations and procedures set forth in the Zoning Ordinance of the Town of Merrimack.

11.04.5 Court Review:

Any person aggrieved by the decision of the Zoning Board of Adjustment, or any officer, department, board or bureau of the municipality may appeal to the Hillsborough County Superior Court within such time and under such conditions as are set forth by the New Hampshire Revised Statutes Annotated

11.04.6 Amend IRC Section R311.1 Exit Door Required:

Not less than two exit doors conforming to this chapter shall be provided from each dwelling unit. The required exit doors shall provide for direct access from the habitable portions of the dwelling to the exterior without requiring travel through a garage.

Add Exception: An accessory dwelling unit shall have one independent exit in conjunction with an interior connection to the main dwelling unit.

11.04.7 Amend Section R314.2 Stairs to read as follows:

In occupancies in Use Group R-3, within dwelling units in occupancies in Use

Group R-2 and in occupancies in Use Group U which are an accessory to an occupancy in Use Group R-3, the maximum riser height shall be 8 1/4 inches (210 mm) and the minimum tread depth shall be 9 inches (229 mm). A nosing not less than 3/4 inches (19 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279 mm).

11.04.8 Add New Section M1804

Connectors serving wood-burning appliances shall not be connected to chimneys serving other appliances

11.04.9 Add new Section M2001.3"Firestopping"

"The area over all furnaces, boilers and solid fuel burning equipment shall be protected either by:

1. One half inch drywall extending at least 3 feet beyond the footprint of the unit with all joints sealed. Any combustible wall within said perimeter shall also be fireproofed with ½ inch drywall and all joints sealed

2. An automatic upright sprinkler head over the specified equipment, connected to the domestic water supply

3. Equivalent protection as approved by the Building Official

11.04.10 Add Section 3501.2 Materials

No aluminum or copper-clad aluminum conductors shall be used within the Town of Merrimack.

Exception: Aluminum conductors are permitted for service entrance and between main disconnect and sub-panel only.

11.05 Test Pits and Percolation Test

11.05.1 A percolation test supervised by the Building Official, to ascertain proper drainage on all new construction and minimum of a 1000 gallon septic tank shall be required. In all instances of on-site waste disposal, test pits shall be dug and each such pit shall be witnessed by the Building Official or his/her agent; an area of at least 4,000 sq ft including the test pit location shall be designated on a plan and the test pit data attached.

11.05.2 For purposes of the percolation test, the time required for water of fall one inch shall not exceed 30 minutes; and the leach bed bottom shall be no less than 4' above the seasonal high water table.

11.06 Sewerage

11.06.1 All dwellings and all public buildings shall be equipped with a minimum 1000 gallon septic tank, sanitary chemical closet or approved vault.

11.06.2 Septic designs shall address drainage on lots so that the systems will not be adversely affected and so that adjacent lots will not be adversely affected.

11.07 Insert New Section R304.5 Dwelling Unit Area

11.07.1.1 Single family and two family dwellings shall have a minimum of 600 square feet of gross living area for the main floor of each dwelling unit. For purposes of this section a manufactured housing shall not be considered a dwelling.

11.07.1.2 Multi-family dwellings: Each dwelling unit shall have a minimum gross living area of 600 square feet for single story dwelling units or 1,040 square feet of gross living area for two-story dwelling units.

11.07.1.3 Gross living area is defined as that floor area within the perimeter of the outside walls or corridor walls and centerline of party/tenant separation walls

11.08 – Reconstruction of Buildings

a. Any structure damaged or destroyed by fire, explosion, or by any other means including flood, storm, earthquake or other act of God may be repaired or reconstructed, however, if a nonconforming structure is destroyed or damaged to a degree equal to or greater than 75 percent of its equalized assessed valuation, when rebuilt it shall thereafter conform to the provisions of this ordinance.

b. Any structure, the use of which is non-conforming, that is damaged or destroyed by fire, explosion, or by any other means including flood, storm, earthquake or other act of God may be repaired or reconstructed within one year of the date the damage occurred, however, if the structure is destroyed or damaged to a degree equal to or greater than 75 percent of its equalized assessed valuation, when rebuilt it shall thereafter conform to the provisions of this ordinance.

c. Every owner, whether individual, partnership, corporation or other entity shall cause to be repaired any damaged structure that poses a threat to the public health or safety as determined by the Building Official and/or to remove all debris, ruins, and other waste material within one (1) year following the date on which the structure was damaged or destroyed. Owners involved in legal proceedings resulting from the loss or damage to said structure(s), shall comply with the terms of this part within one (1) year following the date of settlement of any such legal proceedings.

11.09 Adoption of Plumbing Codes

That a certain document, one copy of which is on file in the office of the Town Clerk, one copy of which is kept in the Office of Community Development being marked and

designated as "The International Plumbing Code 2000" thereto as published by the International Code Council be and is hereby adopted as the Plumbing Code in the Town of Merrimack in the State of New Hampshire; for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, conditions and terms of The International Plumbing Code 2000,, are hereby referred to, adopted, and made a part hereof, with the additions, insertions, deletions and changes, if any, prescribed in Section 11.10 of this ordinance.

11.10 Amendments to the International Plumbing Code 2000

11.10.1 Title Insert 'Town of Merrimack, New Hampshire"

11.10.2 Add Section 106.6.2 Fee Schedule:

The Building Official shall establish the fees for plumbing permits and inspections. Not less than thirty (30) days prior to the implementation of any fee schedule or any subsequent amendment to the fee schedule under this section, the Building Official shall publish notice of same and shall conduct a public hearing.

11.10.3 Delete Section 108.4 in entirety and insert the following:

Section 108.4 Penalties: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall install plumbing work in violation of an approved plan or directive of the plumbing official, or of a permit or certificate issued under the provisions of this Code, shall be subject to the criminal and civil fines and penalties pursuant to Section 10 of the Town of Merrimack Zoning Ordinance and Building Code.

11.10.4 Delete Section 108.5 and insert the following:

Section 108.5 Unlawful Continuance: Any person who shall continue any plumbing work in or about the structure after having been served with a Stop Work Order, except such work as he is directed to perform to remove a violation or unsafe condition, shall be subject to the criminal and civil fines and penalties pursuant to Section 10 of the Town of Merrimack Zoning Ordinance and Building Code.

11.10.5 Delete Section 109 in entirety and replace with the following:

Section 109.1 The Board of Adjustment of the Town of Merrimack shall act as the Board of Appeals according to the regulations and procedures set forth in the zoning ordinance of the Town of Merrimack.

11.10.6 Delete Section 109.7 Court Review in its entirety.

11.10.7 Add Section 301.7 Public Systems Available

A public water supply system and/or public sewer system shall be deemed available to dwellings used for human occupancy if such dwellings or existing

on-site sewerage disposal system are within 200 feet, (measured directly through the dwelling lot perpendicularly from a street, alley, or easement) of the public water supply or sewer system, and a connection conforming with the standards set forth in this code may be made thereto.

11.10.8 Add to Table 608.17.1 "Distance from Sources of Contamination to Private Water Supplies and Pump Suction Lines":

Under `Source of Contamination' column, the category "public right-of-way" and under `Distance (feet), column correspondingly the words "shall not be located within the front yard setback".

11.10.9 Add Section 716 Individual Sewage Disposal Systems

11.10.10 Add Section 716.1 General Approval Requirements: Any private sewage disposal system proposed shall have written approval from Department of Environmental Services, Water Supply & Pollution Control Division and the Building Official, prior to making application for a building and/or plumbing permit.

11.10.11 Add Section 716.2 Septic Tanks: Discontinued use of private sewage disposal systems as required in the Town Sewer Ordinance shall govern this section.

Drain pipe connections to abandoned holding tanks for individual on-site sewage disposal systems shall be plugged with cast iron, masonry, or other suitable watertight stop at points of tie-in with new drains to sewers. All holding tanks other than those constructed of concrete, for individual on-site disposal systems, that are abandoned shall be drained and filled with gravel or clean fill.

11.11 - Adoption of Life Safety Code, NFPA-101, 2000

That a certain document, three (3) copies of which are on file in the office of the Town Clerk, in the office of the Building Official, and in the office of the Fire Chief being marked and designated as the "Life Safety Code, NFPA-101, 2000" is hereby adopted as the Life Safety Code of the Town of Merrimack.

11.12 - Adoption of Fire Prevention Code, NFPA-1, 2000

That a certain document, three (3) copies of which are on file in the office of the Town Clerk, in the office of the Building Official, and in the office of the Fire Chief being marked and designated as the "Fire Prevention Code NFPA-1, 2000" as the Fire Prevention Code of the Town of Merrimack.

11.13 --Adoption of International Mechanical Code 2000

That a certain document, one copy of which is on file with the Town Clerk, one copy of

which is kept in the Office of Community Development, being marked and designated as "The International Mechanical Code 2000" as published by International Code Council be and is hereby adopted as the Mechanical Code of the Town of Merrimack in the State of New Hampshire for the control of buildings and structures as herein provided, and each and all of the regulations; provisions, conditions and terms of the International Mechanical Code, 1996, are hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, described in Section 11.13 of this ordinance.

11.13.1 Section 101.1 Insert "Town of Merrimack".

11.13.2 Delete Sections 106.5.2 and 106.5.3 as written:

11.13.3 Add Section 106.5.2 Fee Schedule: "Fee Schedule for Building Construction in the Town of Merrimack."

11.13.4 Delete Section 108.4 as it now reads and replace with the following:

Section 108.4 Penalties: Any person who shall violate a provision of this Code or shall fail to comply with any other requirements thereof, or who shall erect, construct, alter or repair mechanical equipment or systems in violation of any approved plan or directive of the building official, or of any permit or certificate issued under the provisions of this Code, shall be subject to the criminal and civil fines and penalties pursuant to Section 10 of the Town of Merrimack Zoning Ordinance and Building Code.

11.13.5 Delete Section 108.5 in its entirety and insert the following:

Section 108.5 Unlawful Continuance: Any person who shall continue any work in or about the structure after having been served with a Stop Work Order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to the criminal and civil fines and penalties pursuant to Section 10 of the Town of Merrimack Zoning Ordinance and Building Code.

11.14 - Reserved

11.15 - Adoption of NFPA 70, National Electric Code 2002 edition

That a certain document, one copy of which shall be on file in the office of the Town Clerk, and one copy of which shall be located in the office of Community Development of the Town of Merrimack, being marked and designated as "NATIONAL ELECTRIC CODE 2002" a.k.a. NFPA 70 and is hereby adopted as the Electric Code of the Town of Merrimack in the State of New Hampshire.

11.16 - Driveways

Permits are required for construction or reconstruction of all driveways. Plan and profile plus site distance shall be submitted to the Department of Public Works for approval. Permit must be issued prior to the issuance of a building permit.

11.17 - Street (House) Numbers

All buildings requiring a certificate of occupancy shall, before said certificate can be issued, display the house number as designated by the House Numbering Committee, if said number has been assigned.

11.18 - Sanitary Facilities at Public Swimming Pools

Any multi-family residential development, including Planned Unit Developments (PUD) or cluster residential developments as described in this ordinance, wherein dwelling units are served by a swimming pool, the pool area shall be equipped with customary lavatory facilities; i.e., toilets, showers.

zosctn11

SECTION 12 - VALIDITY

12.01 - Validity

If any section, clause, provision or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or impair any other section, clause, provision or portion of this ordinance.

Zosctn12

SECTION 13 - ADOPTION & AMENDMENTS

13.01 - Adoption

The provisions of this ordinance may be amended or changed per the provisions of the Merrimack Town Charter, as most recently amended.

Approved June 29, 1953
Amended March 9, 1954
Amended March 12, 1957
Amended March 14, 1961
Amended October 16, 1961
Amended November 10, 1964
Amended September 13, 1966
Amended March 12, 1968
Amended March 9, 1971
Amended November 7, 1972
Amended March 6, 1973
Amended March 5, 1974
Amended November 5, 1974
Amended March 4, 1975
Amended November 25, 1975
Amended March 12, 1976
Amended March 8, 1977
Amended March 14, 1978
Amended March 13, 1979
Amended May 13, 1980
Amended May 12, 1981
Amended May 11, 1982
Amended November 2, 1982
Amended March 22, 1983
Amended May 10, 1983
Amended May 8, 1984
Amended May 14, 1985
Amended May 13, 1986
Amended May 12, 1987
Amended May 10, 1988
Amended May 9, 1989
Amended May 8, 1990
Amended May 14, 1991
Amended May 12, 1992
Amended May 10, 1994
Amended May 9, 1995
Amended May 14, 1996
Amended April 8, 1997
Amended March 10, 1998
Amended March 9, 1999
Amended March 14, 2000
Amended April 10, 2001
Amended April 9, 2002
Amended April 8, 2003
Amended April 13, 2004
Amended April 12, 2005
Amended April 11, 2006
Amended November 6, 2008
Amended August 27, 2009
Amended February 11, 2010
Amended September 11, 2014
Amended May 14, 2015
Amended September 10, 2015
Amended October 27, 2016

13.02 - Authority to assign section numbers

The Planning Board has the authority to assign such section numbers to the Zoning Ordinance and Building Code as it may deem appropriate provided that no substantive change to the ordinance shall occur as a result of this renumbering.

Zosctn13

SECTION 14 - LOCAL REGULATION OF EXCAVATION *[revised 5/14/15]*

14.01 - General

A. This ordinance is enacted pursuant to the authority granted the Town of Merrimack to regulate earth moving activities within its boundaries under the provisions of Chapter 155-E: Sections 1-11 inclusive, of the N.H. Revised Statutes Annotated.

B. The Planning Board of the Town of Merrimack is designated the "Regulator" as provided in RSA 155-E: 1, III, and shall have all powers and duties granted thereto by RSA 155-E: 1-11, inclusive.

14.02 - Regulations

Pursuant to its responsibility as the regulator, and in accordance with the provisions of RSA 155-E: 11, the Planning Board is hereby authorized to adopt and from time to time amend regulations governing earth moving activities within the Town of Merrimack to ensure that said activities are conducted in a safe manner in accordance with sound environmental practice and to further provide proper assurances that suitable restoration of affected areas are obtained.

14.03 - Administration

A. No person, firm or corporation shall within the Town of Merrimack undertake any clearing, grading, removal, excavation or other disturbance of land without first obtaining a permit from the Planning Board.

B. Said permit shall be granted pursuant to the provisions of RSA 155-E: 1-11, as well as any additional regulations the Planning Board may have adopted for such purpose.

C. The Planning Board may adopt, and from time to time amend, a permit fee schedule so as to recover all reasonable costs of administration of this Section 14, as well as all inspections.

14.04 - Enforcement

A. The Planning Board may appoint an Enforcement Officer to enforce the provisions of any permit issued hereunder. Said enforcement officer shall have the powers and duties prescribed in RSA 155-E:10.

B. Any owner of an existing earth excavation operation lawfully in existence prior to the effective date of this ordinance and which is subject to the provisions thereof may continue such existing operation with permit as previously granted by the Town Council

Section 14.04 - Local Regulation of Excavation - Enforcement (continued)

provided such operation is not substantially altered or enlarged except in conformance with this ordinance or any regulations adopted pursuant thereto and further provided that the owner shall suitably restore said area of operation within one-year period following the intended cessation of the excavation or any completed section thereof so as to secure the area against any unsafe or hazardous conditions which may endanger the health and safety of the general public.

Zosctn14

SECTION 15 - PLANNED UNIT DEVELOPMENT (PUD)

15.01 - Purpose: Requirements

The purpose of these provisions relating to Planned Unit Developments (PUD) is to promote efficient use of land and utilities by providing an optional pattern of site development different from one in which there is a division into lots for each structure. The exercise of the option is subject to the regulations within this Section. These regulations are intended to allow site plans that will preserve open space; which will provide varied land uses; variety of housing types; which will establish varied forms of land ownership and home ownership; which will lead to private and public economies in the development of land and the construction of housing, which will provide for supporting facilities on a tract of land and which will have a positive economic impact on the Town.

Planned Unit Developments proposed under this Section are, for the purposes of this ordinance, deemed to be subdivisions as defined in Chapter 672:14, Definitions, of the New Hampshire Revised Statutes Annotated, inasmuch as such PUD's are construed to constitute a division of a lot, tract or parcel of land into two (2) or more sites. PUD's under this Section will be subject to approval by the Planning Board under the general authority given it in accordance with Chapter 674:35-42, Revised Statutes Annotated.

15.02 - Procedures

Applications for approval of a Planned Unit Development (PUD) shall be made to the Planning Board and shall contain the elements and information as described in this Section. The application shall consist of a request in writing from the owner, owners, or agents for the owners, of the tract, lot or parcel of land in question and shall include all necessary site plans and documents. The deadline for submittal, hearing notices and for consideration of a PUD application shall be as required under Chapter 674:35-42, Revised Statutes Annotated.

Once an application for approval of a Planned Unit Development has been submitted, no building permit for anything but ordinary maintenance and repair of any structure previously existing on the tract, lot or parcel of land for which an application is submitted shall be issued unless there is a PUD site plan approved by the Planning Board, and no building permits for new construction shall be issued unless there is a PUD site plan approved by the Planning Board.

15.03 - General Regulations

In addition to other requirements, a PUD shall conform to the Subdivision Regulations and the Non-Residential Site review regulations of the Town of Merrimack and the following:

Section 15.03 - General Regulations (continued)

A. Minimum Size

A PUD will be considered for undivided tracts, lots or parcels of land having a minimum size of twelve (12) acres and said tract, lot or parcel must be serviced by municipal water (Merrimack Village District and/or Pennichuck Water Works) and sewer (Town of Merrimack and/or City of Nashua Waste Water Treatment Facilities). Said tract, lot or parcel must be in the Planned Residential District.

B. In evaluating and approving the general design and layout of a PUD, the Planning Board may require that portions of the PUD be so designed as to complete any street or utility systems that abut the tract, lot or parcel of a PUD. The Board may also require a design or layout of a PUD to be consistent with any prior approved subdivisions that exist on the tract, lot or parcel of a PUD or consistent with prior approved subdivisions on abutting properties.

C. The applicant shall submit a statement of projected environmental impact substantiated with data and/or professionally certified information including the following elements:

1. Adequacy of proposed parking for the use intended in accordance with Section 18.

2. Statement of effect on pedestrians and vehicular traffic on abutting streets.

3. Statement of adequacy of utility systems for the provision of water service, fire protection, sewer service, and storm drainage in accordance with the Subdivision Regulations of the Town of Merrimack.

4. Statement of suitability of the proposed drainage system and effect on abutters.

5. Statement of noise, smoke, odor, vibration, lighting, control methods and procedures.

6. Statement certifying ownership of the land upon which the development is proposed.

7. Statement of effect on the public school system.

8. Statement of adequacy of the open space and recreation provisions of the design in meeting the needs of the residents of the PUD.

9. Statement of economic impact to Town and School District facilities and services.

D. Planned Unit Development (PUD) shall be subject to approval by the Planning Board and shall be subject to the following design guidelines:

1. In the design review process for a Planned Unit Development the applicant(s) and the Planning Board shall recognize the special nature of this form of development.

Section 15.03 - General Regulations (continued)

Because of the nature of the areas in which Planned Unit Developments may be built, the development should: 1) be integrated into the surrounding neighborhood in such a way that overall visual qualities between old and new are complimentary; and 2) provide adequate open space as an integrated element of the design.

2. In the preparation of the site plan for a PUD, while it is not mandatory, it is recommended that the applicant secure the services of a professional landscape architect, architect, or land planner to assist in development of the plan. The Planning Board may secure at its discretion, similar consulting services to advise the board in its evaluation of PUD proposals in accordance with the Subdivision Regulations of the Town of Merrimack. It is to the advantage of both the applicant(s) and the Town of Merrimack that a proposed PUD plan represent the highest quality at the time of its submission.

3. In evaluating the data submitted under this Section, the Planning Board shall follow these general design guidelines in so far as is practical:

   a) The scale and size of building proposed to be placed along existing street frontages shall be related to, and harmonize with, existing buildings in the immediate street vicinity of the tract proposed for PUD.

   b) The design of the PUD shall be directed toward establishing a sense of place. Inward oriented placement of buildings, streets, open space and recreational facilities is desired.

   c) The applicant shall submit the external architectural design of the PUD to ensure that it complies with the goals of harmonious existence with the neighborhood and the environment. Materials, colors, and buildings should be compatible with the existing landscape of the tract and with surrounding buildings.

   d) Prominent landscape features should be respected in the plan. A topographic map shall be prepared and existing landscape features noted.

   e) The plan for a PUD shall provide a continuity of open space throughout the tract. Open space and other recreation within the PUD shall be related to projected overall Town plans for such improvements to ensure that the continuity of open space should not be limited to trails and paths, although these are desirable features of the design.

   f) Streets within the PUD should be related to projected overall town plans for vehicular circulation improvements.

Section 15.03 - General Regulations (continued)

g) While not mandatory, it is suggested that the applicant confer with the Planning Board early in the design process to facilitate an understanding of the PUD on the part of both parties.

E. Sanitary Facilities at Public Swimming Pools

Any multi-family residential development, including Planned Unit Development (PUD) or cluster residential developments as described in this ordinance wherein dwelling units are served by a swimming pool, the pool area shall be equipped with customary lavatory facilities; i.e., toilets, showers.

15.04 - Residential Uses

Provisions regulating residential uses in a PUD are provided in the following section.

A. Residential uses in a PUD may include single family detached dwellings on separate sites or individual lots, attached dwellings, which may be two family dwellings or townhouses, and multi-family dwellings.

B. Total residential densities in a PUD shall be in accordance with Table I. For the purposes of this section the maximum land area to be used in determining the maximum number of dwelling units permitted shall exclude all wetland soils and 100 year flood plain areas as defined elsewhere in this ordinance, and all land with slopes greater than 25 percent and land encumbered with overhead electric power line easements.

C. The PUD shall not exceed a total of four hundred (400) dwelling units. No dwelling unit, or other structure, shall be placed closer than fifty (50) feet to the PUD property line. Whenever the PUD abuts an existing single family dwelling, or lot within a prior approved subdivision, attached dwellings shall be placed no closer than seventy-five (75) feet to the PUD property line, and multi-family dwellings shall be placed no closer than one hundred (100) feet to the PUD property line. The buffer strips created in conformity with this section shall be landscaped and shall contain no more than twenty-five (25) percent of all required parking space.

15.05 - Non-Residential Uses

Certain non-residential uses shall be established with a PUD.

In considering the non-residential uses, the Planning Board may require submittal of information and evidence to the effect that such planned uses are needed.

Section 15.05 - Non-Residential Uses (continued)

A. For a PUD, permitted non-residential uses shall include the following:

1. Indoor or outdoor recreation facilities or open space of sufficient size and character to be suitable for use for recreation by the residents of the PUD. These facilities shall be functionally and attractively related to structures, permanently related to the structures by deed or otherwise, and owned and maintained in such a way as not to become a burden to the Town.

2. Sales office for the sale or rental of property in the PUD.

3. Commercial uses including retail, office and personal and professional services.

B. Space allocated for non-residential uses, other than recreational facilities limited to the use of residents, shall be limited in size in accordance with the number of dwelling units. For each dwelling unit in the PUD there may be permitted the construction of gross floor area of non-residential space as specified herein in accordance with Table II.

15.06 -Timing of Development Actions

In submitting a plan for the development of a PUD, the developer shall submit on a plan the phasing of the development.

Table I
Dwelling Unit Density

Type of Unit	No. Dwelling Units/ Gross Acre (43,560 sq. ft.)
1 Bedroom Housing for the Elderly	8
1 Bedroom	7
2 Bedroom	6
3,4, or 5 Bedroom	3

Table II
Non-Residential Gross Floor Area

75 sq. ft./Dwelling Unit

Additional square footage at the discretion of the Planning Board

Zosctn15

SECTION 16 - OFF-SITE IMPROVEMENTS

A. Purpose

This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to promote public health, safety, convenience, welfare, and prosperity; ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Merrimack; prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services; provide for the harmonious development of the municipality and its environs; ensure the proper arrangement and coordination of streets; and, ensure streets of sufficient width to accommodate existing and prospective traffic.

B. Off-Site Improvement Defined

Off-Site Improvement: Within the meaning of this section, an off-site improvement is any improvement to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities, public road systems and rights-of-way that are directly attributable to and necessitated by any development, including subdivision, building construction or other land use change.

C. Off-site Improvements

The Planning Board may, as a condition of approval of any subdivision or site plan require an applicant to complete any off-site improvements, as defined above, that are directly related to and necessitated by a proposed development.

Off-site improvements required under this section shall be completed by the applicant prior to the issuance of a certificate of occupancy unless the Planning Board determines that any such improvements must be completed prior to the issuance of a building permit in the interest of public health or safety. The Planning Board may accept bonds, letters of credit, liens, or other suitable measures of security in lieu of actual construction.

D. Administration

1) Accounting: In accord with RSA 673:16, II and RSA 674:21, V(c), any fees accepted under Section C above in lieu of construction shall be accounted for separately, shall be segregated from the Town's general fund, and shall be used solely for the capital improvements for which they were collected.

2) Refund: Any portion of any fee collected in lieu of construction which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected, shall be refunded, with any accrued interest, to the assessed party or successor in interest:

SECTION 16 - OFF-SITE IMPROVEMENTS (continued)

a) When the subdivision or site plan approval expires under the respective rules of the Planning Board, or under the terms of the decision, without having become vested under RSA 674:39, and without any extension being granted by the Planning Board; OR

b) When such approval is revoked under RSA 676:4-a; OR

c) Six years after its collection, or, if any extension of approval is granted by the Planning Board, six years after such extension is granted; OR

d) Six years after its collection whenever the improvement for which the fee was collected has not been completed.

E. Applicability

Nothing in this section shall be construed to limit the existing authority of the Planning Board to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the Planning Board's authority to require off-site work to be performed by the applicant, in lieu of paying a fee or the board's authority to impose other types of conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, town ordinances or regulations.

Zosctn16

SECTION 17 - SIGNS *[revised 10/27/16]*

17.01 - Purpose

The purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.

17.02 - Severability

If any part of this section, subsection, sentence, clause, or phrase is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted the Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.0

17.03 - Governmental Signs, Signs Required By Law and Flags

Nothing in this section shall prevent the erection, location or construction of signs on private property where such erection, construction or location is required by any law or ordinance enacted by the local, state or federal governments, nor shall any village district or municipally operated utility be prohibited from erecting signs on private property when otherwise permitted. This ordinance does not regulate flags of National, State, Local or historical significance.

17.04 - Permit Required

No sign shall be erected or affixed to any building exterior or placed freestanding on any parcel or altered or moved, without a permit issued by the Building Official and approved by Planning/Zoning Administrator except as otherwise exempted in this ordinance. Signs containing *noncommercial speech* are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.

17.05 - Definitions

The following definitions shall apply throughout these regulations.

1. *Awning*: a removable shelter of canvas, plastic, metal or some other material, extending over a doorway or window and providing shelter from rain or sun.

2. *Awning Sign*: a sign affixed to the surface of an awning but not extending above below or beyond the awning surface.

3. *Banner Sign*: a temporary sign of lightweight material (paper, plastic or fabric) hung either with or without frames. Flags and insignias containing only markings of any government, corporation or business are not considered to be banners.

Section 17.05 - Definitions (continued)

4. *Building Face or Wall*: all window and wall area of a building in one plane or elevation.

5. *Changeable Copy Sign*: a sign on which message copy can be changed through use of attachable letters and numerals excluding electronic switching of lamps or illuminated tubes to form words and numerals. *Changeable copy sign* includes a sign which has automatic switching, limited to time and temperature.

6. *Construction or Project Sign*: a sign erected on a project site prior to or during a construction project.

7. *Directional Sign*: a sign identifying site locations, entrances, exits, parking areas, loading areas, or other messages necessary to direct vehicles or pedestrians to, through or within a site.

8. *Directory Sign*: a sign which identifies or locates the occupants of a building or site.

9. *Electrical Sign*: a sign containing or attached to electrical wiring.

10. *Flashing*: a pattern of changing light illumination where the sign illumination alternates between illuminated and non-illuminated.

11. *Flashing Sign*: a sign containing an intermittent flashing light by means of animation or an externally mounted intermittent light source.

12. *Ground Sign*: a sign erected on a freestanding frame, mast or pole that is not attached to any building.

13. *Illuminated Sign*: a sign lit with either an internal or external artificial light source.

14. *LED*: a Light-Emitting Diode is a semiconductor diode that emits light when a voltage is applied to it.

15. *Marquee*: a permanent roof-like shelter extending from part or all of a building face over a public-right-of-way, and constructed of some durable material such as metal, glass or plastic.

16. *Mobile Signs*: a sign mounted on wheels or a wheeled trailer primarily situated and decorated to display an advertising message.

17. *Nameplate*: a non-electric sign identifying only the name and occupation or profession of the occupant of parcel on which the sign is located. If any parcel includes more than one occupant, nameplate means all names and occupations or professions as well as the name of the building and directional information.

Section 17.05 - Definitions (continued)

18. *Nit*: a unit of visible-light intensity that is used to describe the brightness of a display; one nit is equal to one candela per square meter (cd/m2). For an LED display it is calculated as the following: nit = candela per pixel times pixels per square meter.

19. *Non-commercial Speech*: Any form of speech conducted for personal use or enjoyment without the intent of realizing a profit or recovering costs through the sale of goods or services.

20. *Off-Premise Sign*: a sign visible from a public right of way identifying or advertising a business, person, activity, goods, products or services not located on the parcel where the sign is installed and maintained.

21. *On-Premise Sign*: a sign visible from a public right of way identifying or advertising a business, person, activity, goods, products or services located on the parcel where the sign is installed and maintained.

22. *Premise*: a lot or number of lots on which are situated a building, or group of buildings designed as a unit, or on which a building or a group of buildings are to be constructed.

23. *Projecting Sign*: a sign, other than a wall sign, which is attached to, and projects more than eighteen inches from a building face or wall.

24. *Real Estate Directional Signs*: real estate signs advertising an open house and located off premises.

25. *Real Estate Sign*: a sign advertising exclusively the sale, rental, or lease of the premises, or a portion thereof, upon which the sign is located. Such sign must be removed within fifteen days after the closing of sale, rental or lease.

26. *Roof Sign*: a sign erected upon, against or directly above a roof, or on the top of or above the parapet of a building.

27. *Rotating Sign*: a sign, or portion of a sign, which moves in a revolving manner.

28. *Scrolling Graphics*: a mode of message transition on an electronic message display sign where the message appears to move across the display surface.

29. *Sign:* a permanent or temporary structure, device, two or three dimensional object or any combination of words, letters, figures, lights, designs, pictures, insignias, emblems, logos, banners, pennants or flags visible to the public from the outside of a building that conveys a message to the public in order to advertise, inform, identify, direct, invite or draw attention to any business, goods, products, facilities, services, activities or events that are available, provided or conducted on or off the premises. "Sign" includes any permanently installed and prominently displayed merchandise and for the purpose of removal also includes the sign structure.

Section 17.05 - Definitions (continued)

30. *Sign, Electronic Message Display*: an electronic changeable sign capable of displaying text, symbols, figures or graphics, which can be electronically or mechanically changed by remote or automatic means, and incorporates both Electronic Changeable Copy and/or Electronic Graphic Display signs.

    a. *Sign, Electronic Changeable Copy*: a sign or portion thereof that displays electronically non-pictorial, text information in which each alphanumeric character or symbol is defined by some number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area. Electronic Changeable Copy includes computer programmable, microprocessor controlled electronic displays. Electronic changeable copy does not include time and temperature signs.

    b. *Sign, Electronic Graphic Display*: a sign or portion thereof that displays electronic static images, static graphics, or static pictures, with or without text information, defined by some number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area where the message change sequence is accomplished immediately or by means of fade, re-pixelization or dissolve modes. Electronic Graphic Display Signs include computer programmable, microprocessor controlled electronic displays.

31. *Sign Structure*: a structure which supports or is capable of supporting a sign, including decorative cover. A sign structure may be a single pole and may or may not be an integral part of a building or structure.

32. *Temporary/Portable Sign*: a sign which is not permanently installed or affixed to any sign structure or building.

33. *Transition*: a visual effect used on an electronic message display to change from one message to another.

34. *Wall Sign:* a sign attached to, painted on or erected against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of the wall. "Wall sign" also includes any sign erected against, installed on or painted on a penthouse above the roof of a building as long as the wall of the penthouse is on a plane parallel to the wall of the building, and a sign attached to, painted on or erected against a false wall or false roof that does not vary more than thirty degrees from the plane of the adjoining elevation.

17.06 - Permit Not Required

The following signs may be erected without a permit and are not included in the maximum sign area allowed unless otherwise indicated, but must comply with all other requirements of this ordinance:

17.06 - Permit Not Required (continued)

1. In all districts, one (1) sign shall be allowed on a residential property for each residence. Each sign shall have a maximum area of four (4) square feet, shall be a maximum of six (6) feet high and may not be located within ten (10) feet of an abutter or public right-of-way. Additional signage may be permitted per Section 17.09.2.

2. Wall plaques or markers on properties where a structure has been identified as historic by a local, state or federal agency.

3. In order to maintain public safety, directional or directory signs, no greater than four (4) square feet, which are located outside of setback areas and are not visible from the public right-of-way or abutting properties. Other directional or directory signs are governed by section 17.10.

4. Signs affixed to the interior side of a window so as to be visible from the exterior.

5. In order to maintain public safety, utility signs which identify the location of utility lines, cables, or pipes.

6. Lettering, logos or graphics affixed to products or packaging.

7. In order to maintain public safety, nameplate signs, not to exceed two (2) square feet, showing street addresses, property numbers, names of occupants of the premises, or other identification.

8. Signs installed by governmental bodies.

9. Signs for public safety and/or information, including Electronic Changing Signs (Message Centers).

17.07 - Prohibited Signs in All Districts

1. Rotating and Revolving Signs

2. Flashing Signs

3. Billboards

4. Any changes made to the display of any sign which occurs more often than once in a twenty (20) minute period, with the exception of a time/temperature display.

17.08 - Temporary Signs

In all districts, one (1) temporary sign shall be allowed on each property in accordance with the following standards. For properties that are currently for sale, rent or lease, one additional temporary sign is permitted for the duration that the property maintains that status.

17.08 - Temporary Signs (continued)

Temporary signs that comply with the following standards do not require a permit. All signs that do not follow these standards shall be permitted in accordance with Section 17.04.

1. set back not less than ten (10) feet from any public right-of-way;

2. set back not less than twenty (20) feet from any intersection;

3. maintained for a period no longer than thirty (30) days in any consecutive ninety (90) day period whatsoever, and

4. no larger than thirty-two (32) square feet in area.

17.09 - Signs in Residential Zones

Except as provided in subsection 17.06, only the following signs shall be permitted in residential zones:

1. For public safety, Permanent Subdivision Identification Signs: One (1) single or double-faced ground sign per entrance into a development with a maximum of two per development, non-illuminated, in areas set back from vehicle or pedestrian traffic. The signs shall not exceed a total area of 32 square feet per sign, and shall be set back a minimum of twenty (20) feet from any intersection and shall be located on common land or land covered by appropriate easements and maintained by a homeowners association.

2. Home Occupation Signs: One (1) home occupation sign, not to exceed two (2) square feet, in accordance with Section 2.02.1.A.2 of the Zoning Ordinance.

3. Nonresidential Signs: One single or double face sign identifying any nonresidential use permitted in a residential zone. Area may not exceed six (6) square feet and such signs shall not be illuminated, rotate, or flash.

17.10 - Commercial and Industrial Districts

Except as provided for in Section 17.06, only the following signs are permitted in commercial and industrial zones; and no more than two major sign types (ground, roof, wall and projecting) are permitted per parcel.

1. Residential Signs: Residential signs within these zones are subject to the regulations of Section 17.06 and 17.09.

2. Temporary Signs: In addition to signs permitted under Section 17.06, temporary signs for nonresidential uses are permitted, in accordance with the requirements of Section 17.08.

17.10 - Commercial and Industrial Districts (continued)

3. Ground Sign: One (1) ground sign is permitted for each site with three-hundred (300) feet of contiguous frontage or less. Where a parcel has more than three-hundred (300) feet of contiguous frontage along the same right-of-way, it may have two ground signs, or the occupant may elect to combine the allowable area of two ground signs into one ground sign with a maximum allowable area of 64, 96, 96 or 150 square feet (corresponding to Table 17-1, below.) All ground signs shall display the property address number. Numbers shall be a minimum of 6 inches in height.

TABLE 17-1

Traffic Speed Allowed	No. of Traffic Lanes	Maximum Area in Sq. Ft.
0-35	2	32
40-50	2	48
0-35	4 or more	48
40-50	4 or more	100

a) For corner or double frontage lots, one additional ground sign is permitted for each additional street or road from which frontage and access to the site is provided, however, the area of such additional signs shall not exceed fifty (50%) percent of the maximum sign area allowed for the site's principal ground sign(s) and such additional signs may not be located within fifty (50) feet of any intersection.

b) Ground signs must be set back at least 20 feet from the edge of any public right-of-way except as in such instance as the zoning ordinance shall require a greater setback. The maximum permitted area of any ground sign shall not exceed the figures shown in Table 17-1 for each face of a multi-face sign or for the sole face of a single face ground sign:

c) No ground sign may exceed in height the distance of any portion of the sign to the center of the adjoining public right-of-way, and the maximum height of any portion of any ground sign or sign structure shall be 40 feet from street grade regardless of location. (See figure 5, Appendix to this section.)

d) Two or more owners of adjacent separate parcels zoned for commercial use may combine their street or highway frontages and erect one ground sign. No other ground signs shall be permitted on either of the adjacent parcel if the owners make such an election, and the ground sign may not exceed in area or height the maximum allowable by all other provisions of this subchapter.

17.10 - Commercial and Industrial Districts (continued)

e) Where parcels zoned for commercial or industrial use are within one-hundred (100) feet on the same public right-of-way of any parcel zoned for single-family use, ground signs erected and maintained on the commercial or industrial property may not exceed 20 feet in height above the ground at the base of the sign structure or the base of the building, and ground signs must be set back from the public right-of-way the same distance as is required for residential structures on the adjacent residentially zoned property. This provision affects only signs on commercial or industrial property on the same block and on the same right-of-way as the residential property.

4. Wall Signs:

a) If there is no ground or projecting sign, the maximum area shall be two times the length of the side of the building on which the sign is to be located in square feet. (See figure 6, Appendix to this section.)

b) If there is a ground sign or projecting sign, the maximum area shall be one times the length of the side of the building on which the sign is to be located in square feet. (See figure 7, Appendix to this section.)

c) If there is a projecting but no ground sign, the maximum area shall be one times the length of the side of the building on which the sign is to be located in square feet. (See figure 8, Appendix to this section.)

d) Wall signs consisting of non-illuminated letters up to but not exceeding three inches high are not restricted provided that they are in compliance with the total area designations as outlined in (a), (b) and (c) above.

e) Any building with an actual or false roof varying not more than 30 degrees from a vertical plane, or any building with a portion or all of a wall built not more than 30 degrees from a vertical plane, shall have such a mansard-type wall or roof considered wall space for the purpose of determining allowable sign placement.

f) Wall signs may not project more than three feet above the top of a parapet wall or the roof line at the wall, whichever is higher.

g) For a parcel with or proposing more than one business establishment, each discrete business establishment within the parcel shall be entitled to one wall sign. The maximum area of each shall be two times the length of that portion of the total building length occupied by the individual business on which the sign is to be located in square feet. If a discrete business establishment also has a ground sign the maximum area of their wall sign shall be one times the length of that portion of the total building length occupied by the individual business per Section 17.10.4(b) above.

17.10 - Commercial and Industrial Districts (continued)

h) Businesses having more than one exterior wall shall be entitled to one wall sign per wall sized according to the formula in 4(a), (b) and (c) above.

i) The total sign area of a wall sign or awning sign or any combination of a wall sign and awning sign shall not exceed the total wall sign area permitted herein.

5. Directional Signs: One directional sign may be placed on either side of each driveway entrance. The area of each sign may not exceed four square feet.

6. Changeable Copy Signs: Any of the types of signs permitted by this section may be permitted as changeable copy signs.

7. Roof Signs: Roof signs may be used instead of, but not in addition to, wall signs.

Roof signs are subject to the following restrictions:

a) Roof signs may not project over a public right-of-way or public property.

b) All roof signs shall be set back a distance of at least three feet from the outside of the building on or over which they are located.

c) Roof signage may have the same maximum allowable areas as Section 17.10.4.

d) Height of roof signs:

TABLE 17-2

Building Height	Maximum sign height (including any space required under the sign for clearance) above top of roof or parapet wall, whichever is higher.
0-15'	6'
16-20'	7'
21-25'	8'
26-30'	9'
31-35'	10'
36-40'	11'
41-45'	12'
46-50'	13'

e) Roof signs shall be limited to identification of a business or industrial concern only.

17.10 - Commercial and Industrial Districts (continued)

8. Projecting Signs:

a) The two types of projecting signs, a vertical projecting sign, where the vertical dimension is greater than the horizontal dimension, and a horizontal projecting sign, where the horizontal dimension exceeds the vertical dimension, are permitted instead of, but not in addition to, ground signs. Any one parcel is permitted to have one projecting sign along any one public right-of-way. The projecting sign may be used instead of, but not in addition to, a ground sign. Where a parcel is allowed two ground signs, the occupant may elect to substitute a projecting sign for one of the ground signs.

b) The maximum allowable area for a projecting sign shall be:

TABLE 17-3

Traffic Speed Allowed	Number of Traffic Lanes	Area Each Face (Sq. Ft.)
0-35	2	20
40-50	2	48
0-35	4 or more	32
40-50	4 or more	75

c) Projecting signs must have a minimum clearance between the bottom of the sign and the ground of 10 feet, except signs which project no more than thirty inches, which must have a minimum clearance of eight feet six inches.

d) Where a sign projects above a traffic area, such as a driveway, the minimum clearance between the bottom of the sign and the ground may be no less than 14 feet.

e) Projecting signs may not extend more than three feet above the roof line at the wall or the top of a parapet wall, whichever is higher.

f) Permanent copy of each face of a projecting sign in commercial and industrial zones may include only the name of the occupant and the principal activities, goods, products or services located on the premises.

9. Marquee Signs:

a) Marquee signs are allowed to be on, under or part of a permanent marquee, but always attached thereto. Only theaters, gymnasiums, auditoriums, athletic facilities, motels, conference centers, and similar uses for which a marquee is a common part of said use are permitted.

b) A marquee sign may not project more than ten inches beyond the marquee, and never closer than two feet to a curb.

17.10 - Commercial and Industrial Districts (continued)

c) Marquee signs must have a minimum clearance between the bottom of the sign and the ground of not less than eight feet six inches.

d) Where the sign is attached above or below or to the face of the marquee, the same maximum allowable area for projecting signs on the same parcel is allowed. The marquee itself shall not contain animation or flashing lights.

e) Permanent copy on each face of a marquee sign in commercial and industrial zones may include only the name of the occupant and the principal activities, goods, products or services located on the premises.

10. Sign, Electronic Message Display: Signs permitted in section 17.10.3 & 17.10.4 shall be permitted as electronic message display subject to the following:

a) Electronic Message Displays shall display static messages for a period of a minimum of 20 minutes;

b) Transitions from one static message to the next static message may include the use of frame effects, so long as such effects do not utilize flashing, scrolling or in any manner imitate movement;

c) Electronic Message Displays shall have automatic dimming technology which automatically adjusts the sign's brightness levels as specified in Section 11.10 Subdivision Regulations of the Town of Merrimack; and

d) The owner/installer of Electronic Message Displays shall certify as part of the application that signs will not exceed the brightness levels specified in Section 11.10 Subdivision Regulations of the Town of Merrimack.

11. Signage Requirements for Alternative Treatment Centers

a) In addition to the requirements of Section 17.10, Alternative Treatment Centers that have received a Conditional Use Permit and Site Plan approval from the Planning Board shall be subject to the applicable requirements of the NH Health & Human Services Department (DHHS) Administrative Rules (He-C 400, as most recently published or amended by DHHS) pertaining to Advertising Restrictions.

17.11 - Off-Premise Signs

Off premise signs may be erected on parcels of real estate only within the Commercial and Industrial zones. Off premise signs shall be limited to Ground Signs conforming to the regulations provided in Section 17.10.3. A parcel may contain either an On-Premise sign or an Off-Premise sign, but not both, unless it has enough frontage to display two signs (as described in 17.10.3) in which case one sign may be devoted to on-premise advertising and one sign devoted to off-premise advertising.

17.12 - Site Plan Review

A building permit for any ground sign at a nonresidential or multi-family site shall be issued only after approval by the Planning Board in accordance with the Site Plan Review regulations of the Town of Merrimack.

17.13 - Area and Dimensional Calculations

1. Area: The area of a sign is considered to be the area, on the largest single face of a sign, within a perimeter which forms the outside shape of a sign. If the sign consists of more than one module (i.e. Section) the total area of all modules shall constitute the sign area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle or any other easily recognized geometric shape and then computing the area. Where a sign is of a three-dimensional, round or irregular shape, the largest cross section shall be used in a flat projection for the purpose of computing sign area (figures 1-4, Appendix to this title). If a sign is lettered on both sides back to back only one side shall be counted as the total sign area. All appendages or riders are calculated within the area of the sign to which they are appended.

2. Height: The height of a sign is the vertical distance measured from the adjacent undisturbed grade of the sign to the highest point of the sign.

Appendix to Section 17 follows.

17.14 - Appendix

MEASUREMENT OF SIGN AREA –
SINGLE SIGN
(AREA = L X H)

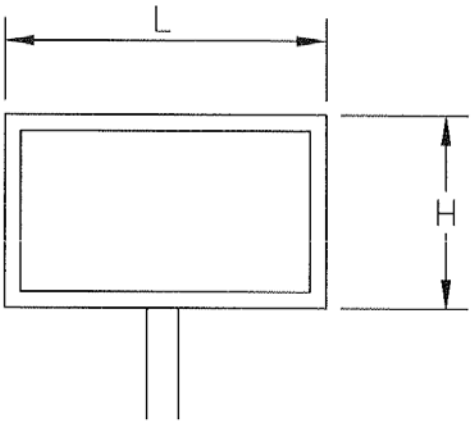


FIG. 1

MEASUREMENT OF SIGN AREA –
MULTIPLE MODULES
(AREA = [A X B] + [C X D] + [E X F])

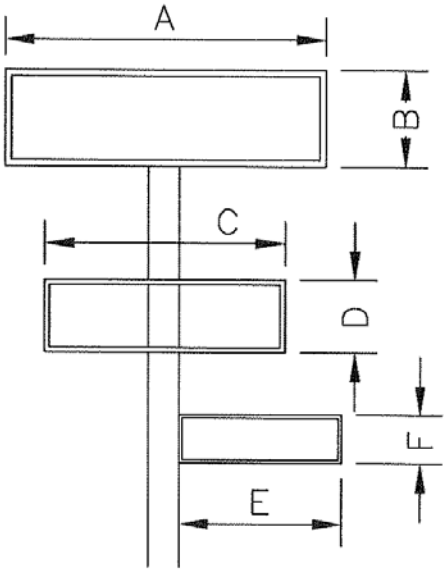


FIG. 2

MEASUREMENT OF SIGN AREA –
3D, ROUND, OR IRREGULAR SHAPED SIGNS
(AREA = USE FORMULA APPROPRIATE FOR SHAPE)

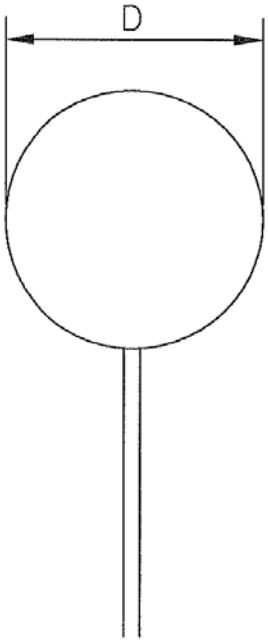


FIG. 3

17.14 Appendix (continued)

MEASUREMENT OF SIGN AREA – IRREGULAR SHAPED SIGN
(AREA = L X H)

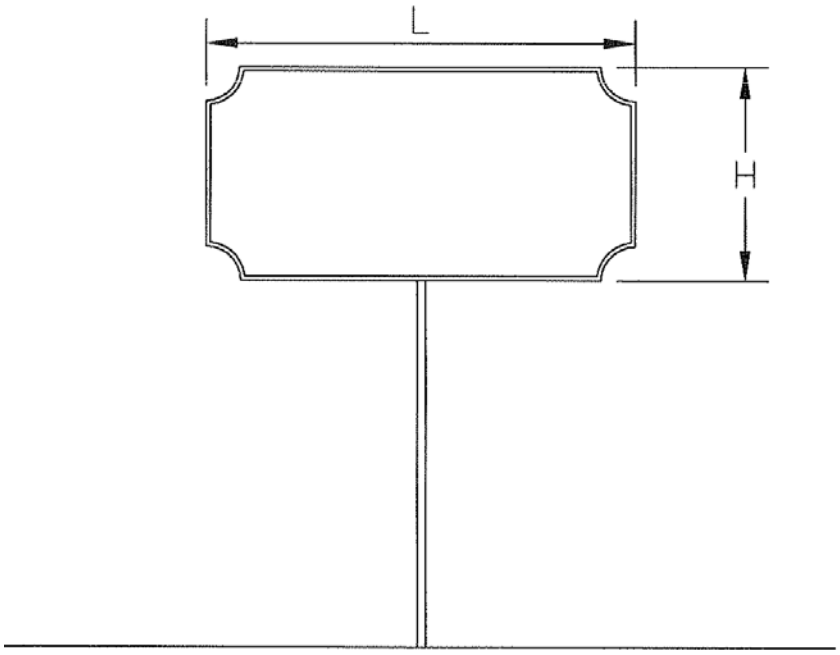


FIG. 4

MAXIMUM HEIGHT OF GROUND SIGN
(MAXIMUM HEIGHT = X; IN NO EVENT GREATER THAN 40 FT.)

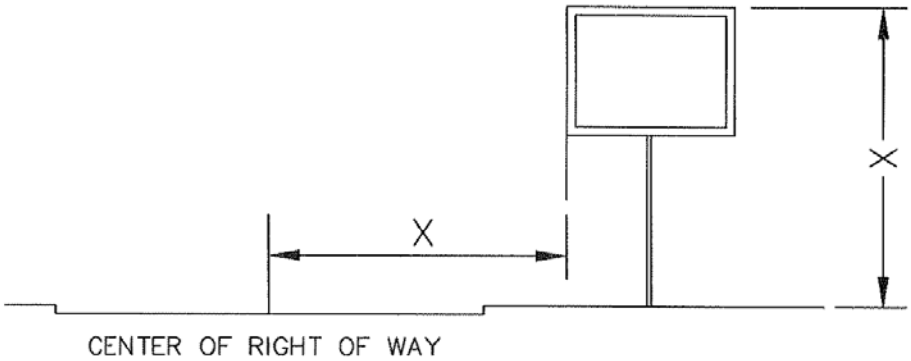


FIG. 5

17.14 Appendix (continued)

MAXIMUM AREA OF WALL SIGN – NO GROUND OR PROJECTING SIGN
(EXAMPLE: 50' X 2 = 100 S.F ALLOWED)

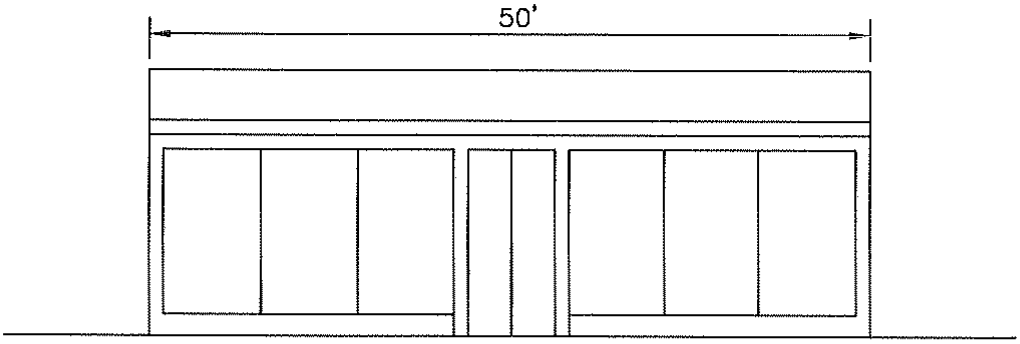


FIG. 6

MAXIMUM AREA OF WALL SIGN –
WITH A GROUND SIGN OR PROJECTING SIGN
(EXAMPLE: 50' X 1 = 50 S.F ALLOWED)

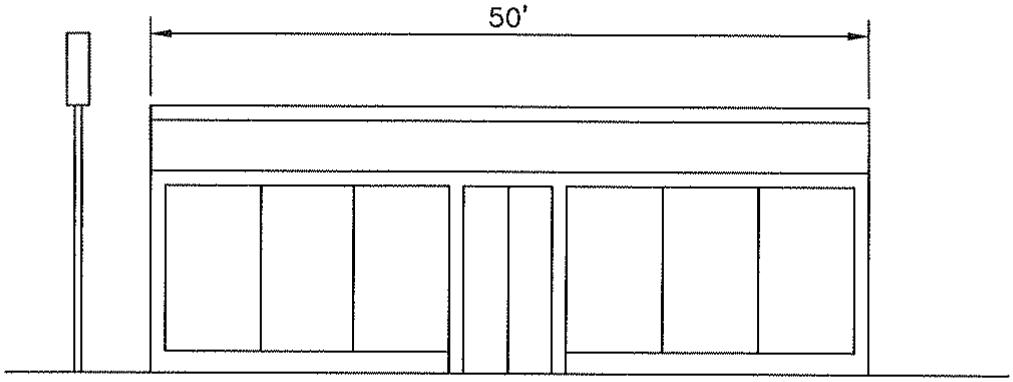


FIG. 7

MAXIMUM AREA OF WALL SIGN –
WITH A PROJECTING SIGN BUT NO GROUND SIGN
(EXAMPLE: 50' X 1 = 50 S.F ALLOWED)

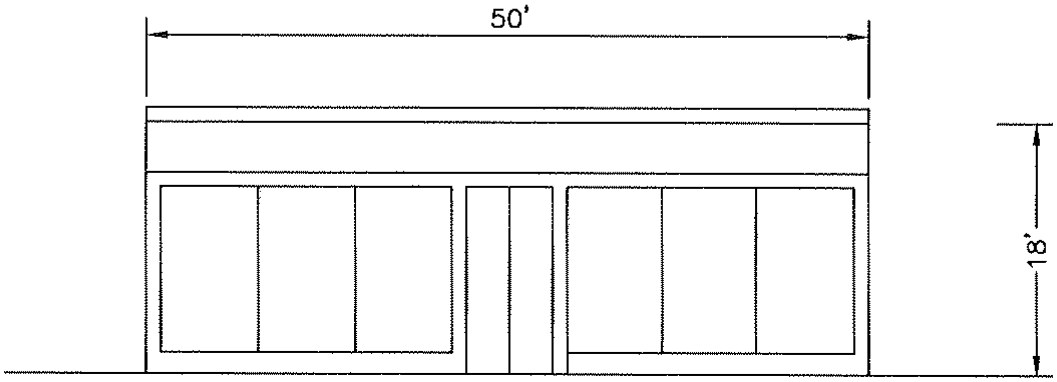


FIG. 8

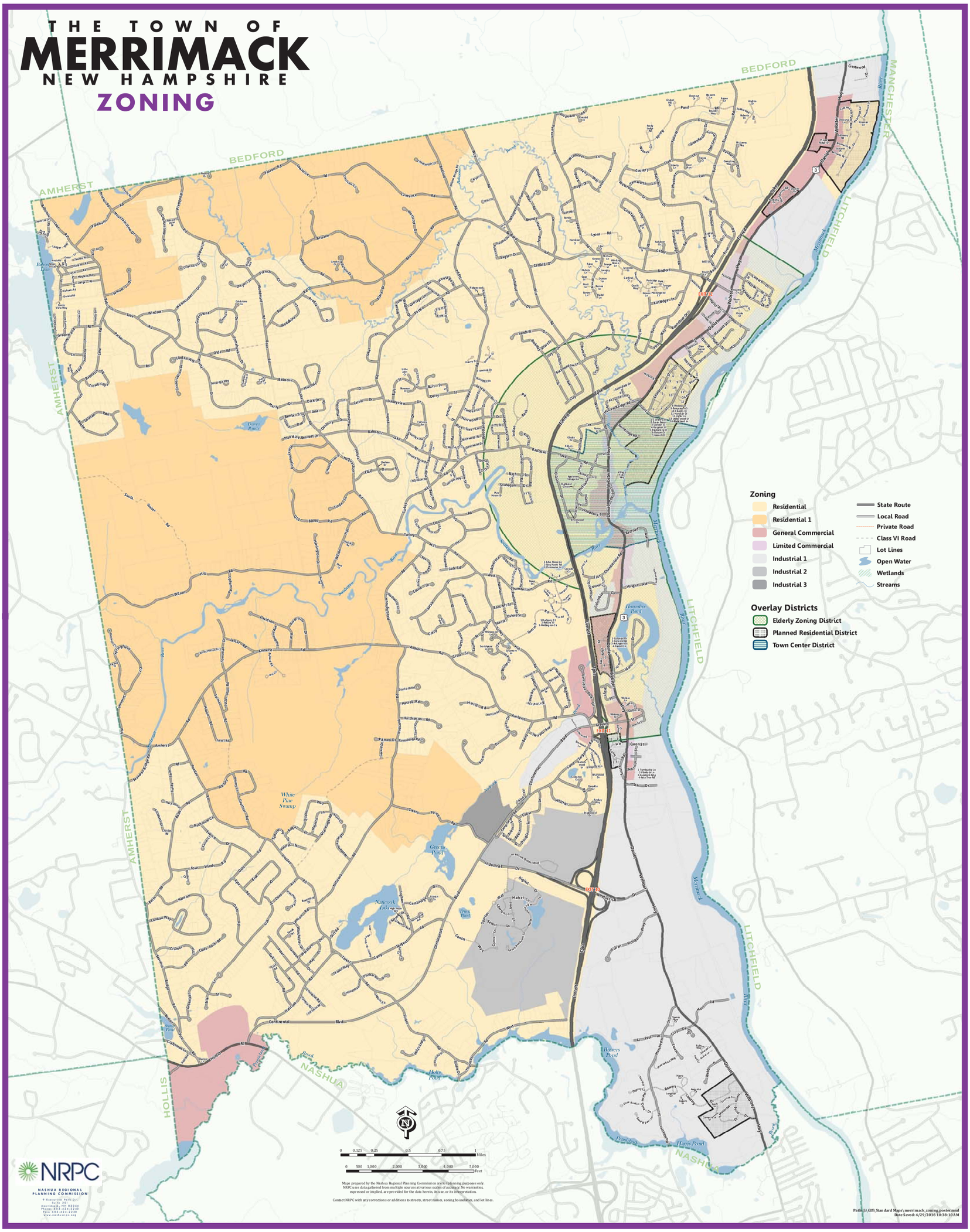
SECTION 18 - PARKING REQUIREMENTS

18.01 - Off-Street Parking

Off-street parking shall be provided for all uses and developments proposed as required by the Planning Board in accordance with RSA 674:43.

THE TOWN OF MERRIMACK NEW HAMPSHIRE

ZONING



NRPC
NASHUA REGIONAL PLANNING COMMISSION
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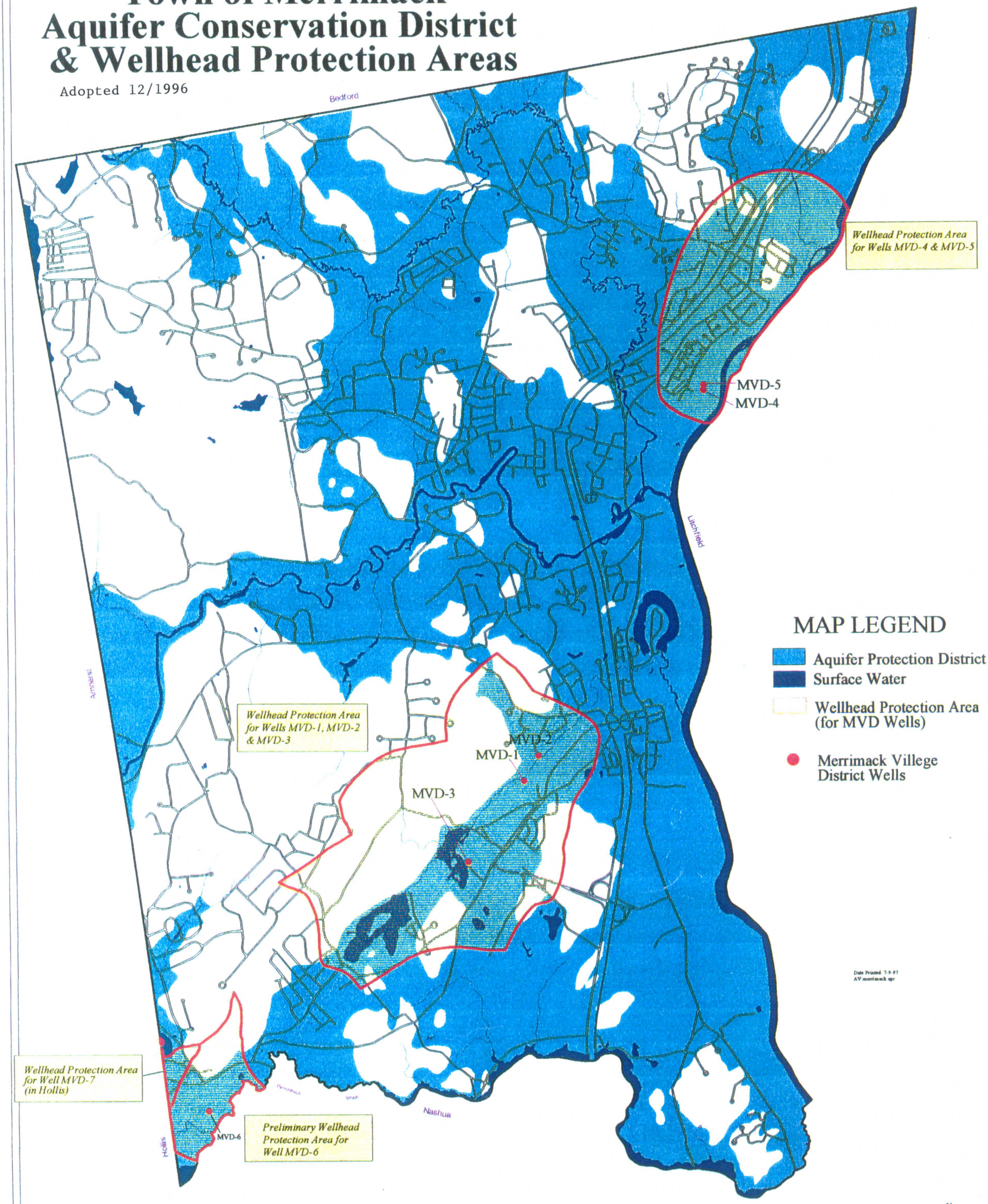
Maps prepared by the Nashua Regional Planning Commission are for planning purposes only. NRPC uses data gathered from multiple sources at various scales of accuracy. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation.

Contact NRPC with any corrections or additions to streets, street names, zoning boundaries, and lot lines.

Path: J:\GIS\Standard Maps\merrimack_zoning_poster.mxd
Date Saved: 4/29/2016 10:38:10 AM

Town of Merrimack
Aquifer Conservation District & Wellhead Protection Areas

Adopted 12/1996



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