



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: September 29, 2023

Date of Meeting: October 12, 2023

Submitted by: Town Council Chair Finlay Rothhaus and Town Manager Paul T. Micali

Department:

Time Required: 10 minutes

Speakers:

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 - Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit [Final Reading]

DESCRIPTION OF ITEM

The Town Council will hold a final reading for the proposed Zoning Ordinance amendments to repeal Section 2.02.A.D (Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit), pursuant to Charter Article V.

REFERENCE (IF KNOWN)

RSA:

Warrant Article:

Charter Article: V

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: Finlay Rothhaus

Address

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Phone Number

Email Address

frothhaus@merrimacknh.gov

APPROVAL

SECTION 2 - ESTABLISHMENT OF DISTRICTS [revised ~~4/14/2021~~x/x/2023]

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 - Industrial District - Metes and Bounds, I-1, I-2, I-3

- 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

<SNIPPED>

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

A. District Objectives

These districts allow for the establishment of manufacturing employment opportunities in the community and takes into consideration truck access and the availability of utilities. Research and development and other high density activities should be concentrated in this area.

Any permitted industrial or commercial use of which no land, building, structure, or equipment, or ancillary appendages shall be used for any purpose which would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibration, noise, light, or other objectionable features or hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.

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

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

18. Support Uses to an Industrial District:
 - a) Restaurants,
 - b) Branch Banks,
 - c) Offices,
 - d) Hotel/Motel,
 - e) Daycare
19. Breweries and Bottling Facilities,
20. Athletic fields and indoor or outdoor skating facilities.
21. Self-Storage Facilities
22. New Personal Wireless Service Facilities: See Section 2.02.6.1.

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

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

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

~~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.~~

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

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.

2. — Permitted Uses

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

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

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

3. — Master Site Development Plan Required

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

- a. The location, type, and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;
- b. The proposed provisions for utilities, access roads, parking, and public and private ways;
- c. Areas proposed to be permanently dedicated for public or private open space or other public purpose;
- d. Proposed buffers between uses and adjacent properties in accordance with the provisions of Section 2.02.4.C.5 of this Ordinance;
- e. Proposed phasing of the overall site development including the general sequence in which related public and private improvements will be accomplished;

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

- 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;

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

- ~~e. 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;~~
- ~~e. Adequate and appropriate public infrastructure shall be provided to ensure the proper operation of the proposed mixed-uses. The Planning Board may require that portions of the project be designed so as to complete any street or utility systems in the vicinity of the subject parcels consistent with projected town plans for such improvements;~~
- ~~f. The proposed development must comply with all applicable federal, state, and local environmental laws, including all appropriate sections of the Town's zoning ordinance and subdivision regulations;~~
- ~~g. Adequate buffers, satisfactory to the Planning Board, shall be provided along the development parcel's perimeter boundaries, and along proposed boundaries of parcels interior to the mixed-use development. Buffers and landscaping shall reflect the need for appropriate separation and transitions between adjoining industrial, commercial and residential uses;~~
- ~~h. The proposed development plan shall provide for a continuity of open space throughout development. Open space and other recreational areas within the development shall be related to projected town plans for such improvements, and should not be limited to trails and paths, although these are desirable features of the design;~~
- ~~i. The proposed development must demonstrate compliance with the architectural design criteria contained in Section 12.04.3 of the Merrimaek Subdivision Regulations pertaining to "Transitional Districts", provided that the Planning Board may permit the Applicant to utilize Merrimaek Subdivision Regulations Section 12.04.2 "Industrial Design District" criteria for exclusively industrial facilities within the development;~~
- ~~j. The proposed development will not result in unreasonable impacts to adjoining properties or uses, by way of light, noise, pollution, visual blight, odor, vibration or other nuisance. The Planning Board may require preparation and review of such studies or assessments as it may deem necessary to demonstrate compliance with this requirement;~~

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

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

6. ~~General Requirements~~

- ~~a. Any applicant proposing to develop land under this Section shall first apply to the Planning Board for a Conditional Use Permit approval, pursuant to the terms of this Section. The applicant may be assessed reasonable fees to cover the costs of special investigative studies and/or review of documents required to facilitate the Board's determination(s) regarding the criteria to be met, and to cover the costs of review by the Board's legal counsel and/or any third party consultants;~~
- ~~b. Following the conclusion of its review of the proposal the Planning Board may approve, approve with modification, or disapprove the application for Conditional Use Permit;~~
- ~~c. The Planning Board shall require, as a condition of its approval of any Conditional Use Permit, the execution of a Development Agreement or other similar instrument specifying: the phasing, timing and sequence of the improvements contained within the development; the performance guarantees relating thereto; and any other such development related information the Board deems necessary to insure the successful completion of the development as proposed and approved;~~
- ~~d. In each case where a Conditional Use Permit has been granted, the applicant must subsequently obtain subdivision approval for the platting of individual lot(s) and/or site plan approval(s) for buildings or sites within the mixed use development in accordance with the Town of Merrimack Subdivision and Site Plan Review Regulations;~~
- ~~e. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to implement this Section of the Zoning Ordinance, and such regulations and standards shall be adopted prior to the Board taking action on any application under this Section.~~

7. ~~Conditional Use Permit – Validity Period~~

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

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

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

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

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

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

All previously approved Mixed Use Conditional Use Permits (CUPs) that existed at the time of this Section being repealed (x/x/2023) shall be subject to the requirements of the former Section 2.02.4.D (as existing in the Zoning Ordinance revised as of January 14, 2021). Any proposed modifications or amendments to those previously approved CUPs shall be required to comply with the requirements of the underlying Zoning District they are located within and/or with the provisions of Section 9 Non-Conforming Uses.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

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

1. Light Manufacturing Industries,
2. Warehouse and Wholesale Uses,
3. Office Uses Greater than 10,000 Square Feet,
4. Churches,
5. Parking Garages,
6. Printing Establishment,
7. Support Uses to an Industrial District:
 - a) Restaurants,
 - b) Branch Banks,
 - c) Offices,
 - d) Hotel/Motel
8. New Personal Wireless Service Facilities: See Section 2.02.6.1.
9. Outlet Village Shops permitted by Conditional Use Permit.
 - a) Outlet Village Shops shall be defined as a collection of buildings arranged in a configuration consisting of multiple adjacent buildings having a center courtyard and connecting walkways in which no single building exceeds 120,000 square feet of gross floor area and no single shop shall exceed 40,000 square feet of gross floor area, and in which are located clothing, appliance, housewares, electronics, hardware and furniture outlet or similar shops, together with accessory and supporting restaurants, which restaurant total gross floor area shall not exceed 15% of the total gross floor area of the Outlet Village Shops. The total gross floor area of the Outlet Village Shops may not exceed 650,000 square feet within the I-2 District in total.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

- b) As provided in RSA 674:21, Innovative Land Use Controls, this section of the Zoning Ordinance provides for the granting of conditional use permits, by the Planning Board, as follows:
- 1) The Planning Board shall vote either to approve a conditional use permit as presented, approve it with conditions or deny it.
 - 2) The applicant shall be required to apply for and obtain a site plan approval, in accordance with the site plan regulations of the Town of Merrimack.
 - 3) The applicant shall be required to submit a financial surety in accordance with the subdivision regulations and site plan regulations of the Town of Merrimack prior to commencing construction of any building.
 - 4) The applicant may be assessed reasonable fees to cover the costs of special investigation studies and/or review of documents required by particular applications, reviews by Town's legal counsel and any third party consultant, as may be required by the Planning Board pursuant to the site plan regulations of the Town of Merrimack.
 - 5) The applicant shall be required to submit an economic or fiscal impact analysis reflecting the impact of the proposed use upon the Town's infrastructure, facilities, support services and taxes.
 - 6) The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit hereunder:
 - (i) the proposed location for the Outlet Village Shops must be readily accessible to high traffic volume carrying facilities, and sited to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements. The primary function of this district use would be to serve a regional and/or local shopping and service need;
 - (ii) the proposed use is consistent with the objectives of Section 2.02.3.B.1 and the second paragraph of Section 2.02.4 of the Town of Merrimack Zoning Ordinance. Specifically excluded are "big box" single user retail stores greater than 75,000 square feet;
 - (iii) the property in question is reasonably suited for the use requested, and does not create a hazard to surface or underground water resources;
 - (iv) the property in question shall be specifically located for readily available access to the F. E. Everett Turnpike;
 - (v) the proposed use will not result in unreasonable impacts by way of increased noise, visual blight, odor or other nuisance to other uses within the zoning district or adjoining land uses;
 - (vi) granting the permit is in accord with the general purpose of the Zoning Ordinance as set forth in Section 1.01;

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

- (vii) the proposed use will have a high tax value and will contribute significantly to the tax base of the Town of Merrimack as contemplated by the Economic Development and Future Land Use and Recommendations Chapters of the Master Plan Update, 2002;
 - (viii) The proposed use shall demonstrate a significant economic and fiscal benefit to the Town in the judgment of the Board.
- 7) The Outlet Village Shops shall have the following density, dimensional and parking requirements:
- (i) minimum lot area - 100 acres;
 - (ii) minimum landscaped buffer, consisting of dense plantings of suitable trees and shrubbery or naturally occurring trees and shrubbery supplemented by additional plantings as may be required by the Planning Board from a residential district - 100 feet;
 - (iii) minimum building setback from a residential use - 300 feet;
 - (iv) minimum percentage of open space - 30%;
 - (v) minimum parking ratio - 5.5 spaces per 1,000 square feet of gross leasable area;
 - (vi) buffer zone - no construction or improvements shall be made within the Buffer Zone within the I-2 District as defined in Section 2.01.1.F.2(a) of the Zoning Ordinance.
- 8) The Outlet Village Shops shall have a comprehensive sign program including ground mounted pylon signs, directional signs and building mounted signs. Notwithstanding the terms and provisions regarding signs incorporated elsewhere within the Zoning Ordinance, the sign program shall be of a nature and magnitude as may be determined by the Planning Board in its sole discretion to be reasonably necessary and appropriate given the location and setting of the proposed use to be approved at the time of the approval of the site plan for the proposed use.
- 9) Whenever the provisions of this subsection conflict with any other provisions of the Zoning Ordinance, the provisions of this subsection shall apply.
- 10) The Board shall adopt such standards and regulations as it may deem necessary in order to implement this section of the Zoning Ordinance, and such regulations and standards shall be adopted prior to the Board taking action on any application under this section of the Zoning Ordinance.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

EF. Special Exceptions

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

1. Accessory uses as defined herein.
2. Other industrial uses except waste disposal sites and dumps, upon the approval by the Board of Adjustment such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses, shall be permitted. This may include the conversion of existing residential uses to commercial or industrial uses as are allowed and provided for in paragraph B. of this section.
3. On-site caretakers lodges or residences.
4. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1, Special Exceptions, Section 2.02.1 District R, Residential Zone.

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

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

GH. General Requirements

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

2.02.5 - District I-3, Industrial - Permitted Uses

A. District Objectives

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

<SNIPPED>

1 Zoning Board of Adjustment Chair Rich Conescu was present to discuss the annual review of the Zoning
2 Board of Adjustment. He began by stating that Rod Buckley has stepped down from the Zoning Board and in
3 his place is now Ben Niles. They also have a new member and new alternate, so they officially only have one
4 opening left on the board for the first time since before the pandemic. Vice Chair Harrington asked how
5 many hearings they've had, in which Mr. Conescu shared that they don't have exact metrics, but this
6 particular year has been very similar to the last two years, with typical requests. Vice Chair Harrington asked
7 for a guesstimate on approval vs disapprovals, in which Mr. Conescu stated that the approvals are around 85%
8 for variances, and there is a firm history of denying appeals.
9

10 Public Hearing

11 **1. Public Hearing – Zoning Ordinance Amendments to Repeal Section 2.02.4.D**

12 *Submitted by Town Council Chair Finlay Rothhaus and Town Manager Paul T. Micali*

13 The Town Council will hold a public hearing to consider the proposed Zoning Ordinance
14 amendments to repeal Section 2.02.A.D (Mixed Use Developments Permitted in the I-1 District by
15 Conditional Use Permit), pursuant to Charter Article V.
16

17 Before beginning, Vice Chair Harrington recused herself. The public hearing was then opened at 7:34pm.
18

19 Attorney Morgan Hollis from Gottesman and Hollis at 39 East Pearl St in Nashua was present to represent
20 Merrimack Parcel A LLC, speaking in opposition on their behalf. He stated that his client received a variance
21 for a mixed use development in an I-2 district, which was granted as a conditional use permit. Years later,
22 this needed to be amended with some minor modifications, and eventually a more significant amendment
23 which doubled the residential numbers and reduced the commercial numbers. Once again, this was granted
24 subject to the Planning Board determining that all requirements under the CUP (which only applied to I-1
25 districts) were met. Over the course of about a year, the Planning Board thought that the proposed number of
26 residential units was too much and too dense, and the town staff felt that it did not meet the requirements of
27 the PUD density. The Zoning Board evaluated the application and negotiated the number of residential units
28 down with the applicant and proceeded to go through the criteria. They decided essentially two section,
29 section "4E" which allows the Planning Board to either increase or decrease the density under certain
30 criteria. Eventually, the amendment to the original CUP was granted. Attorney Hollis wanted to stress that
31 this was a one-off situation because the whole CUP mixed use development was a variance, not a mixed use
32 under the zoning ordinance. Having given this background, he has four comments: If the section is deleted,
33 any development within the I-1 district proposing a mixed use must go through the Zoning Board for a
34 variance. If this CUP is removed, there will be no CUP criteria and no mixed use in Merrimack. Anything
35 creative would have to go through the Zoning Board which isn't really what they do. Additionally, if this is
36 deleted, the new paragraph states that the existing mixed use become essentially non-conforming uses, and
37 any change has to meet the underlying zoning density requirements, which is I-1 which doesn't allow
38 residential change and this would also go back to the Zoning Board. Third, RSA 674:39 protects
39 developments that have been under construction, so any approval that wants to make a modification would
40 proceed back to the Planning Board to amend their CUP. Lastly, if this RSA doesn't apply, then the existing
41 projects that were approved under a provision of Merrimack ordinance will run into financial issues as the
42 development matures as they have to now go to the Zoning Board. In conclusion, his suggestion is to not
43 throw the entirety of the ordinance out, but to hone in on what the issue is. He suggests a proper amendment
44 would be to remove subsection E and remove the flexibility that everyone has to either get a variance from
45 the Zoning Board to have greater density that is allowed under the PUD or meet the density requirements of
46 the PUD. This allows the Planning Board to still have some flexibility but the PUD density will be better
47 defined.
48

1 Ashley Tenhave of 75 Shelburn Rd then spoke, sharing that she lives in the Webster Green community
2 across the street from Flatley and she very much approves of the decision that the board has made to take
3 another look at this. She has been at Webster Green for almost 7 years and attends every Planning Board
4 meeting that speaks about Flatley, arguing over the different uses and changes that they're doing. She would
5 like to see some control taken away from the Planning Board as none of the projects actually get built the
6 way that the Planning Board approves. Any concerns brought up get immediately brushed off, and she is
7 frustrated that nothing is being done with the developers who are not following the CUP. She would also like
8 to see the Zoning Board be put under a microscope as well as they are getting away with too much in this
9 town and they are not listening to the community when concerns are brought to meetings.

10
11 Bernard Plante of Edgebrook Heights LLC of 179 Amherst St., Nashua then spoke, sharing that in August of
12 2006, he and Kevin Slattery, a Nashua based builder, formed Edgebrook Heights LLC after acquiring
13 property that's at the very south end of Merrimack around the Harris Pond shopping center. The previous
14 owner had secured site plan approvals for 280,000 square ft space called "corporate woods" which is around
15 where the proposed circumferential highway was proposed, but did not come to fruition. This property is
16 zoned I-1 and a CUP was proposed to them and approved. They have relied on this CUP to determine the
17 development of the property over the years. He is requesting that the Council maintains section 2.02 4D in its
18 entirety, or at a minimum do not penalize existing CUP permit holders for modifying their design due to
19 physical or dramatic market changes as proposed in the new paragraph at the end of the modification that the
20 board is considering.

21
22 Katie Poirier of 11 Kimberly Drive, also in the Webster Green area, then spoke, sharing that the CUP
23 approvals change from one area to another without completing projects. Some developers add new projects
24 to the CUP without even finishing what they've started. She also stated that she has attended multiple board
25 meetings and feels that she is not being heard and is frustrated. She appreciates the Council for taking action
26 on this.

27
28 Chairman Rothhaus then read a statement from Gordon Leedy, Jr. who is with Tighe & Bond, Inc:

29
30 Dear Mr. Chairman and Members of the Town Council:

31 I am providing written testimony to the Council with regard to the proposed repeal of the Mixed-Use section
32 of the zoning ordinance, Article 2.02.4.D. I apologize for not being in attendance, but I have a conflicting
33 commitment. I felt it important to reiterate for the record my concerns regarding the proposed amendment
34 that I previously voiced at the Planning Board.

35
36 The Mixed-Use zoning provision was adopted by a vote of the Town pursuant to important goals set forth in
37 the 2013 Master Plan. The vehicle chosen for the implementation was the Conditional Use Permit. This
38 vehicle was chosen in large part to allow flexibility to the Planning Board in approving these developments
39 based on site-specific criteria showing fiscal benefit to the Town and adequate of public infrastructure. A
40 side benefit was to provide a method for the Planning Board to weigh benefits and potential impacts on
41 public health, safety, and welfare while avoiding a cumbersome process through the Zoning Board of
42 Adjustment.

43
44 Over the last decade of implementation, the ordinance has shown a need for adjustment in that it does not
45 spell out with any clarity what the expectations are of the Town and with respect to the mix of uses in a
46 mixed-use project. This leaves the matter up to the Planning Board and the Zoning Board of Adjustment,
47 with no formal guidance through the language of the ordinance. Importantly, the criteria contained in the
48 ordinance for approval do not continue to offer protection to the town from undue impacts of development.

1 Over the years, there have been changes both in market conditions and in the development of mixed-use
2 projects under the ordinance. The reaction to these changes is to reject the concept of mixed-use
3 development and revoke the entirety of the ordinance provision. This action would create significant non-
4 conformities with zoning and would threaten the financing and ability to complete developments previously
5 approved by the Town. It would also throw any modifications of these approved projects into the ZBA, a
6 result that the zoning ordinance was crafted to avoid. Revocation would also remove consideration of the
7 criteria for approval that currently protect the Town from impacts of development.
8

9 These were brief comments at a previous Town Council meeting that the Town should not spend taxpayer
10 resources on amending the ordinance prior to preparation of a new Master Plan. The preparation and
11 adoption of an updated Master Plan is at least two years away, and adoption of zoning amendments pursuant
12 to that plan are at best several months subsequent to adoption of the plan. Revocation of the ordinance would
13 create a void in zoning, with millions of dollars of tax revenue at stake for at least the next three years.
14

15 A solution to the issues identified by the Council would be to simply adopt a definition of mixed-use
16 development and a range of proposed mixes (e.g. no more than x% residential, nor more than x%
17 commercial). This would keep some zoning provisions in effect with appropriate Planning Board oversight
18 and would be further protection to the town until a more comprehensive revision of the ordinance can be
19 undertaken pursuant to the Master Plan update. This could also be done at little or no cost to the Town.
20

21 If there is a concern with regard to urgency of the current proposal, the Council could table the revocation
22 amendment and consider an alternative amendment concurrently.
23

24 I appreciate the opportunity to relay my thoughts to the Council and apologize again for not being there in
25 person to offer my testimony.
26

27 Very truly yours,
28 **TIGHE & BOND, INC.**
29 R. Gordon Leedy, Jr., AICP
30 Principal Landscape Architect
31

32 *The Public Hearing was closed at 8:16pm*
33

34 Councilor Koenig shared that he doesn't believe this is based off of one development, and that developments
35 throughout the town have dramatically changed from what was originally presented. He has noticed a pattern
36 of true mixed used variances or commercial areas being changed into apartments over the past few years. He
37 believes a thorough review of the whole program needs to be done, and would be more effective and better
38 financially to review this now instead of revamping the master plan. Councilor Hunter is in agreement with
39 Councilor Koenig, and Councilor N. Murphy shared that the residents tonight represent many thoughts she
40 has heard from others in Merrimack, and there is a vast majority of support for this amongst the community.
41

42 **MOTION made by Councilor Koenig and seconded by Councilor N. Murphy to move the Repeal of**
43 **Section 2.02 4D to a Final Reading and to be placed on the Consent Agenda at the next meeting.**
44 **MOTION CARRIES 5-0-0 with Vice Chair Harrington abstaining**

45 Legislative Updates from State Representatives

46 Councilor N. Murphy shared that they are in the process of redrafting legislative service requests that have
47 been put in that have not yet been assigned, and there are about 800 LSRs right now in the House.
48