



# 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:** April 7, 2016

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

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

**Subject: Workshop Discussion: Zoning Ordinance Amendments regarding Accessory Dwelling Units**

**Background:** As the Board may recall, at a joint meeting with the Zoning Board in December 2014, the topic was raised about amending the Zoning Ordinance regarding how the Town deals with accessory dwelling units (ADU), which are commonly referred to as "in-law apartments." At the time, the ZBA was only interested in amending the process of how ADU's are approved, whereas the Staff and Planning Board were interested in a more comprehensive look at the topic, in order to implement one of the 2013 Master Plan recommendations.

As staff set out to put together amendments to the ordinance, the State Legislature began the process on a proposed bill that would change the way the State allows municipalities to deal with ADU's. While the legislative process was unfolding, staff put the zoning amendment project on the back burner until the bill reached a resolution.

That resolution has now taken place, as the Legislature passed, and the Governor has signed a bill that sets forth new statutory requirements for ADU's. The new law becomes effective on June 1, 2017, but nothing prevents the Town from moving forward with changes before then. Attached to this memo, after the draft of the proposed ordinance amendments, is a copy of the new state law. The new law correlates nicely with the recommendations from the Master Plan (also attached), in that municipalities will no longer be able to restrict occupancy of ADU's to family members only.

The proposed amendments to the ordinance would set forth 2 different processes for ADU's. The first (and most common) would be to change "attached" ADU approvals from a Special Exception requiring ZBA approval to a permitted use, with criteria that would be administered by the Community Development Department and Building Department. The second process would be to allow for "detached" ADU's to be permitted by Conditional Use Permit by the Planning Board. It is staff's belief that these proposed amendments address the issue the ZBA was desirous of "fixing" (the process required for Special Exceptions), and the Master Plan/State Law goals of assisting with meeting the needs of a diversified housing stock to address a limited part of the workforce housing needs for the community.

### **Summary of Proposed Amendments:**

- Section 2.02.1.A (District R - Permitted Uses): Insert new subsection #4 establishing the criteria for attached ADU's to be permitted, renumber old subsection "4" to be "5";
- Section 2.02.1.B (District R - Permitted Uses, Special Exceptions): Delete subsection #2 in its entirety, renumber remaining subsections;

- Section 2.02.1 (District R - Permitted Uses): Insert new subsection C, Conditional Use Permits, and further to establish the criteria for detached ADU's to be permitted by Conditional Use Permit.

### **Required Process for Adoption of Amendments**

These proposed Zoning Ordinance amendments will require a public hearing with the Planning Board, after which (if the Board wishes to see the amendments adopted) the Board will make a recommendation to the Town Council (in accordance with the Charter). From there, the Council will follow their process of 3 readings and a public hearing on the proposed amendments. The final decision on the adoption of any zoning amendment rests with the Council in accordance with the Town Charter and State law.

### **Recommendations:**

1. Review and comment on the proposed amendments to the Zoning Ordinance. Staff will then make any necessary changes to address Planning Board feedback;
2. Schedule a public hearing for the proposed amendments at an upcoming Planning Board meeting (for a recommendation to the Town Council).

cc: Community Development Staff  
Building Division Staff  
Zoning Board of Adjustment  
File

Attachments: Draft Ordinance Amendments  
SB146 Language (new state law)  
Master Plan Excerpts re: ADU's  
12/2/14 Joint PB/ZBA Meeting Minutes Excerpt

**SECTION 2 - ESTABLISHMENT OF DISTRICTS** [revised **TBD**]

**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

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

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

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**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 in 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;

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**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;
- 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; and
- 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;

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

Deleted: 4

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.

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.

**Deleted:** 2. . Accessory dwelling unit (ADU), provided that the applicant meet the criteria set forth in a-d only of B.1 above and further provided that:¶  
¶  
<#>the ADU is contained within or will be an addition to an existing or proposed single family detached dwelling; ¶  
<#>the ADU contains no more than one bedroom;¶  
<#>the ADU does not exceed 1,000 square feet in area, or fifty percent (50%) of the area of heated living space within the principal dwelling unit in area, whichever is smaller;¶  
d) the ADU is connected internally to the principal dwelling unit;¶  
<#>the ADU occupancy is to be restricted to family members only, with the term "family" defined as individuals related by blood, marriage or adoption to the fee simple owner-occupant(s) of the principal dwelling unit; and¶  
<#> the ADU is designed to remain functionally dependent on the principal unit and will not have provisions for separate utilities, garages, driveways, yard and other similar amenities.¶  
¶  
3

**Deleted:** 4

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

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

C. Conditional Use Permits:

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 6  
SB 146 - FINAL VERSION

03/12/2015 0740s  
03/12/2015 0832s  
7Jan2016... 2424h  
02/11/2016 0375EBA

2016 SESSION

15-0314  
03/05

SENATE BILL **146**

AN ACT relative to accessory dwelling units.

SPONSORS: Sen. Boutin, Dist 16; Sen. Cataldo, Dist 6; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21; Sen. Little, Dist 8; Sen. Reagan, Dist 17; Sen. Watters, Dist 4; Rep. Hunt, Ches 11; Rep. Matthews, Rock 3

COMMITTEE: Public and Municipal Affairs

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ANALYSIS

This bill establishes requirements for local regulation of accessory dwelling units.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



**CHAPTER 6**  
**SB 146 - FINAL VERSION**  
**- Page 2 -**

1 size, frontage, space limitations, or other controls beyond what would be required for a single-family  
2 dwelling without an accessory dwelling unit. The municipality is not required to allow more than  
3 one accessory dwelling unit for any single-family dwelling.

4 II. If a zoning ordinance contains no provisions pertaining to accessory dwelling units, then  
5 one accessory dwelling unit shall be deemed a permitted accessory use, as a matter of right, to any  
6 single-family dwelling in the municipality, and no municipal permits or conditions shall be required  
7 other than a building permit, if necessary.

8 III. An interior door shall be provided between the principal dwelling unit and the  
9 accessory dwelling unit, but a municipality shall not require that it remain unlocked.

10 IV. Any municipal regulation applicable to single-family dwellings shall also apply to the  
11 combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to  
12 lot coverage standards and standards for maximum occupancy per bedroom consistent with policy  
13 adopted by the United States Department of Housing and Urban Development. A municipality may  
14 require adequate parking to accommodate an accessory dwelling unit.

15 V. The applicant for a permit to construct an accessory dwelling unit shall make adequate  
16 provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with  
17 RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling  
18 units.

19 VI. A municipality may require owner occupancy of one of the dwelling units, but it shall  
20 not specify which unit the owner must occupy. A municipality may require that the owner  
21 demonstrate that one of the units is his or her principal place of residence, and the municipality  
22 may establish reasonable regulations to enforce such a requirement.

23 VII. A municipality may establish standards for accessory dwelling units for the purpose of  
24 maintaining the aesthetic continuity with the principal dwelling unit as a single-family dwelling. A  
25 municipality may also establish minimum and maximum sizes for an accessory dwelling unit,  
26 provided that size may not be restricted to less than 750 square feet.

27 VIII. A municipality may not require a familial relationship between the occupants of an  
28 accessory dwelling unit and the occupants of a principal dwelling unit.

29 IX. A municipality may not limit an accessory dwelling unit to only one bedroom.

30 X. An accessory dwelling unit may be deemed a unit of workforce housing for purposes of  
31 satisfying the municipality's obligation under RSA 674:59 if the unit meets the criteria in RSA  
32 674:58, IV for rental units.

33 674:73 Detached Accessory Dwelling Units. A municipality is not required to but may permit  
34 detached accessory dwelling units. Detached accessory dwelling units shall comply with the  
35 requirements of, and any municipal ordinances or regulations adopted pursuant to, RSA 674:72, IV  
36 through IX. If a municipality allows detached accessory dwelling units, it may require an increased  
37 lot size.

**CHAPTER 6**  
**SB 146 - FINAL VERSION**  
**- Page 3 -**

1           6:3 Innovative Land Use Controls. Amend RSA 674:21, I(l)-(o) to read as follows:

2                   (l) ~~[Accessory dwelling unit standards.~~

3                   ~~(m)]~~ Impact fees.

4                   ~~(n)]~~ **(m)** Village plan alternative subdivision.

5                   ~~(o)]~~ **(n)** Integrated land development permit option.

6           6:4 Innovative Land Use Controls; Accessory Dwelling Units. Amend RSA 674:21, IV to read as  
7 follows:

8                   IV. As used in this section:

9                   (a) "Inclusionary zoning" means land use control regulations which provide a voluntary  
10 incentive or benefit to a property owner in order to induce the property owner to produce housing  
11 units which are affordable to persons or families of low and moderate income. Inclusionary zoning  
12 includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined  
13 application process.

14                   (b) ~~["Accessory dwelling unit" means a second dwelling unit, attached or detached,~~  
15 ~~which is permitted by a land use control regulation to be located on the same lot, plat, site, or other~~  
16 ~~division of land as the permitted principal dwelling unit.~~

17                   ~~(c)]~~ "Phased development" means a development, usually for large-scale projects, in  
18 which construction of public or private improvements proceeds in stages on a schedule over a period  
19 of years established in the subdivision or site plan approved by the planning board. In a phased  
20 development, the issuance of building permits in each phase is solely dependent on the completion  
21 of the prior phase and satisfaction of other conditions on the schedule approved by the planning  
22 board. Phased development does not include a general limit on the issuance of building permits or  
23 the granting of subdivision or site plan approval in the municipality, which may be accomplished  
24 only by a growth management ordinance under RSA 674:22 or a temporary moratorium or  
25 limitation under RSA 674:23.

26           6:5 Effective Date. This act shall take effect June 1, 2017.

27 Approved: March 16, 2016

28 Effective Date: June 1, 2017

income is \$50,070 adjusted for a family of three.<sup>13</sup>

- New Hampshire Housing estimates that the affordable purchase price for a home in Merrimack is \$295,000 and the estimated affordable rent is \$1,250 per month. The estimated affordable purchase price assumes that no more than 30 percent of household income is spent for housing after a 5 percent down payment, a 30 year mortgage at a 4.81 percent interest rate, private mortgage insurance, taxes and homeowners insurance. The estimated affordable rent is based upon an expenditure of no more than 30 percent of household income that includes the monthly rental cost and utilities.
- Based upon those figures and the current median home price of \$220,000 and the median monthly rent cost of \$1,217, there is no housing affordability gap in Merrimack at this time.
- In 2009, 71.3 percent of the homes units sold were priced at or below, the estimated affordable purchase price. In 2011, 60.1 percent of the two-bedroom dwelling units were rented at the estimated affordable rental cost. These figures are for the Nashua HFMA, not just Merrimack.
- Given that median household income is projected to drop slightly over the next few years and the expectation that housing prices will recover, it is still important to look for ways to ensure that the housing stock remains diverse and affordable into the future in order to avoid an affordability gap. The recession resulted in a disruption of housing prices, but this has created an opportunity for the Town to foster housing affordability in the future by proactively employing the strategies described below that help to diversify the housing stock. If housing prices continued to rise at the pre-recession rate and if household income stayed steady, there would likely have been an affordability gap.
- Demographically, Merrimack is a growing community. As is true for many communities in NH and around the country, the growth is more heavily weighted towards the older population segments. Additional options for housing the growing elder population should be considered. Merrimack is also a community of predominantly family households, and Merrimack's housing stock is predominantly single-family dwellings. Merrimack has infrastructure issues that present a challenge to denser development (sewer and water), but also has areas of town where both town sewer and water are available.

### 3.8 Housing Recommendations

While there may not be any identifiable housing affordability gap based upon the housing needs assessment, it is important for Merrimack to create new opportunities to diversify and preserve its existing housing stock. The following recommendations are made to establish housing policies that achieve the housing goals set forth in this Plan.

<sup>13</sup> New Hampshire Housing Finance Authority 2011 Workforce Housing Purchase and Rent Limits, RSA 674:58 – 6. [http://www.nhfa.org/rl\\_docs/WrkfrchSngPurchaseAndRentLimits\\_current.pdf](http://www.nhfa.org/rl_docs/WrkfrchSngPurchaseAndRentLimits_current.pdf). Accessed August 2012.

In order to strengthen the Town's commitment to housing diversity and affordability, it should establish a Housing Commission that can advocate for the development of affordable workforce housing. A Commission can act as a resource to other Town boards and commissions on issues that arise relating to housing. It is not a regulatory body. However, a Housing Commission can also receive gifts of money or property to create an affordable housing fund. It can acquire and dispose of real property interests, subject to Town approval, in order to preserve or enhance housing affordability.

Consider establishing

H-1 Establish a Housing Commission that can advocate for the development of affordable workforce housing. A Commission can act as a resource to other Town boards and commissions on issues that arise relating to housing. It is not a regulatory body. However, a Housing Commission can also receive gifts of money or property to create an affordable housing fund. It can acquire and dispose of real property interests, subject to Town approval, in order to preserve or enhance housing affordability.

***Goal 1: Encourage high-quality housing in attractive neighborhoods through development of innovative land use controls, regulations and programs, such as incentive bonuses to encourage features in site plans/New Hampshire Revised Statutes (RSA).***

- H-2 Encourage more mixed-use and infill development where appropriate along the Daniel Webster Highway corridor. This encourages the reuse of vacant or underdeveloped parcels and can allow for development at higher densities where the infrastructure can support it. Mixed-use development helps to diversify the housing stock by creating dwelling units that tend to be smaller and more affordable, either as rental or for-sale units.
- H-3 Allow for smaller lot sizes in selected areas where water and sewer infrastructure is available.
- H-4 Utilize substandard lots in certain areas by allowing subdivision of a lot into two lots – one with reduced area and width requirements. These new smaller lots could be developed with a goal of providing an alternative means for reducing housing costs.
- H-5 Revise the zoning ordinance to encourage the development of more duplex and townhouse dwellings.

***Goal 2: Maintain the Town of Merrimack's compliance in meeting the housing affordability goals pursuant to the Workforce Housing Law.***

H-6 Consider adopting an Inclusionary Zoning ordinance. Many communities have enacted inclusionary zoning to designate a certain percentage of new housing units as affordable units that meet the requirements of the Workforce Housing Law. Setting aside a certain percentage of units as affordable would be done on a voluntary basis by developers if incentives are provided such as density bonuses, relief from specific dimensional regulations, or the exemption from paying certain fees, for example.

H-7 Consider revisions to the zoning regulations to allow for accessory apartments to make them more viable housing options, especially for senior citizen households. Do not

restrict accessory units to only family members and consider them as a by-right use rather than requiring a special permit. However, owner-occupancy of either the principal or the accessory unit can be one way in which to ensure greater neighborhood stability.

- H-8 Inventory town-owned land and tax title property to identify potential parcels for use as affordable housing sites, which can be developed/rehabilitated by the Town or private developers.
- H-9 Prepare a detailed and updated housing needs assessment that allows the Town to realistically achieve the creation of new affordable units to meet the needs of current and future Merrimack residents. This will be important given the changing demographics of the Town, especially the increasing population over 65 years of age, and the housing market that is still in a state of flux in the aftermath of the housing collapse during the recent recession. An emphasis should be placed on establishing housing for senior citizens, including assisted living facilities, and creating entry level housing opportunities for younger residents. This effort should be coordinated by the Merrimack Housing Commission, if established.

### *Goal 3: Ensure that housing choices are available to meet the needs of current and future generations in Merrimack.*

- H-10 Continue to look for ways to meet the needs of the growing elderly population. The Town currently has a couple of housing developments for senior citizens, although they are for market rate units. Others have been proposed but did not proceed because of market conditions. One option that is gaining more attraction around the country is for so-called senior cottage housing that provides for small single-family housing units clustered around a common building and other amenities.
- H-11 Create incentives for open space residential development to enhance protection of open space while providing for a more diverse range of housing types. Construction costs can be reduced through lower infrastructure expenditures and lower maintenance costs by clustering dwelling units as a means to preserving larger contiguous open space resources.

**Table 10-1: Plan Recommendations – Priority and Responsible Party**

HOUSING AND POPULATION ELEMENT

	Housing Recommendations	Time Period for Implementation				Responsible Party
		1-2	3-5	6-10	Ongoing	
H – 1	Consider establishing a Housing Commission that can advocate for the development of affordable workforce housing.			✓		TC
H – 2	Encourage more mixed-use and infill development where appropriate along the Daniel Webster Highway corridor.	✓				PB, TC
H – 3	Allow for smaller lot sizes in selected areas where water and sewer infrastructure is available.	✓				PB, TC
H – 4	Utilize substandard lots in certain areas by allowing subdivision of a lot into two lots – one with reduced area and width requirements.		✓			PB, TC
H – 5	Revise the zoning ordinance to encourage the development of more duplex and townhouse dwellings in selected areas of the Town.	✓				PB, TC
H – 6	Consider adopting an Inclusionary Zoning ordinance to respond to the state Workforce Housing Law.		✓			PB, TC
H – 7	Consider revisions to the zoning regulations to allow for accessory apartments to make them more viable housing options, especially for senior citizen households as a Workforce Housing option. Consider them as a by-right use without the need for a special permit.	✓				PB, TC
H – 8	Inventory town-owned land and tax title property to identify potential parcels for use as affordable housing sites.				✓	CD
H – 9	Prepare a detailed, updated housing needs assessment that allows the Town to realistically achieve the creation of new affordable units to meet the needs of current and future Merrimack residents.	✓				CD
H – 10	Continue to look for ways to meet the needs of the growing elderly population, including senior cottage housing.		✓			CD
H – 11	Create incentives for open space residential development to enhance protection of open space while providing for a more diverse range of housing types. See recommendation LU-9.		✓			PB



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Planning - Zoning - Economic Development - Conservation

## **MERRIMACK PLANNING BOARD APPROVED MINUTES TUESDAY, DECEMBER 2, 2014**

Planning Board members present: Robert Best, Alastair Millns, Tom Koenig, Michael Redding, Lynn Christensen (arrived 7:35 p.m.), and Desirea Falt.

Planning Board member absent: Alternate Nelson Disco.

Zoning Board of Adjustment members present: Fran L'Heureux, Patrick Dwyer, Phil Straight, Tony Pellegrino, Richard Conescu, and Alternate Leonard Worster.

Staff present: Community Development Director Tim Thompson, Planning and Zoning Administrator Jillian Harris, Assistant Planner Donna Pohli, and Recording Secretary Zina Jordan.

### **1. Call to Order**

Robert Best called the meeting to order at 7:30 p.m. Fran L'Heureux led the pledge of allegiance.

- 2. Joint Meeting of the Planning Board and Zoning Board of Adjustment –**  
Discussion of topics of concern for both Boards and presentation from Karen Dudley of Natural Resources Conservation Service (USDA).

Lynn Christensen arrived at 7:35 p.m.

Soil Mapping. Karen Dudley, Research Soil Scientist, Natural Resources Conservation Service, described how soils are mapped for general land use. The maps are not site specific. Elements in soil mapping are landform, topography, parent material, water table depth, and slope. A sample usually contains 80% of one type of soil, but other types are included. Soils differ according to age, climate, topography, glaciers, and human activity. The oldest soils change more from the surface down, with wetter soils on the bottom and dryer soils on top. Soils are residues of scraping by ancient glaciers. Karen Dudley described the types of soils and where they are found.

Planning Board Chairman Best asked how the Planning and Zoning Boards could use this information. Karen Dudley replied that the information can help to decide appropriate locations for building foundations, drainage and locating wetlands. A lot should be able to clean a leach field before it goes into the groundwater. The information can help to determine whether a leach bed should be raised. Site-specific soil mapping provides information when building a house or a subdivision to see where to put a runoff/detention basin, whether the land can absorb water, and how to size a culvert. Nothing should be built on a steep slope. The NRCS has information about what types of trees to plant on certain soils and the best use for each type of soil. The public website, "Web Soil

Survey”, gives soil ratings for various districts in Merrimack. Karen Dudley read a list of resources available to the public.

Pete Gagnon, 130 Bedford Road, explained that new innovative technology is being used for mapping and has corrected previous mapping errors. It is helpful in locating on-site disposal systems. The document that describes each soil type and what can be done with them is invaluable. Development professionals use NRCS information, which is also useful for boards whose mandate is to “protect public health, safety and welfare”.

Although Patrick Dwyer suggested that the ZBA could hire soil scientists to measure setbacks, Tim Thompson pointed out that a consultant’s work could not be duplicated by the Planning Board. The developer is responsible for correct mapping and usually hires the soil scientist. The need for the Town to hire a soil scientist is extraordinarily slim. Karen Dudley said the NRCS soil maps are 1:24,000’, whereas soil-specific maps are 1:10’.

Michael Redding said that soil mapping is useful for controlling erosion. It shows slopes, which have impacts on drainage, basements, and settling foundations during construction. Karen Dudley said that erosion is factored into each soil and provides information about what problem would result from cutting into it. Sands must be considered when laying pipe, for instance.

Karen Dudley left brochures on site-specific standard mapping and soil-based lot sizing.

Accessory Dwelling Units (ADUs). Chairman Best wondered if there could be fewer requirements and suggested removing the blood relative/family member and one-bedroom restrictions. The goal is to avoid turning a single-family home into apartments. Tim Thompson explained that ADU requests appear frequently before the ZBA, which thinks it would be more efficient if staff made an administrative decision rather than the ZBA granting a Special Exception. ZBA Chair Fran L’Heureux said staff could easily make most decisions about whether a petition must go to the ZBA. Tim Thompson asked whether an ADU needs a formal public process and what to do if the decision is not clear-cut. He noted that the Master Plan recommends meeting Workforce Housing goals by removing the family member restriction.

Patrick Dwyer was concerned about apartments popping up all over Merrimack and wanted oversight that an ADU is being used for its original purpose, whereas Richard Conescu thought “related by blood” is wasted verbiage because it cannot be enforced. Patrick Dwyer wondered about someone who buys a home with an unwanted ADU and must pay to remove it. Robert Best replied that the person would factor that into the decision to buy the home. He asked what difference it would make, from a planning perspective, for a non-relation to live in an ADU. There would still be someone living in it, parking in the driveway, etc. Alastair Millns surmised that ADUs are being used for non-family members. Robert Best noted the contradiction that a homeowner needs a Special Exception from the ZBA for an ADU, but needs no permission to rent a room to anyone. Tim Thompson explained that Merrimack zoning allows up to five unrelated people to live in a single-family dwelling. Robert Best said providing Workforce Housing is important. Tim Thompson explained that it refers to standards based on HUD fair market rent areas and is not subsidized or low-income rents. Leonard Worster opined that, if anyone could live in an ADU, every home would become a duplex.

ZBA members said that they wanted only to expedite the process and make it easier for petitioners by handling an ADU request administratively. They do not want to change the criteria. Tim Thompson agreed, but said he had to remind the Boards about the Master Plan recommendation to allow non-family members to live in an ADU. Lynn Christensen explained that, in order to change the ADU guidelines, the Planning Board must vote to change an ADU into a Permitted Use and then seek Town Council approval for the change. Tim Thompson recommended that, if the Ordinance were changed to address the Master Plan recommendation, language directing applicants to go to the Planning Board for a Conditional Use Permit (CUP) would be his preference. Robert Best noted that the boards had the same discussion at their joint meeting five years ago. Tim Thompson said the Planning Board has more flexibility than the ZBA and could decide whether to grant a CUP.

Tim Thompson will draft two separate zoning amendments for future discussion: 1) administrative approval for an ADU and 2) changes in the ADU criteria to address the Master Plan recommendation.

Residential Lot Requirements The ZBA also raised a question regarding residential lot requirements. Donna Pohli listed the frontage requirements in residential districts R-1, R-2, R-3 and R-4 by minimum lot size and soil type. Tim Thompson explained that, because R-1 has the most limited soils, it has the largest required lot size in order to have sufficient soils for a septic system, etc. Since R-4 already has water and sewer, it has the smallest required lot size. Phil Straight noted that some septic systems have evolved into aerobic digestion systems that no longer require 2½ acres. A good septic system can now be placed on a much smaller area than was the case 30 years ago. He suggested leaving the regulations alone, but that the boards could be more lenient about interpreting them. Chairman Best suggested requiring a Special Exception rather than a Variance. Alastair Millns said that, if a septic system would work on a smaller area and still meet the five criteria, the ZBA rather than the Planning Board, could give relief. Tim Thompson suggested postponing discussing soils-based lot size until the next time the Planning Board considers possible zoning changes. He agreed with Richard Conescu that such an application does not fit the ZBA's five statutory criteria, but would fit a Planning Board CUP process. It makes more sense for an applicant to go to the Planning Board once than to go to the ZBA and wait another month to go to the Planning Board also.

### **3. Discussion of Planning Board process for determining “Regional Impact” of projects under RSA 36:56**

This agenda item was considered after agenda item #4.

Tim Thompson explained that the Planning Board does not currently make a determination about regional impact for all projects, as the statutes require. He suggested that, as part of the “Planning and Zoning Administrator’s Report” on the agenda, the Planning Board review with staff any applications for site plans and subdivisions that have been received by Community Development since the most recent previous Planning Board meeting and vote on a determination of regional impact. Staff recommends criteria to determine regional impact based on those developed by the Southern NH Planning Commission. Affected communities and the Nashua Regional