

Public Hearing Notice

Residents of Merrimack are hereby advised that the Planning Board will conduct a public hearing to consider amendments to the Zoning Ordinance, pursuant to RSA 675:2 and 675:7.

As proposed by the Town Council and referred to the Planning Board, the purpose of the amendments is to repeal the Mixed Use Development Conditional Use Permit section of the ordinance because of unanticipated development mixes and densities resulting from current ordinance language and so that the Town may develop new mixed use ordinance language in the future following the update to the Town's Master Plan, which is slated to begin in the next fiscal year. The amendments are generally as follows:

- Amend Section 2.02.4.D
 - Repeal all existing language in the Section regarding Conditional Use Permits for mixed use development.
 - Add language regarding existing mixed use projects previously approved.
- Amend Section numbers for I-2 Permitted Uses, Special Exceptions, Alternative Treatment Centers in the I-2 District by Conditional Use Permit, and General Requirements, correcting a numbering error from the previous ordinance that resulted in duplicate section numbers.

Copies of the proposed amendments are attached, and are also available at the Community Development Department office & on the Town's website (merrimacknh.gov/planning-board). All interested parties are invited to attend.

The public hearing will be held on Tuesday, July 18, 2023 at 6:30 PM in the Matthew Thornton Room located at 8 Baboosic Lake Road in Merrimack.

SECTION 2 - ESTABLISHMENT OF DISTRICTS [*revised ~~1/14/2021~~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

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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,

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.~~

~~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;~~

~~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;~~

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

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

~~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.~~

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.

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.

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

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

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

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

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

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.

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