TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information**, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: April 24, 2015
Submitted by: Community Development Tim Thompson
Department: C/D
Speakers: Tim Thompson

Date of Meeting: May 14, 2015
Time Required: 5 minutes
Background Info. Supplied: Yes: ☒ No: ☐

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	☐	Recognition/Resignation/ Retirement:	☐
Public Hearing:	☐	Old Business:	☐
New Business:	☐	Consent Agenda:	☒
Nonpublic:	☐	Other:	☐

TITLE OF ITEM

Proposed Zoning Ordinance Amendments [Final Reading]

DESCRIPTION OF ITEM

The Town Council to consider the Planning Board's recommended amendments to the Zoning Ordinance (Sections 1, 2, 3, 5, 6, 7, 8, 9,14 and 17) pursuant to RSA 675:2 and Charter Article V, Section 5-4.

REFERENCE (IF KNOWN)

RSA:	675:2	Warrant Article:	
Charter Article:	5-4	Town Meeting:	
Other:		N/A	

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	☐	Grant Requirements:	☐
Easel:	☐	Joint Meeting:	☐
Special Seating:	☐	Other:	☐
Laptop:	☐	None:	☐

CONTACT INFORMATION

Name:	**Tim Thompson**	Address	**6 Baboosic Lake Road**
Phone Number	**424-3531**	Email Address	tthompson@merrimacknh.gov

APPROVAL

Councilor Dwyer remarked he is aware Councilor Mahon personally finds the position gratifying. With the unfortunate passing of Dave Yakuboff, Councilor Mahon stepped up and filled the position. Councilor Boyd stated appreciation for him having done that and for the experience he brings to the Council.

Vote on the election of Councilor Mahon to the position of Vice Chairman of the Town Council
6-0-1
Councilor Mahon Abstained

Recognitions, Resignations and Retirements

1. **Boston Post Cane Presentation**
   Submitted by Town Council Chairman Nancy Harrington and Vice Chair Tom Mahon
   The Town Council to present the Boston Post Cane to Mr. Roy Ingerson, the Town of Merrimack's oldest known resident.

Chairman Harrington read the following into the record:

"On September 17, 2014, Madeline Bennett, the holder of the Boston Post Cane since 2011, passed away at the age of 100. The Boston Post Cane tradition started in 1909 when the Boston Post Newspaper delivered the gold headed ebony canes to 700 towns in New England and requested the canes be presented to the oldest citizen in town and passed on to the next oldest when he/she dies. To qualify as a resident one must be a physical resident of Merrimack and have resided in Merrimack for 25 years. After conducting a search and receiving several nominations, Roy Ingerson has been chosen as the next recipient. He was born on May 30, 1914, and has been a resident of Merrimack since 1970. Roy will be presented with a replica of the original Boston Post Cane."

Chairman Harrington congratulated Mr. Ingerson. Mr. Ingerson was unable to be in attendance for the meeting. The Town Council will visit him at his residence to make the presentation.

Appointments - None

Public Hearing

1. **Public Hearing – Proposed Zoning Ordinance Amendments**
   Submitted by Community Development Director Tim Thompson
   The Town Council will conduct a public hearing to consider the Planning Board's recommended amendments to the Zoning Ordinance (Sections 1, 2, 3, 5, 6, 7, 8, 9, 14 and 17), pursuant to RSA 675:2 and Charter Article 5.

Director Thompson stated his department was requested by staff within the Town Manager's Office, to make changes to the junkyard section of the Ordinance, e.g., update it concurrent with updated State statutory language. In doing so, it was noted there were several references to the former Board of Selectmen. A decision was reached to amend that reference throughout the Ordinance. During that process, and at the encouragement of the Planning Board, staff determined they would examine the entire Ordinance to amend any outdated references to State law, sections of the Ordinance where references had not been updated, and make corrections that related to the current departmental structure.

He remarked what was before the Council was a series of housekeeping amendments to clarify and update the references to Ordinances, regulations, State Statutes, and Merrimack's current form of government. There have been a couple of minor substantive changes to the junkyard section; additional language has been added to the definition of junk, and, based on the first reading, changes were made to the language around the appointment process of the Building Inspector.

Vice Chairman Mahon questioned the language in § 7.02 - Duties; specifically what would occur if more than one agent were needed. He suggested it is limiting in its current form. Director Thompson responded he tried not to make any significant substantive changes. The duly authorized agent in actuality is the Director of Community Development. When the Planning & Zoning Administrator is not available to make interpretations of the Zoning Ordinance he takes on that responsibility as the Director of the Department. Under his job description, in his absence and the absence of the Planning & Zoning Administrator, he has the ability to further delegate that authority to the Assistant Planner. There is a procedure in place, which he does not believe needs to be within the language of the Ordinance. He further stated he is relatively comfortable with the current language.

Vice Chairman Mahon questioned why the Five Points of Law were removed from § 8.06 - Statutory Criteria for Granting of Variances. Director Thompson responded over the course of his time in this professional the Legislature and Courts have repeatedly updated the criteria for zoning boards to consider, and the desire was to avoid the necessity to seek amendments every time the Legislature makes a change to those sections. He felt it more efficient to refer specifically to the Statute that delegates those powers to the Zoning Board.

Vice Chairman Mahon questioned if information is provided to an Applicant. Director Thompson stated the criteria is listed in the application.

Chairman Harrington declared the Public Hearing open at 8:46 p.m.

Chairman Harrington opened the floor for public comment. No one from the public addressed the Council.

Chairman Harrington declared the Public Hearing closed at 8:47p.m.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to move the proposed Zoning Ordinance amendments to the Consent Agenda. MOTION CARRIED 7-0-0

Legislative Updates from State Representatives – None

Town Manager's Report

Beginning July 1, 2015, the New Hampshire Hands Free Law take effect. In addition to barring adult drivers from holding their cell phones and talking, drivers under the age of 18 will be barred from all mobile phone use. Fines will begin at $100, increase to $250 for second offenses and $500 for a 3rd offense within 2 years.

The Merrimack Youth Association (MYA) has not submitted their financial statements since October 2014. As per the contract, two payments have been withheld totaling $36,000. The fiscal year ended June 30, 2014. The MYA had until October 31st to submit their financial statement.

Town of Merrimack, New Hampshire
Community Development Department
6 Baboosic Lake Road
Town Hall - Lower level - East Wing
603 424-3531
Fax 603 424-1408
www.merrimacknh.gov
Planning - Zoning - Economic Development - Conservation

MEMORANDUM

Date: February 18, 2015

To: Town Council

From: Timothy J. Thompson, AICP, Community Development Director

Subject: **Zoning Ordinance Amendments regarding references to "Board of Selectmen," Revisions to Junkyard, Zoning Administrator, Zoning Board, and other minor revisions to various Sections**

Background: Over the course of this past summer, the Community Development Department was requested by the General Government Department to update the Junkyard section of the Zoning Ordinance, in order to comply with changes to state law that occurred in the past several years. In preparing these amendments, which included several references to the "Board of Selectmen" which no longer exist in our current form of government under our Charter, Staff decided to review the entire ordinance for such references to the Selectmen and amend them to state "Town Council."

Additionally, as a result of this research and corrective process over multiple sections of the ordinance, Staff and the Planning Board saw an opportunity to correct several other sections of the ordinance that are not in line with the current format of our government and departmental structure, incorrect Section references, minor typographical and intent clarifications, as well as other areas that are outdated in terms of current state law requirements.

The Planning Board unanimously supports the adoption of the attached proposed amendments (summarized below) by the Town Council.

Summary of Proposed Amendments:

- *Section 1 – Purpose and Definitions:*
  - Section 1.02: Correct typo in Section number, capitalization error in subsection A;
  - Section 1.03 (Definitions):
    - Typographical changes to definition of *Accessory Dwelling Unit*;
    - Correct reference to Planning & Zoning Administrator in definition of *Appeal*;
    - Add clarifying language to definition of *Aquifer*;
    - Add definition of *Community Development Director*, eliminating definition of *Planning Director* to be consistent with current Departmental organization;
    - Replace reference to "Board of Selectmen" to "Town Council" in the definition of *Conservation Commission*;

- Add clarifying language to definition of *Junk*;
- Add definition of *Planning & Zoning Administrator*, eliminating definition of *Zoning Administrator* to be consistent with current Departmental organization;
- Correct reference to Planning & Zoning Administrator in definition of *Zoning Board of Adjustment*;
- Renumbering of definitions throughout the section;

- *Section 2 – Establishment of Districts:*
  - Section 2.02.2(B)(1): Correct section reference;
  - Section 2.02.3(A): Correct grammar in second paragraph;
  - Section 2.02.3(C)(1)(f): Clarify use classification and correct subsection numbering;
  - Section 2.02.4(C): Correct typos and incorrect Section reference in subsections 1, 2, and 5;
  - Section 2.02.7(A): Remove reference to map no longer in use in subsection (1)(a) and correct typos in section references in subsections (3)(f), (4), and (7)(b);
  - Section 2.02.11: Clarify for consistency the subsection title for subsection (D);
  - Section 2.02.13: Correct typo in subsection (D)(1)(e), clarify use classification in subsection (D)(2)(d);
- *Section 3 – Lot and Yard Regulations:*
  - Correct section references in Note 9 of Section 3.02(A);
  - Clarify language for consistency in Section 3.02.4;
- *Section 5 – Junkyards:*
  - Section 5.02: Capitalization correction in the subsection title, correct capitalization typos and replace reference to "Board of Selectmen" to "Town Council" in Section 5.02.2;
  - Section 5.03: Replace reference to "Board of Selectmen" to "Town Council," replace the word "day" with "date" in Section 5.03.2, add new Section 5.03.6 referencing NHDES Best Management practices;
  - Section 5.06: Replace "March 31st" with "June 30th.";
- *Section 6 – Building Inspector:*
  - Section 6.01: Replace 2 references to "Board of Selectmen" to "Town Council";
  - Section 6.02: Replace "his" with "his/her" in Section 6.02(a) and "he" with "he/she" in 6.02(B), and replace "Town Zoning Administrator" with "Planning & Zoning Administrator" in 6.02(B);
  - Section 6.03: Replace "he" with "he/she";

- Section 6.06: Delete end of paragraph referring to a former Zoning District;

- *Section 7 – Zoning Administrator:*
  - Retitle section to "Planning & Zoning Administrator";
  - Section 7.01: Re-word entire section consistent with current job titles and hiring procedures;
  - Section 7.02: Add words "Planning &" before "Zoning Administrator," replace "his" with "his/her";
  - Section 7.03: Add words "Planning &" before "Zoning Administrator" in 2 instances, correct reference to Section 6.02(B);

- *Section 8 – Zoning Board of Adjustment:*
  - Section 8.01: Replace "selectmen" with "Town Council";
  - Section 8.02: Replace "office of the board" with "Community Development Department";
  - Section 8.03:
    - Add words "Planning &" before "Zoning Administrator" in 4 instances or reformatted subsection (A);
    - Reformat Sections 8.04, 8.05, and 8.06 to become subsections (B), (C), & (D) of Section 8.03, renumber remainder of Section accordingly;
    - Insert "equitable waivers of dimensional requirements" to the list of types of petitions the Board is responsible for in subsection (C);
    - Insert "equitable waiver of dimensional requirements" in 2 locations, clarify notice requirements to be consistent with current statutory language in subsection (D);
  - Newly reformatted Section 8.04: insert language relative to the validity period for variances and special exceptions per recent statutory changes;
  - Newly reformatted Section 8.06: Retitle from "Five Points of Law" to "Statutory Criteria for Granting of Variances," replace entire section with reference to the appropriate state statute;

- *Section 9 – Nonconforming Uses:*
  - Correct section reference in Section 9.02(E);

- *Section 14 – Local Regulation of Excavation:*
  - Section 14.04: Replace reference to "Board of Selectmen" to "Town Council";

- *Section 17 – Signs:*
  - Add clarifying language to Section 17.10(4)(g).

cc: File
Eileen Cabanel, Town Manager

Robert Best, Planning Board Chair
General Government Staff
Community Development Staff
Building Division Staff
Zoning Board of Adjustment

Proposed Zoning Amendments -
As amended by Town Council at 1st Reading on March 26, 2015

For 2nd Reading & Public Hearing on April 23, 2015

SECTION 1 - PURPOSE AND DEFINITIONS

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

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

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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.

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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.

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Section 1.03 Definitions (cont):

5. 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.

6. 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..

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

8. 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.

9. 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.

10. 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.

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

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

13. 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.

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Section 1.03 - Definitions (continued)

14. 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.

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15. 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.

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16. 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.

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17. 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.

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18. 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.

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19. 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.

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20. 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

Section 1.03 - Definitions (continued)

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.

21. 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.

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22. 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.

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23. 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.

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24. 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.

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25. 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.

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26. 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.

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

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Section 1.03 - Definitions (continued)

28. 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.

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29. 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.

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30. 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.

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31. 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.

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32. 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.

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33. 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.

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34. 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.

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35. 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.

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Section 1.03 – Definitions (continued)

36. 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.

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

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38. 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.

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39. 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.

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40. 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.

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41. 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.

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42. 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.

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

Deleted: 42. Planning Director: The chief administrator of the Planning Department.¶
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44. 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.

Section 1.03 - Definitions (continued)

45. 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.

46. 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.

47. 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)

48. 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.

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49. 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.

Section 1.03 - Definitions (continued)

50. 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.

51. 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.

52. 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.

53. 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.

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

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

56. 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.

57. 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.

58. 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.

Section 1.03 - Definitions (continued)

59. 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.

60. 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.

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58. Zoning Administrator: An appointed official whose primary responsibility is to administer and enforce the zoning code of the Town of Merrimack.¶

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SECTION 2 - ESTABLISHMENT OF DISTRICTS [revised 9/11/14]

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

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Section 2.02.1 - District R - Permitted Uses (continued)

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.

4. 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.

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;

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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,

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

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.

D. 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.

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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.

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

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.

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, — Deleted: a

   2) The use as developed will not adversely affect the neighborhood, — Deleted: b

   3) There will be no nuisance or serious hazard to vehicles or pedestrians, and — Deleted: c

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

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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.

But excluding Waste Disposal Sites and Dumps.

C. Uses 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.

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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);

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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;

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;

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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;

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- 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.

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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.

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.

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Section 2.02.6 – Sexually Oriented Businesses (continued)

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.

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

Deleted: These soils are shown on a map or maps designated as the "Town of Merrimack Wetland Conservation District Map" and is a supplement to the "Zoning Map" of the Town of Merrimack, New Hampshire to be used for a pictorial and information guide only.

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.):

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

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

(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.

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);

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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).

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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.

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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 *[Amended: 8/27/09]*

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")

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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**:

Deleted: Aquifer Conservation District,

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.

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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.

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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;

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e) freight & trucking terminals;

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SECTION 3 - LOT AND YARD REGULATIONS [revised 7/13/2011]

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.

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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).

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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.

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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.

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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,

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SECTION 5 - JUNKYARDS

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

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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.

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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:

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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.

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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.

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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.

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SECTION 6 - BUILDING INSPECTOR

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.

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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.

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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.

Deleted: and is to be suitably painted on the outside whenever the same is of wood or a material customarily painted except that in District B camps may be left unpainted. This is intended to eliminate the erection of structures obviously out of place for the neighborhood where they are to be located, and which may have a detrimental effect on property values and a neighborhood's character. When an objection, on the account of the appearance of a proposed structure as above indicated, is raised by a majority of the families residing or owning property within a radius of 500 ft. of the property in question, the Board of Adjustment shall hold a public hearing to receive evidence on both sides and shall have the authority to decide whether the permit shall be issued or not.

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.

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SECTION 7 – PLANNING & ZONING ADMINISTRATOR

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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.

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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.

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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.

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SECTION 8 - ZONING BOARD OF ADJUSTMENT

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.

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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.

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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.

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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.

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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.

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Deleted: Said notice shall be sent or delivered in hand and published at least 72 hours before the date and time of meeting. If the notices are sent by mail, they shall be mailed to the last known address of the abutting owners or representatives of interest if on record aforesaid.

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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.

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¶
1. No diminution of value of surrounding properties would be suffered.¶
¶
2. Granting the permit would not be contrary to the public interest.¶
¶
3. Denial of the permit would result in unnecessary hardship to the owner seeking it because:¶
¶
a. The zoning restriction as applied to the property interferes with the reasonable use of the property given the unique setting of the property in its environment;¶
¶
b. A fair and substantial relationship does not exist between the general purposes of the zoning ordinance and the specific restrictions on the property; and ¶
¶
c. The permit would not injure the public or private rights of others.¶
¶
4. Granting the permit, substantial justice will be done.¶
¶
5. The use will not be contrary to the spirit and intent of the Zoning Ordinance

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SECTION 9 - NON-CONFORMING USES

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)

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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 - <u>Non-Conformity Other than Use</u>

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.

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SECTION 14 - LOCAL REGULATION OF EXCAVATION

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

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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 17 - SIGNS *[Amended: 2/11/10]*

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 - Governmental Signs and Signs Required By Law

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.

17.03 - Permit Required

No sign shall be erected or affixed to any building exterior or placed freestanding on any premises 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.

17.04 - 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.

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,

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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 premises with or proposing more than one business establishment, each discrete business establishment within the premises 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.

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. Commercial/Industrial Real Estate Signs: The total area of a real estate sign shall not exceed 32 square feet. Such signs may be modified to indicate that the property has been sold.

8. 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:

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