



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: October 30, 2019

To: Robert Best, Chairman, & Members, Planning Board

From: Tim Thompson, AICP, Community Development Director
Robert Price, Planning & Zoning Administrator

Subject: **Various potential Zoning Ordinance amendments (Definitions, Non-Conforming lots, Signs, Telecommunication Towers).**

Please find attached an initial draft of several proposed amendments to the Zoning Ordinance, developed by staff.

Over the course of the past several years, it has become clear to staff that several sections of the Ordinance needed tweaks and slight modifications to address repeated ordinance administration and/or enforcement tasks. Additionally, with regard to the Telecommunications Tower section, Councilor Boyd has brought forth to the Council's annual goal setting session a desire for modifications to that section of the ordinance as well.

The purpose of the workshop on November 5 is to introduce the proposed modifications, discuss them, and set forth with a timeline for public hearings with the Planning Board and Town Council for adoption.

This memo provides and outline of the proposed modifications and changes made to Sections 1-4 and 17 of the Zoning Ordinance.

Outline of Proposed Amendments:

Section 1

- Add new Section 1.02.E
 - Clarification that certain words and terms are defined under Section 2.02.6.1
- Amend Section 1.03.A.13
 - Update definition of "Community Development Director"
- Amend Section 1.03.A.29
 - Revise definition of "Junk" to be consistent with NH RSA 236:91 & 92, and to clarify that residents are permitted by State law to have 1 unregistered vehicle on a property.
- Amend Section 1.03.A.30
 - Revise "Junk Yard Commercial" to be "Junk Yard" and to define it consistently with the language used in RSA 236:91

- Amend Section 1.03.A.44
 - Update definition of “Planning & Zoning Administrator”
- Amend Section 1.03.A.52
 - Update definition of “Setback, Side Yard” to clarify that accessory buildings must meet side yard setback requirements
- Amend Section 1.03.A.53
 - Update definition of “Setback, Yard” to clarify that accessory buildings must meet setback requirements
- Amend Section 1.03.A.58
 - Revise definition of “Travel Trailer” to clarify they do not have a permanent foundation and are primarily intended for temporary occupancy or travel. Further, to eliminate weight and length descriptions, and include reference to their being referred to as recreational vehicles or campers.

Section 2

- Amend Section 2.02.1.A.5
 - Delete language and add reference to proposed new Section 2.02.6.1
- Amend Section 2.02.1.C.1
 - Revise previous language regarding special exceptions and create new subsection under conditional use permits adding a reference to proposed new Section 2.02.6.1, renumber remainder of section
- Add new Section 2.02.2.D.1
 - Create new subsection under conditional use permits adding a reference to proposed new Section 2.02.6.1, renumber remainder of section
- Amend Section 2.02.3.B.8
 - Delete language and add reference to proposed new Section 2.02.6.1
- Add new Section 2.02.3.D.1
 - Revise previous language regarding special exceptions and create new subsection under conditional use permits adding a reference to proposed new Section 2.02.6.1, renumber remainder of section
- Amend Section 2.02.4.B.22
 - Delete language and add reference to proposed new Section 2.02.6.1
- Amend Section 2.02.4.D.8
 - Delete language and add reference to proposed new Section 2.02.6.1
- Amend Section 2.02.5.C.4
 - Delete language and add reference to proposed new Section 2.02.6.1
- Create new Section 2.02.6.1
 - New section regarding personal wireless service facilities and telecommunications towers

- Potential Amendment of Section 2.02.7
 - Staff questions, but hasn't yet proposed a change, why wetland setback encroachments require variances but buffer encroachments only require special exceptions. We will discuss this with the Board on November 5, and proceed with amendments if it is desired by the Board.

Section 3

- Amend Section 3.02.A
 - Add clarification under R-1 that a zoning map delineation of R-1 cannot be construed to mean any other residential district besides R-1.
- Amend Section 3.02.6.A.2
 - Update language to conform to 2019 Subdivision Regulations
- Amend Section 3.02.6.A.3
 - Update language to conform to 2019 Subdivision Regulations
- Amend Section 3.02.6.B
 - Delete in entirety because this is not legal
- Amend Section 3.02.7.A.3
 - Update language to conform to 2019 Subdivision Regulations
- Amend Section 3.02.7.B
 - Delete in entirety because it is not legal
- Amend Section 3.05
 - Revise to clarify that any structure, not just a single-family residence, can be built on a nonconforming lot
- Amend Section 3.06
 - Update to reference current DES terminology

Section 4

- Amend Section 4.01
 - Delete last sentence regarding unoccupied travel trailers in order to replace with new Section 4.04
- Amend Section 4.04
 - New section specific to travel trailers that outlines allowances for parking of both occupied and unoccupied travel trailers

Section 17

- Amend Section 17.02
 - Clerical edit
- Amend Section 17.05.4
 - Add new term "Billboard" and corresponding definition
- Amend Section 17.05.11

- Add new term “Feather flag” and corresponding definition
- Amend Section 17.05.27
 - Move duration restriction to new section 17.06.9
- Amend Section 17.05.34
 - Clarify that temporary/portable signs are intended to be non-electronic, and do not include real estate signs or political signs
- Amend Section 17.06.8
 - Clarify that signs installed by a governmental entity do not require a permit
- Amend Section 17.06.9
 - New language indicating real estate signs of a certain size do not require a permit, don’t count against a property’s total signage allowance, permission to display for duration while property maintains sale, rent or lease status and requirement to be removed
- Amend Section 17.06.10
 - New language discussing political signage
- Amend Section 17.08
 - Revise section layout & language to require permits for all temporary signs.
- Amend Section 17.10.10.c
 - Update reference
- Amend Section 17.10.10.d
 - Update reference
- Amend Section 17.10.10.e
 - New language prohibiting the use of electronic message displays as temporary signs
- Amend Section 17.12
 - Update reference
- Amend Section 17.13
 - Delete and replace with new language that more-clearly explains how area of ground signs and wall signs are to be calculated

Recommendation

Review the proposed regulations, determine an appropriate schedule for review by the Board, public, and design firms that regularly work in Merrimack, and work toward a public hearing and adoption in the coming months.

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

1.01 Purposes

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

1.02 Other Definitions Found at Other Locations in This Ordinance

- A. Certain terms and words are also defined at Section 2.02.8 *Flood Hazard Conservation District*.
- B. Certain terms and words are also defined at Section 2.02.11 *Aquifer Conservation District*.
- C. Certain terms and words are also defined at Section 17.04 *Signs*.
- D. Certain terms and words are also defined at Section 2.02.12 *Shoreland Protection District*.
- E. Certain terms and words are also defined at Section 2.02.6.1 *Personal Wireless Service Facilities/Telecommunication Towers*.

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1.03 - Definitions

- A. For the purposes of this ordinance, certain terms and words are hereby defined.
 - 1. Abutter: Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board or Zoning Board of Adjustment.
 - 2. Accessory Dwelling Unit: A second dwelling which is contained within an existing or proposed single family detached dwelling unit that is clearly incidental and subordinate in extent, use and purpose to the principal dwelling.
 - 3. Accessory Use: A subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.
 - 4. Airport/helicopter/aircraft: An area of land or water providing certain specified facilities and services for use in connection with air transportation which could be used as a site for landing and taking-off of aircraft. Aircraft means any engine powered contrivance for air transportation.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 1.03 Definitions (cont):

5. Alternative Treatment Center: An "alternative treatment center" as defined in RSA 126-X:l, I, namely, a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers.
 - a) Alternative Treatment Center (Cultivation Location Only): A "cultivation location" as defined in RSA 126-X:l, IV, namely, a locked and enclosed site under the control of an alternative treatment center where cannabis is cultivated, secured with one or more locks or other security devices in accordance with RSA 126-X and the Department of Health and Human Service's administrative rules.
 - b) Alternative Treatment Center (Non-Cultivation Location): An alternative treatment center operated in accordance with RSA 126-X and the Department of Health and Human Services administrative rules that has a separate location for the cultivation of cannabis.
6. Appeal: A process whereby any person, officer, department, board or bureau aggrieved by a decision of the Planning & Zoning Administrator or Building Official may appeal to the Zoning Board of Adjustment where such matter is within the board's power and shall file a Notice of Appeal specifying the grounds therefore, and shall include the process whereby any adverse decisions by the Zoning Board of Adjustment are further appealed to the Superior Court.
7. Aquifer: Those areas designated as having high, medium, and low potential to yield water which appear on state-wide mapping prepared by the U.S. Geological Survey (USGS) entitled "Availability of Groundwater in the lower Merrimack River Basin Southern N.H." by John E. Cotton, 1977, or as most recently published by USGS..
8. Building Official: An appointed official whose primary responsibility is to enforce the Building Code of the Town of Merrimack.
9. Certificate of Occupancy: A statement signed by the Building Official setting forth that a building or structure or any portion thereof complies with the zoning and building ordinance; that a building, structure or parcel of land may lawfully be employed for specified uses; or both.
10. Certified Soil Scientist: a person who, by reason of special knowledge of pedological principles acquired professional education and practical experience, as specified in RSA 310-A:84, I & II, is qualified to identify, classify, and prepare soil maps according to the standards of the National Cooperative Soil Survey, or standards adopted by the New Hampshire Department of Environmental Services, or standards adopted by the board, and who has been duly certified by the authorized state board of natural sciences.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 1.03 - Definitions (continued)

11. Certified Wetland Scientist: a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified in RSA 310-A:84, II-a & II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor and who has been duly certified by the authorized state board of natural sciences.
12. Change of Use: The change in the use of land and/or building(s) to another use.
13. Community Development Director: The department head of the Community Development Department, as outlined in Section A198 of the Town's Administrative Code.
14. Conservation Commission: A seven member municipal body appointed by the Town Council for the proper utilization and protection of natural resources and for the protection of water-shed resources within the Town of Merrimack.
15. District, Overlay: A special district or zone which addresses special land use circumstances and/or environmental safeguards and is superimposed over the underlying existing zoning districts. Permitted uses in the underlying zoning district shall continue subject to compliance with the regulations of the overlay zone or district.
16. District or Zone: A geographical section or sections of the Town for which the regulations and provisions governing the use of buildings and land are uniform for each class of use permitted therein and where certain uses of land may be permitted, permitted or denied pursuant to municipal review or prohibited.
17. Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
18. Expansion/Alteration: As applied to a building or structure, means a change or rearrangement in the structural parts or in the means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.
19. Family: One or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling unit.

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Section 1.03 - Definitions (continued)

20. Family Day Care Home: An occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except the children who are 10 years of age or older. In addition to the 6 children, up to three children attending a full day school program may also be cared for up to five hours per day on school days and all day during school holidays.
21. Farms, Agriculture, Farming: As defined in RSA 21:34-a and amendments thereto, the word "farm" shall mean any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. The words "agriculture" and "farming" shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.
22. Floor Area, Gross: For the purpose of determining required parking spaces, the gross floor area is the total floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns and other similar features.
23. Floor Area, Net: For the purpose of determining required parking spaces, the net floor area is total floor area within the perimeter of the inside walls of the building deducting for interior walls, hallways, stairs, closets, storage and similar features including other areas such as those for the preparation of food and drink, restrooms and waiting rooms.
24. Floor Area of Building: The total number of square feet of floor area of all stories in a building, excluding cellars, unfinished attics, uncovered steps and uncovered porches. All horizontal measurements shall be made between exterior faces of walls.
25. Frontage: The length of the lot line connecting the side lot lines which borders on a Class V or better highway (excepting the F.E. Everett Turnpike and other Limited Access Highways as defined in RSA 230:44 (as may be amended from time to time)), or a street on a subdivision plat approved by the Planning Board, or land designed to become a Class V or better highway.

Section 1.03 - Definitions (continued)

- 26. Hazardous or Toxic Materials or Liquids: Materials or liquids that pose a threat present or future to the environment, whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with Section 3001 of the Resource Conservation and Recovery Act of 1976.
- 27. Home Occupation: A non-residential use carried on within a residence or its accessory buildings, which use is clearly incidental and secondary to the principal use of the property as a residence and does not change the character thereof.
- 28. Home Owner: The owner of record of any land and residential and accessory structures located thereon.
- 29. Junk: Means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material. Junk shall also include two (2) or more unregistered or old motor vehicles, no longer intended or in condition for legal use on the highways, or used parts or materials from motor vehicles which, taken together, include in bulk, 2 or more vehicles held on the property of a person or persons not operating an establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automotive recycling yard (see RSA 236:91 & 236:92).
- 30. Junk Yard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary fills (see RSA 236:91).
- 32. Lot Depth: Lot depth shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
- 33. Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements for corner lots and double frontage lots, all sides of a lot adjacent to streets shall be considered frontage.
- 34. Lot Line, Rear: The lot line or lines generally opposite or parallel to the front lot line, except in a double frontage lot. If the rear lot line is less than 10 feet long or the lot comes to a point at the rear, said rear lot line is assumed to be a line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 1.03 – Definitions (continued)

35. Lot of Record: A lot held under separate ownership from the adjacent lots or a lot shown to be a separate and distinct numbered lot of record by a plan of lots which has been recorded.
36. Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. The terms "mobile home" or "trailer", as these may appear in this ordinance, should be understood to mean "manufactured housing" as defined herein.
37. Manufactured Housing Park: A parcel of land containing at least five acres, upon which one or more manufactured homes are parked or intended to be parked for living purposes.
38. Multiple (Multi) family dwelling: A building containing three (3) or more dwelling units.
39. Non-Conforming Lot: A lot lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the regulations of the district in which it is located.
40. Non-Conforming Use: A use of a building or of land lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the use regulations of the district in which it is located.
41. Nonprofit Organization: Nonprofit organization shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation organized and operated exclusively for religious, cultural, charitable, scientific, recreational, literary, agricultural, or educational purposes, or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association, and an organization exempt from taxation under Section 501 (c) of the Internal Revenue Code of 1986 organized or incorporated in this state or another state of having a principal place of business in this state or in another state.
42. Parking Space, Off-Street: A rectangular area, not less than 9 X 18.5 feet forming a parking stall within or without a structure, not located in any public right-of-way.
43. Planning Board: A seven member legislative body charged with the duty to prepare and amend the Town of Merrimack Master Plan, prepare and amend a capital improvements program, the formulation of proposed amendments to the Merrimack Zoning Ordinance, and the review and approval of subdivision plans and site plans, and other duties as set forth in RSA 674:1.

Section 1.03 - Definitions (continued)

44. Planning & Zoning Administrator: An appointed official in the Community Development Department whose responsibilities include administration and enforcement the zoning ordinance of the Town of Merrimack, as outlined in Section 7 of this ordinance and Section A198 of the Town's Administrative Code.
45. Public Hearing: A publicly advertised meeting of an official legislative or quasi-judicial body conducting Town business during which the public is allowed to give testimony concerning issues under consideration.
46. Public Land and Institutions: All publicly owned land and facilities such as schools, parks and conservation land, museums, libraries, administration and maintenance building and grounds, police and fire stations, utility sites and utility rights-of-way and easements.
47. Restaurant: An establishment whose principal business is selling food and beverages in a ready-to-consume state whether said food and beverages are consumed on or off the premises.
 - a) Restaurant, carry-out: An establishment which sells food and beverages in a ready-to-consume state where no provisions are made for consumption on the premises.
 - b) Restaurant, combination: An establishment which sells food and beverages in a ready-to-consume state which may be either consumed on or taken off of the premises.
 - c) Restaurant, drive-in: An establishment which sells food and beverages in a ready-to-consume state primarily for consumption on the premises by persons in parked motor vehicles.
 - d) Restaurant, sit-down: An establishment which sells food and beverages in a ready-to-consume state primarily to persons who are seated within the building or outside on the premises.
48. Seasonal Building or Structure: A building or structure, usually but not always a dwelling unit, which was originally designed to be occupied only during the warm months of the year, not during winter; such a structure may not have been originally built with insulation or any permanent, central heating system; such a structure, when originally constructed, may not have had a septic system designed for year round use. (Reference 9.02.E)

Section 1.03 - Definitions (continued)

49. Self-Storage Facility: A building, group of buildings or other facility having compartments, rooms, spaces, containers or other type of units that are individually leased, rented, sold or otherwise contracted for, by customers for the storage of non-toxic, non-explosive personal or business goods or property, and where the facility owner/operator has limited access to the units. For purposes of this Ordinance, "self-storage facility" shall be considered synonymous with self-storage warehouse, self-service storage facility, mini-warehouse or mini-storage.
50. Setback, Front Yard: Open space extending across the full width of lot between the front lot line and nearest line of the principal building or any enclosed portion thereof. The depth of such yard shall be the shortest horizontal distance between the front lot line and the nearest point of the building or any enclosed portion thereof.
51. Setback, Rear Yard: Open space extending across the full width of lot between the rear line of the lot and the nearest line of the building or any enclosed portion thereof. The depth of such yard is the shortest horizontal distance between the rear lot line and the nearest point of the building. When the rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the depth of the rear yard is measured to an assumed rear lot line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.
52. Setback, Side Yard: Open space between the side lot line, and the nearest line of the principal and/or accessory buildings, or any enclosed portion thereof, extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front lot line and/or rear lot line. The width of a side yard shall be the shortest distance between the side lot line and the nearest point of the principal building or any enclosed portion thereof.
53. Setback, Yard: A required open space on a lot unoccupied and unobstructed by any principal and/or accessory structure or portion thereof, except for such projections into any required open space as are expressly permitted herein.
54. Special Exception: Uses authorized under the Zoning Ordinance subject to appropriate conditions and safeguards as set forth in the ordinance as may be approved by the Zoning Board of Adjustment. Applicants for a special exception need not prove hardship but must comply with all other applicable zoning laws and any conditions for approval imposed by the Zoning Board.
55. Street: Class V Highway or better, as defined in RSA 229:5(VI).
56. Structural Alterations: Any change in the supporting members of a building or structure, such as walls, columns, beams or girders.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 1.03 - Definitions (continued)

- 57. Structure: Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.
- 58. Travel Trailer: A mobile home without a permanent foundation primarily designed to be used for temporary occupancy for travel, recreational or vacation use. The terms “camper” and “recreational vehicle (RV)” shall have the same meaning.
- 59. Variance: A grant of permission by the Zoning Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of the zoning laws, could not otherwise legally be done.
- 60. Wetlands: “Wetlands” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- 61. Zoning Board of Adjustment: A quasi-judicial body which hears and decides matters relating to the application of the zoning ordinance and considers appeals from the decisions of the Planning & Zoning Administrator and Building Official and considers variance and special exception applications.

Deleted: ; 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

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

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

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

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

2.01.1 - 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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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02 - Permitted Uses - All Districts (continued)

B. General Prohibitions:

1. No use of any kind shall be permitted in any district, if it in any way would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibrations, noise, light, or other objectionable features or if it would be hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.
2. The underground storage of petroleum, refined petroleum products and organic solvents except with suitable secondary barriers and automatic alarm systems approved by the Planning Board is prohibited in every district. For the purpose of this regulation, storage in basement or cellar spaces shall not be considered as underground storage. This regulation shall apply to all new and replacement storage facilities constructed after the date of its adoption.
 - a) The underground storage of petroleum, refined petroleum products and organic solvents referred to in (2) above is not intended to include Liquified Petroleum Gas (LPG).

Section 2.02.1 - District R, Residential - Permitted Uses

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

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1. Residential uses and customary secondary accessory uses and structures. Note: aircraft takeoffs and landings on private land by the owner of such land or by a person who resides on such land are not valid and permitted accessory uses.
2. Home Occupations: Except as provided in 3 below, requests to conduct home occupations as set forth in this section must comply with the criteria listed below and receive permission from the Planning Board after a public hearing.
 - a) No more than one person who is not a resident of the premises is employed therein;
 - b) Off-street parking can be provided as specified in Section 18;
 - c) There is no external evidence of the occupation or office other than a sign limited to two (2) square feet.
 - d) No more than 25% of the inhabitable floor area of the dwelling is utilized by the occupation or office.
 - e) Such use shall be personal to the owner of the premises or the occupant with the permission from the owner and shall not survive a transfer of title of the real estate or be transferable to a new occupant.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

- f) Home Occupations shall be deemed to include professional offices, such as that of a doctor, dentist, lawyer, accountant, engineer, architect, and the business offices of a variety of similar occupations. They shall also include occupations such as dressmaking, cooking limited to items for off-premise consumption, home crafts, hairdressing and barbering limited to one chair, and family day care homes in accordance with RSA 170-E:2 IV (a).
 - g) Home occupations expressly do not include commercial kennels, the parking or storage of tractor trailers, auto repair or small engine repair or maintenance, welding, or other uses which involve the visible storage on the property of automobiles or the parts thereof.
 - h) A contractor or other tradesman may store building materials or construction equipment on his premises only within existing structures.
3. Home Occupations which meet all of the criteria listed below are not subject to site plan review and approval by the Planning Board.
- a) There is no external evidence of the occupation or office.
 - b) There is no individual employed on the premises who is not a resident.
 - c) The dwelling meets off-street parking requirements Section 18.
 - d) There are no visitors, customers or solicitations for individuals to visit the premises to conduct business.
 - e) There is no business sign of any type.
 - f) No more than 25% of the inhabitable floor area of the dwelling is utilized by the occupation or office.
 - g) Delivery of goods and materials is limited to step-vans and similar vehicles customarily associated with residential deliveries. No more than two (2) deliveries are permitted daily.
4. To increase housing alternatives while maintaining neighborhood aesthetics and quality, attached accessory dwelling units (ADU) are permitted on any property containing an owner-occupied single-family dwelling, provided that the applicant meets the criteria set forth below:
- a) A maximum of one (1) ADU per property is permitted. An ADU shall not be permitted on property where more than one primary dwelling unit (PDU) currently exists;
 - b) The ADU is contained within or will be an addition to an existing or proposed single family detached dwelling;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

- c) Exterior alterations, enlargements, or extensions of the PDU are permitted in order to accommodate the ADU. However, no such change is permitted which would alter the appearance of the PDU to look like a duplex or any other multi-family structure (i.e., the house should not look like it was designed to house more than one family). The construction of any exterior accessways which are required for access to the ADU shall be located to the side or rear of the building whenever possible. The ADU shall also be designed to remain functionally dependent on the PDU and shall not have provisions for separate utilities, garages, driveways, and other similar amenities;
- d) The ADU shall contain no more than two bedrooms;
- e) The ADU shall not exceed 1,000 square feet in area;
- f) The ADU shall be connected internally to the PDU;
- g) The property owner must occupy one of the two dwelling units;
- h) One parking space for the ADU shall be provided in addition to any parking for the PDU;
- i) The PDU, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy; and
- j) Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

- 5. Co-location of a new telecommunication antenna on existing Personal Wireless Service Facility (tower): See Section 2.02.6.1.

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

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

1. Churches, provided that it finds that all of the following conditions are met:
 - a) The specific site is an appropriate location for such a use or uses in terms of overall community development.
 - b) The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighboring area.
 - c) There will be no nuisance or serious hazard to vehicles or pedestrians.
 - d) That an adequate parking area is provided for motor vehicles on the premises.
 - e) A buffer shall be erected and maintained to screen existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.
 - f) The use as developed will be restricted for church purposes only. No commercial use of a church within the residential zone will be allowed.

C. Conditional Use Permits:

1. New Personal Wireless Service Facilities: See Section 2.02.6.1.

2. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Detached Accessory Dwelling Units (ADU's) in the R District. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for a Detached ADU:

- a) A maximum of one (1) ADU per property is permitted. An ADU shall not be permitted on property where more than one primary dwelling unit (PDU) currently exists;
- b) The Detached ADU shall be located only in the side or rear yard of the property;
- c) The Detached ADU shall not exceed 50% of the size of the Principal Dwelling Unit (PDU) or 1,000 square feet in size, whichever is smaller;
- d) Lots seeking a Detached ADU shall be comprised of at least 125% of the minimum lot area as required by Section 3.02.A, Table 1;
- e) A Detached ADU shall not contain more than two bedrooms;
- f) The property owner must occupy one of the two dwelling units;

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

- a) . The applicant shall meet the approval criteria set forth in a-e of B.1 above.¶
- b) . The applicant meets the criteria set forth in section 2.02.4.B.22.a (New Towers).¶

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

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

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

- a) . The applicant shall meet the approval criteria set forth in a-e of B.1 above.¶
- b) . The applicant meets the criteria set forth in section 2.02.4.B.22.c.¶
- c) . Proposed telecommunications antenna(s) shall be disguised through the use of camouflage technologies.¶

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Section 2.02.1 - District R - Permitted Uses (continued)¶

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

- g) One parking space for the ADU shall be provided in addition to any parking for the PDU;
- h) The PDU, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy;
- i) Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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. The following uses are permitted in the limited commercial district:

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1. Stores for the sale of retail goods or performance of personal services except those specifically excluded below;
2. Business and professional offices;
3. Specifically excluded are the following: banks, automotive related uses of all kinds, hotels, and motels, and “big box”, single user retail stores greater than 75,000 square feet.

C. Special Exceptions:

1. The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the limited commercial district C-1:
 - a) Restaurants,
 - b) Cafes,
 - c) Residential (other than a Planned Unit Development), and
 - d) Accessory uses as defined herein;
2. Provided that it finds that all of the following conditions are met:
 - a) The specific site is an appropriate location for such a use or uses in terms of overall community development.
 - b) The use as developed will not adversely affect the neighborhood.
 - c) There will be no nuisance or serious hazard to vehicles or pedestrians.
 - d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

D. Conditional Use Permits:

1. New Personal Wireless Service Facilities: See Section 2.02.6.1.

2. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) within the C-1 District.
3. Purpose & Intent: The purpose of this Section is to implement NH RSA 126-X, authorizing the use of therapeutic cannabis and to regulate the locations and operations of Alternative Treatment Center uses, so as to promote and protect the public health, safety, and welfare of the residents of Merrimack. The intent of this Section is to:
 - a) Provide for the safe sale and distribution of therapeutic cannabis to patients who qualify to obtain, possess, and use cannabis for medical purposes under RSA 126-X and as managed by the New Hampshire Department of Health & Human Services; and
 - b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, building safety, neighborhood and patient safety, security for the business and its personnel and other health safety concerns.
4. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location):
 - a) An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone; and
 - b) The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited; and
 - c) The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers; and
 - d) The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department; and
 - e) The use of cannabis on the premises is prohibited; and
 - f) The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

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

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

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

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

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

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1. Stores for sale of goods at retail or performance of regional customary personal services, or services clearly incidental to retail sales including services and construction materials, but no fabrication or manufacturing except incidental to, and on the same premises with, such retail sales, provided such incidental fabrication is conducted entirely within a building and does not occupy more than 20% of the floor area used for business purposes. Specifically excluded are "big box", single user retail stores greater than 75,000 square feet.
2. Business, professional, or banking offices.
3. Research and Development on lots of five (5) acres or more located in Commercial Parks of five or more lots.
4. Restaurant, cafe, or other place serving food or beverages.
5. Parking lot areas for transient motor vehicles, but not for storage of new or used motor vehicles for sale or hire.
6. Hotel/motel.
7. Churches.
8. Co-location of a new telecommunication antenna on existing Personal Wireless Service Facility (tower): See Section 2.02.6.1.

Deleted: 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.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

C. Special Exceptions:

1. The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the general commercial district C-2:
 - a) Accessory uses as defined herein,
 - b) Residential (other than a Planned Unit Development),
 - c) Public Facilities,
 - d) Sale or storage of used and new cars,
 - e) Commercial recreation and entertainment, and
 - f) Gasoline and automobile service and repair stations;

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

- 1) The specific site is an appropriate location for such a use or uses in terms of overall community development,
- 2) The use as developed will not adversely affect the neighborhood,
- 3) There will be no nuisance or serious hazard to vehicles or pedestrians, and
- 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

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

1. New Personal Wireless Service Facilities: See Section 2.02.6.1.

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

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

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

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

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

¶ b) . The applicant meets the following criteria:¶

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

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

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

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

¶

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

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

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

¶

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

2. Self Storage Facilities

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

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

- 1) Granting of the application would meet some public need or convenience;
- 2) Granting of the application is in the public interest;
- 3) The property in question is reasonably suited for the use requested;
- 4) The use requested would not have a substantial adverse effect on the rights of the owners of surrounding properties;
- 5) There must be appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure public safety and to avoid traffic congestion;
- 6) Electrical service to storage units shall be for lighting and climate control only. No electrical outlets are permitted inside individual storage units. Lighting fixtures and switches shall be of a secure design that will not allow tapping the fixtures for other purposes;
- 7) If the facility abuts residentially zoned property, the facility loading bays, docks or doors shall not be visible from the residential property or from public rights-of-way;
- 8) In order to promote visual compatibility with commercial development allowed in commercial zones, Self-Storage Facility buildings shall incorporate appropriate landscaping/screening and architectural and design features common to commercial and/or multifamily development. (Examples of such architectural and design features include: massing; proportion; facade modulation; exterior building materials and detailing; varied roofline; pedestrian scale; fenestration; repetition; etc.).

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

E. General Requirements:

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

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:

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

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

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.

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

Deleted: a. - New Towers¶

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

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

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

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

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

¶
¶
¶

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

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

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

¶
8) . Permit Required: a) building permits shall be obtained for all towers, accessory structures and ...

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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.

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

Deleted: only

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.

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

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.

Deleted: a) . New Towers, provided the applicant meets the criteria set forth in section 2.02.4.B.21.A (New Towers).¶
¶
b) . Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.¶
¶
c) . Co-location on Existing Non-Tower Structures, provided the applicant meets the criteria set forth in section 2.02.4.B.21.C (Co-location on Existing Non-Tower Structures). A building permit shall be required.¶
¶

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;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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)

E. Special Exceptions

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

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

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

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

G. General Requirements

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

2.02.5 - District I-3, Industrial - Permitted Uses

A. District Objectives

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

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

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

B. General Requirements

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

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

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

Deleted: only

1. Light manufacturing industries (i.e. electronics, light mechanical assembly, etc.)
2. Research and Development.
3. Offices.

4. New Personal Wireless Service Facilities: See Section 2.02.6.1

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

D. Special Exceptions

1. Accessory uses as defined herein.
2. Other industrial uses upon the approval by the Board of Adjustment upon finding that such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses shall be permitted.
3. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1 Special Exceptions, Section 2.02.1, District R, Residential Zone.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.6.1 – Personal Wireless Service Facilities/Telecommunication Towers

A. Purpose and intent. It is the purpose of this section to:

1. Facilitate the provision of personal wireless telecommunications services to residents and businesses;
2. Minimize adverse visual effects of wireless facilities through design and siting standards;
3. Encourage location of wireless facilities in non-residential areas; and
4. Encourage co-location of wireless facilities to limit as much as is practicable, wireless facility proliferation.

B. Separability: If any part or provision of this section of the ordinance or the application of this section of the ordinance to any service provider is determined to be invalid by any court of applicable jurisdiction, the judgement shall be confined in its operation to the part, provision, or application directly involved in the judgement, and it shall not affect or impair the validity of the remainder of this section of the ordinance.

C. Definitions. (Please also refer to NH RSA12-K:2 for further definitions applicable in NH)

1. *Personal wireless service facility (or "PWSF")*: means any facility as defined in the Federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying tower or mount, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services.
2. *Accessory equipment*: means any equipment serving or being used in conjunction with a PWSF or mount. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.
3. *Antenna*: means the equipment from which wireless radio signals are sent and received by a PWSF.
4. *Base station*: means a station at the base of a mount or in the area near the PWSF that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.
5. *Camouflaged*: means for a personal wireless service facility, one that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.
6. *Carrier*: means a company that provides personal wireless services.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.6.1 – Personal Wireless Service Facilities/Telecommunication Towers (continued)

7. *Collocation*: means the placement or installation of new PWSFs on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of PWSFs in compliance with applicable codes. "Collocation" does not include a "substantial modification."
8. *Disguised*: means, for a PWSF, designed to look like a structure which may commonly be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles, traffic lights, or artificial tree poles.
9. *Equipment compound*: means an area surrounding or near the base of a tower or mount supporting a PWSF, and encompassing all equipment shelters, cabinets, generators, and appurtenances primarily associated with the PWSF.
10. *Equipment shelter*: means an enclosed structure, cabinet, shed vault, or box near the base of a mount within which are housed equipment for PWSFs, such as batteries and electrical equipment.
11. *Height*: means the height above ground level from the natural grade of a site to the highest point of a structure.
12. *Modification*: means the replacement or alteration of an existing PWSF within a previously approved equipment compound or upon a previously approved mount. Routine maintenance of an approved PWSF shall not be considered a modification.
13. *Mount*: means the structure or surface upon which antennas are mounted and includes roof-mounted, side-mounted, ground-mounted, and structure-mounted antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding utility poles.
14. *Radio frequency emissions*: means the emissions from personal wireless service facilities, as described in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(B)(iv).
15. *Tower*: shall mean a freestanding or guyed structure, such as a monopole, monopine, or lattice tower, designed to support PWSFs.
16. *Substantial modification*: means the mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:
 - a) *Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or*

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.6.1 – Personal Wireless Service Facilities/Telecommunication Towers (continued)

- b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
- c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or
- d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage.

D. Wireless Communications Facilities/Telecommunication Towers are permitted uses in the I-1, I-2, and I-3 Zoning Districts, subject to site plan review by the Planning Board and the following requirements:

1. New Tower:

- a) Towers shall be set back from the property line by a distance equal to the height of the tower. The Planning Board may permit a lesser setback where alternative protections to abutting properties are provided by way of easement, covenant or other adequate deed restriction or where the proposed tower is designed in full compliance with all applicable building codes and building/construction plans submitted to the building inspector are certified and stamped by a licensed structural engineer prior to the issuance of a building permit. Prior to the issuance of a Building Permit, the tower design and plans shall be reviewed by a structural engineer designated by the Town.
- b) Accessory facilities must satisfy the minimum zoning district setback requirements.
- c) Towers shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness.
- d) For security purposes, towers and ancillary facilities shall be enclosed by a minimum six (6) foot fence.
- e) All utility buildings and structures accessory to a tower shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.6.1 – Personal Wireless Service Facilities/Telecommunication Towers (continued)

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

2. Collocation on existing Tower:

a) Collocation applications and modification applications (that are not determined to be "substantial modifications" as defined by this section and RSA 12-K:2) shall be reviewed for conformance with applicable building permit requirements but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review.

b) Collocation applications that are determined to be "substantial modifications" are subject to site plan review and conformance with the standards outlined in Section 2.02.6.1.D.1, above.

3. Collocation on Existing Non-Tower Structures:

a) Installing an antenna(s) on an existing structure other than a tower (such as a building, water tank, light fixture, or utility pole on private property) shall be reviewed for conformance with applicable building permit requirements but shall not otherwise be subject public hearing review, so long as the additional antenna(s) is no more than 20 feet higher than the existing structure and the color of the antenna(s) blends with the existing structure or surroundings. In any other circumstance, site plan review by the Planning Board is required.

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

c) 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.

d) 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.

2.02.6.1 – Personal Wireless Service Facilities/Telecommunication Towers (continued)

E. Wireless Communications Facilities/Telecommunication Towers are permitted uses in the following circumstances in the R, C-1, and C-2 Zoning Districts:

Deleted: allowed

1. New Tower:

- a) New towers in these districts are permitted by Conditional Use Permit (CUP) from the Planning Board. The following criteria, along with the requirements outlined in Section 2.02.6.1.D.1, must be met in order for the Planning Board to grant a CUP:
 - 1) The tower shall not exceed 120 feet in height from grade OR 10 feet above the generally surrounding tree line (determined by measuring the approximate average height of trees within a 500 foot radius of the proposed tower), whichever is less;
 - 2) The applicant shall camouflage or disguise the tower to look like trees or other appropriate alternative designs that blend in to the particular environment;
 - 3) The proposed tower shall not unreasonably impair the view of or from any public park, natural scenic vista, historic building, or significant view corridor as determined by the Planning Board;
 - 4) Demonstration that the proposed wireless communications equipment planned for the proposed site cannot be accommodated on an existing or approved tower or any structure within one mile of the proposed location for one of the following reasons:
 - i) The planned equipment would exceed the structural capacity of the existing tower/structure, as documented by a qualified professional engineer registered in the State of New Hampshire, and the existing tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost (defined here in as three quarters (3/4) of the cost of the tower); or
 - ii) The planned equipment would cause interference materially impacting the usability of other existing equipment at the antenna support structure as documented by a qualified professional engineer registered in the State of New Hampshire and the interference cannot be prevented at a reasonable cost.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.6.1 – Personal Wireless Service Facilities/Telecommunication Towers (continued)

2. Co-Location on existing Tower:

a) Collocation applications and modification applications (that are not determined to be “substantial modifications” as defined by this section and RSA 12-K:2) shall be reviewed for conformance with applicable building permit requirements but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review.

b) Collocation applications that are determined to be “substantial modifications” are subject to Conditional Use Permit and site plan review in accordance with the standards outlined in Section 2.02.6.1.E.1, above.

E. Prohibitions:

1. Signs are prohibited on Personal Wireless Service Facilities/Telecommunication Towers.

2. Lighting is prohibited on Personal Wireless Service Facilities/Telecommunication Towers except for lighting deemed required by the Federal Aviation Administration or ground level lighting required by the Planning Board for security purposes for accessory equipment structures associated with the tower.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.7 - District W, Wetlands Conservation District - Permitted Uses

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

1. The Wetlands Conservation District : in the Town of Merrimack is hereby determined to consist of three areas: (1) Wetland Soils – Those areas meeting the definition of wetland soils as defined in section 2.02.7.A.1(a) below; (2) Wetlands - Those areas meeting the definition of a wetland(s) as defined in Section 2.02.7.A.1(b), below; (3) and Buffer Areas - All buffer areas established under Section 2.02.7.A.7 of this Ordinance.
 - a) Wetland Soils – The wetland soils in the Town of Merrimack are those areas delineated as poorly drained or very poorly drained soils identified by the U.S. Department of Agriculture, Soil Conservation Service, through field mapping surveys completed in 1971 and shown on its field mapping photographic sheets for the Town of Merrimack, New Hampshire. The soil types which the Soil Conservation Service has determined in its field mapping surveys to be poorly drained or very poorly drained soils shall include the following (a detailed explanation of soil types is included in the Hillsborough County Soil Handbook which is on file with the Planning Board and in the office of the Soil Conservation Service, Milford, N.H.):

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

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

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

- c) Buffer Areas: are those areas immediately adjacent to Wetlands as defined in 2.02.7.A.7 of this Ordinance.
2. Purpose: In the interest of public health, convenience, safety and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high water tables:
- a) To prevent the development of structures and other land uses on or adjacent to wetlands that would contribute to pollution of surface and ground water.
 - b) To prevent the destruction and degradation of natural wetlands that provide flood protection.
 - c) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which arise because of inharmonious use of wetlands and adjacent upland areas.
 - d) To encourage those uses that can be appropriately and safely located in and around wetland areas.
3. Permitted Uses: Any use that does not result in the erection of any structure or alter the surface configuration by the addition of fill or by dredging and that is otherwise permitted by the zoning ordinance.
- a) Forestry-tree farming;
 - b) Agriculture;
 - c) Water impoundments and well supplies;
 - d) Drainage ways, streams, creeks, or other paths of normal runoff water;
 - e) Wildlife refuge;
 - f) Parks and such recreation uses as are consistent with the purpose and intentions of Section 2.02.7(A)(2);
 - g) Conservation areas and nature trails;
 - h) Open space as permitted by subdivision regulations and other sections of this ordinance.
 - i) Streets, roads, and other access ways if essential to the productive use of land not so zoned;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

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

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

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

5. Incorrectly Designated Soils:

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

- 1) A detailed topographic layout of the subdivision and/or area prepared by a registered land surveyor.
- 2) A revised soils map of the subdivision and/or area prepared by the Soils Conservation Service and/or evidence submitted by a soils scientist qualified in soils classification including a written report of his on-site inspection.
- 3) The soil boundary as shown on the photo map shall be overlaid on the plat as outlined in Section 4.04 of the subdivision regulations and the newly proposed boundary location shall be indicated on the same plat by a broken line.

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

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

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

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

7. Buffer Requirements:

- a) Buffer: a naturally vegetated upland area adjacent to a wetland, more specifically defined as the area within a specified distance from the edge of a wetland.
- b) Applicability: all residential and nonresidential development proposals submitted to the Planning Board for subdivision or nonresidential site plan approval after the effective date of this section (March, 2000) shall provide for a buffer of not less than twenty-five (25) feet from all applicable wetland areas. Applicable wetland areas include all naturally occurring jurisdictional wetlands, as defined herein, with a contiguous area of 3,000 square feet or more, and all jurisdictional wetlands adjacent to any surface water body, river, or stream listed in Section 2.02.12(C) (Shoreland Protection District) of this Ordinance. Upon designation of a wetland buffer area on any plat or plan approved by the Planning Board, said buffer area shall thereafter become a part of the Wetlands Conservation District as defined and described in Section 2.02.7(A).(1) of this ordinance.
- c) Exceptions: the buffer requirement noted above shall not apply to minor lot line adjustments, consolidation plans or voluntary mergers of nonconforming lots not intended for development purposes or for waivers from nonresidential site plan review applications related to changes, alterations or modifications of previously approved, developed sites.

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

A. Boundaries

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

B. Definitions

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

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

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

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

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

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

<u>District (See Note 1)</u>	<u>Area Sq Ft.</u>	<u>Frontage Ft.</u>	<u>Depth Ft.</u>	<u>Front Ft.</u>	<u>Side Ft.</u>	<u>Rear Ft.</u>
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(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 (regardless of soils) 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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3.02.5 - Multiple Soil Districts Within Lots (continued)

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

3.02.6 - Soil District Boundary Designated By Slope

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

1. A detailed topographic layout of the subdivision and the proposed lots prepared by a registered land surveyor, and accompanied with a written statement of his findings.
2. Such layout shall conform to the requirements of the Subdivision Regulations,
3. The soil boundary as shown on the photo map shall be overlaid on the plat as required by the Subdivision Regulations, and the newly proposed boundary location shall be indicated on the same plat by a broken line along the nearest contour line determining the beginning of the slope.

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

3.02.7 - Soils District Boundary Designated By Soil Classification

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

1. A detailed topographic layout of the subdivision and the proposed lots prepared by a registered land surveyor.
2. A revised soils map of the Town of Merrimack prepared by the Soils Conservation Service and/or evidence submitted by a soils scientist qualified in soils classification including a written report of his on-site field inspection.
3. The soil boundary as shown on the photo map shall be overlaid on the plat as required by the Subdivision Regulations, and the newly proposed boundary location shall be indicated on the same plat by a broken line.

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

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C. -

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

3.03 - Reserved

3.04 - Lot or Yard Size Reduction

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

3.05 - Nonconforming Lots

Notwithstanding the minimum lot area, frontage and depth requirement set forth in Section 3.02 of this ordinance, ~~a structure may be built on a nonconforming lot not complying with the aforementioned requirements provided that:~~

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

3.06 - Lots Without Public Sewerage

Notwithstanding compliance of any lot with the requirements set forth in Section 3.02 or Section 3.05, no residence shall be constructed on any lot which is not served by public sewerage facilities unless private sewage disposal system absorption area requirements can be and are met to the satisfaction of the Building Official, said area requirements to be determined by the Building Official in accordance with the provisions contained in ~~the NH Department of Environmental Services' ENV-WQ1000 Administrative Rules, as most recently amended.~~

3.07 - Previously Approved Permits

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

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

4.01 – Manufactured Housing Units

After the effective date of this section, no manufactured housing units shall be located otherwise than in a manufactured housing park or manufactured housing subdivision except as specifically provided in this section. A manufactured housing unit lawfully existing on the effective date of this section on land out of a manufactured housing park or manufactured housing subdivision, or a replacement hereof if such manufactured housing unit is destroyed by fire or casualty and its replacement is located on the land within 180 days after such fire or casualty may be maintained as a non-conforming use, provided that when such use shall have been discontinued by the removal of such manufactured housing unit or its replacement from the land, the use of such land shall thereafter conform to the provisions of this ordinance.

4.02 – Manufactured Housing Parks

- A. No manufactured housing park shall be established or operated without approval from the Planning Board of a plan which clearly defines the area of the proposed park, as well as all manufactured housing unit sites, all utilities, and such other requirements as shall be required by the subdivision regulations of the Town of Merrimack as may be adopted from time to time.
1. Manufactured housing parks shall consist of a minimum of six (6) lots and are permitted in any residential zone provided that all requirements pertain to single family houses are met.
 2. Each lot must contain not less than 30,000 square feet and shall have a depth of at least 150 feet and a frontage of at least 100 feet on a public or private street having a width of at least 50 feet, with town water and town sewerage.
 3. No lot shall contain more than one manufactured housing unit. No manufactured housing unit shall be placed closer than 150 feet to an existing residence.
 4. Each lot shall be clearly marked.
 5. Front yard setbacks shall be at least 20 feet. Rear yard setbacks shall be at least 10 feet. Side yard setbacks shall be at least 10 feet.
 6. No principal building shall be located in a manufactured housing park except manufactured housing units and laundry, recreation, or other buildings maintained in connection with the operation of the manufactured housing park or subdivision.

Deleted: An unoccupied travel trailer registered for use on the highways of this state may be parked on land owned by the owner of the travel trailer, provided that the location or condition of such travel trailer is not detrimental to the neighborhood or to property in the vicinity.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 4.02 – Manufactured Housing Parks (continued)

7. **Ordinary and customary accessory structures and additions including sheds, porches, decks and car ports, are permitted provided that all applicable setback and building code requirements are met.**
8. The proposed manufactured housing park will be effectively screened by the use of the existing natural features of the landscape and/or added landscaping.

4.03 – Manufactured Housing Subdivisions

- A. Manufactured housing subdivisions, consisting of a minimum of six (6) lots, are permitted in any residential zone provided that all requirements, which pertain to single-family houses, are met. Cluster Development provisions may be applied to manufactured housing subdivisions.
- B. If a plat is submitted with a request for approval for a manufactured housing subdivision and such plat is approved, the plat shall bear the legend that it is "approved for manufactured housing units".
- C. The manufactured housing subdivision will be effectively screened by the use of the existing natural features of the landscape and/or added landscaping.

4.04 – Travel Trailers

- A. No person shall park or occupy any travel trailer on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling, except as follows:
 1. The parking of one travel trailer is permitted, provided that said trailer is not occupied and the trailer belongs to the property owner or lessee of the land it occupies.
 2. The temporary use of a travel trailer by a person or persons for whom a residence is being constructed, provided that such use is shown to be a temporary expediency, may be permitted by the Planning & Zoning Administrator or his/her designee. The Planning & Zoning Administrator or his/her designee may grant such permission for a period not to exceed ninety (90) days, excepting that he/she may extend, at his/her discretion, such permission at the expiration of said ninety (90) day period following a written request by the applicant containing a reasonable explanation for the extension request.
 3. Any property owner or lessee of a premises containing an occupied single-family dwelling may accommodate one (1) travel trailer of a nonpaying guest for a period not exceeding thirty (30) days in any one calendar year, may be permitted by the Planning & Zoning Administrator or his/her designee.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

SECTION 17 - SIGNS [revised 10/27/16]

17.01 - Purpose

The purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.

17.02 - Severability

If any part of this section, subsection, sentence, clause, or phrase is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted the Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

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17.03 - Governmental Signs, Signs Required By Law and Flags

Nothing in this section shall prevent the erection, location or construction of signs on private property where such erection, construction or location is required by any law or ordinance enacted by the local, state or federal governments, nor shall any village district or municipally operated utility be prohibited from erecting signs on private property when otherwise permitted. This ordinance does not regulate flags of National, State, Local or historical significance.

17.04 - Permit Required

No sign shall be erected or affixed to any building exterior or placed freestanding on any parcel or altered or moved, without a permit issued by the Building Official and approved by Planning/Zoning Administrator except as otherwise exempted in this ordinance. Signs containing *noncommercial speech* are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.

17.05 - Definitions

The following definitions shall apply throughout these regulations:

1. *Awning*: a removable shelter of canvas, plastic, metal or some other material, extending over a doorway or window and providing shelter from rain or sun.
2. *Awning Sign*: a sign affixed to the surface of an awning but not extending above below or beyond the awning surface.
3. *Banner Sign*: a temporary sign of lightweight material (paper, plastic or fabric) hung either with or without frames. Flags and insignias containing only markings of any government, corporation or business are not considered to be banners.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.05 – Definitions (continued)

4. Billboard: a sign which directs attention to a business, product, service, or entertainment conducted, sold, or offered at a location other than on the premises on which the sign is located. For the purposes of this ordinance, an off-premise sign becomes a billboard when it is greater than 150 square feet in size.
5. *Building Face or Wall:* all window and wall area of a building in one plane or elevation.
6. *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.
7. *Construction or Project Sign:* a sign erected on a project site prior to or during a construction project.
8. *Directional Sign:* a sign identifying site locations, entrances, exits, parking areas, loading areas, or other messages necessary to direct vehicles or pedestrians to, through or within a site.
9. *Directory Sign:* a sign which identifies or locates the occupants of a building or site.
10. *Electrical Sign:* a sign containing or attached to electrical wiring.
11. Feather flag: a freestanding temporary sign that is in the shape of a feather or teardrop and constructed of a non-rigid material.
12. *Flashing:* a pattern of changing light illumination where the sign illumination alternates between illuminated and non-illuminated.
13. *Flashing Sign:* a sign containing an intermittent flashing light by means of animation or an externally mounted intermittent light source.
14. *Ground Sign:* a sign erected on a freestanding frame, mast or pole that is not attached to any building.
15. *Illuminated Sign:* a sign lit with either an internal or external artificial light source.
16. *LED:* a Light-Emitting Diode is a semiconductor diode that emits light when a voltage is applied to it.
17. *Marquee:* a permanent roof-like shelter extending from part or all of a building face over a public-right-of-way, and constructed of some durable material such as metal, glass or plastic.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.05 – Definitions (continued)

- 18. *Mobile Signs*: a sign mounted on wheels or a wheeled trailer primarily situated and decorated to display an advertising message.
- 19. *Nameplate*: a non-electric sign identifying only the name and occupation or profession of the occupant of parcel on which the sign is located. If any parcel includes more than one occupant, nameplate means all names and occupations or professions as well as the name of the building and directional information.
- 20. *Nit*: a unit of visible-light intensity that is used to describe the brightness of a display; one nit is equal to one candela per square meter (cd/m²). For an LED display it is calculated as the following: nit = candela per pixel times pixels per square meter.
- 21. *Non-commercial Speech*: Any form of speech conducted for personal use or enjoyment without the intent of realizing a profit or recovering costs through the sale of goods or services.
- 22. *Off-Premise Sign*: a sign visible from a public right of way identifying or advertising a business, person, activity, goods, products or services not located on the parcel where the sign is installed and maintained.
- 23. *On-Premise Sign*: a sign visible from a public right of way identifying or advertising a business, person, activity, goods, products or services located on the parcel where the sign is installed and maintained.
- 24. *Premise*: a lot or number of lots on which are situated a building, or group of buildings designed as a unit, or on which a building or a group of buildings are to be constructed.
- 25. *Projecting Sign*: a sign, other than a wall sign, which is attached to, and projects more than eighteen inches from a building face or wall.
- 26. *Real Estate Directional Signs*: real estate signs advertising an open house and located off premises.
- 27. *Real Estate Sign*: a sign advertising exclusively the sale, rental, or lease of the premises, or a portion thereof, upon which the sign is located.
- 28. *Roof Sign*: a sign erected upon, against or directly above a roof, or on the top of or above the parapet of a building.
- 29. *Rotating Sign*: a sign, or portion of a sign, which moves in a revolving manner.
- 30. *Scrolling Graphics*: a mode of message transition on an electronic message display sign where the message appears to move across the display surface.

Comment [RP1]: Moved to 17.06.9

Deleted: Such sign must be removed within fifteen days after the closing of sale, rental or lease.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.05 – Definitions (continued)

31. *Sign*: a permanent or temporary structure, device, two or three dimensional object or any combination of words, letters, figures, lights, designs, pictures, insignias, emblems, logos, banners, pennants or flags visible to the public from the outside of a building that conveys a message to the public in order to advertise, inform, identify, direct, invite or draw attention to any business, goods, products, facilities, services, activities or events that are available, provided or conducted on or off the premises. "Sign" includes any permanently installed and prominently displayed merchandise and for the purpose of removal also includes the sign structure.
32. *Sign, Electronic Message Display*: an electronic changeable sign capable of displaying text, symbols, figures or graphics, which can be electronically or mechanically changed by remote or automatic means, and incorporates both Electronic Changeable Copy and/or Electronic Graphic Display signs.
 - a. *Sign, Electronic Changeable Copy*: a sign or portion thereof that displays electronically non-pictorial, text information in which each alphanumeric character or symbol is defined by some number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area. Electronic Changeable Copy includes computer programmable, microprocessor controlled electronic displays. Electronic changeable copy does not include time and temperature signs.
 - b. *Sign, Electronic Graphic Display*: a sign or portion thereof that displays electronic static images, static graphics, or static pictures, with or without text information, defined by some number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area where the message change sequence is accomplished immediately or by means of fade, re-pixelization or dissolve modes. Electronic Graphic Display Signs include computer programmable, microprocessor controlled electronic displays.
33. *Sign Structure*: a structure which supports or is capable of supporting a sign, including decorative cover. A sign structure may be a single pole and may or may not be an integral part of a building or structure.
34. *Temporary/Portable Sign*: a non-electronic sign which is not permanently installed or affixed to any sign structure or building. Temporary signs shall not include Real Estate Signs or Political Signs.
35. *Transition*: a visual effect used on an electronic message display to change from one message to another.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.05 – Definitions (continued)

- 36. *Wall Sign:* a sign attached to, painted on or erected against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of the wall. "Wall sign" also includes any sign erected against, installed on or painted on a penthouse above the roof of a building as long as the wall of the penthouse is on a plane parallel to the wall of the building, and a sign attached to, painted on or erected against a false wall or false roof that does not vary more than thirty degrees from the plane of the adjoining elevation.

17.06 - Permit Not Required

The following signs may be erected without a permit and are not included in the maximum sign area allowed unless otherwise indicated, but must comply with all other requirements of this ordinance:

- 1. In all districts, one (1) sign shall be allowed on a residential property for each residence. Each sign shall have a maximum area of four (4) square feet, shall be a maximum of six (6) feet high and may not be located within ten (10) feet of an abutter or public right-of-way. Additional signage may be permitted per Section 17.09.2.
- 2. Wall plaques or markers on properties where a structure has been identified as historic by a local, state or federal agency.
- 3. In order to maintain public safety, directional or directory signs, no greater than four (4) square feet, which are located outside of setback areas and are not visible from the public right-of-way or abutting properties. Other directional or directory signs are governed by section 17.10.
- 4. Signs affixed to the interior side of a window so as to be visible from the exterior.
- 5. In order to maintain public safety, utility signs which identify the location of utility lines, cables, or pipes.
- 6. Lettering, logos or graphics affixed to products or packaging.
- 7. In order to maintain public safety, nameplate signs, not to exceed two (2) square feet, showing street addresses, property numbers, names of occupants of the premises, or other identification.

- 8. Signs **erected by a governmental entity, including but not limited to those** for public safety and/or information, including Electronic Changing Signs (Message Centers).

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8. - Signs installed by governmental bodies. ¶
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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.06 - Permit Not Required (continued)

- 9. One (1) temporary non-illuminated on premise real estate (for sale, rent or lease) sign not exceeding six (6) square feet in Residential districts, nor greater than twelve (12) square feet in other districts. Real estate signs shall not count against any property's total signage allowance, may be displayed for the duration the property is for sale, rent or lease, and shall be removed within fifteen (15) days after the closing of sale, rental or lease.
- 10. Political signs that conform to all applicable New Hampshire State Statutes, including but not limited to RSA 664:14 through 664:18 and as may be amended, and enforcement shall be through the State of New Hampshire Office of the Attorney General.

17.07 - Prohibited Signs in All Districts

- 1. Rotating and Revolving Signs
- 2. Flashing Signs
- 3. Billboards
- 4. Any changes made to the display of any sign which occurs more often than once in a twenty (20) minute period, with the exception of a time/temperature display.

17.08 - Temporary Signs

- 1. In all districts, one (1) temporary sign shall be allowed on each property.
- 2. All temporary signs shall require a permit in accordance with Section 17.04, and shall adhere to the following standards:
 - a). Sign placement shall be not less than ten (10) feet from any public right-of-way;
 - b). Sign placement shall be not less than twenty (20) feet from any intersection;
 - c). Temporary signs may be displayed for a period no longer than thirty (30) days in any consecutive ninety (90) day period whatsoever; and
 - d). Temporary signs shall be no larger than thirty-two (32) square feet in area.

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Temporary signs that comply with the following standards do not require a permit.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.10 - Commercial and Industrial Districts (continued)

10. Sign, Electronic Message Display: Signs permitted in section 17.10.3 & 17.10.4 shall be permitted as electronic message display subject to the following:
- a) Electronic Message Displays shall display static messages for a period of a minimum of 20 minutes;
 - b) Transitions from one static message to the next static message may include the use of frame effects, so long as such effects do not utilize flashing, scrolling or in any manner imitate movement;
 - c) Electronic Message Displays shall have automatic dimming technology which automatically adjusts the sign's brightness levels as specified in the Site Plan Regulations of the Town of Merrimack; and
 - d) The owner/installer of Electronic Message Displays shall certify as part of the application that signs will not exceed the brightness levels specified in the Site Plan Regulations of the Town of Merrimack.
 - e) Electronic Message Displays shall not be permitted as temporary signs.

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11. Signage Requirements for Alternative Treatment Centers

- a) In addition to the requirements of Section 17.10, Alternative Treatment Centers that have received a Conditional Use Permit and Site Plan approval from the Planning Board shall be subject to the applicable requirements of the NH Health & Human Services Department (DHHS) Administrative Rules (He-C 400, as most recently published or amended by DHHS) pertaining to Advertising Restrictions.

17.11 - Off-Premise Signs

Off premise signs may be erected on parcels of real estate only within the Commercial and Industrial zones. Off premise signs shall be limited to Ground Signs conforming to the regulations provided in Section 17.10.3. A parcel may contain either an On-Premise sign or an Off-Premise sign, but not both, unless it has enough frontage to display two signs (as described in 17.10.3) in which case one sign may be devoted to on-premise advertising and one sign devoted to off-premise advertising.

17.12 - Site Plan Review

A building permit for any ground sign at a nonresidential or multi-family site shall be issued only after approval by the Planning Board in accordance with the Site Plan Regulations of the Town of Merrimack.

Deleted: Review r

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.13 - Area and Dimensional Calculations

1. Area of Ground Signs

- a) Sign face area is calculated as the total area within the smallest rectangle, circle or triangle, which will completely enclose the sign face. The sign structure shall not be included as a portion of the sign face, provided that no message, symbol, or anything that can be construed as part of the sign face is displaced on or designed as part of the sign structure.
- b) If a ground sign consists of more than one module or section, the total area of all modules or sections shall constitute the sign area.
- c) The area of one side of a double-faced sign shall be regarded as the total area of the sign provided that such sign faces are either parallel or at an angle of thirty (30) degrees or less to each other. If the sides are of unequal area, the larger shall determine the area.

2. Area of Wall Signs

- a) The sign face area of signs attached or affixed to buildings or other structures shall include all lettering, designs or symbols, together with the background, whether open or enclosed, upon which they are displayed. When signs are incorporated into canopies or awnings, the entire panel containing the sign copy is counted as the sign face area.
- b) Where a sign consists or individual letters or symbols attached, painted or applied to a building, wall or window, without any distinguishing border, panel or background, the area shall be considered to be the smallest rectangle, triangle or circle encompassing all the letters and symbols.
- c) In no case can the additional surrounding background area exceed the area of the copy. For the purpose of this section, the permitted background area is the total area between the lintel bar and the parapet on a one (1) story building or between the lintel bar and the floor level of the floor above on a multi-story building.

Appendix to Section 17 follows.

Deleted: 1. - Area: The area of a sign is considered to be the area, on the largest single face of a sign, within a perimeter which forms the outside shape of a sign. If the sign consists of more than one module (i.e. Section) the total area of all modules shall constitute the sign area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle or any other easily recognized geometric shape and then computing the area. Where a sign is of a three-dimensional, round or irregular shape, the largest cross section shall be used in a flat projection for the purpose of computing sign area (figures 1-4, Appendix to this title). If a sign is lettered on both sides back to back only one side shall be counted as the total sign area. All appendages or riders are calculated within the area of the sign to which they are appended.¶

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2. - Height: The height of a sign is the vertical distance measured from the adjacent undisturbed grade of the sign to the highest point of the sign. ¶