

# MERRIMAC ZONING BYLAW

AS AMENDED THROUGH ANNUAL TOWN MEETING 10/19/2020

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## **ARTICLE 1. GENERAL PROVISIONS**

### **1.1. Title.**

This Bylaw shall be known and may be cited as the Zoning Bylaw of the Town of Merrimac, Massachusetts and is referred to herein as “this Bylaw.”

### **1.2. Authority.**

This Bylaw is adopted in accordance with and pursuant to the authority granted to the Town of Merrimac by G.L. c.40A as amended by Chapter 808 of the Acts of 1975, as amended.

### **1.3. Purpose.**

This Bylaw is for the purpose of protecting the health, safety, convenience and general welfare of all inhabitants of the Town of Merrimac; to lessen the danger from fire, congestion and confusion; to encourage the most appropriate use of land throughout the Town; to further the goals of the Merrimac Master Plan; to guide development toward areas of the Town with adequate public infrastructure and utilities, and preserve the rural quality of outlying areas; to control the impacts of future development on the quantity and quality of the Town’s drinking water resources; to protect natural and historic resources, farmland and forests; to encourage housing for households at all income levels; to provide for a variety of business and industrial uses; to improve and beautify the Town under and pursuant to the provisions of the Constitution and the General Laws. Accordingly, it is also the purpose of this Bylaw to utilize the powers granted to the Town in order to:

- 1.3.1. Encourage preservation, reuse, reinvestment and infill development in established residential and commercial areas as a preferred growth policy for the Town, and to provide within this Bylaw methods to achieve these ends;
- 1.3.2. Protect significant environmental features such as but not limited to the Merrimack River, Lake Attitash, Cobbler’s Brook, and the Towns’ abundant wetlands, brooks, ponds, streams, aquifers, and drinking water resources, and to provide within this Bylaw methods to achieve these ends;
- 1.3.3. Protect the architecture and settings of historic areas such as but not limited to Merrimac Square and its surrounding neighborhoods, and Merrimacport, and to provide within this Bylaw methods to achieve these ends;
- 1.3.4. Adopt and apply standards to evaluate the capability of individual sites to support proposed developments;
- 1.3.5. Adopt standards to measure, evaluate and control the impact which future land development will have on the Town’s natural resources, municipal and school facilities, historic areas, natural features, and to provide within this Bylaw methods to minimize the impact of developments;
- 1.3.6. Establish rational land development alternatives through a fair and clearly prescribed negotiation process to establish a balanced land use pattern responsive to the characteristics of individual sites, including through the use of adjustable densities of land use, and to provide reasonable community



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improvements consistent with the needs of the development of each site;

- 1.3.7. Establish within this Bylaw techniques to allow the Town to measure and evaluate the economic and fiscal impacts of future development, and to provide within this Bylaw methods to minimize adverse impacts by introducing or encouraging varied land uses;
- 1.3.8. Further the conservation and open space objectives of the Town as stated in the Merrimac Master Plan and the Town's most recent Open Space and Recreation Plan;
- 1.3.9. Adopt regulations pursuant to these purposes that may include, but are not limited to, restricting, prohibiting, permitting or regulating the use, construction, alteration, height, area and location of buildings and STRUCTURES and the use of land and premises in the Town.

#### 1.4. Zoning Districts.

The Town is hereby divided into the following zoning districts as shown on the OFFICIAL ZONING MAP entitled Zoning Map of the Town of Merrimac on file with the Town Clerk. Said map as from time to time amended is hereby made a part of this by-law.

VR	Village Residential
SR	Suburban Residential
AR	Agricultural Residential
LA	Lake Attitash
VC	Village Center
RH	Rural Highway
HS	Highway Services
OI	Office-Light Industrial
RA	Rural Agricultural Preservation Overlay District
FP	Floodplain District
WRPD	Water Resource Protection District
BM	Birch Meadow Overlay District

#### 1.5. Zoning Map.

The OFFICIAL ZONING MAP, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Bylaw.

- 1.5.1. The OFFICIAL ZONING MAP shall be located in the office of the Town Clerk. The authenticity of the Zoning Map shall be identified by the signature of the Town Clerk and the imprinted seal of the Town under the following words: This is to certify that this is the Zoning Map of the Town of Merrimac, Massachusetts, referred to in the Town of Merrimac Zoning Bylaw, June 5, 1975, as amended through May 3, 2004.
- 1.5.2. Changes in district boundaries or other matters portrayed on the OFFICIAL ZONING MAP shall be indicated by the alteration of such map, and the map thus altered as declared to be part of the Bylaw thus amended. Such changes

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shall be made within 14 days of final approval of amendments by the Attorney General's Office. The Building Commissioner shall be responsible for making changes to the Zoning Map.

- 1.5.3. No changes of any nature shall be made in the OFFICIAL ZONING MAP or matters shown thereon except in conformity with the procedures set forth in this Bylaw. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Bylaw and punishable under the provisions of Article 24 of this Bylaw.
- 1.5.4. Regardless of the existence of purported copies of the Zoning Map which may be made or published from time to time, the OFFICIAL ZONING MAP located in the office of the Town Clerk shall be the final authority as to the current zoning status of all land, buildings and other structures in the Town.
- 1.5.5. Any conflict between the map and the description of any district in the written terms of this Bylaw shall be resolved according to the written terms.

#### 1.6. Description of District Boundary Lines

- 1.6.1. Where a district boundary line is shown as following a street, railroad or utility, the boundary shall be the centerline thereof as said line existed at the date of the zoning map unless otherwise indicated.
- 1.6.2. Where a boundary line is shown outside of a street, railroad or utility and approximately parallel thereto, the boundary shall be deemed parallel to the nearest line thereof, and the figure placed on the zoning map between the boundary and such line shall be the distance in feet between them, as measured at a right angle from such line unless otherwise indicated.
- 1.6.3. Where a boundary line is shown as following a watercourse, the boundary line shall coincide with the centerline thereof as said line existed at the date of the zoning map.
- 1.6.4. Where a boundary line shall include a numerical figure followed by the letters M.S.L., it is at that number of feet above Mean Sea Level. The basic source for determining such a line shall be the United States Geological Survey as interpreted by the Board of Selectmen or subsequent field surveys.
- 1.6.5. Where a boundary line is indicated as a property or LOT line and the exact position of such line is not defined by measurements, the true location thereof shall be taken as the boundary line as said line existed at the date of the establishment of such boundary line.
- 1.6.6. Where the location of a boundary line is otherwise uncertain, the Zoning Enforcement Officer shall determine its position in accordance with the distance in feet from other lines or bounds as given or as measured on the zoning map and good engineering practice.
- 1.6.7. Boundaries of the Flood Hazard Areas Overlay District are shown and set

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forth in the Merrimac Flood Insurance Rate Map (MFIRM), dated July 5, 1982, or as subsequently revised, on file in the Planning Board Office.

#### 1.7. General Applicability.

Except as may be otherwise provided herein, no building, STRUCTURE or LOT may be used, and no building STRUCTURE or part thereof may be erected, reconstructed, extended, enlarged or altered, except in conformity with the regulations herein specified for the district in which it is located.

### **ARTICLE 2. DEFINITIONS**

In this Bylaw, the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Words used in the singular include the plural and words used in the plural include the singular. Words used in the present tense include the future. The word “shall” is mandatory and not directory; the word “land” includes the words “swamps” and “water.” Every effort has been made to recognize terms defined in Article 2 in upper-case text throughout this Bylaw.

**ABANDONMENT:** Cessation or discontinuance of a nonconforming use of a building or premises for a period of two years or more; or the removal of the characteristic equipment or furnishings used in the nonconforming use, without its replacement by similar equipment or furnishings; or the replacement of the nonconforming use or building by a conforming use or building; or cessation or discontinuance of a nonconforming use with the apparent intent to initiate a conforming use and/or structure. “Intent” shall include, but is not limited to, applications for permits and advertising to rent or lease for conforming purposes.

**ACCESSORY DWELLING UNIT:** A dwelling unit contained within or being an extension of a single-family STRUCTURE. An accessory dwelling unit shall contain no more than 900 square feet in total floor area.

**ACCESSORY USE:** A building, STRUCTURE or use that is customarily incidental and subordinate to the lawful PRINCIPAL USE of the LOT and is located on the same LOT as the PRINCIPAL USE or building. An accessory use must not be the primary use of the property but rather one that is subordinate and minor in significance, has a reasonable relationship with the primary use and is one that is usual to maintain in connection with the primary use of the LOT.

**ADULT USES (or ADULT ENTERTAINMENT USES)** shall include any or all of the following:

1. Adult Bookstore -- An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other matter which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, Section 31.
2. Adult Motion-Picture Theater -- An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, Section 31.
3. Adult Paraphernalia Store -- An establishment having as a substantial or significant portion of its stock-in-trade devices, objects, tools or toys which are distinguished or characterized by their

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association with sexual activity, including sexual conduct or sexual excitement as defined in G.L. c. 272, Section 31.

4. Adult Video Store -- An establishment having as a substantial or significant portion of its stock-in-trade videos, movies or other film material which is distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, Section 31.

**AFFORDABLE HOUSING:** As used in this Bylaw, “affordable housing” is sub-classified as “low- and moderate-income housing” and “BELOW-MARKET housing,” according to the following meanings:

1. **LOW- OR MODERATE-INCOME housing:** housing occupied by households with incomes at or below 80% of area median income, as determined and published from time to time by the U.S. Department of Housing and Urban Development. Low- and moderate-income housing must meet the requirements of the Local Initiative Program, 760 CMR 45.00, and be approved for inclusion in the SUBSIDIZED HOUSING INVENTORY under G.L. c.40B, Sections 20-23, prior to the issuance of an occupancy permit. A housing unit will generally be considered affordable to low- or moderate-income households if its sale or rental price is equal to or less than 30% of gross monthly income for a low- or moderate-income household whose household size is suitable for the proposed dwelling unit. To comply with this Bylaw, a low- or moderate-income housing unit must be protected by a USE RESTRICTION that meet the requirements of 760 CMR 45.00 (Local Initiative Program) and qualifies as an affordable housing restriction under G.L. c.184. (See also, USE RESTRICTION.)
2. **BELOW-MARKET HOUSING:** housing units affordable to households with incomes between 81-100% of area median income, as determined and published from time to time by the U.S. Department of Housing and Urban Development. A housing unit will generally be considered affordable at below-market rates if its sale or rental price is equal to or less than 30% of gross monthly income for a median-income household whose household size is suitable for the proposed dwelling unit.

**AGRICULTURE:** In accordance with G.L. c. 128, Section 1A, the term “agriculture” includes farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market. As provided in G.L. c.40A, Section 3, agriculture on land greater than fives acres is an exempt use under this Bylaw.

**ALTERATION:** A change in or addition to a building that modifies the location, plan, manner of construction or materials used, or in any way varies the character of its use.

**APPEAL:** An appeal to the BOARD OF APPEALS by any person aggrieved by an order or decision of the BUILDING COMMISSIONER or other administrative official, pursuant to G.L. c. 40A, Section 8 or 10.

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**ASSISTED LIVING FACILITY:** A managed residential community, operated under the provisions of G.L. c.19D, and contained in one or more buildings consisting of private residential units with or without kitchens. Assisted living facilities are for frail elders who do not require twenty-four-hour skilled nursing care, but need assistance with dressing, bathing, eating, housekeeping, medicine monitoring and other elder care and activities of daily living. It may provide meal service, housekeeping services, social and recreational activities, personal care services and transportation services, in a group setting primarily limited to individuals 62 years and older or couples. An assisted living facility may be conducted by a for-profit or non-profit entity that meets all of the following criteria:

1. Provides room and board.
2. Provides assistance with activities of daily living and personal care services for three or more non-related adult residents.
3. Collects payments or third party reimbursements from or on behalf of residents to pay for the provision of assistance.

The above definition shall not include group homes, CONGREGATE LIVING RESIDENCES, nursing facilities or other types of ELDERLY HOUSING. (See also, CONGREGATE LIVING RESIDENCE and ELDERLY HOUSING.)

**AUTOMOTIVE SERVICE STATION or GARAGE:** A building or part thereof in which the chief activity is the selling of gasoline, oil and related products for motor vehicles, or the provision of lubricating service or general auto repair.

**BASEMENT:** A portion of a building partly underground but having less than half of its clear height below the average finished grade of the adjoining ground.

**BED-AND-BREAKFAST ESTABLISHMENT:** Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation.

**BOARD OF APPEALS:** The Board of Appeals of the Town of Merrimac established by Article 25 under the authority of G.L. c.40A, Section 12.

**BUILDING COVERAGE:** See COVERAGE; BUILDING COVERAGE.

**BUILDING COMMISSIONER:** The Building Inspector or BUILDING COMMISSIONER of the Town of Merrimac. In this Bylaw, the terms Building Inspector and BUILDING COMMISSIONER are used synonymously.

**CHILD CARE (or DAY CARE) CENTER:** A day care or school age child care program as defined in Section 9 of G.L. c.128A.

**CONDOMINIUM:** A method of ownership whereby an individual may own separately one or more single dwelling units in a multifamily building or project. Said individual and other owners of such units may have an undivided interest in the common areas and facilities that serve the unit or project, such as land, roofs, floors, main walls, stairways, lobbies, halls, parking areas, driveways, recreation areas, open space areas and natural landscaped and/or conservation areas. Said individual may take title to his individual dwelling unit or units, vote on a proportional basis in all respects of his

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undivided interest in common areas, be taxed separately by the Town for the individual dwelling unit or units and may have a mortgage on the individual dwelling unit.

**CONFERENCE CENTER:** A STRUCTURE or series of STRUCTURES for the purpose of providing conference, seminar or meeting facilities and/or recreation facilities, including but not limited to golf, tennis or dining. A residential dormitory component of a conference center shall be considered a separate use and is defined as providing living, sleeping and toilet facilities solely for the patrons of the conference center.

**CONGREGATE LIVING RESIDENCE:** A non-institutional, shared living environment for elderly persons who are otherwise in good health and can maintain a semi-independent life-style and who do not require constant supervision or intensive health care as provided by an institution. A unit in a congregate living facility shall have an individual bedroom and may have a separate living room, kitchen, dining area or bathroom. Each elderly resident in the CONGREGATE LIVING RESIDENCE may share living, dining and bathroom facilities with other elderly persons, such as a common dining facility. Unless otherwise provided for in this Bylaw, a CONGREGATE LIVING RESIDENCE shall contain no more than 12 units as defined herein.

**CONVENIENCE STORE:** A small retail establishment, often synonymous with “food mart,” of less than 2,500 square feet of floor space, primarily engaged in retailing a limited line of fast-moving, high turnover goods that usually include milk, bread, soda, beer, snacks and cigarettes, excluding fuel pumps. A convenience store typically has extended hours of operation for the convenience of customers.

**CORNER LOT:** A LOT located at the intersection of two or more streets having an angle of intersection of not more than 135 degrees or where the intersection is bounded by a curve having a radius of less than 100 feet.

**COVERAGE.** As used in this Bylaw, “coverage” is classified according to the following terms and meanings:

1. **BUILDING COVERAGE:** The maximum percentage of a LOT in any district which is covered by STRUCTURES which constitute principal and accessory uses thereof. For the purposes of this section, uncovered swimming pools, tennis courts and decks of one hundred square feet or less shall be exempt from the definition of building coverage. Garages, barns, storage sheds or additions and alterations to the principal residential building occupying the LOT shall not be exempt from the definition of building coverage.
2. **LOT COVERAGE:** The percentage of a LOT in any district which is covered by impervious surfaces, including the principal building and accessory STRUCTURES on the LOT. For the purposes of this section, such impervious surfaces shall include, and not be limited to, paved driveways and parking areas, sidewalks constructed of impervious materials, principal and accessory STRUCTURES, and other on-site amenities that render any portion of a LOT impervious.

**DWELLING UNIT:** A room or group of rooms forming a habitable unit for one family with the facilities which are used or intended to be used for living, sleeping, cooking and eating.

**EARTH REMOVAL:** Stripping, digging, excavating or blasting soil, loam, sand or gravel from one LOT and removing or carrying it away from said LOT to other LOTS or places.

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**EAVE:** The projecting lower edges of a roof overhanging the wall of a building.

**ELDER CARE:** Any building or facility providing medical services or assistance with daily living activities for residents over 62 years of age on an out patient or live-in basis.

**ELDERLY HOUSING:** A single-family, Townhouse or MULTI-FAMILY residential development consisting of multiple dwelling units on one single contiguous parcel, restricted for occupancy by households with at least one family member who is 55 years of age or older.

**FAMILY DAY CARE:** CHILD CARE or day care provided in a single-family dwelling, as defined in Section 9 of G.L. c.128A. Unless otherwise stated in this Bylaw, family day care shall be considered an accessory use incidental to a residential use.

**FARM:** A tract or parcel of land containing more than five acres, devoted primarily to agricultural uses, together with a dwelling and/or other accessory uses. (See also, AGRICULTURE.)

**FARM-RELATED BUSINESS:** A business operated on a farm parcel, related to or supportive of agricultural activities, such as blacksmithing, farm implement repair, and/or roadside sale of agricultural products.

**FILLING STATION:** An establishment which sells or dispenses fuel and motor oil for motor vehicles, but which does not undertake to perform repairs for customers at that location.

**FINDINGS:** A written report of a decision reached by a reviewing agency as required by this Bylaw.

**FLOOR AREA:** The sum of the horizontal area of the several floors of a dwelling unit measured from the outside, excluding cellar floor areas, BASEMENT rooms, garages, porches and open attics or unfinished rooms, and for which a certificate of occupancy has been issued as habitable living quarters. In split-level houses, the first two levels may be counted as one floor, provided that the difference in floor levels is less than five feet.

**FRONTAGE:** The boundary of a LOT coinciding with a street line if there are both rights of access and potential vehicular access across that boundary to a potential building site and the street has been determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and Merrimac Subdivision Regulations measured continuously along one street line between side LOT lines or in the case of corner LOTS, between one side LOT line and the midpoint of the corner. For LOTS on a cul-de-sac, or partially on a cul-de-sac, FRONTAGE shall be measured as the shortest straight line from side yard line to side yard line that is a tangent to the curve. For LOTS on curved roads that have curvilinear FRONTAGES, FRONTAGE shall be determined by measuring the linear distance along the curve. The driveway providing the principal access to a LOT shall be across the LOT FRONTAGE as herein defined, subject to the provision, however, that if a LOT has minimum LOT FRONTAGE on more than one street, the driveway may enter the LOT from any of such streets, subject to the approval of the BUILDING COMMISSIONER. The approval of the BUILDING COMMISSIONER shall be given only after issues concerning public safety, designed scenic roads and good planning principles have been considered.

**GREEN BUILDING TECHNOLOGIES:** Any techniques or use of building or landscape materials or combination thereof that reduces the operational energy requirements of a STRUCTURE.

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**GROSS FLOOR AREA:** The sum of the gross horizontal areas of the several floors of a building excluding areas used for accessory garage purposes and such BASEMENT and cellar areas as are devoted exclusively to uses accessory to the operation of the building. All dimensions shall be taken from the exterior faces of walls, including the exterior faces of enclosed porches.

**HALF-STORY:** Any place under the gable hip or gambrel roof, the floor of which is not more than two feet below the plate.

**HOMEOWNERS' OR RESIDENTS' ASSOCIATION:** A legal organization approved by this Bylaw composed of all resident owners in a Residential Conservation Cluster responsible for owning or maintaining common property, providing for compulsory membership for each resident, equitable voting rights and effective participation opportunities.

**HOME OCCUPATIONS:** The following limitations apply to all classes of home occupations as defined for the purposes of this Bylaw, although the BOARD OF APPEALS may grant a SPECIAL PERMIT conditionally modifying such limitations:

1. The occupation is situated in the petitioner's dwelling.
2. There is no major structural change to the exterior or any other external evidence of such home occupation, other than one accessory, nonflashing SIGN of not more than four square feet.
3. Not more than one person other than the resident shall be employed on the premises.
4. No more than four clients shall be scheduled in any one hour nor more than 16 in any one day and only between the hours of 8:00 a.m. and 8:00 p.m.
5. There shall be sufficient parking area on the LOT to accommodate expected peak parking by the resident family, employees and clients.
6. No produce nor stock-in-trade shall be sold at retail except insofar as incidental to the home occupation (e.g. teaching supplies), or as specifically permitted in connection with farm uses or home retail occupations.

HOME OCCUPATIONS are divided into the following classes:

1. Home professional office: office for the practice of a profession involving a high degree of training in the humanities, science or arts, such as medicine, law, engineering or fine arts.
2. Home personal service: personal services, such as insurance, notary public, real estate broker, dressmaking, beauty care, clerical services; studio for the teaching of fine or domestic arts and crafts; home care or therapy (for pay) for not more than three patients or children; home baker or caterer.
3. Home business workshop: the business or shop of a painter, carpenter, electrician or similar construction trade.
4. Home specialty retail: the sale of homemade products on the premises other than those permitted in connection with farm uses; or of collector's items, such as antiques, stamps, coins, etc.; provided that the BOARD OF APPEALS finds that the production or selection of the



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products depends on a special skill or knowledge of the resident and the access road and off-street parking are adequate and safe.

IMPERVIOUS COVERAGE: See COVERAGE; LOT COVERAGE.

INTERESTED PARTY: Any person who holds an interest in property within three hundred feet of a LOT with respect to which a SPECIAL PERMIT or VARIANCE is sought, or who is entitled to receive notice of hearings under G. L. c. 40A.

LAND USE: The purpose for which land or building is occupied or maintained, arranged, designed or intended.

LOT: A single piece or parcel of land lying in a solid body under single, joint or several ownership and separated from contiguous land by property lines or street lines.

LOT AREA: The horizontal area of a LOT, not including any area in a public or private street, nor any water area more than 10 feet from the shoreline, nor any surface drainage easement. In all zoning districts, at least 75 percent of the required minimum lot area shall be contiguous upland, not including wetlands or wetland resource area as defined in G.L. c.131 Section 40 and the Merrimac Wetlands Bylaw. In addition, when the distance between any two (2) points on lot lines is less than fifty (50) feet, measured in a straight line, the smaller portion of the lot which is bounded by such straight line and such lot lines shall not be considered in computing the minimum lot area unless the distance along such lot lines between such two (2) points is less than one hundred fifty (150) feet.

LOT WIDTH: The diameter of a circle, placed between side lot lines and tangential to the frontage of a given lot. The required circle shall be contained entirely within the lot's perimeter. For all residential lots except those created under special permits, each single or two family dwelling shall be located on a lot containing an imaginary circle with a diameter that is equal to or greater than the minimum lot width for the applicable zoning district.

LOTS IN TWO OR MORE RESIDENCE DISTRICTS: If a LOT is located in two or more residence districts, all of the LOT shall be considered as lying entirely within the district having the largest area and FRONTAGE requirements.

LOW- OR MODERATE INCOME HOUSEHOLD: A household with income at or below 80% of area median income, as determined from time to time by the U.S. Department of Housing and Urban Development.

LOW- OR MODERATE INCOME HOUSING: A dwelling unit that is affordable to a low- or moderate-income household; see also, AFFORDABLE HOUSING.

*MANUFACTURING FACILITIES: Facilities used primarily for light industry or the manufacturing or assembly of a product including processing, blending, and hydro fabrication, assembly treatment and packaging.*

MAXIMUM HEIGHT: Vertical distance measured from the mean finished grade of all sides of the building or STRUCTURE to the highest point of the roof for flat roofs, to the deckline for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. The mean finished grade shall not be raised or lowered more than five feet above the mean center-line grade of

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the FRONTAGE street for the proposed building unless the building will be located more than 50 feet from the front property line.

**MEDICAL CENTER or MEDICAL FACILITY:** A building that contains establishments dispensing health services for health maintenance and the treatment of medical or physical conditions. This term shall not include hospitals, nursing homes or extended-care facilities, but may include establishments providing support to the medical profession and patients, such as medical and dental laboratories, blood banks and oxygen and other miscellaneous types of medical supplies and services.

**MIXED-USE DEVELOPMENT:** Developments and/or STRUCTURES with commercial and residential uses, including but not limited to commercial uses on the ground floor of a commercial STRUCTURE and residential units located on the upper floors.

**MOBILE HOME:** A STRUCTURE designed as a dwelling unit for location on a permanent foundation and containing sleeping accommodations, a toilet, a tub or shower or bath, and kitchen facilities, including major appliances, fixtures and furnishings, with plumbing and electrical connections provided for attachments to outside systems; and designed to be transported after fabrication on its own wheels.

**MOBILE HOME PARK:** A LOT used, designed or advertised as a parking space for two or more trailers used for living purposes.

**MULTI-FAMILY DWELLING (or MULTIPLE UNIT DWELLING):** A building containing three or more dwelling units.

**NONCONFORMING USE:** A use of a building or land that does not conform to all the LAND USE regulations of this Bylaw for the district in which it is located, which use was in existence and lawful at the time said LAND USE regulations became effective unless otherwise exempted within this by-law. And to further amend the by-law **ARTICLE 3 BASIC REQUIREMENTS FOR ALL DISTRICTS** by the addition of a new subsection 3.3.6

**OFFICIAL ZONING MAP:** The Zoning Map located in the office of the Town Clerk, attested by the Town Clerk and bearing the Seal of the Town of Merrimac and a certification of its status as the OFFICIAL ZONING MAP.

**OFF-STREET PARKING:** That portion of a LOT set aside for purposes of parking, including any necessary aisle space in said facility, but not including roadways or drives connecting said off-street parking space or LOT with a street or thoroughfare.

**Planning Board:** The Planning Board of the Town of Merrimac.

**PRINCIPAL USE:** The main use of land or STRUCTURES on a LOT, as determined by the BUILDING COMMISSIONER/Zoning Enforcement Officer.

**REAR YARD DEPTH:** The minimum distance from the rear LOT line to the nearest part of the STRUCTURE nearest to said line. The term "STRUCTURE," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that SIGNS, retaining walls, fences, tents, poles, swing sets and the like are not to be considered STRUCTURES.

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**RECREATION:** An indoor or outdoor activity that provides a form of play, exercise, sport, leisure or relaxation.

**RECYCLING CENTER:** A parcel of land, with buildings, within which materials are stored, separated and processed for shipment and eventual reuse in new products. All storage, separation and processing for shipment shall be contained within enclosed buildings. No use which has outdoor storage, separation or processing for shipment shall be considered a recycling center. Recycling centers shall not include facilities where recyclables are processed and/or treated so as to be placed in a condition in which they may be used again in new products or establishments that store, process or treat hazardous wastes. This definition of recycling center shall not apply to a municipal facility for the collection of recyclable materials.

**RESEARCH AND DEVELOPMENT FACILITIES:** *Facilities uses primarily for research, development and/or testing of innovative information concepts, methods, processes, materials, or products. This can include the design, development, and testing of biological, chemical, electrical, magnetic, mechanical, and/or optical components in advance product manufacturing. The accessory development, fabrication, and light manufacturing or prototypes or specialized machinery and devices integral to research or testing may be associated with these uses.*

**SANITARY SEWER:** A sewer that carries wastewater and to which storm, surface and groundwater are not intentionally admitted.

**SCREENING:** A suitable area that will serve as a buffer to adjacent properties, will reduce noise levels and partially obscure any STRUCTURES.

**SETBACK:** Shortest line or distance from the street line to the nearest portion of the first adjacent STRUCTURE measured at a right angle from the street line. The term "STRUCTURE," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that SIGNS, retaining walls, fences, tents, poles, swing sets and the like are not to be considered STRUCTURES.

**SEWER SERVICE AREA:** Includes areas presently served or anticipated to be served by the Merrimac Municipal Sewer System, as may be determined by Town Meeting upon the recommendation of the Merrimac Sewer Commission and Planning Board.

**SIDE YARD WIDTH:** The minimum distance from the side LOT line to the nearest part of the STRUCTURE nearest to said line. The term "STRUCTURE," for purposes of this definition, shall mean a man-made combination of materials assembled in a fixed location to give support or shelter or for any other purpose, including buildings, frameworks, platforms, sheds, and the like; provided, however, that SIGNS, retaining walls, fences, tents, poles, swing sets and the like are not to be considered STRUCTURES.

**SIGN** shall mean any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any exterior building surfaces which are internally illuminated or decorated with gaseous tube or other lights are considered "SIGNS." The following, however, shall not be considered "SIGNS" within the context of this by-law:

1. Flags and insignia of any government except when displayed in connection with commercial promotion;

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2. Legal notices or informational devices erected or required by public agencies;
3. Standard gasoline pumps bearing thereon in usual size and form the name, type and price of gasoline;
4. Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or parts internally illuminated or decorated with gaseous tube or other lights;
5. On-premises devices guiding and directing traffic and parking, not exceeding two square feet in area, and bearing no advertising matter;
6. On awnings or similar devices, lettering not exceeding three inches in height or symbols not exceeding four square feet in area.

SIGN AREA shall mean the area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the SIGN, together with any backing different in color or material from the finish material of the building face without deduction for open space or other irregularities. Structural members not bearing advertising matter shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back SIGNS need be included in calculating "SIGN AREA."

SINGLE-FAMILY DWELLING: A detached dwelling unit, but not including a MOBILE HOME or trailer as defined by the State Building Code.

SITE PLAN REVIEW (or SITE PLAN APPROVAL): A development review procedure established by the Town to regulate but not prohibit development, providing criteria for layout, scale, general appearance, safety, and environmental impacts.

SPECIAL PERMIT: A right or permit granted by the BOARD OF APPEALS or Planning Board pursuant to the authority of G.L. c. 40A, Section 9, and this Bylaw for a purpose specified in this Bylaw as one subject to SPECIAL PERMIT, following upon review and conditions set by the Board.

STORY: That portion of a building above the finished grade included between the floor and the ceiling or roof above it.

STREET LINE: Common bound between street right-of-way, public or private, and abutting LOT.

STRUCTURE: A combination of material assembled at a fixed location to give support or shelter, such as a building, tower framework, platform, or the like.

1. ACCESSORY STRUCTURE: A STRUCTURE, such as a detached garage, shed, swimming pool, tennis court, pier, or greenhouse, located on the same LOT with and accommodating a use accessory to the principal STRUCTURE or use of the LOT.
2. PRINCIPAL STRUCTURE: A STRUCTURE in which the primary use of the LOT is conducted; including porches, patios, decks, utility buildings, and any other attached projections of the STRUCTURE.

SUBSIDIZED HOUSING INVENTORY: A listing of low- and moderate-income housing, as defined in G.L. c.40B, Section 20, used by the Massachusetts Department of Housing and Community

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Development (DHCD) to determine whether low or moderate income housing exists in excess of ten per cent of the housing units reported in the latest federal decennial census of each city or Town.

**TOWER:** A monopole or lattice STRUCTURE that is designed to serve as a mount for wireless communications facilities.

**TOWN:** Town of Merrimac, Massachusetts.

**TOWNHOUSE:** A building designed and/or used exclusively for residential purposes and containing not less than two (2) nor more than four (4) attached dwelling units, each of which is completely separated from one another by a continuous vertical fire wall extending from its foundation or slab floor to its roof line, and which is constructed so that each unit has two (2) building faces with outside exposure; (b) has separate entrances from the outside; (c) is arranged, intended and designed as a residence for one (1) family; and (d) is not located whole or in part over another dwelling unit

**TWO-FAMILY DWELLING (or DUPLEX):** A building that is situated on a single LOT and contains two dwelling units which share a common wall or ceiling/floor but are entirely and permanently separated from each other by an unpierced wall extending from the ground to the roof or an unpierced ceiling/floor extending to all exterior walls, except that the building may have a common stairwell exterior to both dwelling units.

**USABLE LAND:** Excludes WETLANDS and floodplains as defined in G.L. c.131, Section 40, and areas with slopes of more than 15%.

**USE RESTRICTION:** A qualification placed upon any or all parts of a site which shall define the uses permitted on the land.

**WETLANDS or WETLAND RESOURCE AREAS:** Any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, bog, wet meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, as further defined in and regulated under the authority of G.L. c.131, Section 40.

**VARIANCE:** Relief from strict enforcement of one or more zoning bylaws granted by the BOARD OF APPEALS pursuant to authority under G.L. c. 40A, Sections 10 and 14.

**VETERINARY CLINIC:** An establishment to provide medical care to animals of all types housed in a facility separate and apart from all other uses on that site. There shall be no outdoor facilities to house or exercise animals.

**WAY:** Any public way or private way shown in a plan approved under the provisions of the Subdivision Control Law or any way in existence when the provisions of said Subdivision Control Law became effective in the Town, having, in the opinion of the Planning Board, suitable width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

**WIRELESS COMMUNICATIONS FACILITY:** A structure (with antennae, if any) designed to facilitate the following types of services: cellular telephone service, personal communications service

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and enhanced specialized mobile radio service. Types of structures facilitating these types of services include but are not limited to a tower, water storage tank, building and utility poles.

**ZONING DISTRICT:** One of the zones or districts into which the Town is divided for zoning purposes.

### **ARTICLE 3. BASIC REQUIREMENTS FOR ALL DISTRICTS**

#### **3.1. Prohibited Uses.**

In any district, no use will be permitted which will produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, harmful radioactivity, offensive noise or vibration, flashes, objectionable effluent, or electrical interference which may affect or impair the normal use and peaceful enjoyment of any property, STRUCTURE or dwelling in the Town. Parks for MOBILE HOMES, travel trailers, tent trailers, auto dismantling, junkyards, privately developed and operated septage waste disposal/treatment facilities and refuse disposal facilities are expressly prohibited.

*3.1.1. The operation of all types of non-medical marijuana establishments as defined in GL c 94G sec.1, including marijuana cultivators, independent testing laboratory, marijuana product manufacturers, marijuana retailers or any other type of licensed marijuana related businesses within the Town of Merrimac.*

#### **3.2. Agricultural Exemption.**

As required by G.L. c.40A Section 3, this Bylaw shall not apply to lands in excess of five (5) acres actively devoted to agriculture, horticulture, floriculture or viticulture, as defined in G.L. c.128, or to the use of pesticides on such lands when carried out in accordance with G.L. c.132b.

#### **3.3. Nonconforming Uses.**

Any lawful building or STRUCTURE, or lawful use of a building, STRUCTURE, or part thereof, existing at the time of adoption of this Bylaw, or existing at the time of an amendment to this Bylaw, which does not conform to the regulations thereof may be continued as a NONCONFORMING USE, subject to the following provisions:

3.3.1. Discontinuance. Any NONCONFORMING USE which has been discontinued for more than two years or any nonconforming buildings, STRUCTURES, or land used primarily for agriculture, floriculture or horticulture which has been discontinued for more than five years, shall not be re-established and any future use shall conform to the regulations of this Bylaw.

3.3.2. Restoration. A nonconforming STRUCTURE or STRUCTURE occupied by a NONCONFORMING USE which has been destroyed by fire or other casualty may be reconstructed; provided that the reconstruction is substantially completed within three years of the date of destruction. Reconstruction of nonconforming STRUCTURES on LAND USED primarily

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for agriculture, horticulture or floriculture must be substantially completed within five years of the date of destruction.

- 3.3.3. Changes of Use and Limitation on Intensity and Size of Use: Other Than Single or Two-Family Residential Dwellings. As provided in G. L. c. 40A, sec. 6, a lawfully preexisting NONCONFORMING USE and/or STRUCTURE, other than a single or two-family residential dwelling, may be reconstructed, altered or extended only if: (1) said reconstruction, alteration or extension itself conforms with all the provisions of the Zoning Bylaw; (2) there is a finding by the BOARD OF APPEALS that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming STRUCTURE or use; (3) that said extension, alteration or change is in accordance with the standards noted below; and (4) that the BOARD OF APPEALS grants a SPECIAL PERMIT as provided in this Bylaw.
- 3.3.4. Alteration, Reconstruction, Extension or Structural Changes to Preexisting Nonconforming Single and Two-Family Residential STRUCTURES. As provided for in G. L. c. 40A sec. 6, a nonconforming single or two-family dwelling or STRUCTURE accessory thereto may be altered, reconstructed, extended or otherwise structurally changed provided that: (i) there is no nsity (ii) there is a finding by the BOARD OF APPEALS that such reconstruction, alteration or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming STRUCTURE or use.
- 3.3.5. Alteration to Dwellings on a Single Lot. Any alteration, extension, reconstruction or structural change to a dwelling on a LOT containing more than one dwelling shall require a SPECIAL PERMIT and a finding by the BOARD OF APPEALS that such alteration, extension, reconstruction or structural change shall not be more detrimental to the neighborhood than the existing dwelling.
- 3.3.6. Exemptions. Any LOT or STRUCTURE located in the Agricultural Residential (AR) District lawfully in existence prior to 2004 shall not be considered NON-CONFORMING USEs and may be altered by-right provided that such alterations maintain side, front, and rear SETBACKS equal to or greater than twenty (20) feet; and **ARTICLE 6 AGRICULTURAL RESIDENTIAL DISTRICT (AR)** by adding a new footnote to Dimensional and Intensity Regulations.

#### 3.4. Municipal Uses.

Municipal uses shall be established by a two-thirds vote of Town Meeting in accordance with the General Laws of the Commonwealth of Massachusetts. All buildings or STRUCTURES for an approved municipal use shall meet all applicable dimensional, density, and design requirements of this Bylaw, and shall be subject to site plan review under Article 19 of this Bylaw.

3.5. Permitted Uses

- 3.5.1. No building or other STRUCTURE shall be erected and no building, STRUCTURE, or land shall be used for any purpose or in any manner other than as regulated and as permitted and as set forth herein for each district.
- 3.5.2. Uses permitted and uses allowed by the Planning Board, BOARD OF APPEALS, or any other SPECIAL PERMIT Granting Authority (SPGA) authorized by this Bylaw, shall be in conformity with all the density and dimensional regulations and any other pertinent requirements of this Bylaw as set forth herein for each district.
- 3.5.3. A building, use or STRUCTURE not specifically permitted shall be deemed prohibited.

3.6. Building or Use Permit.

No building or STRUCTURE shall be used, constructed, relocated, added to or demolished without a building permit having been issued by the BUILDING COMMISSIONER/Zoning Enforcement Officer. No such permit shall be issued until such construction, alteration, or use, as proposed complies in all respects with the provisions of this Bylaw or with a decision rendered or SPECIAL PERMIT granted by the Planning Board, BOARD OF APPEALS or any other SPECIAL PERMIT Granting Authority (SPGA) authorized by this Bylaw.

3.7. Plot Plan Accompanying Application

- 3.7.1. Minimum Requirements. Any application for a building, STRUCTURE or use permit or a certificate of occupancy shall be accompanied by a plot plan in triplicate, accurately drawn to a scale of one inch = forty feet, showing the actual shape, area and dimensions of the LOT to be built upon, the exact location and size of any buildings or STRUCTURES already on the LOT, the location of proposed alterations to and enlargements of existing buildings or STRUCTURES, driveways, the location of new buildings or STRUCTURES to be constructed together with the lines within which all buildings or STRUCTURES are to erected or enlarged, the existing and intended use of each building or STRUCTURE and all streets and WAYS on or adjacent to the LOT, the delineation of any Flood Plain District, or Water Resource Protection District areas located within a LOT, unless the plot plan includes a statement that: "No part of LOT is within a Flood Plain District or Water Resource Protection District," and such other information as the BUILDING COMMISSIONER/Zoning Enforcement Officer may determine is necessary. In the case of a building or use permit for interior improvements to a building or STRUCTURE, a plot plan shall not be required.
- 3.7.2. Additional Requirements. In addition, for all new buildings and STRUCTURES, and all existing buildings and STRUCTURES to be externally enlarged or expanded in ground area to an extent greater than 30% of internal floor areas or ground coverage, or six hundred square feet, whichever is larger, plot plans shall show existing and approved abutting street grades, the proposed elevation of the top of the foundation of existing



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and proposed buildings or STRUCTURES, existing and proposed topography, existing septic disposal systems, private wells, wetland boundary delineations as approved by the Conservation Commission, gas, water and other public utilities in the abutting street and the zoning classification of the abutting properties. PLOT plans shall also show such other information as may be necessary to provide for the verification of compliance with the applicable provisions and the enforcement of this Bylaw, including, but not limited to, off street parking, SCREENING and fencing. PLOT plans shall be certified by a registered professional engineer or land surveyor. A record of all applications, plans, and permits shall be kept on file by the BUILDING COMMISSIONER/Zoning Enforcement Officer.

- 3.7.3. The requirements of this section may be waived by the BUILDING COMMISSIONER upon a determination that an application for a building permit to alter or expand an existing dwelling unit, or for an occupancy permit, clearly complies with the provisions of this Bylaw.

**3.8. Lots in Two Towns.**

When a LOT in one ownership is situated so that a part of it is in the Town and part is in an adjacent Town, the provisions of this Bylaw shall be applied to that portion of the LOT which lies in the Town in the same manner as if the entire LOT were situated therein; i.e., the entire area and FRONTAGE shall be considered in determining conformity to the dimensional requirements herein. The use of the portion of the LOT in the Town shall conform to the provisions herein.

**3.9. Lots Divided by Zoning Boundary**

Where a boundary line between zoning districts divides a lot, the requirements of the less regulated district shall be applicable to that part of the lot in the more regulated district which lies within 30 feet of the district boundary. For this purpose, a single residence district is deemed more regulated than a business district and an industrial district; and a business district more regulated than an industrial district. The Building Commissioner shall determine, as to subdistricts within each principal district, which subdistrict is the less regulated subdistrict and which is the more regulated.

**3.10. Reduction in Minimum Requirements**

No LOT, yard, court or other open space already having less than the minimum requirements in this Bylaw shall be further divided or reduced with respect to such minimum requirement and requirements except as provided herein.

**ARTICLE 4. VILLAGE RESIDENTIAL DISTRICT (VR)**

**4.1. Purposes.**

The Town shall have a Village Residential District as shown on the OFFICIAL ZONING MAP. The purposes of the Village Residential District are to preserve and enhance the established development pattern and traditional neighborhoods near Merrimac Square, to promote a range of housing choices, and to provide opportunities for community investment

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in areas supported by adequate infrastructure and services. In the Village Residential District, no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

4.2. Permitted Uses and Structures.

- 4.2.1. SINGLE-FAMILY DWELLING.
- 4.2.2. TWO-FAMILY DWELLING.
- 4.2.3. Home professional office.
- 4.2.4. Home personal service.
- 4.2.5. Home business workshop.
- 4.2.6. One accessory dwelling unit in a single-family dwelling in existence for at least five years prior to the application for a building permit, provided that (a) the accessory dwelling unit contains no more than 900 square feet of total floor area, (b) the LOT contains sufficient area to accommodate parking for the occupants of the single-family dwelling and the accessory dwelling, in the opinion of the BUILDING COMMISSIONER, and (c) there is no change to the exterior of the single-family dwelling except where required to comply with the State Building Code.
- 4.2.7. AGRICULTURE or horticulture, as defined by G.L. 128, Section 1A, on any parcel of more than five acres.
- 4.2.8. Real estate SIGNS not over six square feet in area advertising only the sale or rental of the premises on which they are located. Professional announcement SIGNS, farm produce SIGNS, lodging, boarding and tourist SIGNS, having an area of not more than four square feet, provided that there is only one such SIGN for each household so engaged. Illuminated SIGNS shall be non-flashing.
- 4.2.9. ACCESSORY USES customarily incidental to any use permitted herein.
- 4.2.10. A MOBILE HOME park in existence prior to the effective date of this Bylaw.
- 4.2.11. Rooftop residential solar installation

4.3. Permitted Uses Subject to SITE PLAN REVIEW.

- 4.3.1. Infill residential uses, subject to “Regulations for Infill Residential Uses” at Section 4.11 of this Bylaw.
- 4.3.2. Churches and other places of worship, parish houses.
- 4.3.3. Public schools, public libraries and museums, private schools, including preschools and colleges.
- 4.3.4. CHILD CARE or day care center.
- 4.3.5. Membership clubs, lodges, social recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity which is usually carried on as a business (fairs and public benefits excluded).
- 4.3.6. Municipal use authorized by Town Meeting.
- 4.3.7. Other government uses.
- 4.3.8. Telephone exchanges, provided that there is no service yard or garage.

4.4. Uses and Structures Permitted by Special Permit.

In the Village Residential District, the Planning Board may grant a special permit for any of the following uses except that where an accessory apartment or the conversion of a single-family to a multi-family dwelling is allowed by Special Permit, THE Special Permit Granting Authority shall be the Board of Appeals in accordance with Article 17 Accessory Dwelling Units and Conversion of Existing Single Family Dwellings.

- 4.4.1. BED AND BREAKFAST.
- 4.4.2. The renting of rooms or the furnishing of board in a dwelling occupied as a private residence.
- 4.4.3. Multi-family dwelling, subject to “Regulations for Multi-Family Housing in the Village Residential District” at Section 4.13 of this Bylaw.
- 4.4.4. The conversion of a single-family dwelling in existence prior to 1950 to a MULTI-FAMILY dwelling, subject to the “Accessory Dwelling Units and Conversion of Existing Single-Family Dwellings” regulations in Article 17 of this Bylaw.
- 4.4.5. Home specialty retail.
- 4.4.6. Congregate living residence for the elderly or disabled, subject to the “ASSISTED LIVING FACILITIES and Elderly Housing” regulations in Article 16 of this Bylaw.

4.5. Prohibited Uses.

- 4.5.1. Use of a MOBILE HOME on a residential LOT.
- 4.5.2. Parks for MOBILE HOMES, except for a MOBILE HOME park in existence prior to the effective date of this Bylaw.
- 4.5.3. Outdoor storage of more than one unregistered motor vehicle for more than ninety days, except on a farm.
- 4.5.4. Auto dismantling, junkyards, privately developed and operated septage waste disposal/treatment facilities and refuse disposal facilities are expressly prohibited.
- 4.5.5. The dispensing of medical marijuana.
- 4.5.6. Any use not explicitly provided for in the By-law.

4.6. Dimensional, Setback and Intensity Regulations.

No building or STRUCTURE shall be located, constructed, changed, enlarged or permitted and no use of premises in the Village Residential District shall be permitted except in conformity to the intensity and dimensional regulations as set forth herein. If a LOT is determined by the rules of Article 14 to be within a Water Resource Protection Overlay District, then the more restrictive regulations of Article 14 shall prevail.

- 4.6.1. Minimum LOT AREA: 10,890 square feet (ft<sup>2</sup>)
- 4.6.2. Minimum FRONTAGE: 80 feet
- 4.6.3. Lot Width: 70 feet
- 4.6.4. Maximum Building Height (Feet): 35 feet
- 4.6.5. Maximum Building Height (Stories): 2 ½ stories
- 4.6.6. Maximum LOT COVERAGE: 40%
- 4.6.7. Minimum Front Yard Setback: 10 feet
- 4.6.8. Maximum Front Yard Setback: 25 feet
- 4.6.9. Minimum Side Yard Setback: 10 feet
- 4.6.10. Minimum Rear Yard Setback: 10 feet

4.7. Special Permits in the Village Residential District.

- 4.7.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Village Residential District shall be the Planning Board.

- 4.7.2. Requirements. An application for a SPECIAL PERMIT in the Village Residential District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.
- 4.7.3. Relationship to SITE PLAN REVIEW. The site plan review requirements of Article 19 of this Bylaw shall apply to the Village-Residential District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 4.7.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation Commission and the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon the SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.
- 4.7.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Village Residential District. In making its decision, the Planning Board shall consider the following criteria:
  - 4.7.5.1. Consistency with the Merrimac Master Plan.
  - 4.7.5.2. Consistency with “Design Standards for the Village Residential District” in Section 4.10 of this Bylaw.
  - 4.7.5.3. Consistency with special regulations that apply (if any) to the proposed use.
  - 4.7.5.4. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 4.7.5.5. The degree to which the proposed use preserves historic built resources or achieves compatibility with the traditional neighborhood elements of the Village Residential District.
  - 4.7.5.6. The degree to which the proposed use furthers the Town’s interest in providing a range of housing types, where applicable.

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- 4.7.5.7. The degree to which the proposed use, viewed in its entirety, is of superior design or provides more environmental, social or fiscal benefits to the Town than the alternative of a use permitted as of right.
- 4.7.5.8. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
- 4.7.5.9. Adequacy of water supplies and distribution for domestic use fire protection.
- 4.7.5.10. Adequacy of the methods of :
  - 4.7.5.10.1. Disposal of sanitary sewage, as determined by the Board of Health or regulations of the Merrimac Sewer Commission, where applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.
  - 4.7.5.10.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
  - 4.7.5.10.3. Drainage and retention of surface water.
- 4.7.5.11. Conformance to SIGN regulations in Article 21, where applicable.

4.8. Signs.

One SIGN only shall be permitted at the entrance to the site, in accordance with the SIGN Regulations at Article 21 of the bylaw.

4.9. Parking.

OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw.

4.10. Design Standards for the Village Residential District.

The following design guidelines apply to site improvements, buildings and structures in the Village Residential District. They must be addressed in any application for SITE PLAN REVIEW or a SPECIAL PERMIT, as applicable. To the maximum extent possible, development in the Village Residential District shall:

- 4.10.1. Respect the established development pattern and physical form of the district. Most of the Village Residential District consists of relatively dense, compact neighborhoods oriented toward Merrimac Square. New construction or substantial alteration of buildings development should reinforce, not detract from, the design features of these neighborhoods.
- 4.10.2. Minimize new driveway openings and curb cuts on existing public WAYS. Wherever possible, the Town strongly prefers shared driveway access with an adjoining property.

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- 4.10.3. Avoid the removal, obscuring or disruption of existing STRUCTURES of historic value.
- 4.10.4. Protect established vegetation.
- 4.10.5. Prevent stormwater runoff to nearby properties using Low Impact Development Best Management Practices and rooftop infiltration or disconnection methods where applicable
- 4.10.6. New, substantially altered or converted residential and non-residential buildings in the Village Residential District must address the following design principles:
  - 4.10.6.1. Incorporate architectural styles, building materials, and colors used in surrounding buildings.
  - 4.10.6.2. A building greater than one STORY should clearly delineate the boundary between each floor of the STRUCTURE through architectural detailing similar to surrounding STRUCTURES.
  - 4.10.6.3. Avoid long, monotonous façades, window placements and roof planes. The façade of a building should be divided into distinct modules no longer than 40 feet.
  - 4.10.6.4. The roofline must be pitched or gabled, consistent with surrounding STRUCTURES. Flat or nearly flat rooflines are inappropriate.
  - 4.10.6.5. When set back between five to twenty feet from the front yard line, a building shall have a porch of at least four feet in width.
  - 4.10.6.6. Provide landscape treatments with shrubs, trees, flower boxes and other greenery around buildings or in recessed places.
  - 4.10.6.7. No garage or carport shall face the street unless it is located at least 20 feet behind the front façade of the principal STRUCTURE. When a garage is located under the principal STRUCTURE, the entrance to the garage shall not be located on the front exterior wall facing the street (FRONTAGE) side of the lot.
- 4.10.7. Use GREEN BUILDING TECHNOLOGIES and materials, wherever possible, to limit environmental impacts.
- 4.10.8. Preserve established architectural traditions. Buildings or STRUCTURES listed on the National Register of Historic Places or the State Register, or that are more than 50 years old as of the date of application for a SPECIAL PERMIT or site plan approval, or that are located within a local historic district as established by G.L. c. 40C, may be converted, constructed, reconstructed, restored or altered only in a manner that maintains or promotes their status as listed or eligible historic resources. For purposes of zoning compliance, additions or alterations that adhere to the U.S. Secretary of the

Interior's Standards for Rehabilitation of Historic Buildings will generally be presumed to maintain or promote such status.

4.11. Regulations for Infill Residential Uses.

- 4.11.1. Purposes and Intent. The purposes of the Infill Residential Uses bylaw are to provide for development and redevelopment of compatible uses, to preserve and enhance Merrimac's traditional neighborhoods, provide housing choices and use land efficiently in the Village Residential District. This Bylaw furthers the objectives of the Merrimac Master Plan by guiding development toward established areas, thereby creating opportunities for new investment away from outlying rural and agricultural areas of the Town.
- 4.11.2. Applicability. Infill residential uses are allowed only in the Village Residential District on LOTS for which the Planning Board has issued a SPECIAL PERMIT for reduced lot frontage as provided in Section 4.12 of this Bylaw. Infill residential uses shall be permitted subject to SITE PLAN REVIEW and the requirements outlined below.
- 4.11.3. After adoption of this Bylaw, the Planning Board shall adopt rules and regulations to implement the Infill Residential Uses provisions of this Bylaw, following a public hearing. The Planning Board's rules and regulations shall be on file with the Town Clerk, and shall be updated annually by the Planning Board to set maximum purchase prices and rents for affordable housing units approved under this Bylaw. Maximum purchase prices and rents shall, where applicable, conform to the regulations and guidelines of the Local Initiative Program, 760 CMR 45.00.
- 4.11.4. Permitted Uses. Infill residential uses include the following, subject to compliance with the AFFORDABLE HOUSING Requirements at Section 4.11.7.
  - 4.11.4.1. SINGLE-FAMILY DWELLING.
  - 4.11.4.2. TWO-FAMILY DWELLING.
  - 4.11.4.3. Multi-family, zero-lot line or common-wall dwelling units, up to four such units with a combined total of no more than eight bedrooms on a reduced-frontage lot.
  - 4.11.4.4. A single-family dwelling unit built on a reduced FRONTAGE LOT may never be converted to a two-family or MULTI-FAMILY dwelling, and it may never be altered to include an accessory apartment. All infill residential uses shall be connected to the municipal sewer system.
- 4.11.5. SITE PLAN REVIEW. Infill Residential Use is subject to Article 19 of this Bylaw.
- 4.11.6. Aggregate Infill Residential Use Limitation. No more than 40 dwelling units



may be permitted as infill residential uses in the Village Residential District.

4.11.7. AFFORDABLE HOUSING Requirements. An infill residential use must provide housing that meets the following requirements:

4.11.7.1. Low- and moderate-income housing eligible for listing on the Chapter 40B SUBSIDIZED HOUSING INVENTORY, i.e., affordable to households with incomes at or below 80% of area median income.

4.11.7.2. “BELOW-MARKET” housing units affordable to households with incomes between 81-100% of area median income.

4.11.7.3. The affordable housing requirements shall be met according to the following schedule of uses:

Infill Residential Use	AFFORDABLE HOUSING Requirement
Detached single-family dwelling	BELOW-MARKET
Two-family dwelling	50% BELOW-MARKET
	50% low- and moderate-income
Zero-lot line/common-wall or MULTI-FAMILY dwelling units	75% BELOW-MARKET
	25% low- and moderate-income

4.11.7.4. All low- and moderate-income housing units must be approved for listing on the Chapter 40B SUBSIDIZED HOUSING INVENTORY through the DHCD Local Initiative Program, 760 CMR 45.00. No occupancy permit shall be issued for an infill residential use until the applicant has submitted the following documentation in a form satisfactory to the BUILDING COMMISSIONER:

4.11.7.5. Affordable Housing Use Restriction:

The applicant shall have recorded a USE RESTRICTION or regulatory agreement at the Registry of Deeds. Model use restrictions for low- and moderate-income units and below-market units shall be supplied by the Planning Board and incorporated in the Planning Board’s Infill Residential Use regulations.

4.11.7.6. Applicant’s Affidavit

The applicant shall certify in a form acceptable to the Planning Board that low- or moderate-income rental units will be monitored annually in accordance with the rent limit and income eligibility requirements of the Local Initiative Program. All such monitoring shall be at the expense of the property owner as set forth in the use restriction and regulatory agreement on file at the Registry of Deeds.

4.11.7.7. OFF-STREET PARKING. All dwelling units shall be required to

provide two off street parking spaces per unit.

4.12. Regulations for Reduced Lot Frontage in the Village Residential District

- 4.12.1. Purpose. A reduction in lot frontage may be permitted in the Village Residential District for the purpose of providing a range of housing choices, including housing affordable to low-, moderate- and median-income households.
- 4.12.2. Requirements. The Planning Board may issue a SPECIAL PERMIT to reduce lot frontage in the Village Residential District consistent with the following criteria:
  - 4.12.2.1. The LOT has a minimum continuous street FRONTAGE of not less than fifty (50) feet.
  - 4.12.2.2. The area of a LOT with reduced FRONTAGE shall be at least equal to the minimum LOT size of the Village Residential District.
  - 4.12.2.3. The LOT shall have at least one area suitable for the construction of a dwelling that can accommodate a circle with a diameter of 60 feet.
  - 4.12.2.4. Not more than two reduced frontage lots shall abut each other.
  - 4.12.2.5. Two abutting reduced frontage lots shall be served by a Common Driveway.
  - 4.12.2.6. A reduced frontage lot shall not interfere with the use and enjoyment of an abutting LOT and will not adversely affect the neighborhood.
- 4.12.3. Notwithstanding any other provision, a reduced FRONTAGE LOT created by SPECIAL PERMIT from the Planning Board shall not be further subdivided, or reduced in area, or changed in size or shape, and it may be used only for Infill Residential Uses as defined in Section 4.11 of this Bylaw. The Planning Board shall require deed restrictions to insure the aforementioned criteria and use limitations.

4.13. Regulations for Multi-Family Housing in the Village Residential District

The Planning Board may grant a SPECIAL PERMIT for MULTI-FAMILY housing in the Village Residential District under the following conditions:

- 4.13.1. Multi-family housing in the Village Residential District is intended to provide a mix of housing types at a density and scale appropriate for the historic character of the district. To qualify for a MULTI-FAMILY housing SPECIAL PERMIT, the applicant must include housing affordable to low- or moderate-income households as defined in this Bylaw, according to the following schedule:
  - 4.13.1.1. In a multi-family housing development subject to this Bylaw, the

- 4.13.5. seventh housing unit and every third unit thereafter shall be a LOW- AND MODERATE-INCOME housing unit; except that beginning with the 22nd unit, that 22nd unit and every fourth unit thereafter shall be a LOW- AND MODERATE-INCOME housing unit. Nothing in this section shall preclude a developer from providing more low- or moderate-income housing units than the minimum required by this Bylaw.
- 4.13.1.2. All low- and moderate-income affordable units shall be subject to a use restriction pursuant to G.L. c.184, Sections 31-32.
- 4.13.1.3. The Planning Board may allow a developer of non-rental MULTI-FAMILY housing units to make a cash payment to the Town through its Affordable Housing Trust Fund for each affordable low- or moderate-income unit. The cash payment shall be equal to the difference between the fair market value for a typical market-rate housing unit in the proposed development, as determined by the Board, and the price of a housing unit affordable to a low- or moderate-income household.
- 4.13.2. The Building Inspector may not issue an occupancy permit to the applicant without prior receipt of evidence that the use restriction or regulatory agreement has been recorded at the Registry of Deeds and that the low- and moderate-income units have been approved for listing on the Chapter 40B SUBSIDIZED HOUSING INVENTORY by the Department of Housing and Community Development.
- 4.13.3. The following density and dimensional rules shall apply to MULTI-FAMILY housing in the Village Residential District:
  - 4.13.3.1. Multi-family dwellings shall not exceed eight units per acre unless the applicant proposes and the Planning Board approves a higher percentage of affordable housing units than the percentage achieved under Section the 20% minimum set forth in Section 4.13.1. In no event shall the Planning Board issue a SPECIAL PERMIT for more than ten units per acre.
  - 4.13.3.2. A MULTI-FAMILY development shall provide a mix of one-, two-, and three-bedroom units, except that no more than ten percent of the units in a MULTI-FAMILY development shall be three-bedroom units.
  - 4.13.3.3. A MULTI-FAMILY building shall contain no more than eight units, and shall not exceed a building height of 35 feet and two and one half stories.
- 4.13.4. Multi-family housing STRUCTURES shall avoid monotonous, look-alike designs and promote high standards of exterior quality and appearance.

Off-Street Parking. Applicants shall provide 1.5 parking spaces per one-

bedroom unit and 2 parking spaces per two- or three-bedroom unit. At least one space per unit shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.

- 4.13.6. Setbacks. All buildings must be located at least 25 feet from any side or rear LOT line and 25 feet from any established street layout or, where applicable, any defined street line of a public road, which street setback area shall be undeveloped and/or landscaped.
  - 4.13.6.1. Upon a finding by the Planning Board that a setback of lesser width would be sufficient to screen and/or separate the development from adjacent property, the setback may be reduced. The Board may require no-cut easements, conservation restrictions or the like where the setback has been reduced.
  - 4.13.6.2. The Planning Board may also reduce the setback for MULTI-FAMILY development of five or fewer units if the building is architecturally similar to single-family residences in the same general area.
  - 4.13.6.3. Buildings shall be located at least 20 feet from interior roadways and driveways that are not considered streets or public roads.
- 4.13.7. Distance between structures. The distance between STRUCTURES shall be no less than the average height of the two STRUCTURES or 35 feet, whichever is greater. Such distance shall include any garages or other accessory STRUCTURES.
- 4.13.8. Road construction. Roads that serve MULTI-FAMILY housing shall be constructed in accordance with the standards of the Subdivision Rules and Regulations of the Town of Merrimac with the exception of width, which shall be determined by the Planning Board. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the Subdivision Rules and Regulations at the time of site plan submittal.
- 4.13.9. Special Permit Granting Criteria. Before the Planning Board may issue a SPECIAL PERMIT for MULTI-FAMILY housing in the Village Residential District, it shall consider the following criteria:
  - 4.13.9.1. Consistency with the Merrimac Master Plan.
  - 4.13.9.2. Consistency with the requirements of this section of the bylaw.
  - 4.13.9.3. Desirability of architectural design.

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- 4.13.9.4. Desirability of the number and mix of units proposed, and the provision of housing units accessible to persons with disabilities.
- 4.13.9.5. Protection of adjoining premises against detrimental or offensive uses on the site.
- 4.13.9.6. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
- 4.13.9.7. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
- 4.13.9.8. Adequacy of water supplies and distribution for domestic use fire protection.
- 4.13.9.9. Adequacy of the methods of:
  - 4.13.9.9.1. Disposal of sanitary sewage. For multi-family housing by special permit from the Planning Board, connection to the municipal sewer is mandatory. No on-site disposal of wastewater or use of tight tanks is allowed.
  - 4.13.9.9.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
  - 4.13.9.9.3. Drainage and retention of surface water.

## **ARTICLE 5. SUBURBAN RESIDENTIAL DISTRICT (SR)**

### **5.1. Purposes.**

The Town shall have a designated Suburban Residential District as shown on the OFFICIAL ZONING MAP. The purpose of the Suburban Residential District is to recognize and reinforce the provision of established single-family neighborhoods near schools, the Town center, Route 110 and other appropriate locations. In the Suburban Residential District, no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

### **5.2. Permitted Uses and Structures.**

- 5.2.1. SINGLE-FAMILY DWELLING.
- 5.2.2. Home professional office.
- 5.2.3. Home personal service.
- 5.2.4. AGRICULTURE, as defined by G.L. 128, Section 1A, on any parcel of more than five acres of land.
- 5.2.5. AGRICULTURE and horticulture on parcels of five acres or less so long as such use is not noxious, injurious or offensive to the neighborhood.

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5.2.6. Real estate SIGNS not over six square feet in area advertising only the sale or rental of the premises on which they are located. Professional announcement SIGNS, farm produce SIGNS, lodging, boarding and tourist SIGNS, having an area of not more than four square feet, provided that there is only one such SIGN for each household so engaged. Illuminated SIGNS shall be non-flashing.

5.2.7. ACCESSORY USES customarily incidental to any use permitted herein.

5.2.8. Rooftop residential solar installations.

5.3. Permitted Uses Subject to SITE PLAN REVIEW.

5.3.1. Private boat, canoe or motor boathouses.

5.3.2. Private bathhouses.

5.3.3. Public recreational uses.

5.3.4. Churches and other places of worship, parish houses.

5.3.5. FARM stands.

5.3.6. CHILD CARE or day center center.

5.3.7. Public schools, public libraries and museums, and private schools, including preschools and colleges.

5.3.8. Membership clubs, lodges, social recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity which is usually carried on as a business (fairs and public benefits excluded).

5.3.9. Municipal use authorized by Town Meeting.

5.3.10. Other government uses.

5.3.11. Telephone exchanges, provided that there is no service yard or garage.

5.4. Uses and Structures Permitted by Special Permit.

In the Suburban-Residential District, the Planning Board may grant a special permit for the following uses except that where an accessory apartment or the conversion of a single-family to a multi-family dwelling is allowed by special permit, THE Special Permit Granting Authority shall be the Board of Appeals in accordance with Article 17 Accessory Dwelling Units and Conversion of Existing Single Family Dwellings;

5.4.1. BED AND BREAKFAST.

5.4.2. A home occupation not otherwise permitted under Section 5.2 or 5.3.

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- 5.4.3. The conversion of a single-family dwelling in existence for at least ten years prior to the application for a SPECIAL PERMIT to a two-family dwelling, subject to the regulations for “Accessory Dwelling Units and Conversion of Existing Single-Family Dwellings” in Article 17 of this Bylaw.
- 5.4.4. One accessory dwelling unit in a single-family dwelling in existence for at least five years to the application for a building permit, subject to the regulations for “Accessory Dwelling Units and Conversion of Existing Single-Family Dwellings” in Article 17 of this Bylaw.
- 5.4.5. Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities.

5.5. Prohibited Uses.

- 5.5.1. Use of a MOBILE HOME on a residential LOT.
- 5.5.2. Parks for MOBILE HOMES.
- 5.5.3. Outdoor storage of more than one unregistered motor vehicle for more than ninety days, except on a farm.
- 5.5.4. Auto dismantling, junkyards, privately developed and operated septage waste disposal/treatment facilities and refuse disposal facilities are expressly prohibited.
- 5.5.5. The dispensing of medical marijuana.
- 5.5.6. Any uses not explicitly provided for in this By-law.

5.6. Dimensional, Setback and Intensity Regulations.

No building or STRUCTURE shall be located, constructed, changed, enlarged or permitted and no use of premises in the Suburban Residential District shall be permitted except in conformity to the intensity and dimensional regulations as set forth herein. If a LOT is determined by the rules of Article 14 to be within a Water Resources Protection Overlay District, then the more restrictive regulations of Article 14 shall prevail.

- 5.6.1. Minimum LOT AREA: 43,560 square feet (ft<sup>2</sup>)
- 5.6.2. Minimum FRONTAGE: 150 feet
- 5.6.3. Lot Width: 100 feet
- 5.6.4. Maximum Building Height (Feet): 35 feet
- 5.6.5. Maximum Building Height (Stories): 2 ½ stories
- 5.6.6. Maximum LOT COVERAGE: 20%
- 5.6.7. Minimum Front Yard Setback: 20 feet

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- 5.6.8. Minimum Side Yard Setback: 20 feet
- 5.6.9. Minimum Rear Yard Setback: 20 feet
- 5.6.10. Minimum preservation of existing wooded area: 20%

5.7. Special Permits in the Suburban Residential District.

- 5.7.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Suburban Residential District shall be the Planning Board.
- 5.7.2. Requirements. An application for a SPECIAL PERMIT in the Suburban Residential District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.
- 5.7.3. Site Plan Review. The site plan review requirements of Article 19 of this Bylaw shall apply to the Suburban-Residential District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 5.7.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation Commission and the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon the SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.
- 5.7.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Suburban Residential District. In making its decision, the Planning Board shall consider the following criteria:
  - 5.7.5.1. Consistency with the Merrimac Master Plan.
  - 5.7.5.2. Consistency with "Design Standards for the Suburban Residential District" set forth in Section 5.10 of this Bylaw.
  - 5.7.5.3. Consistency with special regulations that apply (if any) to the proposed use.



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- 5.7.5.4. Protection of adjoining premises against detrimental or offensive uses on the site.
- 5.7.5.5. The degree to which the proposed use achieves compatibility with the traditional neighborhood elements of the Suburban Residential District.
- 5.7.5.6. The degree to which the proposed use furthers the Town's interest in providing a range of housing types, where applicable.
- 5.7.5.7. The degree to which the proposed use, viewed in its entirety, is of superior design or provides more environmental, social or fiscal benefits to the Town than the alternative of a use permitted as of right.
- 5.7.5.8. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
- 5.7.5.9. Adequacy of water supplies and distribution for domestic use fire protection.
- 5.7.5.10. Adequacy of the methods of:
  - 5.7.5.10.1. Disposal of sanitary sewage, as determined by the Board of Health or Sewer Commission, as applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.
  - 5.7.5.10.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
  - 5.7.5.10.3. Drainage or retention of surface water.
- 5.7.5.11. Drainage and retention of surface water.
- 5.7.5.12. Conformance to SIGN regulations in Article 21 where applicable.

#### 5.8. Signs.

One SIGN only shall be permitted at the entrance to the site, in accordance with Article 21 of the bylaw.

#### 5.9. Parking.

OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw.

#### 5.10. Design Standards for the Suburban-Residential District

The following design guidelines apply to site improvements, buildings and STRUCTURES in the Suburban Residential District. They must be addressed in an application for SITE PLAN REVIEW or a SPECIAL PERMIT, as applicable. To the maximum extent possible, development in the Suburban Residential District shall:

- 5.10.1. Conform to the established development pattern and architectural character of the neighborhood in which the use or structure will be located.

The Suburban-Residential District includes land in four areas of Town: north and west of the Village Residential District, around Broad Street and River Road, and between Emery Street and the Amesbury Town line. Although the development pattern and building styles in each location are not the same, the Suburban Residential District as a whole consists mainly of conventional subdivisions of single-family dwellings, typically served by looped or interconnected curvilinear roads, or cul-de-sac roads, lined with mature trees. Homes tend to be set back from the street, with attached rather than separate garages or carports. New construction or substantial alteration of buildings should complement the scale and design elements of existing development in these neighborhoods.

- 5.10.2. Protect mature vegetation, particularly within the front setback area.
- 5.10.3. Prevent stormwater runoff to nearby properties using Low Impact Development Best Management Practices and rooftop infiltration or disconnection methods where applicable
- 5.10.4. New, substantially altered or converted residential and non-residential buildings in the Suburban Residential District must address the following design principles:
  - 5.10.4.1. Incorporate architectural styles, building materials, and colors used in surrounding buildings.
  - 5.10.4.2. Avoid substantial setbacks from the road.
  - 5.10.4.3. Avoid long, monotonous façades, window placements and roof planes. The façade of a building should be divided into distinct modules no longer than 40 feet.
  - 5.10.4.4. The roofline must be pitched or gabled, consistent with surrounding STRUCTURES. Flat or nearly flat rooflines are inappropriate.
  - 5.10.4.5. Provide landscape treatments such as a traditional picket fence, shrubs, trees, flower boxes and other greenery around buildings or in recessed places.
- 5.10.5. Use GREEN BUILDING TECHNOLOGIES and materials, wherever possible, to limit environmental impacts.
- 5.10.6. Preserve established architectural traditions. Buildings or STRUCTURES listed on the National Register of Historic Places or the State Register, or that are more than 50 years old as of the date of application for a SPECIAL PERMIT or site plan approval, or that are located within a local historic district as established by G.L. c. 40C, may be converted, constructed, reconstructed, restored or altered only in a manner that maintains or promotes their status as listed or eligible historic resources. For purposes of zoning

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compliance, additions or alterations that adhere to the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings will generally be presumed to maintain or promote such status.

## **ARTICLE 6. AGRICULTURAL RESIDENTIAL DISTRICT (AR)**

### **6.1. Purpose.**

The Town shall have a designated Agricultural Residential District as shown on the OFFICIAL ZONING MAP. The purposes of the Agricultural Residential District are to preserve the Town's rural character and scenic landscapes, encourage farming, provide for residential uses appropriate to a rural setting, and protect open space. In the Agricultural Residential District, no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

### **6.2. Permitted Uses and Structures.**

6.2.1. SINGLE-FAMILY DWELLING.

6.2.2. The renting of rooms or the furnishing of board in a dwelling occupied as a private residence.

6.2.3. Home professional office.

6.2.4. Home personal service.

6.2.5. Home business workshop.

6.2.6. Wood lots, portable wood working mills and machinery.

6.2.7. AGRICULTURE, as defined by G.L. 128, Section 1A, on parcels of more than five acres of land.

6.2.8. AGRICULTURE on LOTS of five acres or less provided that the sale of products is confined to those raised or grown on the premises and so long as such use is not noxious, injurious or offensive to the neighborhood.

6.2.9. Real estate SIGNS not over six square feet in area advertising only the sale or rental of the premises on which they are located. Professional announcement SIGNS, farm produce SIGNS, lodging, boarding and tourist SIGNS, having an area of not more than four square feet, provided that there is only one such SIGN for each household so engaged. Illuminated SIGNS shall be non-flashing.

6.2.10 ACCESSORY USES

6.2.11. Rooftop residential solar installations.

### **6.3 Permitted Uses Subject to Site Plan Review.**

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- 6.3.1 Private boat, canoe or motor boathouses.
- 6.3.2 Private bathhouses.
- 6.3.3 Public recreational uses.
- 6.3.4 Churches and other places of worship, parish houses.
- 6.3.5 Public schools, public libraries and museums, and private schools, including preschools and colleges.
- 6.3.6 CHILD CARE or day care center.
- 6.3.7 Membership clubs, lodges, social recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity which is usually carried on as a business (fairs and public benefits excluded).
- 6.3.8 Municipal use authorized by Town Meeting.
- 6.3.9 Other government uses.
- 6.3.10 Telephone exchanges, provided that there is no service yard or garage.

6.4 Uses and Structures Permitted by Special Permit.

In the Agricultural Residential District, the Planning Board may issue a SPECIAL PERMIT for the following uses except that where an accessory apartment or the conversion of a single-family to a multi-family dwelling is allowed by special permit, THE Special Permit Granting Authority shall be the Board of Appeals in accordance with Article 17 Accessory Dwelling Units and Conversion of Existing Single Family Dwellings;

- 6.4.1 BED AND BREAKFAST.
- 6.4.2 One accessory dwelling unit in a single-family dwelling in existence for at least five years prior to the application for a building permit, subject to “Accessory Dwelling Units and Conversion of Existing Single-Family Dwellings” in Article 17 of this Bylaw.
- 6.4.3 The conversion of a single-family dwelling in existence for at least ten years prior to the application for a SPECIAL PERMIT to a two-family dwelling, subject to “Accessory Dwelling Units and Conversion of Existing Single-Family Dwellings” in Article 17 of this Bylaw.
- 6.4.4 Home specialty retail.
- 6.4.5 Public or semipublic institutions of a philanthropic or charitable character, nursing homes, acute care and rehabilitation facilities.
- 6.4.6 Assisted living facility or CONGREGATE LIVING RESIDENCE for the elderly or disabled, subject to “Regulations for Assisted Living Facilities and Elderly

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Housing” at Article 16 of this Bylaw.

- 6.4.7 Open Space-Residential Development, subject to “Open Space-Residential Development” regulations at Article 15 of this Bylaw.
- 6.4.8 Cemetery
- 6.5 Prohibited Uses,
  - 6.5.1 Use of a MOBILE HOME on a residential LOT.
  - 6.5.2 Parks for MOBILE HOMES.
  - 6.5.3 Outdoor storage of more than one unregistered motor vehicle for more than ninety days, except on a farm.
  - 6.5.4 Auto dismantling, junkyards, privately developed and operated septage waste disposal/treatment facilities and refuse disposal facilities are expressly prohibited.
  - 6.5.5 The dispensing of medical marijuana.
  - 6.5.6 Any use not explicitly provided for in this Bylaw.
- 6.6 Dimensional and Intensity Regulations.

No building or STRUCTURE shall be located, constructed, changed, enlarged or permitted and no use of premises in the Agricultural Residential District shall be permitted except in conformity to the intensity and dimensional regulations as set forth herein. If a LOT is determined by the rules of Article 14 to be within a Water Resources Protection Overlay District, then the more restrictive regulations of Article 14 shall prevail.

  - 6.6.1 Minimum LOT AREA: 87,120 square feet (ft<sup>2</sup>)
  - 6.6.2 Minimum FRONTAGE: 200 feet
  - 6.6.3 LOT WIDTH: 180 feet
  - 6.6.4 Maximum Building Height (Feet): 35 feet
  - 6.6.5 Maximum Building Height (Stories): 2 ½ stories
  - 6.6.6 Maximum LOT COVERAGE: 25%
  - 6.6.7 Minimum Front Yard Setback: 50 feet <sup>(2)</sup>
  - 6.6.8 Minimum Side Yard Setback: 30 feet <sup>(2)</sup>
  - 6.6.10 Minimum preservation of existing wooded area: 25%

<sup>1</sup> Side and rear yard setbacks shall be a minimum of 50 feet on LOTS that abut an exempt agricultural use.

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<sup>2</sup> Front, side and rear yard setbacks shall be a minimum of 20 feet on LOTS lawfully in existence prior to 2004, unless otherwise regulated within this bylaw

6.7 Special Permits in the Agricultural Residential District.

- 6.7.1 The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Agricultural Residential District shall be the Planning Board.
- 6.7.2 Requirements. An application for a SPECIAL PERMIT in the Agricultural Residential District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.
- 6.7.3 SITE PLAN REVIEW. The site plan review requirements of Article 19 of this Bylaw shall apply to SPECIAL PERMITS in the Agricultural Residential District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 6.7.4 Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation Commission and the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon the SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.
- 6.7.5 Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Agricultural Residential District. In making its decision, the Planning Board shall consider the following criteria:
  - 6.7.5.1 Consistency with the Merrimac Master Plan.
  - 6.7.5.2 Consistency with “Design Standards for the Agricultural Residential District” in Section 6.10 of this Bylaw.
  - 6.7.5.3 Consistency with special regulations that apply (if any) to the proposed use.

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6.7.5.4 Protection of adjoining premises against detrimental or offensive uses on the site.

6.7.5.5 The degree to which the proposed use protects open space, farmland and historic resources in the Agricultural Residential District.

6.7.5.6 The degree to which the proposed use furthers the Town's interest in providing a range of housing types, where applicable.

6.7.5.7 The degree to which the proposed use, viewed in its entirety, is of superior design or provides more environmental, social or fiscal benefits to the Town than the alternative of a use permitted as of right.

6.7.5.8 Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.

6.7.5.9 Adequacy of water supplies and distribution for domestic use fire protection.

6.7.5.10 Adequacy of the methods of:

6.7.5.10.1 Disposal of sanitary sewage.

6.7.5.10.2 Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.

6.7.5.10.3 Drainage and retention of surface water.

6.7.5.11 Conformance to SIGN regulations in Article 21, where applicable.

## 6.8 Signs.

One SIGN only shall be permitted at the entrance to the site, in accordance with the SIGN Regulations at Article 21 of the bylaw.

## 6.9 Parking.

OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw.

## 6.10 Design Standards for the Agricultural Residential District

The following design guidelines apply to site improvements, buildings and STRUCTURES in the Agricultural Residential District. They must be addressed in applications for SITE PLAN REVIEW or SPECIAL PERMITS, as applicable. To the maximum extent possible, development in the Agricultural Residential District shall:

6.10.1 Protect views from the road, open space and scenic landscapes. Toward that end:

- 6.10.1.1 Applicants are strongly encouraged to seek a SPECIAL PERMIT for Open Space-Residential Development in lieu of a conventional subdivision. See also, “Open Space-Residential Development” regulations in Article 15 of this Bylaw.
- 6.10.1.2 Every feasible effort shall be made to avoid the removal of mature trees and stone walls, reduce the volume of earth materials cut or filled, reduce soil erosion during and after construction and reduce the extent of alteration in the amount, timing and location of stormwater runoff from the site. The Town encourages the use of Low Impact Development Best Management Practices for Stormwater Management, where applicable.
- 6.10.2 Minimize new driveway openings and curb cuts on existing public WAYS. For small developments comprised of Approval Not Required (ANR) LOTS, the Town encourages common driveways.
- 6.10.3 Respect the Town’s rural-agricultural legacy by avoiding the removal, obscuring or disruption of existing STRUCTURES of historic value and assuring design compatibility between new construction and adjacent or nearby buildings. The following design principles should be addressed by all applicants for a SPECIAL PERMIT and/or site plan approval in the Agricultural Residential District:
  - 6.10.3.1 Avoid unarticulated and monotonous building facades and window placements, regular spacings, and building placements that will be viewed from the street as continuous walls.
  - 6.10.3.2 Provide a variety of building heights and varied roofline articulation that stresses New England vernacular architecture.
  - 6.10.3.3 Provide variety in building mass, entry and porch design, window pattern, and other architectural features.
  - 6.10.3.4 Consider climatic response in the orientation of dwelling units on the site, the number and location of windows, and the design treatment of building entries.
  - 6.10.3.5 Avoid dominating the streetscape with garages.
  - 6.10.3.6 Use materials characteristic of the area. These materials include painted clapboard, shingles, or brick and other unit masonry (painted or unpainted). Variation within the range of characteristic materials, colors and textures is encouraged when they are compatible with surrounding buildings.
  - 6.10.3.7 Preserve attractive views from major vantage points, especially from major roads and residential neighborhoods.
  - 6.10.3.8 Provide visual relief from buildings and hard materials with landscape treatment using shrubs, trees, flower boxes and other greenery around



buildings or in recessed places.

6.10.3.9 Provide access to open spaces for the physically handicapped, elderly, and children.

6.10.4 Use GREEN BUILDING TECHNOLOGIES and materials, wherever possible, to limit environmental impacts.

6.10.1 Preserve established architectural traditions. Buildings or STRUCTURES listed on the National Register of Historic Places or the State Register, or that are more than 50 years old as of the date of application for a SPECIAL PERMIT or SITE PLAN REVIEW, or that are located within a local historic district as established by G.L. c. 40C, may be converted, constructed, reconstructed, restored or altered only in a manner that maintains or promotes their status as listed or eligible historic resources. For purposes of zoning compliance, additions or alterations that adhere to the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings will generally be presumed to maintain or promote such status.

6.11 Reduced Lot Frontage in the Agricultural Residential District

6.11.1 Purpose. A reduction in lot frontage may be permitted in order to encourage flexible development, preserve rural character and reduce overall density.

6.11.2 Requirements. The Planning Board may issue a SPECIAL PERMIT to reduce lot frontage consistent with the following criteria:

6.11.2.1 The LOT has a minimum continuous street FRONTAGE of not less than fifty (50) feet.

6.11.2.2 The area of a LOT with a reduced FRONTAGE shall be at least two times the minimum LOT size of the zoning district in which it is located.

6.11.2.3 The LOT shall have at least one area suitable for the construction of a dwelling that can accommodate a circle with a diameter of 150 feet.

6.11.2.4 Not more than two reduced frontage lots shall abut each other.

6.11.2.5 Two abutting reduced frontage lots shall be served by a Common Driveway, subject to Article 23 of this Bylaw.

6.11.2.6 Reduced frontage lots shall be located such that they will not block future extensions or connections of a dead end street, do not interfere with the use and enjoyment of an abutting LOT, and do not adversely affect the neighborhood.

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- 6.11.3 Notwithstanding any other provision, a reduced frontage lot created by SPECIAL PERMIT from the Planning Board shall not be further subdivided, or reduced in area, or changed in size or shape. The Planning Board shall require deed restrictions to insure the aforementioned criteria.

#### 6.12 Birch Meadow Overlay District (BM)

##### 6.12.1 Purpose.

The purposes of the Birch Meadow Overlay District (BM) are to recognize the established smaller lot (<25,000 sq.ft.) development pattern of parcels in the vicinity of West Main Street and Birch Meadow Road, to protect property values, and to provide regulatory flexibility, incentives and appropriate design standards for property improvements in the district.

6.12.2 Establishment of District: The Birch Meadow Overlay District is hereby established as an overlay district as shown on the map entitled "Birch Meadow Overlay District", dated October 22, 2007, which shall be part of the Official Zoning Map, on file with the Town Clerk.

6.12.3 Relationship to Agricultural Residential (AR) Zone: In the Birch Meadow Overlay District, all requirements of the underlying district(s) shall remain in effect except where these regulations supersede or provide an alternative to such regulations. In the event that an owner desires to redevelop in accordance with the regulations herein, the rules and regulations of the Birch meadow Overlay District shall apply and by filing an application for a building permit, SITE PLAN REVIEW or SPECIAL PERMIT for a development subject to these rules and regulations, the owner shall be deemed to accept and agree to them. Where the provisions of the Birch meadow Overlay District are silent on a zoning regulation, the requirement of the underlying district shall apply.

##### 6.12.4 USE REGULATIONS

###### 6.12.4.1 Permitted Uses and Structures

###### 6.12.4.1.1 SINGLE FAMILY DWELLING

6.12.4.1.2 The renting of rooms or the furnishing of board in a dwelling occupied as a private residence.

6.12.4.1.3 Home professional office

6.12.4.1.4 Home personal service

6.12.4.1.5 Home business workshop

6.12.4.1.6 Real estates SIGNS not over six square feet in area advertising only the sale or rental of the premises on which they are located. Professional announcement SIGNS, farm produce SIGNS, lodging, boarding and tourist SIGNS, having an area of not more than four square feet, provided that there

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is only one such SIGN for each household so engaged. Illuminated SIGNS shall be non-flashing.

#### 6.12.4.1.7 ACCESSORY USES

#### 6.12.4.2 Permitted Uses Subject to Site Plan Review

##### 6.12.4.2.1 Public Recreational Uses

##### 6.12.4.2.2 Churches and other places of worship, parish houses.

##### 6.12.4.2.3 Public schools, public libraries, and museums, and private schools, including preschools and colleges.

##### 6.12.4.2.4 CHILD CARE or day care center.

##### 6.12.4.2.5 Membership clubs, lodges, social recreational and community center buildings and grounds for games and sports, except those having as a principal purpose any activity which is usually carried on as a business (fairs and public excluded)

##### 6.12.4.2.6 Municipal uses authorized by Town Meeting.

6.12.4.3 Uses and Structures Permitted by Special Permit: In the Birch Meadow Overlay District, the Planning Board may issue a SPECIAL PERMIT for the following uses except that where an accessory apartment or the conversion of a single-family dwelling is allowed by SPECIAL PERMIT, the Special PermitGranting Authority shall be the Board of Appeals in accordance with **Article 17, Accessory Dwelling Units and Conversion of Existing Single Family Dwellings;**

6.12.4.3.1 One accessory dwelling unit in a single-family dwelling in existence for at least five years prior to the application for a building permit, subject to “Accessory Dwelling Units and Conversion of Existing Single Family Dwellings” in Article 17 of the By-law.

6.12.4.3.2 The conversion of a single-family dwelling in existence for at least ten years prior to the application for SPECIAL PERMIT to a two-family dwelling, subject to “Accessory Dwelling Units and Concersion of Existing Single-Family Dwellings” in Article 17 of this By-law.

6.12.4.3.3 Home specialty retail.

6.12.4.4 Prohibited Uses: All uses prohibited in the underlying district shall be prohibited in the Birch Meadow Overlay District

6.12.5 Dimensional and Intensity Regulations: The following dimensional and intensity regulations shall apply in the Birch Meadow Overlay District, except that if a LOT is determined by the rules of Article 14 to be within a Water Resource Protection Overlay District, then the more restrictive regulations of Article 14 shall prevail.

6.12.5.1 Minimum LOT AREA: 20,000 square feet

[Type here]

6.12.5.2 Minimum FRONTAGE: 100 feet

6.12.5.3 Lot Width: 80 feet

6.12.5.4 Maximum Building height (Feet ) 35 feet

6.12.5.5 Maximum Building Height (Stories) 2 ½ stories

6.12.5.6 Maximum LOT COVERAGE: 30%

6.12.5.7 Minimum Front Yard Setback: 15 feet

6.12.5.8 Minimum Side Yard Setback: 15 feet

6.12.5.9 Minimum Rear Yard Setback: 15 feet

6.12.6 Site Plan Review and Special Permits in the Birch Meadow Overlay District :The SITE PLAN review and SPECIAL PERMIT procedures and decisions standard that apply in the Agricultural Residential District shall also apply in the Birch Meadow Overlay District.

6.12.7 Signs One SIGN only shall be permitted at the entrance to the site, in accordance with the SIGN Regulations of Article 21 of this By-law.

6.12.8 Parking OFF-STREET PARKING shall be provided with Article 20 of this By-law.

6.12.9 Design Standards for the Birch Meadow Overlay District the design guidelines that apply to site improvements, buildings and STRUCTURES in the Agricultural Residential District shall also apply to the Birch Meadow Overlay District.

## **ARTICLE 7. LAKE ATTITASH DISTRICT (LA)**

### **7.1. Purpose.**

The Town shall have a Lake Attitash District as shown on the OFFICIAL ZONING MAP. The purposes of the Lake Attitash District are to recognize and reinforce the established pattern of single-family homes on small LOTS along a portion of Lake Attitash, to enable property owners to make minor alterations to their homes, and to foster new and infill development at a LOT size that is appropriate to modern building standards, yet cognizant of the history of the district's very small LOT development pattern. In the Lake Attitash District, no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

[Type here]

7.2. Permitted Uses and Structures.

- 7.2.1. SINGLE-FAMILY DWELLING.
- 7.2.2. Home professional office.
- 7.2.3. Home personal service.
- 7.2.4. Rooftop residential solar installations.
- 7.2.5. AGRICULTURE, as defined by G.L. 128, Section 1A, on land of more than five acres

7.3. Permitted Uses Subject to Site Plan Review.

- 7.3.1. Private boat, canoe or motor boathouses.
- 7.3.2. Private bathhouses.
- 7.3.3. Public recreational uses.
- 7.3.4. Churches and other places of worship, parish houses.
- 7.3.5. Public schools, public libraries and museums, or private schools, including preschools.
- 7.3.6. CHILD CARE or day care center.
- 7.3.7. Municipal use authorized by Town Meeting.
- 7.3.8. Other government uses.
- 7.3.9. Telephone exchanges, provided that there is no service yard or garage.

7.4. Uses and Structures Permitted by Special Permit.

- 7.4.1. Any home occupation not otherwise permitted in Section 7.2 or 7.3.

7.5. Prohibited Uses.

- 7.5.1. Accessory apartments or conversion of single-family to MULTI-FAMILY dwellings.
- 7.5.2. The dispensing of medical marijuana.
- 7.5.3. Any use not explicitly provided for in this Bylaw.

7.6. Dimensional, Setback and Intensity Regulations.

No building or STRUCTURE shall be located, constructed, changed, enlarged or permitted and no use of premises in the Lake Attitash District shall be permitted except in conformity to the intensity and dimensional regulations as set forth herein. If a LOT is determined by the rules of Article 14 to be within a Water Resource Protection Overlay District, then the more restrictive regulations of Article 14 shall prevail.

- 7.6.1. Minimum LOT AREA: 7,500 square feet (ft<sup>2</sup>)
- 7.6.2. Minimum FRONTAGE: 60 feet
- 7.6.3. Lot Width: Not applicable
- 7.6.4. Maximum Building Height (Feet): 35 feet
- 7.6.5. Maximum Building Height (Stories): 2 ½ stories
- 7.6.6. Maximum LOT COVERAGE: 50%
- 7.6.7. Minimum Front Yard Setback: 10 feet
- 7.6.8. Minimum Side Yard Setback: 10 feet
- 7.6.9. Minimum Rear Yard Setback: 20 feet

7.7. Special Permits in the Lake Attitash District

- 7.7.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Lake Attitash District shall be the Planning Board.
- 7.7.2. Requirements. An application for a SPECIAL PERMIT in the Lake Attitash District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.
- 7.7.3. Site Plan Review. The site plan review requirements of Article 19 of this Bylaw shall apply to the Lake Attitash District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 7.7.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation Commission and the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or

[Type here]

agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon the SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.

7.7.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Lake Attitash District. In making its decision, the Planning Board shall consider the following criteria:

- 7.7.5.1. Consistency with the Merrimac Master Plan.
- 7.7.5.2. Consistency with special regulations that apply (if any) to the proposed use.
- 7.7.5.3. Protection of adjoining premises against detrimental or offensive uses on the site.
- 7.7.5.4. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
- 7.7.5.5. Adequacy of water supplies and distribution for domestic use fire protection.
- 7.7.5.6. Adequacy of the methods of:
  - 7.7.5.6.1. Disposal of sanitary sewage. Connection to the municipal sewer is required. No on-site disposal of wastewater or use of tight tanks is allowed.
  - 7.7.5.6.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
  - 7.7.5.6.3. Drainage and retention of surface water.

#### 7.8. Signs.

One SIGN only shall be permitted at the entrance to the site, in accordance with Article 21 of the Bylaw.

#### 7.9. Parking.

OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw.

## **ARTICLE 8. VILLAGE CENTER DISTRICT (VC)**

### **8.1. Purposes.**

The Town shall have a Village Center (VC) District as shown on the OFFICIAL ZONING MAP. The purposes of the Village Center District are to preserve and enhance the historic built form of Merrimac Square, develop and sustain a vital local economy, provide goods and services used predominantly by residents of the Town, and provide a village that encourages people to live and work in the community. In the Village Center District no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

### **8.2. Permitted Uses and Structures.** The following uses are permitted in existing buildings in the Village Center District;

#### **8.2.1. Retail Business or Services as Specified Below in Buildings of 2,500 square feet or less of GROSS FLOOR AREA**

- 8.2.1.1. Retail sale of food items, including confectionery, dairy products, fruits, vegetables, groceries and meats.
- 8.2.1.2. Sale of baked goods and the manufacture of same for sale.
- 8.2.1.3. Sale of dry goods, variety merchandise and handicraft work.
- 8.2.1.4. Sale of clothing and clothing accessories.
- 8.2.1.5. Sale of hardware, household items including appliances, furniture, furnishings and supplies.
- 8.2.1.6. Sale of printed matter, pharmaceuticals, stationary and photographic supplies

#### **8.2.2. Professional, Medical or Business Offices as Specified Below in Buildings of 2,500 square feet or less of GROSS FLOOR AREA.**

- 8.2.2.1. Professional office for dental, architectural, engineering, legal, medical, and other similar recognized professions.
- 8.2.2.2. Real estate, insurance and general business office, banks, telephone office.

#### **8.2.3. Hospitality Uses**

- 8.2.3.1. Restaurant for the serving of food or beverages inside the premises or outside but on the premises, such as at tables on an adjoining deck or patio, in buildings of 2,500 square feet or less of GROSS FLOOR AREA.



[Type here]

8.2.4. Service and Other Establishments, as Specified Below in Buildings of 2,500 square feet or less of GROSS FLOOR AREA.

8.2.4.1. Barber and beauty shop

8.2.4.2. Laundry agency, shoe and hat repair, bicycle and household appliance repair, dressmaking, dry cleaning and pressing or tailor shop where no work is done on the premises for retail outlets elsewhere.

8.2.4.3. Shop for custom work involving the manufacture of articles to be sold on premises.

8.2.4.4. Shop of contractor or tradesperson, such as an electrician, painter, paperhanger, plumber, upholsterer, carpenter or cabinet-maker and similar trades.

8.2.4.5. CHILD CARE center or day care center.

8.2.5. Residential and Accessory Uses

8.2.5.1. DWELLING UNIT(S) above the ground floor of a building occupied by a minimum of 30% commercial uses.

8.2.5.2. Live-and-work space, e.g. artist's residence and studio.

8.2.5.3. Home professional office.

8.2.5.4. Rooftop residential solar installations.

8.2.6. Other Uses

8.2.6.1. Public transportation passenger station and right-of-way passenger bus terminal.

8.2.6.2. Municipal use approved by Town Meeting.

8.2.6.3. Other government uses.

8.2.6.4. Uses exempt under G.L. c.40A, Section 3.

All uses permitted in the Village Center District are subject to SITE PLAN REVIEW under Article 19 of this Bylaw.

8.3. Uses and Structures Permitted by Special Permit

In the Village Center District, the Planning Board may issue a special permit and site plan approval for the following uses:

8.3.1. New Construction of Multi-family dwellings restricted for occupancy by persons over 55 and persons with disabilities, with up to 9 (nine) dwelling units on a conforming LOT.

[Type here]

- 8.3.2. BED AND BREAKFAST.
- 8.3.3. Mortuary and funeral home.
- 8.3.4. Indoor recreation or amusement facility.
- 8.3.5. Video tape rental and sales, and rental and sales of related equipment.
- 8.3.6. Take-out food establishment or delicatessen where food is prepared and sold retail but not consumed on the premises; or catering services.
- 8.3.7. A drive-through service for a permitted commercial use, except food service establishments.
- 8.3.8. Cinema or theatre.
- 8.3.9. Newspaper or job printing.
- 8.3.10. Hotel, motel.
- 8.3.11. Retail business or services as specified in 8.2.1.1 through 8.2.1.6 in buildings that exceed 2,500 square feet of GROSS FLOOR AREA.
- 8.3.12. Professional, Medical or Business Offices, as specified in 8.2.2.1 through 8.2.2.2 in buildings that exceed 2,500 square feet of GROSS FLOOR AREA.
- 8.3.13. Restaurant for the serving of food or beverage inside the premises or outside but on the premises, such as at tables on an adjoining deck or patio, in buildings that exceed 2,500 square feet of GROSS FLOOR AREA.
- 8.3.14. Service and Other Establishments, as specified in 8.2.4.1 through 8.2.4.5 in buildings that exceed 2,500 square feet of GROSS FLOOR AREA.

All uses permitted by SPECIAL PERMIT in the Village Center District are subject to SITE PLAN REVIEW for any use indicated in sections 8.2 or 8.3 above and in accordance with the design standards of section 8.9 below.

#### 8.4. Prohibited Uses

- 8.4.1. SINGLE-FAMILY DWELLING.
- 8.4.2. ADULT USES.
- 8.4.3. VETERINARY CLINICS, animal hospitals or animal sales.
- 8.4.4. Automobile or truck sales.
- 8.4.5. Drive-up services associated with a food service establishment.
- 8.4.6. Junkyards.

[Type here]

- 8.4.7. Recycling collection facilities or RECYCLING CENTER.
- 8.4.8. Automotive service stations or filling stations.
- 8.4.9. Wholesale business, except if affiliated with and accessory to another use on the same LOT.
- 8.4.10. The dispensing of medical marijuana.
- 8.4.11. Any use not explicitly provided for the By-law.

#### 8.5. Dimensional, Setback and Intensity Regulations

Uses in the Village Center District shall be subject to the following LOT area, FRONTAGE, depth and dimensional requirements:

- 8.5.1. Minimum LOT AREA: 10,500 square feet (ft<sup>2</sup>)
- 8.5.2. Minimum FRONTAGE: 50 feet
- 8.5.3. Lot Width: 50 feet
- 8.5.4. Maximum Building Height (Feet): 45 feet
- 8.5.5. Maximum Building Height (Stories): 3 stories
- 8.5.6. Maximum LOT COVERAGE: No maximum
- 8.5.7. Minimum Front Yard Setback: No minimum
- 8.5.8. Minimum Side Yard Setback: No minimum<sup>1</sup>
- 8.5.9. Minimum Rear Yard Setback: No minimum

#### 8.6. Special Permits in the Village Center District

- 8.6.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Village Center District shall be the Planning Board.
- 8.6.2. Requirements. An application for a SPECIAL PERMIT in the Village Center District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show

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<sup>1</sup> No side yard setback shall be required when a side yard abuts a public right of way or another commercial building within the Village Center District. However, when abutting a residential district boundary, without an intervening public right of WAY, the side yard setback shall be 50 feet. OFF-STREET PARKING may be located within 10 feet of an abutting residential district boundary, but not less than 40 feet from the front LOT line.

dimensions, legend, and all other information deemed necessary to describe the site and its conditions.

- 8.6.3. Relationship to SITE PLAN REVIEW. The site plan review requirements of Article 19 of this Bylaw shall apply to the Village Center Residential District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 8.6.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Merrimac Historical Commission, the Police, Fire, Water and Sewer Departments, the Board of Health, and the Conservation Commission for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon said SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.
- 8.6.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Village Center District. In making its decision, the Planning Board shall consider the following criteria:
  - 8.6.5.1. Consistency with the Merrimac Master Plan.
  - 8.6.5.2. Consistency with “Design Standards for the Village Center District” in Section 8.9 of this Bylaw.
  - 8.6.5.3. The degree to which the applicant has preserved and enhanced a historically significant building or other historic or cultural resource.
  - 8.6.5.4. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 8.6.5.5. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
  - 8.6.5.6. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
  - 8.6.5.7. Adequacy of water supplies and distribution for domestic use fire protection.
  - 8.6.5.8. Adequacy of the methods of:

[Type here]

8.6.5.8.1. Disposal of sanitary sewage. Connection to the municipal sewer is required. No on-site disposal of wastewater or tight tanks is allowed.

8.6.5.8.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.

8.6.5.8.3. Drainage and retention of surface water.

8.6.5.9. Conformance to SIGN regulations in Article 21.

#### 8.7. Signs.

SIGNS shall be permitted in accordance with Article 21 of this Bylaw.

#### 8.8. Parking.

8.8.1. OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw, except that in the Village Center District, applicants may seek relief from strict compliance with the off-street parking requirements of this Bylaw by obtaining a SPECIAL PERMIT from the Planning Board.

8.8.2. The Planning Board may grant relief by issuing a SPECIAL PERMIT to:

8.8.2.1. Reduce the number of required parking spaces.

8.8.2.2. Accept from the applicant a payment in lieu of parking spaces to the Merrimac Square Parking Fund. Such funds shall be deposited with the Town Treasurer in an account to be used by the Town to provide public parking in Merrimac Square. If such an account must be established with the approval of the legislature and funds are received prior to the establishment of this account, the funds shall be deposited in a gift or grant account to be used for the purpose of providing public parking by the Board of Selectmen without further appropriation, in consultation with the Planning Board

8.8.2.3. Authorize a combination thereof.

#### 8.9. Design Standards for the Village Center District

The following special requirements shall apply to all uses and STRUCTURES in the Village Center District:

8.9.1. Existing buildings shall be used before new construction.

8.9.2. New construction design shall be in harmony with the existing district.

8.9.3. Architectural design shall be compatible with the historic character and scale of buildings in Merrimac Square through the use of appropriate building materials, SCREENING, breaks in roof and wall lines and other architectural techniques.

[Type here]

- 8.9.4. Variety in articulation and form shall be used to provide visual interest and avoid monotony.
- 8.9.5. Proposed buildings shall relate harmoniously to each other with adequate light, air circulation, and separation between buildings. They shall be compatible with the historic character of their context within the Village Center District.
- 8.9.6. For purposes of reconstruction or rehabilitation, existing buildings shall remain compatible with the historic character and scale of contiguous buildings within the Village Center.
- 8.9.7. Buildings or STRUCTURES listed on the National Register of Historic Places or the State Register, or that are more than 50 years old as of the date of application for a SPECIAL PERMIT or site plan approval, or that are located within a local historic district as established by G.L. c. 40C, may be converted, constructed, reconstructed, restored or altered only in a manner that maintains or promotes their status as listed or eligible historic resources. For purposes of zoning compliance, additions or alterations that adhere to the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings will generally be presumed to maintain or promote such status.
- 8.9.8. For applications to replace a razed STRUCTURE, the Planning Board shall find that the replacement STRUCTURE is superior to the razed STRUCTURE and is compatible in design, height, massing and articulation with other historic STRUCTURES in the Village Center District.
- 8.9.1. Dwelling units and/or common areas must comply with the American Disabilities Act (ADA) and regulations of the Massachusetts Architectural Access Board.

## **ARTICLE 9. RURAL HIGHWAY DISTRICT (RH)**

### **9.1. Purposes.**

The Town shall have a Rural Highway District as shown on the OFFICIAL ZONING MAP. The purposes of the Rural Highway District are to encourage Route 110 to develop in a manner consistent with the visual character of the community, strengthen and stabilize the Town's tax base, and foster a wide range of commercial uses. It is the intent of this Bylaw that development in the Rural Highway District will address the following goals of the Town:

- 9.1.1. Consist of a mix of uses, but mainly business uses.
- 9.1.2. Avoid the appearance and hazards of a strip commercial area by minimizing curb cuts, providing attractive pedestrian walkways along Route 110 and between commercial or MIXED-USE properties, subordinating parking, and providing high-quality architectural design.
- 9.1.3. Avoid "big-box" development.

[Type here]

9.1.4. Provide goods and services used by residents of the Town and adjacent communities.

9.1.5. Encourage small- and medium-size businesses to locate and stay in Merrimac.

In the Rural Highway District no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

## 9.2. Permitted Uses and Structures.

9.2.1. Retail Business or Service in Buildings up to 25,000 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA:

9.2.1.1. Retail sale of food items, including confectionery, dairy products, fruits, vegetables, groceries and meats.

9.2.1.2. Sale of baked goods and the manufacture of same for sale.

9.2.1.3. Sale of dry goods, variety merchandise and handicraft work.

9.2.1.4. Sale of clothing and clothing accessories.

9.2.1.5. Sale of hardware, household items including appliances, furniture, furnishings and supplies.

9.2.1.6. Sale of printed matter, pharmaceuticals, stationary and photographic supplies.

9.2.1.7. Roadside stand for the sale of agricultural products, primarily grown or produced locally.

9.2.2. CONVENIENCE STORE in a building up to 2,500 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA, not including gasoline fuel pumps.

9.2.3. Professional, Medical or Business Office

9.2.3.1. Professional office for dental, architectural, engineering, legal, medical, and other similar recognized professions.

9.2.3.2. Real estate, insurance and general business office, banks, telephone office.

9.2.4. Medical and Related Facilities

9.2.4.1. Nursing home.

9.2.4.2. Private hospital.

9.2.4.3. Other care and treatment facilities.

[Type here]

9.2.5. Hospitality Uses

- 9.2.5.1. Restaurant for the serving of food or beverages inside the premises or outside but on the premises, such as at tables on an adjoining deck or patio.

9.2.6. Service and Other Establishments

- 9.2.6.1. CHILD CARE or day care center.
- 9.2.6.2. Barber or beauty shop.
- 9.2.6.3. Laundry agency, shoe and hat repair, bicycle and household appliance repair, dressmaking, dry cleaning and pressing or tailor shop.
- 9.2.6.4. Shop for custom work involving the manufacture of articles to be sold on premises.
- 9.2.6.5. Shop of an electrician, painter, paper-hanger, plumber, upholsterer, carpenter or cabinet-maker and similar trades.

9.2.7. Residential and Accessory Uses

- 9.2.7.1. Conversion of an existing single-family home to a TWO-FAMILY DWELLING or a MULTI-FAMILY STRUCTURE of no more than four units, provided that one (1) of the units is occupied by the owner of the property.
- 9.2.7.2. Live-and-work space, e.g. artist's residence and studio.

9.2.8. Other Uses

- 9.2.8.1. Public transportation passenger station and right-of-way passenger bus terminal.
- 9.2.8.2. Municipal use approved by Town Meeting.
- 9.2.8.3. Other government uses.
- 9.2.8.4. Uses exempt under G.L. c.40A, Section 3.

All permitted uses in the Rural Highway District are subject to SITE PLAN REVIEW.

9.3. Uses and Structures Permitted by Special Permit.

In the Rural Highway District, the Planning Board may issue a special permit and site plan approval for the following uses:

- 9.3.1. Retail uses listed as Permitted Uses in Section 9.2.1, in buildings that exceed 25,000 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA.



[Type here]

- 9.3.2. BED AND BREAKFAST.
- 9.3.3. Mortuary and funeral home.
- 9.3.4. Indoor recreation or amusement facility.
- 9.3.5. Outdoor recreation facilities, such as a golf course or ski tow, except that race tracks or amusement parks are prohibited.
- 9.3.6. Video tape rental and sales, and rental and sales of related equipment.
- 9.3.7. Take-out food establishment or delicatessen where food is prepared but not consumed on the premises and sold retail; or catering services.
- 9.3.8. Residential uses
  - 9.3.8.1. Assisted living facility, CONGREGATE LIVING RESIDENCE for the elderly or disabled, or elderly (over-55) housing in accordance with Article 16 of this Bylaw.
  - 9.3.8.2. Multi-family dwelling when carried out in a MIXED-USE development that includes permitted commercial uses, subject to “Regulations for Multi-Family Housing in the Rural Highway District” at Section 9.10 of this Bylaw.
- 9.3.9. Cinema, theatre or other cultural establishment.
- 9.3.10. Auto sales, AUTOMOTIVE SERVICE STATION or FILLING STATION.
- 9.3.11. Newspaper or job printing.
- 9.3.12. Hotel or motel.
- 9.3.13. VETERINARY CLINIC or animal hospital.
- 9.3.14. Repair garage or body shop for motorized vehicles.
- 9.3.15. HOME OCCUPATION.
- 9.3.16. Cemetery
- 9.3.17. Commercial Solar Power Installations of 250 kilowatt or larger of rated nameplate capacity located at least 300 feet from the center line of West Main Strret (Route 110).

9.4. Prohibited Uses.

- 9.4.1. ADULT USES.
- 9.4.2. Junkyards.

[Type here]

- 9.4.3. RECYCLING CENTER or recycling collection facilities.
- 9.4.4. Retail uses in buildings that exceed 75,000 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA.
- 9.4.5. The dispensing of medical marijuana
- 9.4.6. Any uses not explicitly provided for in this bylaw.

9.5. Dimensional, Setback and Intensity Regulations.

Development in the Rural Highway District shall be subject to the following LOT area, FRONTAGE, depth and dimensional requirements:

- 9.5.1. Minimum LOT AREA: 80,000 square feet (ft<sup>2</sup>)
- 9.5.2. Minimum FRONTAGE: 200 feet
- 9.5.3. Lot Width: 180 feet
- 9.5.4. Maximum Building Height (Feet): 40 feet
- 9.5.5. Maximum Building Height (Stories): 3 stories
- 9.5.6. Maximum BUILDING COVERAGE: 40%<sup>2</sup>
- 9.5.7. Maximum LOT COVERAGE: 80%
- 9.5.8. Maximum Front Yard Setback: 40 feet
- 9.5.9. Minimum Side Yard Setback: 20 feet
- 9.5.10. Minimum Rear Yard Setback: 50 feet
- 9.5.11. Open Space Percent of LOT AREA: 20%

9.6. Special Permits in the Rural Highway District

- 9.6.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Rural Highway District shall be the Planning Board.
- 9.6.2. Requirements. An application for a SPECIAL PERMIT in the Rural Highway District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional

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<sup>2</sup> BUILDING COVERAGE may be increased to 60% for MIXED-USE developments that include MULTI-FAMILY dwellings in accordance with the MULTI-FAMILY dwelling regulations at Section 9.10 of this Bylaw.

Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.

- 9.6.3. SITE PLAN REVIEW. The site plan review requirements of Article 19 of this Bylaw shall apply to the Rural Highway District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 9.6.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation Commission and, where applicable, the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon said SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.
- 9.6.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Rural Highway District. In making its decision, the Planning Board shall consider the following criteria:
  - 9.6.5.1. Consistency with the Merrimac Master Plan.
  - 9.6.5.2. Consistency with “Design Standards for the Rural Highway District” in Section 9.9 of this Bylaw.
  - 9.6.5.3. Consistency with “Regulations for Multi-Family Housing in the Rural Highway District” of Section 9.10 of this Bylaw, as applicable.
  - 9.6.5.4. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 9.6.5.5. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
  - 9.6.5.6. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
  - 9.6.5.7. Adequacy of water supplies and distribution for domestic use fire protection.
  - 9.6.5.8. Adequacy of the methods of:

[Type here]

9.6.5.8.1. Disposal of sanitary sewage, as determined by the Board of Health or regulations of the Merrimac Sewer Commission, where applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.

9.6.5.8.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.

9.6.5.8.3. Drainage and retention of surface water.

9.6.5.9. Conformance to SIGN regulations in Article 21 of this Bylaw.

9.7. Signs.

SIGNS shall be permitted in accordance with Article 21 of this Bylaw.

9.8. Parking.

OFF-STREET PARKING shall be provided in accordance with the OFF-STREET PARKING Regulations at Article 20 of this Bylaw. No parking shall be included in the front yard or in front of any new development, or in any side yards within 20 feet of the front façade of the principal building.

9.9. Design Standards for the Rural Highway District.

The following design guidelines apply to all site improvements, buildings and STRUCTURES in the Rural Highway District and must be addressed in applications for SITE PLAN REVIEW or SPECIAL PERMITS, as applicable. To the maximum extent possible, development in the Rural Highway District shall:

9.9.1. Promote safety by avoiding pedestrian or vehicular hazards within the site or egressing from it, facilitating access by emergency vehicles and facilitating visual surveillance by occupants, neighbors and passersby.

9.9.2. Minimize new curb cuts on existing public WAYS. Wherever feasible, access to businesses should be provided through one of the following methods: (a) through a common driveway serving adjacent LOTS or premises; (b) through an existing side or rear street, thus avoiding Route 110 or (c) through a cul-de-sac or loop road shared by adjacent LOTS or premises.

9.9.3. Contribute to a visually pleasing, pedestrian- and bicycle-oriented image throughout the district by providing appropriate landscaping and walkways along Route 110 and between adjoining properties. The first twenty (20) feet of the front yard area should contain plant materials designed to provide a continuous landscaped edge to the property in question, except for points of entry and exit. If no public sidewalk exists across the FRONTAGE of the LOT, a paved sidewalk of at least six feet in width shall be provided within the 20-foot landscaped area, and to the maximum extent possible, the sidewalk shall be designed to create a continuous pedestrian walkway with the abutting properties. To the maximum

extent practical, tree plantings shall be located along the side of the sidewalk closest to Route 110.

- 9.9.4. Protect the natural environment by reducing the number of mature trees removed, reducing the volume of earth materials cut or filled, reducing soil erosion during and after construction and reducing the extent of alteration in the amount, timing and location of stormwater runoff from the site. The Town encourages the use of Low Impact Development Best Management Practices for Stormwater Management, where applicable.
- 9.9.5. Serve functional needs by avoiding inconvenience to pedestrians because of stormwater ponding and flow and by assuring accessibility by the handicapped.
- 9.9.6. Enhance the visual character and built environment of Route 110 in the following ways:
  - 9.9.6.1. All buildings should be designed to achieve visual compatibility with the character and scale of buildings found throughout Merrimac. "Compatibility" does not mean "uniformity." Diversity of architectural styles is welcome in the Rural Highway District. However, new development should avoid the removal, obscuring or disruption of existing STRUCTURES of historic value and should be compatible with adjacent or nearby buildings.
  - 9.9.6.2. To retain the small-scale character of Merrimac and to promote diversity of design, a single building with a width of more than 40 feet facing the street should be divided visually into sub-elements, preferably expressing the functional diversity within the building.
  - 9.9.6.3. Provide continuous visual interest, emphasizing such design features as bay windows and recessed doorways.
  - 9.9.6.4. Avoid unarticulated and monotonous building facades and window placements, regular spacings, and building placements that will be viewed from the street as continuous walls.
  - 9.9.6.5. Provide human-scale features, especially for pedestrians and at lower levels.
  - 9.9.6.6. Building detailing should provide small-scale elements of interest from a pedestrian viewing distance.
  - 9.9.6.7. Locate taller buildings away from Route 110 and from abutting and off-site residential areas.
  - 9.9.6.8. The Town prefers materials characteristic of the area. These materials include painted clapboard, or brick and other unit masonry (painted or unpainted). Uncharacteristic materials include rough, imitation or reflective materials such as unpainted wood, field stone, exposed metal, imitation materials (e.g., false brick siding), mirror glass,

porcelain enamel or polished stone. Such appearance should generally be avoided; however, variation within the range of characteristic materials, colors and textures is encouraged when they are compatible with surrounding buildings.

- 9.9.6.9. Provide visual relief from buildings and hard materials with landscape treatment using shrubs, trees, flower boxes and other greenery around buildings or in recessed places.
- 9.9.7. Use GREEN BUILDING TECHNOLOGIES and materials, wherever possible, to limit environmental impacts.
- 9.9.8. Recognize that major visual exposure comes not only from the building front, and give full attention to the treatment of sidewalks, landscaping, parking areas and the building wall at the rear and sides.
- 9.9.9. Preserve established architectural traditions. Buildings or STRUCTURES listed on the National Register of Historic Places or the State Register, or that are more than 50 years old as of the date of application for a SPECIAL PERMIT or site plan approval, or that are located within a local historic district as established by G.L. c. 40C, may be converted, constructed, reconstructed, restored or altered only in a manner that maintains or promotes their status as listed or eligible historic resources. For purposes of zoning compliance, additions or alterations that adhere to the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings will generally be presumed to maintain or promote such status.

#### 9.10. Regulations for Multi-Family Housing in the Rural Highway District

The Planning Board may grant a SPECIAL PERMIT for MULTI-FAMILY housing in the Rural Highway District under the following conditions:

- 9.10.1. Multi-family housing in the Rural Highway District is intended to be part of a MIXED-USE development and contribute to the MIXED-USE character of the district as a whole. To qualify for a MULTI-FAMILY housing SPECIAL PERMIT, the applicant must integrate dwelling units with a proposed commercial development. Integration may be achieved by one or both of the following methods:
  - 9.10.1.1. Locating units above the ground floor of a commercial building, i.e., an accessory dwelling in a structure occupied principally for commercial uses.
  - 9.10.1.2. Constructing "free-standing" or separate MULTI-FAMILY buildings on the same lot, provided they are located behind a commercial development that is oriented toward Route 110 and are connected to the commercial development by pedestrian walkways, appropriate landscaping, lighting and other elements of the site plan.
  - 9.10.1.3. The Town strongly prefers that some of units be located above the ground floor of one or more commercial buildings in a development,

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and the Planning Board may require the same as a condition of SPECIAL PERMIT approval.

- 9.10.2. The following density and dimensional rules shall apply to MULTI-FAMILY housing:
- 9.10.2.1. No more than 60% of the GROSS FLOOR AREA of a proposed MIXED-USE development shall be used for MULTI-FAMILY dwelling units.
  - 9.10.2.2. Multi-family dwellings shall not exceed six units or twelve bedrooms per acre.
  - 9.10.2.3. A building designed exclusively for MULTI-FAMILY use shall contain no more than six units, and shall not exceed a building height of 35 feet and two and one half stories.
  - 9.10.2.4. Buildings designed exclusively for MULTI-FAMILY housing shall avoid monotonous, look-alike designs and promote high standards of exterior quality and appearance.
- 9.10.3. Parking. Applicants shall provide 1.5 parking spaces per one-bedroom unit and 2 parking spaces per two- or three-bedroom unit. At least one space per unit shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
- 9.10.4. Setbacks. All buildings must be located at least 50 feet from any side or rear LOT line and 50 feet from any established street layout or, where applicable, any defined street line of a public road, which street setback area shall be undeveloped and/or landscaped. Upon a finding by the Planning Board that a setback of lesser width would be sufficient to screen and/or separate the development from adjacent property, the setback may be reduced. The Board may require no-cut easements, conservation restrictions or the like where the setback has been reduced. Buildings shall be located at least 20 feet from interior roadways and driveways that are not considered streets or public roads.
- 9.10.5. Distance between STRUCTURES. The distance between two STRUCTURES shall be no less than their average height or 35 feet, whichever is greater. Such distance shall include any garages or other accessory STRUCTURES.
- 9.10.6. Road construction. Roads that serve MULTI-FAMILY housing in a MIXED-USE development shall be constructed in accordance with the standards of the Subdivision Rules and Regulations of the Town of Merrimac with the exception of width, which shall be determined by the Planning Board. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the Subdivision Rules and Regulations at the time of site plan submittal.

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9.10.7. SPECIAL PERMIT granting criteria. Before the Planning Board may issue a SPECIAL PERMIT for MULTI-FAMILY housing in the Rural Highway District, it shall consider the following criteria:

- 9.10.7.1. Consistency with the Merrimac Master Plan.
- 9.10.7.2. Compliance with all applicable provisions of this Bylaw.
- 9.10.7.3. Desirability of architectural design.
- 9.10.7.4. Desirability of the number and mix of units proposed, and the provision of housing units accessible to persons with disabilities.
- 9.10.7.5. Protection of adjoining premises against detrimental or offensive uses on the site.
- 9.10.7.6. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
- 9.10.7.7. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
- 9.10.7.8. Adequacy of water supplies and distribution for domestic use fire protection.
- 9.10.7.9. Adequacy of the methods of:
  - 9.10.7.9.1. Disposal of sanitary sewage, as determined by the Board of Health or regulations of the Merrimac Sewer Commission, where applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.
  - 9.10.7.9.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
  - 9.10.7.9.3. Drainage and retention of surface water.

## **ARTICLE 10. HIGHWAY SERVICES DISTRICT (HS)**

### **10.1. Purposes.**

The Town shall have a Highway Services District as shown on the OFFICIAL ZONING MAP. The purposes of the Highway Services District are to manage traffic flows on Broad Street between I-495 and Route 110, provide goods and services that serve local and non-local customers, enhance the Town's tax base, foster a wide range of commercial uses, and make the best use of land in an area that is characterized by predominantly small commercial lots. It is the intent of this Bylaw that development in the Highway Services District will address the following goals of the Town:



[Type here]

- 10.1.1. Provide highway-oriented businesses in appropriate locations, in a manner sensitive the Town's rural character and location.
- 10.1.2. Meet the needs of commuters for convenience and auto-oriented business establishments.
- 10.1.3. Provide appropriate, attractively developed locations for uses such as convenience stores, coffee and donuts shops and similar establishments that typically have extended hours of operation and a high rate of customer turnover per hour.
- 10.1.4. Discourage non-local traffic from making needless trips into Merrimac Square, thereby enhancing vehicular and pedestrian safety in the Village Center District.
- 10.1.5. Encourage small businesses to locate and stay in Merrimac.

In the Highway Services District no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

10.2. Permitted Uses and Structures.

- 10.2.1. Retail Business or Service in Buildings of 2,500 square feet (ft<sup>2</sup>) or less of GROSS FLOOR AREA
  - 10.2.1.1. Retail sale of food items, including confectionery, dairy products, fruits, vegetables, groceries and meats.
  - 10.2.1.2. Sale of baked goods and the manufacture of same for sale.
  - 10.2.1.3. Sale of dry goods, variety merchandise and handicraft work.
  - 10.2.1.4. Sale of printed matter, pharmaceuticals, stationary and photographic supplies.
  - 10.2.1.5. CONVENIENCE STORE.
- 10.2.2. Office Uses.
  - 10.2.2.1. Real estate or insurance office, banks.
- 10.2.3. Hospitality Uses
  - 10.2.3.1. Restaurant for the serving of food or beverages inside the premises or a take-out food service establishment, in buildings of 2,500 square feet (ft<sup>2</sup>) or less of GROSS FLOOR AREA.
- 10.2.4. Service and Other Establishments
  - 10.2.4.1. CHILD CARE or day care center.
  - 10.2.4.2. Barber or beauty shop.

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10.2.4.3. Laundry agency, shoe and hat repair, bicycle and household appliance repair, dressmaking, dry cleaning and pressing or tailor shop.

10.2.5. Other Uses

10.2.5.1. Public transportation passenger station and right-of-way passenger bus terminal.

10.2.5.2. Municipal use approved by Town Meeting.

10.2.5.3. Other government uses.

10.2.5.4. Uses exempt under G.L. c.40A, Section 3.

All permitted uses in the Highway Services District are subject to SITE PLAN REVIEW.

10.3. Uses and Structures Permitted by Special Permit

10.3.1. Retail uses listed as Permitted Uses in Section 10.2.1, in buildings that exceed 2,500 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA

10.3.2. Video tape rental and sales, and rental and sales of related equipment.

10.3.3. Restaurant for the serving of food or beverages inside the premises or a take-out food service establishment, including a catering service, in buildings of more than 2,500 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA.

10.3.4. Drive-up services associated with a food service establishment.

10.3.5. Auto sales, service or refueling.

10.3.6. Repair garage or body shop for motorized vehicles.

10.3.7. Indoor recreation facility.

10.3.8. Commuter parking facility.

All uses permitted by SPECIAL PERMIT in the Highway Services District are subject to SITE PLAN REVIEW.

10.4. Prohibited Uses

10.4.1. Adult uses.

10.4.2. Junkyards.

10.4.3. Recycling collection facilities.

10.4.4. Retail uses in buildings that exceed 10,000 square feet (ft<sup>2</sup>) of GROSS FLOOR AREA.

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10.4.5. Wholesale business, except if affiliated with and accessory to another use on the same LOT.

10.4.6. The dispensing of medical marijuana.

10.4.7. Any use not explicitly provided for in this By-law.

#### 10.5. Dimensional, Setback and Intensity Regulations

Development in the Highway Services District shall be subject to the following LOT area, FRONTAGE, depth and dimensional requirements:

10.5.1. Minimum LOT AREA: 20,000 square feet (ft<sup>2</sup>)

10.5.2. Minimum FRONTAGE: 100 feet

10.5.3. Lot Width: 100 feet

10.5.4. Maximum Building Height (Feet): 35 feet

10.5.5. Maximum Building Height (Stories): 2.5 stories

10.5.6. Maximum LOT COVERAGE: 80%

10.5.7. Minimum Front Yard Setback: 25 feet

10.5.8. Minimum Side Yard Setback: 20 feet

10.5.9. Minimum Rear Yard Setback: 50 feet

10.5.10. Open Space Percent of LOT AREA: 20%

#### 10.6. Special Permits in the Highway Services District

10.6.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Highway Services District shall be the Planning Board.

10.6.2. Requirements. An application for a SPECIAL PERMIT in the Highway Services District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.

10.6.3. Relationship to SITE PLAN REVIEW. The site plan review requirements of Article 19 of this Bylaw shall apply to the Highway Services District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.

10.6.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation

Commission and, where applicable, the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon said SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.

- 10.6.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Highway Services District. In making its decision, the Planning Board shall consider the following criteria:
  - 10.6.5.1. Consistency with the Merrimac Master Plan.
  - 10.6.5.2. Consistency with “Design Standards for the Highway Services District” in Section 10.9, as applicable.
  - 10.6.5.3. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 10.6.5.4. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
  - 10.6.5.5. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
  - 10.6.5.6. Adequacy of water supplies and distribution for domestic use fire protection.
  - 10.6.5.7. Adequacy of the methods of:
    - 10.6.5.7.1. Disposal of sanitary sewage. Connection to the municipal sewer is required. No on-site disposal of wastewater or use of tight tanks is allowed.
    - 10.6.5.7.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
    - 10.6.5.7.3. Drainage and retention of surface water.
  - 10.6.5.8. Conformance to SIGN regulations in Article 21.

10.7. Signs.

SIGNS shall be permitted in accordance with the SIGN Regulations at Article 21 of this Bylaw.

10.8. Parking.

OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw. No parking shall be included within 10 feet of the front yard setback as measured from the front LOT line.

10.9. Design Standards for the Highway Services District

The following design guidelines apply to all site improvements, buildings and STRUCTURES in the Highway Services District and must be addressed in applications for SITE PLAN REVIEW or SPECIAL PERMITS, as applicable. To the maximum extent possible, development in the Highway Services District shall:

- 10.9.1. Promote safety by avoiding pedestrian or vehicular hazards within the site or egressing from it, facilitating access by emergency vehicles and facilitating visual surveillance by occupants, neighbors and passersby.
- 10.9.2. Minimize new curb cuts on existing public WAYS. Wherever feasible, access to businesses should be provided through one of the following methods: (a) through a Common Driveway serving adjacent LOTS or premises or (b) through a cul-de-sac or loop road shared by adjacent LOTS or premises.
- 10.9.3. Protect the natural environment by reducing the number of mature trees removed, reducing the volume of earth materials cut or filled, reducing soil erosion during and after construction and reducing the extent of alteration in the amount, timing and location of stormwater runoff from the site. The Town encourages the use of Low Impact Development Best Management Practices for Stormwater Management, where applicable.
- 10.9.4. Enhance the built environment and visual image of Broad Street in the following ways:
  - 10.9.4.1. Development in the Highway Services District is intended to consist mainly of small, convenience-oriented business establishments that provide goods and services to local and non-local commuters. Every effort should be made to design small-scale, attractive buildings with architectural elements and materials characteristic of the Town, to provide sufficient landscaping and accessible walkways visible from the street, and to locate parking areas so as to avoid the appearance of strip commercial development.
  - 10.9.4.2. Developments should be designed with human-scale features, especially for pedestrians.
  - 10.9.4.3. The design of new or renovated buildings should avoid unarticulated

and monotonous building facades and window placement, incorporating materials and treatments that reduce the visibility of the buildings from distant vantage points while achieving compatibility with backgrounds and surroundings.

- 10.9.4.4. Varied building heights and varied roofline articulation that stress New England vernacular architecture are encouraged.
- 10.9.4.5. New development should avoid the removal, obscuring or disruption of existing STRUCTURES of historic value and should be compatible with adjacent or nearby buildings.
- 10.9.4.6. Developments should provide visual relief from buildings and hard materials with landscape treatment using shrubs, trees, flower boxes and other greenery around buildings.
- 10.9.4.7. Developments should use GREEN BUILDING TECHNOLOGIES and materials, wherever possible, to limit environmental impacts.

## **ARTICLE 11. OFFICE-LIGHT INDUSTRIAL DISTRICT (OI)**

### **11.1. Purposes.**

The Town shall have an Office-Light Industrial District as shown on the OFFICIAL ZONING MAP. The purposes of the Office-Light Industrial District are to provide areas for a range of employment opportunities, strengthen the tax base of the Town of Merrimac, and encourage high-quality industrial and office developments that make a positive aesthetic and economic contribution to the community while also protecting environmental resources. In the Office-Light Industrial District, no STRUCTURE shall be erected or altered and no building, STRUCTURE, premises or land shall be used for any purpose or in any manner other than as permitted as follows.

### **11.2. Permitted Uses and Structures.**

- 11.2.1. AGRICULTURE or horticulture, as defined by G.L. 128, Section 1A, on any parcel of more than five acres of land.
- 11.2.2. Conservation or passive recreation area.

### **11.3. Permitted Uses and Structures, Subject to Site Plan Approval.**

- 11.3.1. *Establishments RESEARCH AND DEVELOPMENT FACILITIES with associated professional offices, administrative and/or clerical offices, in a STRUCTURE of not more than 5,000 square feet of GROSS FLOOR AREA, in the aggregate.*
  - 11.3.1.1 *Facilities for research and development (R&D) for Renewable Energy, such as sola-photovoltaic and thermal; wind; biomass power conversion or thermal technologies (including R&D of wood pellets); ultra-low emissions high efficiency wood pellet boilers and furnaces; low impact hydro-electric and kinetic; ocean thermal, wave or tidal; geothermal; landfill gas; fuel cells that use renewable*

*energy and advance biofuels. This can also include R&D for Alternative Energy, such as combined heat and power and electric and hydrogen-powered vehicles and associated technologies. Including advanced batteries and recharging stations.*

11.3.2. *MANUFACTURING FACILITIES with associated professional, administrative and/or clerical offices for the following types of industries, in a STRUCTURE of not more than 5,000 square feet of GROSS FLOOR AREA, in the aggregate:*

11.3.2.1. Electronic and electrical products.

11.3.2.2. Robotics and precision instruments.

11.3.2.3. Computer related products.

11.3.2.4. Instruments and related products, or any other light manufacturing enterprise, provided that no activities will be offensive, injurious or noxious because of gas, dirt, sewage and refuse, vibration, smoke, fumes, dust, odors, discharge of harmful bacteria, radioactive material or chemicals into air, water or septic or site drainage systems, danger of fire or explosion, objectionable noise or other characteristics which are detrimental or offensive or which tend to reduce property values in the same or adjoining districts.

11.3.2.5. Furniture and fixtures.

11.3.2.6 *Facilities for manufacturing for Renewable Energy, such as solar-photovoltaic and thermal; wind; biomass power conversion or thermal technologies (including manufacturing of wood pellets); ultra-low emissions high efficiency wood pellet boilers and furnaces; low impact hydro-electric and kinetic; ocean thermal, wave or tidal; geothermal; landfill gas; fuel cells that use renewable energy and advance biofuels. This can also include manufacturing for Alternative Energy, such as combined heat and power and electric and hydrogen-powered vehicles and associated technologies. Including advanced batteries and recharging stations.*

11.3.3. Health club, indoor athletic facility.

11.3.4. Professional offices, medical offices or a medical center.

11.3.5. VETERINARY CLINIC, animal hospital..

11.3.6. RECYCLING CENTERS, provided that such activities on the LOT are not located within 100 feet of a residential zoning district, and a buffer area containing natural material will form an effective year-round screen between the industrial uses and the residential zone.

11.3.7. ACCESSORY USES customarily incidental to any use permitted herein, including but not limited to cafeterias, child care centers and showrooms.

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- 11.3.8. On-site directional SIGNS for the purpose of regulating traffic in and out of the site, provided that such SIGNS are limited to the number and information necessary to the purpose, are not illuminated, do not exceed two square feet in area and, if freestanding, are not placed more than four feet above the ground. Directional SIGNS may be placed anywhere on the LOT as needed for visibility, in such manner as not to obscure sight lines or directions for general traffic. Such SIGNS shall be indicated on a plan submitted to the Building Inspector.
- 11.3.9. Churches and other places of worship, parish houses.
- 11.3.10. Municipal use authorized by Town Meeting.
- 11.3.11. Other government uses.

11.4. Uses and Structures Permitted by Special Permit.

- 11.4.1. Any uses listed in Section 11.2 or 11.3, occupying more than 5,000 square feet of GROSS FLOOR AREA in the aggregate.
- 11.4.2. The following additional light manufacturing and/or assembly with associated professional, administrative and/or clerical offices for the following types of industries:
  - 11.4.2.1. Primary and fabricated metal industries.
  - 11.4.2.2. Machinery.
  - 11.4.2.3. Transportation equipment.
- 11.4.3. Warehousing for distribution.
- 11.4.4. Printing and publishing.
- 11.4.5. Contractor's yard
- 11.4.6. Wholesale or retail sale of lumber and wood products.
- 11.4.7. Watchperson's quarters, to be occupied by no more than two people, not to exceed 1,000 square feet in size. Use of the watchperson's quarters, if approved, is permitted only as long as the site need exists, with the assumption, rebuttable, that if the concerned area and use were no longer operational, the need would cease and be cause for revocation of permit.
- 11.4.8. Hotel, motel, inn
- 11.4.9. CONFERENCE CENTERS with or without a residential dormitory component.
- 11.4.10. Assisted living facility or retirement community.
- 11.4.11. Adult entertainment uses.



[Type here]

- 11.4.12. Any use permitted in Sections 11.2 or 11.3 of this Bylaw, in a STRUCTURE that exceeds the maximum height limitation in Section 11.6.
- 11.4.13. ACCESSORY USES customarily incidental to any use permitted herein, including but not limited to cafeterias and child care center.
- 11.4.14. Dispensaries for supplying marijuana for medical purposes by prescription and as regulated by the Massachusetts Department of Public Health.
- 11.4.15. Commerical Solar Power Installations, of 250 kilowatt or larger rated nameplate capacity.
- 11.4.16. Commerical Wind Power Installations, not to exceed 3 turbines

All uses permitted by SPECIAL PERMIT are subject to site plan approval under Article 19 of this Bylaw.

#### 11.5. Prohibited Uses.

- 11.5.1. Use of a MOBILE HOME on a residential or non-residential LOT.
- 11.5.2. Parks or establishments for MOBILE HOMES, except for a MOBILE HOME park in existence prior to the effective date of this Bylaw.
- 11.5.3. Outdoor storage of more than one unregistered motor vehicle for more than ninety days, except on a farm.
- 11.5.4. Auto dismantling, junkyards, privately developed and operated septage waste disposal/treatment facilities and refuse disposal facilities are expressly prohibited.
- 11.5.5. Any use not explicitly provided for in this Bylaw.

#### 11.6. Dimensional, Setback and Intensity Regulations.

No building or STRUCTURE shall be located, constructed, changed, enlarged or permitted and no use of premises in the Office-Light Industrial District shall be permitted except in conformity to the intensity and dimensional regulations as set forth herein. If a LOT is determined by the rules of Article 14 to be within a Water Resources Protection District, then the more restrictive regulations of Article 14 shall prevail.

- 11.6.1. Minimum LOT AREA: 60,000 square feet (ft<sup>2</sup>)
- 11.6.2. Minimum FRONTAGE: 50 feet<sup>3</sup>

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<sup>3</sup> A reduction to 0 feet of FRONTAGE (none) may be allowed by SPECIAL PERMIT for an office or industrial development comprised of more than one permitted or special permitted use on five or more acres of land, provided that the interior roads (a) provide adequate access for all buildings on

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- 11.6.3. Lot Width: 70 feet
- 11.6.4. Maximum Building Height (Feet): 35 feet<sup>4</sup>
- 11.6.5. Maximum Building Height (Stories): Three stories<sup>5</sup>
- 11.6.6. Maximum LOT COVERAGE: 80%
- 11.6.7. Maximum Floor Area Ratio: 1.5<sup>5</sup>
- 11.6.8. Minimum Front Yard Setback: 25 feet
- 11.6.9. Minimum Side Yard Setback: 30 feet<sup>6</sup>
- 11.6.10. Minimum Rear Yard Setback: 30 feet<sup>7</sup>
- 11.6.11. Open Space Percent of LOT AREA: 20%

11.7. Special Permits in the Office-Light Industrial District.

- 11.7.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Office-Light Industrial District shall be the Planning Board.
- 11.7.2. Requirements. An application for a SPECIAL PERMIT in the Office-Light Industrial District shall include a written description of the proposal for which a SPECIAL PERMIT is requested and a Site Plan prepared by a Registered Professional Engineer and/or Registered Land Surveyor at an appropriate scale to clearly show dimensions, legend, and all other information deemed necessary to describe the site and its conditions.
- 11.7.3. Site Plan Review. The site plan review requirements of Section 19 of this Bylaw shall apply to the Office-Light Industrial District. For uses allowed by SPECIAL PERMIT, site plan review shall be conducted concurrently with the SPECIAL PERMIT application, review and determination procedures.
- 11.7.4. Referral. The Planning Board shall refer a SPECIAL PERMIT application to the Police, Fire, Water and Sewer Departments, the Board of Health, the Conservation

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the development site, (b) shall not become public WAYS and (c) are to be considered private access roads. Fifty feet of FRONTAGE is required for each LOT if the roads are intended to be accepted by the Town as public WAYS.

<sup>4</sup> The Planning Board may, by SPECIAL PERMIT, authorize an increase in the height of a building subject to "Design Standards" at Section 11.10 of this Bylaw (below).

<sup>5</sup> Computed as ratio of GROSS FLOOR AREA to LOT AREA.

<sup>6</sup> Side and rear yard setbacks shall be 50 feet when abutting a residential zoning district, including a minimum 30-foot landscaping buffer for SCREENING. See "Design Standards" at Section 11.10 (below) for treatment of such setbacks.

Commission and the Merrimac Historical Commission, for written comments and recommendations before taking final action on said SPECIAL PERMIT application. Any board or agency to which applications are referred shall make recommendations and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The Planning Board shall not act upon the SPECIAL PERMIT until either comments from referred boards or agencies have been received, or said 35 days have elapsed, whichever is sooner.

- 11.7.5. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for a proposed use or STRUCTURE upon finding that the application complies with the purposes of this Bylaw, to the degree consistent with a reasonable use of the site for the purpose permitted within the Office-Light Industrial District. In making its decision, the Planning Board shall consider the following criteria:
  - 11.7.5.1. Consistency with the Merrimac Master Plan.
  - 11.7.5.2. Consistency with “Office-Light Industrial District Design Guidelines” in Section 11.10 of this Bylaw.
  - 11.7.5.3. Consistency with special regulations that apply (if any) to the proposed use.
  - 11.7.5.4. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 11.7.5.5. The degree to which the proposed use preserves historic built resources, where applicable.
  - 11.7.5.6. The degree to which the proposed use furthers the Town’s interest in providing a range of employment opportunities and strengthening its tax base.
  - 11.7.5.7. The degree to which the proposed use, viewed in its entirety, is of superior design or provides more environmental, social or fiscal benefits to the Town than the alternative of a use permitted as of right.
  - 11.7.5.8. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
  - 11.7.5.9. Adequacy of water supplies and distribution for domestic use fire protection.
  - 11.7.5.10. Adequacy of the methods of:
    - 11.7.5.10.1. Disposal of sanitary sewage. Connection to the municipal sewer is required. No on-site disposal of wastewater or use of tight tanks is allowed.

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11.7.5.10.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.

11.7.5.10.3. Drainage and retention of surface water.

11.7.5.11. Conformance to SIGN regulations in Article 21, where applicable.

#### 11.8. Signs.

SIGNS shall be permitted in accordance with Article 21 and Section 11.10 of this Bylaw.

#### 11.9. Parking.

OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw.

#### 11.10. Design Standards for the Office-Light Industrial District

The design standards and controls in the Office-Light Industrial District are established to promote and maintain an ecological balance between the undeveloped natural resources, watersheds and residential neighborhoods in the Town of Merrimac and the new industrial buildings and uses that will be present in the area. As new buildings are developed, they should complement and enhance the natural beauty of the Town. New industrial uses must recognize that the land abutting major highways will have two visual "front doors": the highway itself and local roads. Buildings on such sites must be sited, planned, developed and maintained to present an attractive appearance from both directions.

##### 11.10.1. Open Land.

11.10.1.1. At least 25% of the LOT, or 25% of the area in a development comprised of more than one LOT, will be retained as open land. Open land shall consist primarily of undisturbed land, which may be used for outdoor active or passive recreational purposes and shall be planned as large, contiguous units of open space wherever possible. If privately owned, the open land may be used solely by occupants of the development site or may be available for use by residents of the Town. The decision as to whether to permit Town residents to use the open land shall be that of the property owner. The open land may be comprised of more than one parcel, provided that the size, shape and location of such parcels are suitable for the above purposes.

11.10.1.2. Adequate pedestrian access shall be provided to the open land. The open land may remain as part of the overall development site and need not be a separate parcel, but there shall be deed restrictions stating that there shall be no further development of the open land. The open land may consist of a separate parcel and may be conveyed to a nonprofit organization, the purpose of which is the preservation of open space. If the open land is conveyed to another entity, it shall continue to be part of the development site for the purpose of calculating dimensional requirements.

- 11.10.1.3. Setback areas from exterior development site property lines of 50 feet or more may be counted as part of the open land.
- 11.10.1.4. If detention or retention ponds are necessary for the construction of the buildings on the development site, such ponds shall not be located within the required setback areas, unless specifically permitted by the site plan approval. Such detention or retention areas shall be designed to appear as natural landforms. The Town encourages the use of Low Impact Development Best Management Practices for Stormwater Management, where applicable.
- 11.10.1.5. Areas set aside for planned or reserve parking spaces or fire lanes may not be considered to be open land.
- 11.10.2. Landscaping. All required setback areas shall be adequately and attractively landscaped with lawns, trees, shrubbery and other plantings within one year of the completion of building construction on any LOT and shall thereafter be maintained in an attractive manner. Landscaping shall be in accordance with the approved site plan.
- 11.10.3. SCREENING. Within the setback to a residential zoning district, there shall be a SCREENING buffer of evergreen trees or existing trees, provided they create an equivalent year-round buffer. The buffer area shall be maintained in a wooded state to provide effective year-round SCREENING of abutting property.
- 11.10.4. Buildings.
  - 11.10.4.1. Buildings in the Office-Light Industrial District shall be designed to possess a harmony of appearance and scale with each other.
  - 11.10.4.2. Except as provided in this section, no building or STRUCTURE shall exceed 35 feet or three stories in height, whichever is less. The limitation of height shall apply at the curb grade of the principal front of the building.
  - 11.10.4.3. The allowable building height may be increased to 55 feet by SPECIAL PERMIT from the Planning Board. In granting a SPECIAL PERMIT, the Planning Board may require additional setbacks, stepping-down of building elevations, visual buffering, SCREENING, and/or other appropriate measures to provide a height transition between the development and adjacent non-industrial development. The Planning Board may also require the applicant to provide off-street parking below grade. Roof equipment and other similar features which are necessary to the industrial operation shall be screened, and may not exceed 40 feet in height without approval of a SPECIAL PERMIT.
  - 11.10.4.4. All buildings shall have a primary entrance oriented to a street. "Oriented to a street" means that the building entrance faces the street, or is connected to the street by a direct and convenient pathway not

exceeding 30 feet in length. Streets used to comply with this standard may be public streets, or private streets that contain sidewalks and street trees.

- 11.10.4.5. Buildings on corner LOTS shall have their primary entrance oriented to the street corner, or within 30 feet of the street corner (i.e., as measured from the LOT corner). In this case, the street corner shall provide an extra-wide sidewalk or plaza area with landscaping, seating or other pedestrian amenities. The building corner shall provide architectural detailing or beveling to add visual interest to the corner.
- 11.10.4.6. Where building elevations are oriented to the street, architectural features such as windows, pedestrian entrances, building offsets, projections, detailing, change in materials or similar features, shall be used to break up and articulate large building surfaces and volumes.
- 11.10.4.7. Recessed entries, canopies, and/or similar features shall be used at the entries to buildings in order to create a pedestrian-scale.
- 11.10.5. Outdoor Storage.
  - 11.10.5.1. No material or supplies shall be stored or permitted to remain on any part of the property outside the building.
  - 11.10.5.2. Outdoor storage and/or display of merchandise or equipment. No open storage or display shall be permitted in any setback area.
  - 11.10.5.3. Any finished products or semi-finished products stored on the property outside of the building shall be confined to the rear one-half of the property and shall be appropriately screened on all sides, but shall in no instance be placed on the side of a building paralleling the street. Storage or display areas shall be adequately screened by a fence or landscaping so as not to be visible from any road or highway.
  - 11.10.5.4. No materials or equipment stored on a LOT shall project above the eave line of the tallest building on the LOT.
  - 11.10.5.5. No waste material or refuse shall be dumped upon or permitted to remain upon any part of said property outside of a building.
- 11.10.6. Loading zone. Adequate off-street loading shall be provided only at the side or rear of the building. Such loading space shall be provided on the LOT to service all loading requirements of the industry or use conducted thereon without requiring use of adjacent public streets, WAYS or required setback area thereof.
- 11.10.7. SIGNS. No display SIGN or other advertising device shall be permitted in the Office-Light Industrial District, except under the following conditions:
  - 11.10.7.1. SIGNS must identify or otherwise relate to the primary use of the building and may not be used for other purposes, except that, on a

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vacant LOT, a non-illuminated real estate SIGN advertising the sale of the LOT on which it is located, and having an area of not more than 20 square feet, is permitted.

- 11.10.7.2. SIGNS shall conform to the side and rear yard requirements for the Office-Light Industrial District. SIGNS may be located no nearer than 15 feet to a street line.
- 11.10.7.3. SIGNS may be illuminated, but shall be nonflashing, nonmoving and nonanimated. No neon SIGNS shall be permitted.
- 11.10.7.4. There may be one standing SIGN at the entrance to each individual parcel of land. The standing SIGN shall not exceed 32 square feet in area. The standing SIGN shall not exceed 10 feet in height, measured from the average grade to the top of the SIGN. There may be two wall SIGNS on each building, each not to exceed 32 square feet in area. One such wall SIGN shall be located on the front of the building, and one shall be located on the rear of the building. There may be directional SIGNS within the property, each not to exceed 10 square feet, for the purpose of directing traffic within the property.
- 11.10.7.5. No SIGN shall project above the eave of any building on the LOT.
- 11.10.8. Curb Cuts. Curb cuts shall be minimized by coordinating or sharing access with adjoining uses in the Office-Light Industrial District.
- 11.10.9. OFF-STREET PARKING. All off-street parking shall be located in the rear of a building, except that parking may also be located on the side of a building but not closer than 40 feet to the front elevation. The Planning Board may permit buildings within a development site to share parking areas and may permit a portion of the required spaces to be set aside as reserve or planned spaces to be constructed as future needs require.

## **ARTICLE 12. RURAL-AGRICULTURAL PRESERVATION OVERLAY DISTRICT (RESERVED)**

### **12.1. Purposes.**

The purpose of the Rural-Agricultural Preservation Overlay District is to encourage a development pattern that preserves established agricultural and forested landscapes along the Town's rural roadways and protects the scenic beauty of the Town.

### **12.2. Applicability.**

The Rural-Agricultural Preservation Overlay District is an overlay district that applies to all land in the Agricultural Residential District within 300 linear feet of the roadway centerline of the following roads: Bear Hill Road, Brush Hill Road, Highland Road, Battis Road, Hadley Road, West Hadley Road, Birchmeadow Loop, and Heath Road. Uses and structures permitted in the underlying district shall be permitted in the Rural-Agricultural Preservation

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Overlay District. In addition, the Planning Board shall have the authority to issue a SPECIAL PERMIT for Small-Area Cluster Development in accordance with this Bylaw.

#### 12.3. Definitions

Small-Area Cluster Development (SACD). A development of three to five single-family dwellings set back from the road, on lots with reduced frontage but that meet the minimum lot area requirement for the Agricultural Residential District, and with permanently protected open space equal to at least 50% of the total land area in the development. Small-Area Cluster Development is intended as an alternative to a conventional division of land into "Approval Not Required" lots under G.L. c.41, Section 81P.

Designated Rural Corridor. A roadway along which the Rural-Agricultural Overlay District applies: Bear Hill Road, Brush Hill Road, Highland Road, Battis Road, Hadley Road, West Hadley Road, Birchmeadow Loop, and Heath Road.

#### 12.4. Permitted Uses and Structures.

All uses permitted in the Agricultural Residential District shall be permitted in the Rural-Agricultural Overlay District.

#### 12.5. Uses and Structures Permitted by Special Permit.

12.5.1. All special permitted uses in the Agricultural Residential District shall be special permitted uses in the Rural-Agricultural Overlay District.

12.5.2. Small-Area Cluster Development (SACD).

#### 12.6. Prohibited Uses.

All uses prohibited in the Agricultural Residential District shall be prohibited uses in the Rural-Agricultural Overlay District.

#### 12.7. Use, Dimensional and Design Standards for Small-Area Cluster Development

The Planning Board may issue a Special Permit to waive the minimum FRONTAGE, lot shape and lot area requirements that normally apply to land in the Agricultural Residential District in exchange for the protection of open space, stone walls, mature trees and scenic views in an SACD. To be eligible for a Special Permit, an SACD must meet the following requirements:

12.7.1. Dwelling units in an SACD shall be limited to single-family dwellings.

12.7.2. The parcel or contiguous parcels to be divided into new SACD lots shall have enough area so that each proposed lot meets the minimum lot area requirement of the Agricultural Residential District. The Planning Board may authorize a reduction in lot area or the placement of more than one building on a single lot in order to achieve the purposes of this by-law, provided that the SACD shall not have more than the number of dwelling units that could be built if the site were divided into individual house lots, each meeting the minimum lot area requirement



of the Agricultural Residential District.

- 12.7.3. At least 40% of the land in an SACD shall be permanently protected as common open space. The open space shall be protected by a conservation restriction held by the Merrimac Conservation Commission or a non-profit conservation land trust, and the restriction shall meet the requirements of G.L. c.184.
- 12.7.4. Existing views from the road shall be protected by locating at least 60% of the common open space along and immediately adjacent to the designated rural corridor.
- 12.7.5. An SAC with a cluster or grouping of three dwelling units shall be served by a common driveway. An SACD of four or five dwelling units may consist of two clusters or groupings of dwelling units, with each cluster or grouping served by a common driveway. No dwelling unit in an SACD shall be served by an individual driveway.
- 12.7.6. Dwelling units shall be set back at least 65 feet from the road. The preferred location for dwelling units in an SACD is in a cluster or grouping of buildings set back from the designated rural corridor.
- 12.7.7. An SACD located adjacent to land in active agricultural use shall preserve a continuous buffer along the perimeter of at least 100 feet, unless waived by the Planning Board.
- 12.7.8. An SACD must comply with the Design Standards for the Agricultural Residential District as set forth in Section 6.10 of this Bylaw unless waived by the Planning Board.
- 12.7.9. Reduced Frontage Lots. An SACD may consist of not less than three nor more than five lots with reduced FRONTAGE on a designated rural corridor, provided that all other requirements for an SACD Special Permit are met. The Planning Board may authorize a reduction in lot frontage for lots in an SACD provided that:
  - 12.7.9.1. Each LOT in an SACD must have a minimum continuous street FRONTAGE of not less than one hundred fifty(150) feet.
  - 12.7.9.2. The area of each LOT with a reduced FRONTAGE shall comply with the minimum LOT size of the Agricultural Residential District.
  - 12.7.9.3. Each LOT shall have at least one area suitable for the construction of a dwelling that can accommodate a circle with a diameter of 150 feet.
  - 12.7.9.4. Not more than five reduced FRONTAGE LOTS shall abut each other.
  - 12.7.9.5. Reduced frontage lots in an SACD shall be served by common driveways in accordance with Section 12.7.3 and Section 23.3 of this Bylaw:
  - 12.7.9.6. Reduced FRONTAGE LOTS shall be located such that they do not

interfere with the use and enjoyment of an abutting LOT and do not adversely affect the neighborhood.

- 12.7.9.7. Notwithstanding any other provision, a reduced FRONTAGE LOT created by SPECIAL PERMIT from the Planning Board shall not be further subdivided, or reduced in area, or changed in size or shape. The Planning Board shall require deed restrictions to assure these requirements.
- 12.7.10. Irregular lot shapes are permitted in an SACD when, in the opinion of the Planning Board, they further the purposes of the bylaw.
- 12.7.11. The Planning Board may authorize a reduction in side and rear yard setbacks on SACD reduced frontage lots when a reduction furthers the purposes of this Bylaw.
- 12.7.12. Except as provided in this Bylaw, any LOT in an SACD shall comply with any other dimensional requirements of the Agricultural Residential District.

#### 12.8. Special Permits for Small-Area Cluster Development

- 12.8.1. The SPECIAL PERMIT Granting Authority (SPGA) for Small Area Cluster Development in the Rural-Agricultural Overlay District shall be the Planning Board.
- 12.8.2. The requirements for a SPECIAL PERMIT application for a Small-Area Cluster Development shall include the requirements for a SPECIAL PERMIT application in the Agricultural Residential District under Section 6.7 of this Bylaw, and the Small-Area Cluster Development Submission Requirements and Procedures adopted by the Planning Board and on file with the Town Clerk. After adoption of this Bylaw, the Planning Board shall prepare and adopt Small Area Cluster Development Submission Requirements and Procedures following a public hearing.
- 12.8.3. Special Permit Granting Criteria. The Planning Board may approve a SPECIAL PERMIT for an SACD upon finding that the application complies with the purposes of this Bylaw. In making its decision, the Planning Board shall consider the following criteria:
  - 12.8.3.1. Consistency with the Merrimac Master Plan.
  - 12.8.3.2. Consistency with Design Standards for the Agricultural Residential District in Section 6.10 of this Bylaw.
  - 12.8.3.3. Consistency with Use, Dimensional and Design Standards for Small-Area Cluster Development in Section 12.7 of this Bylaw.
  - 12.8.3.4. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 12.8.3.5. The degree to which the proposed SACD protects open space,

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farmland and historic resources along a designated rural corridor.

12.8.3.6. The degree to which the proposed use, viewed in its entirety, is of superior design or provides more environmental benefits to the Town than the alternative of a use permitted as of right.

12.8.3.7. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.

12.8.3.8. Adequacy of water supplies and distribution for domestic use fire protection.

12.8.3.9. Adequacy of the methods of:

12.8.3.9.1. Disposal of sanitary sewage.

12.8.3.9.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.

12.8.3.9.3. Drainage and retention of surface water.

## **ARTICLE 13. FLOODPLAIN DISTRICT**

### **13.1. Purpose.**

13.1.1. The purposes of the Floodplain District are to protect public health, safety and general welfare; to protect human life and property from the hazards of periodic flooding; to preserve natural flood control characteristics and the flood storage capacity of the floodplain; and to preserve and maintain the groundwater table and water recharge areas within the floodplain.

13.1.2. The Flood Plain District is established as an overlay district to all other districts. Where there is a conflict between provisions of this article and other Zoning Bylaws, the more restrictive regulation shall take precedence.

13.1.3. All development, including structural and nonstructural activities, whether permitted by right or by SPECIAL PERMIT, must be in compliance with Chapter 13.1 Section 40, of the Massachusetts General Laws and with the following sections of the Massachusetts State Building Code (780CMR) which address floodplains and coastal high hazard areas; Wetlands Protection Regulations Department of Environmental Protection DEP (currently 310 CMR 10.00); Inland Wetland Restrictions, DEP (currently 310 CMR 13.00) and Minimum Requirements for Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15 Title 5)

### **13.2. District Delineation.**

13.2.1. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard within the Town of Merrimac designated as Zone A and E on the Essex County Flood Insurance Rate Map (FIRM) issued by the

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Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Merrimac are panel numbers 25009C0081F, 25009C0082F, 25009C0083F, 25009C0084F, 25009C0101F, 25009C0103F, 25009C0092F and 25009C0111F dated July 3, 2012. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, Conservation Commission and BUILDING COMMISSIONER.

- 13.2.2. In Zones AE, along watercourses for which no regulatory floodway has been designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodwayS which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

### 13.3. Permitted Uses and Structures.

There shall be allowed the following uses, which create a minimal risk of damage due to flooding and will not constitute obstructions to flood flow, provided that they are permitted in the underlying district and that they do not require STRUCTURES, fill or storage of materials or equipment:

- 13.3.1. AGRICULTURE uses, such as farming, grazing, truck farming and horticulture.
- 13.3.2. Forestry and nursery uses.
- 13.3.3. Outdoor recreational uses, including fishing, boating and play area.
- 13.3.4. Conservation of water, plants and wildlife.
- 13.3.5. Wildlife management areas, foot, bicycle and horse paths.
- 13.3.6. Temporary nonresidential STRUCTURES used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
- 13.3.7. Buildings lawfully existing prior to the adoption of these provisions.

### 13.4. Permitted Uses Subject to Site Plan Review. (Reserved)

### 13.5. Uses Permitted by Special Permit. (Reserved)

### 13.6. Prohibited Uses.

- 13.6.1. In the Floodplain District, no building or STRUCTURE shall be erected, constructed, moved or enlarged except for not more than 30% of the ground floor area of the existing STRUCTURE, and no dumping, filling or earth removal or transfer shall be permitted unless a SPECIAL PERMIT is granted by the BOARD OF APPEALS in each instance.

13.7. Special Permits in the Flood Plain District

- 13.7.1. The SPECIAL PERMIT Granting Authority (SPGA) for uses and STRUCTURES in the Flood Plain District shall be the BOARD OF APPEALS.
- 13.7.2. Referral. Within 10 days of receipt of an application for a SPECIAL PERMIT, the BOARD OF APPEALS shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health and Building Inspector. Final action shall not be taken until reports have been received from the above Boards or until 35 days after the transmittal of the development plan to the Boards, whichever occurs first.
- 13.7.3. SPECIAL PERMIT granting criteria. The BOARD OF APPEALS may issue a SPECIAL PERMIT if the application complies with the following provisions:
  - 13.7.3.1. The proposed use shall comply in all respects with the provisions of the underlying district.
  - 13.7.3.2. In the floodway prohibit all encroachments, including fill, new construction, substantial improvement to existing STRUCTURES and other development, unless the applicant shall provide certification by a registered professional engineer demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood.
  - 13.7.3.3. The BOARD OF APPEALS may specify such additional requirements and conditions as it finds necessary to protect the health, safety and welfare of the public
  - 13.7.3.4. All subdivision proposals must be designed to assure that:
    - A. Such proposals minimize flood damage;
    - B. All public utilities and facilities are located and constructed to minimize or eliminate damage; and
    - C. Adequate drainage is provided to reduce exposure to flood hazards.
  - 13.7.3.5 Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, which ever is the lesser, within unnumbered A Zones.
  - 13.7.3.6. In a riverine situation the Harbor master shall notify the following f any alteration ofrr relocation of a watercourse:
    - A. Adjacent communities
    - B. Bordering States

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C. NFIP State Coordinator/Mass Dept. of Conservation & Recreation/251 Causeway St., Suite 600-700/ Boston, MA 02114-2104

D. NFIP Program Specialist/ FEMA Mgt Agency , Region 1/99 High St., 6<sup>th</sup> floor//Boston, MA 02110.

NFIP State Coordinator

## **ARTICLE 14. WATER RESOURCES PROTECTION DISTRICT**

### **14.1. Purposes.**

The purposes of this Water Resource Protection District are to limit development in watershed boundaries and recharge areas in order to protect public health by preventing the degradation or contamination of surface water and groundwater used for public water supply, to preserve and protect existing and potential sources of drinking water supplies and water supply reservoirs, to ensure an adequate quality and quantity of drinking water for residents, institutions, and businesses, to allow for aquifer recharge through natural percolation, to facilitate the adequate provision of water supply; to reduce the cumulative impact of nutrient loading, to conserve the value of land and buildings including the conservation of natural resources and most appropriate use of land, to preserve resources for future generations, to conserve natural resources, and prevent temporary and permanent contamination of the environment.

### **14.2. Scope of Authority.**

The Water Resource Protection District is an overlay district superimposed on the zoning districts within and only within, the Town of Merrimac. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts that fall within the Water Resource Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Water Resource Protection District. Where a conflict exists between the regulations of the underlying and overlay district, the regulations with the most restrictive provisions shall apply.

### **14.3. Definitions.**

For the purposes of this Bylaw, the following terms are defined below:

- 14.3.1. Aquifer: Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.
- 14.3.2. Contamination: An impairment of water quality by chemicals, radionuclides,

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biologic organisms, or other extraneous matter whether or not it affects the potential or intended beneficial use of water.

- 14.3.3. Development: Any construction, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel or land.
- 14.3.4. Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the Town of Merrimac. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under G.L. c. 21C and 21E and 310 CMR 30.00.
- 14.3.5. Impervious Surface: Material or STRUCTURE on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.
- 14.3.6. Landfill: A facility established in accordance with a valid site **asSIGNment** for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.
- 14.3.7. Non-sanitary wastewater: Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).
- 14.3.8. Open Dump: A facility which is operated or maintained in violation of the Resource Conservation and Recovery Act (42 U.S.C. 4004(a)(b)), or the regulations and criteria for solid waste disposal.
- 14.3.9. Potential Drinking Water Sources: Areas that could provide significant potable water in the future.
- 14.3.10. Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas include areas designated by DEP as Zone I, Zone II, or Zone III.
- 14.3.11. Reservoir: Any impoundment of surface waters designed to provide drinking water to the public.
- 14.3.12. Septage: The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material which is a hazardous waste, pursuant to 310 CMR 30.000.
- 14.3.13. Sludge: The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, SCREENING, or grease and oil which are removed at the headworks of a facility.

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- 14.3.14. Stormwater Treatment Practices (best management practices): Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.
- 14.3.15. Treatment Works: Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.
- 14.3.16. Tributary stream: Any perennial or intermittent stream, including any lake, pond or other body of water formed therefrom, flowing either directly or indirectly into any reservoir.
- 14.3.17. Very Small Quantity Generator: Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.
- 14.3.18. Waste Oil Retention Facility: A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with G.L. c. 21. s. 52A.
- 14.3.19. Water Resource Protection District: The zoning district defined to overlay other zoning districts in the Town of Merrimac The Water Resource Protection District may include specifically designated recharge areas or watersheds.
- 14.3.20. Watershed. Any area lying within the drainage basin of any reservoir.
- 14.3.21. Zone A: The land area between a surface water source and the upper boundary of the bank, and the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), and the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.
- 14.3.22. Zone B: The land area within one-half mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less. However, Zone B shall always include the land area within a 400-foot lateral distance from the upper boundary of the bank of the Class A surface water source.
- 14.3.23. Zone C: the land area not designated as Zone A or B within the watershed of a Class A surface water source as defined at 314 CMR 4.05(3)(a).
- 14.3.24. Zone I. The 100 to 400 foot protective radius around a public water system well or well-field which must be owned by the water supplier or controlled through a conservation restriction unless otherwise regulated by the Department of Environmental Protection.



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- 14.3.25. Zone II. The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 CMR 22.00.
- 14.3.26. Zone III. The land area beyond the area of Zone II from which surface water and groundwater drain or recharge into Zone II, as defined in 310 CMR 22.00.

#### 14.4. Establishment and Delineation of Water Resource Protection District.

For the purposes of this district, there are hereby established within the Town of Merrimac certain groundwater and surface water protection areas, consisting of Interim Wellhead Protection Areas, Zone I, Zone II and Zone III areas as defined in 310 CMR 22.02, and Zone A, Zone B and Zone C surface water source watersheds as defined in 315 CMR 4.05, located within the Town of Merrimac, as delineated on the Water Resource Protection District map dated April 5, 2004, on file in the Office of the Town Clerk. This map is hereby adopted coincident with and made a part of the Merrimac Zoning Bylaw.

#### 14.5. District Boundary Disputes.

- 14.5.1. If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a SPECIAL PERMIT application to the SPECIAL PERMIT Granting Authority (SPGA). Any application for a SPECIAL PERMIT for this purpose shall be accompanied by adequate documentation.
- 14.5.2. The burden of proof shall be upon the owner(s) of the land to demonstrate that the location of the district boundary with respect to their parcel(s) of land is uncertain. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation(s).

#### 14.6. Permitted Uses.

The following uses are permitted within the Water Resource Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

- 14.6.1. Uses permitted in the underlying district, unless they are prohibited by Section 14.7 or require a special permit under Section 14.8.
- 14.6.2. Conservation of soil, water, plants, and wildlife;
- 14.6.3. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
- 14.6.4. Foot, bicycle and/or horse paths, and bridges;
- 14.6.5. Normal operation and maintenance of existing water bodies and dams, splash

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boards, and other water control, supply and conservation devices;

- 14.6.6. Maintenance, repair, and enlargement of any existing STRUCTURE, subject to Section 14.7 and Section 14.8 of this Bylaw;
- 14.6.7. Residential development, subject to Section 14.7 and Section 14.8 of this Bylaw;
- 14.6.8. Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 14.7 and Section 14.8 of this Bylaw;
- 14.6.9. Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as but not limited to, wells, pipelines, aqueducts, and tunnels.

#### 14.7. Prohibited Uses.

The following uses are prohibited within the Water Resources Protection District. The following list is not exhaustive and shall be read in conjunction with Section 14.6 above and Section 14.8 below, such that if the use is not permitted by Section 14.6 or Section 14.8 it shall be deemed prohibited.

- 14.7.1. Landfills and open dumps as defined in 310 CMR 19.006;
- 14.7.2. Automobile graveyards and junkyards, as defined in G.L. c.140B, Section1;
- 14.7.3. Landfills receiving only wastewater and/or septage residuals, including those approved by the Department of Environmental Protection (DEP) pursuant to G.L.c. 21, Section 26 through Section; G.L.c. 111, Section17; G.L c. 83, Section and Section7, and regulations promulgated thereunder;
- 14.7.4. Facilities that generate, treat, store, or dispose of hazardous waste that are subject to G.L.c. 21C and 310 CMR 30.00, except for:
  - 14.7.4.1. Very small quantity generators as defined under 310 CMR 30.000;
  - 14.7.4.2. Household hazardous waste centers and events under 310 CMR 30.390;
  - 14.7.4.3. Waste oil retention facilities required by G.L. c. 21, Section 52A;
  - 14.7.4.4. Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
- 14.7.5. Petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171, not including liquefied petroleum gas.
- 14.7.6. Storage of liquid hazardous materials, as defined in G.L.c. 21E, and/or liquid petroleum products unless such storage is:
  - 14.7.6.1. Above ground level, and;

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- 14.7.6.2. On an impervious surface, and
- 14.7.6.3. Either:
  - 14.7.6.3.1. In container(s) or above ground tank(s) within a building, or;
  - 14.7.6.3.2. Outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;
- 14.7.7. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- 14.7.8. Storage of deicing chemicals unless such storage, including loading areas, is within a STRUCTURE designed to prevent the generation and escape of contaminated runoff or leachate;
- 14.7.9. Storage of animal manure unless covered or contained within a STRUCTURE designed to prevent the generation and escape of contaminated runoff or leachate;
- 14.7.10. EARTH REMOVAL, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within 4 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;
- 14.7.11. Discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:
  - 14.7.11.1. The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
  - 14.7.11.2. Treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);and
  - 14.7.11.3. Publicly owned treatment works.
- 14.7.12. Stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the Water Resource Protection District;
- 14.7.13. Storage of commercial fertilizers, as defined in G.L. c. 128, Section 64, unless such storage is within a STRUCTURE designed to prevent the generation and escape of contaminated runoff or leachate.

14.8. Uses and Activities Requiring a Special Permit.

The following uses and activities are permitted only upon the issuance of a SPECIAL PERMIT by the Zoning Board of Appeals, the Special Permit Granting Authority (SPGA) under this Bylaw, under such conditions as they may reasonably require:

- 14.8.1. Enlargement or alteration of existing uses and STRUCTURES that do not conform to the Water Resource Protection District;
- 14.8.2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section 14.7). Such activities shall require a SPECIAL PERMIT to prevent contamination of groundwater;
- 14.8.3. Any use that will render impervious any LOT or parcel more than 15% or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

14.9. Procedures for Issuance of Special Permit.

- 14.9.1. The SPECIAL PERMIT Granting Authority (SPGA) under this Bylaw shall be the Zoning BOARD OF APPEALS. Such SPECIAL PERMIT shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, Water Department and Planning Board that the intent of this Bylaw, as well as its specific criteria, are met. The SPGA shall not grant a SPECIAL PERMIT under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision.
- 14.9.2. Upon receipt of the SPECIAL PERMIT application, the SPGA shall transmit one copy to the Planning Board, Board of Health, the Conservation Commission, and Merrimac Water Department for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The number of copies of the application required by Section 14.9.5 shall be furnished by the applicant.
- 14.9.3. The SPGA may grant the required SPECIAL PERMIT only upon finding that the proposed use meets the following standards, those specified in Section 14.8 of this Bylaw, and any regulations adopted by the SPGA. The proposed use must:
  - 14.9.3.1. In no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the

Water Resource Protection District; and

- 14.9.3.2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- 14.9.4. The SPGA may adopt regulations to govern design features of projects.
- 14.9.5. The applicant shall file eleven copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:
  - 14.9.5.1. A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
  - 14.9.5.2. For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
    - 14.9.5.2.1. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
    - 14.9.5.2.2. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
    - 14.9.5.2.3. Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
    - 14.9.5.2.4. Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.
- 14.9.6. The SPGA shall hold a hearing, in conformity with the provision of G.L. c. 40A, Section 9, within 65 days after the filing of the application and after the review by Town of Merrimac Boards, Departments, and Commissions.
- 14.9.7. Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in G.L. c. 40A, Section 11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing

of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit.

14.10. Buffer Requirements for Activity in the Watershed of a Surface Water Source

- 14.10.1. A 200-foot wide buffer strip shall be maintained along the edge of all Class A surface water sources and any tributary stream discharging into these reservoirs. The required setback distance shall be measured from the centerline of such tributary stream and from the mean high water level of such reservoir. The buffer strip shall be maintained in its natural state to the maximum extent possible, and shall be planted with an erosion resistant vegetative cover in those areas that have been disturbed. In the case of tributary streams located upstream from a stormwater management facility designed to provide water quality protection, no buffer shall be required if such facility has been designed to accommodate and manage the quality of runoff from the subject site.
- 14.10.2. A reduction in the required buffer width down to an absolute minimum of seventy-five feet (75') may be granted by the SPGA upon presentation of an impact study that provides sufficient documentation and justification that even with the reduction, the same or a greater degree of water quality protection would be afforded as would be with the full-width buffer. In granting such a reduction, the SPGA may require additional erosion control or runoff control measures as deemed necessary to protect reservoir water quality.
- 14.10.3. All development shall be located outside of the required buffer strip, except for the following:
  - 14.10.3.1. The buffer strip requirement shall not apply to development which is appurtenant to the production, supply, distribution or storage of water by a public water supplier.
  - 14.10.3.2. Encroachment into or through the required buffer by roads, main-line utilities, or stormwater management STRUCTURES may be permitted provided the following performance standards are met:
    - 14.10.3.2.1. Road and main-line utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the hydrology of the watershed.
    - 14.10.3.2.2. Any stormwater management facilities located within the buffer should be sited within the context of a larger watershed stormwater management program.
    - 14.10.3.2.3. No more land shall be disturbed than is necessary.
    - 14.10.3.2.4. Indigenous vegetation shall be preserved to the maximum extent possible.

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14.10.3.2.5. Wherever possible, disturbed areas shall be planted with trees and shrubs.

14.10.3.3. When the property where an encroachment is proposed is owned by the entity owning and operating the water supply reservoir being protected, and such entity specifically and in writing authorizes and approves the encroachment, it shall be allowed.

14.10.4. The following uses shall not be permitted within the buffer strip or within feet 25 feet of the required buffer strip:

14.10.4.1. Septic tanks and drainfields;

14.10.4.2. Feed lots or other livestock impoundments;

14.10.4.3. Trash containers and dumpsters which are not under roof or which are located so that leachate from the receptacle could escape unfiltered and untreated;

14.10.4.4. Fuel storage in excess of fifty (50) gallons;

14.10.4.5. Sanitary landfills;

14.10.4.6. Activities involving the manufacture, bulk storage or any type of distribution of petroleum, chemical or asphalt products or any hazardous materials.

#### 14.11. Enforcement.

14.11.1. Written notice of any violations of this Bylaw shall be given by the Zoning Enforcement Officer/ Building Commissioner to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance.

14.11.2. A copy of such notice should also be submitted to the Town of Merrimac Building Inspector, Board of Health, Conservation Commission, Engineer, and Water Department. The cost of containment, cleanup, or other action of compliance shall be borne by the owner and operator of the premises.

#### 14.12. Severability.

Should any section or provision of this Bylaw be declared invalid, such decision shall not affect the validity of the Bylaw as a whole or any other part thereof. A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any SPECIAL PERMIT previously issued thereunder.

## **ARTICLE 15. OPEN SPACE-RESIDENTIAL DEVELOPMENT**

### **15.1. Purposes and Intent.**

The purposes of the Open Space-Residential Development (OSRD) bylaw are to preserve open space in perpetuity, protect natural resources, wildlife habitat and farmland, encourage residential development that is of superior design to conventional subdivisions, provide housing alternatives that are suitably designed for and attractive to older households, avoid sprawl and achieve more efficient use of land, thereby helping to reduce the negative fiscal impacts of conventional development.

### **15.2. Applicability.**

The Planning Board may grant a SPECIAL PERMIT for an OSRD in the Agricultural Residential District on a parcel or contiguous parcels of land with at least ten (10) acres of land area. Existing public and private WAYS need not constitute boundaries of the tract, but the area within such WAYS shall not be counted in determining parcel or tract size.

### **15.3. Permitted Uses. An OSRD may include the following uses:**

#### **15.3.1. SINGLE-FAMILY DWELLINGS.**

15.3.2. Attached or common-wall units, not to exceed four units in a single building, restricted for occupancy by over-55 households.

15.3.3. AGRICULTURE and horticulture.

15.3.4. Open space.

15.3.5. Passive recreation, including but not limited to trails for walking, hiking and horseback riding, and areas for wildlife observation.

15.3.6. Accessory recreational uses, such as a tennis court or playground.

### **15.4. Relationship to Subdivision Control.**

A subdivision plan is not required for an OSRD, but an applicant who proposes a subdivision plan shall submit the same to the Planning Board in accordance with the Planning Board's Subdivision Rules and Regulations.

### **15.5. Cul-de-sac streets.**

An OSRD may contain cul-de-sac streets as defined in and regulated by the Planning Board's Subdivision Regulations. However, an OSRD may have cul-de-sac streets up to a linear distance of 1,000 feet.

### **15.6. Future Subdivision.**

No LOT shown on a plan for which an OSRD SPECIAL PERMIT is granted may be further subdivided, and a notation to this effect shall be placed on the plan of record, which shall be recorded at the registry of deeds.



15.7. Pre-Submission Meeting.

All applicants seeking an OSRD SPECIAL PERMIT shall schedule a pre-submission meeting with the Planning Board to review the scope of the project and the site for which it is proposed. Whenever possible, the Planning Board shall invite other Town boards to the pre-submission meeting. Additional pre-submission meetings may be held by mutual agreement of the Planning Board and the applicant. At a minimum, the intent of the pre-submission meeting shall be to:

- 15.7.1. Identify the key natural features of the proposed development site.
- 15.7.2. Identify historic or culturally important features of the site.
- 15.7.3. Identify any safety, traffic, or infrastructure issues directly related to the site.
- 15.7.4. Identify areas that the Town prefers to see preserved for open space, view shed, agricultural, or agricultural buffer purposes.
- 15.7.5. Discuss the proposed site plan and any issues relative to the Town's site plan review process or review criteria.
- 15.7.6. Discuss any issues relevant to OSRD requirements.
- 15.7.7. Assist the developer in understanding all related permitting issues required for the project.

15.8. Site Plan Review.

An OSRD is subject to Article 19 of this Bylaw and the following additional site plan standards.

- 15.8.1. An OSRD shall maintain natural features and vegetation for a depth of at least 40 feet along all public ways in existence prior to the effective date of this Bylaw.
- 15.8.2. No building may be constructed on a ridge line, or otherwise located so as to block or obstruct scenic views.
- 15.8.3. To the maximum extent feasible, all open space resulting from an OSRD shall be designed to connect with other public open space or permanently protected private open space, and foster the goals of the most recent Merrimac Master Plan and Open Space and Recreation Plan, as determined by the Planning Board.
- 15.8.4. To the maximum extent feasible, an OSRD shall preserve and protect farmland.
- 15.8.5. An OSRD shall be designed to protect significant upland features and landscape views.
- 15.8.6. All local historic sites, buildings or stone walls shall be preserved as part of an OSRD.
- 15.8.7. Grade changes shall be in keeping with the general appearance of surrounding

developed areas.

- 15.8.8. All landscaping shall consist only of native species.
- 15.8.9. Streets shall be designed and located in such a manner as to preserve natural topography, cover, significant landmarks and trees, and to minimize cut and fill.
- 15.8.10. Shared septic systems may be permitted, provided that the requirements of the Merrimac Board of Health are met, including appropriate provisions for legal obligations related to maintenance and replacement.

#### 15.9. Common Open Space: Use, Shape, Location.

An OSRD must provide at least 50% of the total land area as permanently protected, usable open space. The open space shall have no STRUCTURES, parking, loading or unloading space or access WAYS thereto, and it shall not include private yards, patios, or gardens that are restricted for the exclusive or PRINCIPAL USE by residents of individual dwelling units. The following additional requirements apply to common open space in an OSRD:

- 15.9.1. To the maximum extent feasible, the open space shall be undisturbed, unaltered and left in its natural condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or where appropriate, a recreational area, and serve as a visual and natural amenity for the development and the Town.
- 15.9.2. At least 60% of the common open space shall be linked as a unit, with links at least 100 feet wide.
- 15.9.3. Common open space shall be functional for wildlife habitat, passive recreation, resource preservation or agriculture.
- 15.9.4. The location(s) of the common open space shall be subject to approval by the Planning Board as part of site plan review.
- 15.9.5. Each parcel of common open space shall offer adequate access to residents of the OSRD. Toward that end, the nearest part of the common open space shall not be more than three hundred (300) feet in distance from the nearest point of any building that it is proposed to serve.
- 15.9.6. The common open space may be used to site a common or shared septic system.
- 15.9.7. Not more than 15% of the common open space in an OSRD may be located in a flood plain or consist of wetlands as defined in G.L. c.131, Sec.40.
- 15.9.8. Unless approved by the Planning Board, common open space shall not be considered usable if the slope of the finished grade exceeds thirty (30) percent.
- 15.9.9. Existing rights of way and utility easements may not be counted as common open space.

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15.9.10. All usable open space shall be open to the sky and pervious.

15.10. Ownership of Common Open Space.

The common open space shall be conveyed in the following ways as approved by the Planning Board:

- 15.10.1. To a corporation or trust comprising a homeowners association whose membership includes the owners of all LOTS or units contained in the development. The developer shall include in the deed to owners beneficial rights in said open land, and shall grant a perpetual conservation restriction to the Merrimac Conservation Commission or a non-profit corporation or organization over such land to insure that it be kept in an open state and not be built upon for residential use, or developed for accessory uses such as parking or roadways. Such restriction shall be in such form and substance as the Planning Board shall prescribe, and may contain such additional restrictions on development and use of the open space as the Planning Board may deem appropriate.
- 15.10.2. To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or non-profit organization shall grant an open space restriction as set forth above.
- 15.10.3. To the Town for a park or open space use, subject to the approval of the Board of Selectmen, for management by the Parks Commission or by the Conservation Commission, with a clause insuring that it be maintained as open space.

15.11. Dimensional Standards.

*The Planning Board may waive the minimum requirements for LOT AREA, FRONTAGE and/or yard requirements that would normally apply to land in the Agricultural Residential District in order to maximize the amount of open space, protect significant landscapes and reduce site disturbance.*

*15.11.1. If the minimum requirements in the AR District are waived for a SINGLE-FAMILY DWELLING located on a LOT in the OSRD, it is subject to the following requirements:*

*15.11.1.1 Minimum LOT AREA: 21,780 square feet*

*15.11.1.2 Minimum FRONTAGE: 100 feet*

*15.11.1.3 Minimum LOT COVERAGE: 40%*

*15.11.1.4 Minimum Front Yard SETBACK: 20 feet*

*15.11.1.5: Minimum Side Yard SETBACK: 10 feet*

*15.11.1.6 Minimum Rear Yard SETBACK: 10 feet*

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*15.11.1.7 Minimum Rear and Side Yard SETBACKS for ACCESSORY STRUCTURES: One (1) foot greater than that of the PRIMARY STRUCTURE on the LOT*

15.11.2. *The Planning Board also may permit more than one SINGLE or TWO-FAMILY DWELLING to be located on a LOT in an OSRD, subject to the following requirements:*

*15.11.2.1 The parcel proposed for development must have a minimum of fifty (50) feet of FRONTAGE on a public WAY or private WAY that is open to the public.*

*15.11.2.2 Irregular LOT shapes and shared driveways are permitted in an OSRD when, in the opinion of the Planning Board, they further the purposes of the bylaw.*

*15.11.2.3 Attached units shall contain no more than four (4) units in a single building.*

*15.11.2.4 The minimum distance between clusters of multiple-unit dwellings shall be fifty (50) feet, unless waived by the Planning Board.*

*15.11.2.5 The minimum width of existing and proposed open space between dwelling units in the OSRD and adjacent property shall be one hundred and fifty (150) feet.*

*15.11.2.6 The minimum setback from internal roads shall be twenty-five (25) feet.*

*15.11.2.7 The maximum height of proposed buildings shall be thirty-five (35) feet and shall not exceed two and one-half 2½ stories.*

*15.11.2.8 Except as provided in this Bylaw, any LOT in an OSRD shall comply with any other dimensional requirements of the zoning district in which it is located.*

### 15.12. Base Density; Determination of Development Capacity.

Except as provided under “Development Incentives” below, the maximum number of LOTS and dwelling units permitted in an OSRD shall not exceed the number arrived at under the following formula:

Total Number Lots and Dwelling Units =	Total Acreage (in Square Feet) –	(.5X Wetlands) –	All areas with steep slopes <sup>7</sup> (see below) –	(.1X Total Acres)
	87,120 Square Feet			

<sup>7</sup> “Steep slopes” shall mean all areas with natural slopes exceeding 25% over a horizontal distance of 30 feet as measured perpendicular to the contour on the tract or parcel of land.

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In the instance of a fraction, a fraction may be counted as an additional LOT if the fraction is over one half.

#### 15.13. Development Incentives.

The Planning Board may authorize an increase in LOTS or dwelling units up to a maximum of fifty (50%) percent, when all of the units in the OSRD are restricted for occupancy by over-55 households and at least one of the following conditions is met:

- 15.13.1. The applicant proposes an increase in open space above the fifty percent (50%) minimum and preserves significant natural resources, in the opinion of Planning Board, or
- 15.13.2. The applicant sets aside ten percent (10%) or more of LOTS or dwelling units on the site for affordable housing for LOW- AND MODERATE-INCOME households. Such units must be eligible for listing on the SUBSIDIZED HOUSING INVENTORY under G.L. c.40B, Sections 20-23, in accordance with the requirements of the Local Initiative Program (LIP) at 760 CMR 45.00, as may be amended. The Planning Board shall review and approve the actual percentage distribution of qualifying low- and moderate-income units.

#### 15.14. Affordable Housing.

Units set aside as housing affordable to low- and moderate-income households shall have a GROSS FLOOR AREA comparable to market-rate units and shall be integrated into the development and not grouped together. When viewed from the exterior, the affordable units shall be indistinguishable from the market-rate units. The developer shall provide adequate guarantee, acceptable to the Planning Board, to ensure the continued availability and affordability of the units. At minimum, this guarantee will meet LIP requirements in effect when the Planning Board approves the SPECIAL PERMIT. The Planning Board may place conditions on the SPECIAL PERMIT to assure appropriate phasing of market-rate and affordable unit construction.

#### 15.15. Off-Street Parking.

All dwelling units shall be required to provide two off-street parking spaces per unit.

#### 15.16. Submittal Requirements.

Applicants shall file an application with the Planning Board for a SPECIAL PERMIT, including a site plan that meets all of the submission requirements of SITE PLAN REVIEW at Article 19 of this Bylaw. The SPECIAL PERMIT application and site plan shall present the location and size of the proposed development site, the total number of proposed buildings or LOTS and the size of each in square feet, the amount of land to be preserved as permanent open space and the proposed use(s) and form of ownership thereof, and sufficient detail to demonstrate compliance with the dimensional, design, common open space and other standards of this Bylaw. Applicants seeking an increase in base density for over-55 developments shall include a request for the same in the SPECIAL PERMIT application and provide evidence in support of their proposal.

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The Planning Board may adopt rules and regulations concerning submission requirements and procedures for an Open Space Residential Development.

**15.17. Approval Criteria.**

The Planning Board may grant a SPECIAL PERMIT for an OSRD with any conditions, safeguards, and limitations, upon determining that the applicant meets all SPECIAL PERMIT granting criteria for the Agricultural Residential District and the following additional OSRD criteria:

- 15.17.1. That the application was filed in proper form and the content is complete.
- 15.17.2. That the Site Plan is properly completed.
- 15.17.3. That all requirements of the OSRD Bylaw have been met.
- 15.17.4. That based on available information, the design and layout of the proposed OSRD is superior to a conventional subdivision because it preserves open space for conservation and recreation, protects natural features, makes efficient provision of streets, utilities and other public services and offers exemplary design quality, considering OSRD standards and the Design Guidelines for Development in the Agricultural Residential District.

**ARTICLE 16. REGULATIONS FOR ASSISTED LIVING FACILITIES AND ELDERLY HOUSING**

**16.1. Purposes.**

The purposes of the Regulations for ASSISTED LIVING FACILITIES and ELDERLY HOUSING Bylaw are to provide for housing and support services that meet the needs of elderly persons, to encourage efficient use of land and to protect open space and farmland, and to offer alternatives to conventional subdivisions of land.

**16.2. Assisted Living Facility.**

- 16.2.1. Applicability. The Planning Board may grant a SPECIAL PERMIT and site plan approval for an ASSISTED LIVING FACILITY in the Agricultural Residential District or the Rural Highway District, subject to the requirements of this section.
- 16.2.2. Pre-Submission Meeting. All applicants seeking a SPECIAL PERMIT to develop an assisted living facility shall schedule a pre-submission meeting with the Planning Board to review the scope of the project and the site for which it is proposed. Whenever possible, the Planning Board shall invite other Town boards to the pre-submission meeting. Additional pre-submission meetings may be held by mutual agreement of the Planning Board and the applicant. The intent of the pre-submission meeting shall be consistent with the intent of a pre-submission meeting for Open Space-Residential Development at Article 15 of this Bylaw.
- 16.2.3. Dimensional, Setback and Intensity Requirements

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- 16.2.3.1. Minimum LOT AREA: 10 acres
- 16.2.3.2. Minimum FRONTAGE: 100 feet
- 16.2.3.3. Lot Width: Not applicable
- 16.2.3.4. Maximum Building Height (Feet): 35 feet
- 16.2.3.5. Maximum Building Height (Stories): 2 ½ stories
- 16.2.3.6. Maximum BUILDING COVERAGE: 20%
- 16.2.3.7. Maximum LOT COVERAGE: 30%
- 16.2.3.8. Minimum Front Yard Setback: 50 feet
- 16.2.3.9. Minimum Side Yard Setback: 50 feet
- 16.2.3.10. Minimum Rear Yard Setback: 50 feet
- 16.2.3.11. Open Space Percent of LOT AREA: 60%
- 16.2.4. Number of Units. The maximum number of units in an assisted living facility shall be 150. However, at the discretion of the Planning Board, a nursing home developed in conjunction with and within the same premises as an assisted living facility may be substituted and permitted at a rate of two nursing home beds for every one assisted living unit, up to a maximum of 50 nursing home beds.
- 16.2.5. Site Plan and Design Standards. An assisted living facility is subject to site plan review and design review, and must comply with the requirements of Article 19 of this Bylaw.
- 16.2.6. Open Space. All open space associated with an assisted living facility shall meet the requirements set forth in Article 15 for Open Space-Residential Development.
- 16.2.7. Application Procedure. Applicants shall file an application with the Planning Board for a SPECIAL PERMIT, including a site plan that meets all of the submission requirements of SITE PLAN REVIEW at Article 19 of this Bylaw. The SPECIAL PERMIT application and site plan shall present the location and size of the proposed development site, the total number of units and the size of each in square feet, the amount of land to be preserved as permanent open space and the proposed use(s) and form of ownership thereof, and sufficient detail to demonstrate compliance with the dimensional, design, common open space and other standards of this Bylaw.
- 16.2.8. Approval Criteria. The Planning Board may grant a SPECIAL PERMIT for an assisted living facility with any conditions, safeguards, and limitations, upon determining that the applicant meets all SPECIAL PERMIT granting criteria for the zoning district in which the proposed facility will be located and the following additional criteria:

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- 16.2.8.1. That the application was filed in proper form, and the content is complete.
  - 16.2.8.2. That the Site Plan is properly completed.
  - 16.2.8.3. That the proposed facility is of exemplary design, preserves high-quality, usable open space, and preserves important natural, scenic or historic resources of the Town.
- 16.2.9. Parking. OFF-STREET PARKING shall be provided in accordance with Article 20 of this Bylaw.

16.3. Over-55 Elderly Housing

- 16.3.1. Applicability. The Planning Board may grant a SPECIAL PERMIT and site plan approval for ELDERLY HOUSING in any district where the use is allowed, on a parcel or contiguous parcels of land with at least five (5) acres of land area. Existing public and private WAYS need not constitute boundaries of the tract, but the area within such WAYS shall not be counted in determining parcel or tract size.
- 16.3.2. Relationship to Subdivision Control. A subdivision plan is not required for an ELDERLY HOUSING development, but an applicant who proposes a subdivision plan shall submit the same to the Planning Board in accordance with the Planning Board's Subdivision Rules and Regulations.
- 16.3.3. Site Plan and Design Standards. Over 55-elderly housing is subject to site plan review and design review, and must comply with the requirements of Article 19 of this Bylaw.
- 16.3.4. Basic Density and Dimensional Requirements.
  - 16.3.4.1. Density. Over-55 housing shall not exceed six units per acre, and over-55 housing units shall contain no more than two bedrooms per dwelling unit.
  - 16.3.4.2. Site Design. To the maximum extent possible, over-55 housing shall be designed in accordance with the site plan standards for Open Space-Residential Development in Article 15 of this Bylaw.
  - 16.3.4.3. Units in Structures. Over-55 Housing may be comprised of single-family, townhouse or multi-family dwellings. Townhouse buildings shall contain no more than four units, and MULTI-FAMILY buildings shall contain no more than eight units.
  - 16.3.4.4. Height. No building shall exceed a building height of 35 feet and two and one half stories.
  - 16.3.4.5. Scale. An over-55 housing development shall not exceed 50 units.



- 16.3.4.6. Common Open Space. Over-55 housing shall preserve at least 50% of the total land area in the development as permanently protected open space, designed in accordance with Article 15, Section 9, to the maximum extent possible.
- 16.3.4.7. Setbacks. All buildings must be located at least 25 feet from any side or rear LOT line and 50 feet from any established street layout or, where applicable, any defined street line of a public road, which street setback area shall be undeveloped and/or landscaped.
  - 16.3.4.7.1. The Planning Board may approve a setback of lesser width if there is sufficient landscaping to screen and/or separate the development from adjacent property. The Board may require no-cut easements, conservation restrictions or the like where the setback has been reduced.
  - 16.3.4.7.2. Buildings shall be located at least 20 feet from interior roadways and driveways that are not considered streets or public roads.
- 16.3.4.8. Distance between STRUCTURES. The distance between STRUCTURES shall be no less than the average height of the two STRUCTURES or 35 feet, whichever is greater. Such distance shall include any garages or other accessory STRUCTURES.
- 16.3.5. Road construction. Roads that serve an over-55 development shall be constructed in accordance with the standards of the Subdivision Rules and Regulations of the Town of Merrimac with the exception of width, which shall be determined by the Planning Board. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees or deposits for the inspections as required by the Subdivision Rules and Regulations at the time of site plan submittal.
- 16.3.6. Off-Street Parking. Over-55 housing shall provide off-street parking in accordance with Article 20. At least one space per unit shall be located so as to provide convenient access to its assigned dwelling unit. Parking garages will be permitted as a parking space if located and designed so as to complement the building design and site layout.
- 16.3.7. Special Permit Granting Criteria. Before the Planning Board may issue a SPECIAL PERMIT for ELDERLY HOUSING, it shall consider the following criteria:
  - 16.3.7.1. Consistency with the Merrimac Master Plan.
  - 16.3.7.2. Conformance to all other requirements of the zoning district in which the proposed over-55 housing is to be located.

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- 16.3.7.3. Desirability of architectural design, landscaping treatments, walkways and amenities for residents of the development.
- 16.3.7.4. The amount and location of common open space.
- 16.3.7.5. Adequacy of the provision of housing units accessible to persons with disabilities.
- 16.3.7.6. Protection of adjoining premises against detrimental or offensive uses on the site.
- 16.3.7.7. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
- 16.3.7.8. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
- 16.3.7.9. Adequacy of water supplies and distribution for domestic use fire protection.
- 16.3.7.10. Adequacy of the methods of:
  - 16.3.7.10.1. Disposal of sanitary sewage, as determined by the Board of Health or regulations of the Merrimac Sewer Commission, where applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.
  - 16.3.7.10.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
  - 16.3.7.10.3. Drainage and retention of surface water.

#### 16.4. Congregate Living Residence

- 16.4.1. Applicability. The Planning Board may grant a SPECIAL PERMIT and site plan approval for a CONGREGATE LIVING RESIDENCE in the Village Residential, Agricultural Residential or Rural Highway District.
- 16.4.2. Basic Density and Dimensional Requirements.
  - 16.4.2.1. Density. A CONGREGATE LIVING RESIDENCE shall consist of one building, and the building shall contain no more than six units.
  - 16.4.2.2. Height. The building shall not exceed a building height of 35 feet and two and one half stories.
  - 16.4.2.3. Setbacks. All buildings must be located at least 25 feet from any side or rear LOT line and 50 feet from any established street layout or, where applicable, any defined street line of a public road, which street

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setback area shall be undeveloped and/or landscaped.

- 16.4.3. OFF-STREET PARKING. A CONGREGATE LIVING RESIDENCE shall provide off-street parking in accordance with Article 20 of this Bylaw. All parking shall be located on the side or rear of the building.
- 16.4.4. SPECIAL PERMIT granting criteria. Before the Planning Board may issue a SPECIAL PERMIT for a CONGREGATE LIVING RESIDENCE, it shall consider the following criteria:
  - 16.4.4.1. Consistency with the Merrimac Master Plan.
  - 16.4.4.2. Conformance to all other requirements of the zoning district in which the residence is to be located.
  - 16.4.4.3. Desirability of architectural design, landscaping, walkways and amenities for residents.
  - 16.4.4.4. Adequacy of the provision of housing units accessible to persons with disabilities.
  - 16.4.4.5. Protection of adjoining premises against detrimental or offensive uses on the site.
  - 16.4.4.6. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.
  - 16.4.4.7. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent WAYS and land.
  - 16.4.4.8. Adequacy of water supplies and distribution for domestic use fire protection.
  - 16.4.4.9. Adequacy of the methods of:
    - 16.4.4.9.1. Disposal of sanitary sewage, as determined by the Board of Health or regulations of the Merrimac Sewer Commission, where applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.
    - 16.4.4.9.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.
    - 16.4.4.9.3. Drainage and retention of surface water.

## **ARTICLE 17. ACCESSORY DWELLING UNITS AND CONVERSION OF EXISTING SINGLE-FAMILY DWELLINGS**

### **17.1. Purpose.**

The purposes of the Accessory Dwelling Units and Conversions of Existing Structures bylaw are to provide for a range of housing types in the Town of Merrimac through the reuse of existing buildings, to encourage the creation of affordable housing units, to enable homeowners to accommodate the needs of elderly family members or family members with disabilities, and to provide suitable housing for caregivers.

### **17.2. Applicability.**

In any zoning district where an accessory dwelling or a conversion of a single-family dwelling to not more than four dwelling units is permitted only by SPECIAL PERMIT, the BOARD OF APPEALS shall be the Special Permit Granting Authority.

### **17.3. Accessory Dwelling Unit.**

- 17.3.1. The intent and the purpose of this section is to permit accessory dwelling units in residential districts subject to the standards and procedures hereinafter set forth. It is also the intent to assure that the single-family character of the neighborhood will be maintained and that the accessory unit remains subordinate to the principal living quarters.
- 17.3.2. Restrictions. A SPECIAL PERMIT may be granted by the Zoning BOARD OF APPEALS to accommodate an accessory dwelling by the installation of a common wall or the partitioning of or extension of existing living space. There shall be no other living unit on the LOT upon which such accessory unit is to be located.
- 17.3.3. Use limitations. Such accessory dwelling unit shall at the discretion of the Zoning BOARD OF APPEALS accommodate up to a maximum of three persons, provided that the owner of record of the STRUCTURE is a resident of the STRUCTURE which includes the accessory dwelling unit and occupancy of the dwelling unit is limited to:
  - 17.3.3.1. A family related by blood, marriage or adoption to the owner of the premises, or
  - 17.3.3.2. A household with an individual who is 65 years of age or older, or
  - 17.3.3.3. A household with an individual with disabilities.
  - 17.3.3.4. A low- or moderate-income household, provided the unit meets the requirements of the Local Initiative Program, 760 CMR 45.00, for listing on the Chapter 40B SUBSIDIZED HOUSING INVENTORY as provided for by G.L. c.40B, Sections 20-23.
- 17.3.4. Disposal of sewage. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of such accessory unit in

accordance with the requirements of the Board of Health. Connection to the municipal sewer system is required for property located in a designated sewer service area unless such connection imposes an undue economic hardship on the applicant, as determined by the Sewer Commission. Such determination shall be made prior to the application for a SPECIAL PERMIT, and evidence of same shall be included with such application.

- 17.3.5. *DESIGN. An ACCESSORY DWELLING UNIT shall be a structurally integral part of the SINGLE-FAMILY DWELLING in which it is contained. Viewed from the exterior it shall preserve the appearance and be indistinguishable from such a SINGLE-FAMILY DWELLING. It may be created by the installation of a common wall or the partitioning of or extension of existing habitable area. It shall not be separated from such existing habitable area by unheated or uninhabitable space, such as a garage, but may be separated from such area by common residential space on exceeding 35 square feet in floor area. All stairways to additional stories shall be enclosed within the exterior walls of the STRUCTURE.*

*17.3.5.1 Ingress, egress, access. Adequate provision, as determined by the BUILDING COMMISSIONER, shall be provided for separate ingress and egress to the outside of each unit. An interior doorway shall be provided between DWELLING UNITS as a means of access for purposes of supervision and emergency response.*

- 17.3.6. Area limitation. Such accessory unit shall be limited to a maximum of 900 square feet in floor area.
- 17.3.7. Plans. Floor plans of the accessory unit and principal residence and a certified site plan showing the dwelling unit on the LOT and its relationship to other STRUCTURES and premises within 200 feet of the LOT shall be filed with the application for a SPECIAL PERMIT.
- 17.3.8. Parking. Provisions for off-street parking of residents and guests of both units shall be provided in such a fashion as is consistent with the character of the neighborhood, as determined by the Zoning BOARD OF APPEALS, which shall seek advice from the BUILDING COMMISSIONER.
- 17.3.9. Special Permit. No building permit shall be issued in accordance with the SPECIAL PERMIT issued under this section until the SPECIAL PERMIT has been recorded in the Registry of Deeds by the applicant and evidence of such recording has been submitted to the BUILDING COMMISSIONER.
- 17.3.10. Occupancy permit; control. No occupancy of the additional dwelling unit shall take place without an occupancy permit issued by the BUILDING COMMISSIONER.
- 17.3.11. For an accessory dwelling unit authorized by the BOARD OF APPEALS as affordable housing unit, the BUILDING COMMISSIONER shall not issue an occupancy permit without evidence that an affordable housing USE RESTRICTION or deed rider has been recorded at the Registry of Deeds and the unit has been approved by the Department of Housing and Community Development for inclusion on the Chapter 40B SUBSIDIZED HOUSING

INVENTORY.

- 17.3.12. Occupancy permits shall not be transferable upon change in ownership or change in occupancy. In such event, an affidavit shall be presented to the BUILDING COMMISSIONER attesting to the fact that the circumstances under which an occupancy permit was granted will in the future continue to exist. The owner of record is responsible for initiating each application to the BUILDING COMMISSIONER. Appropriate fees, as established and recorded, may be assessed for each such renewal review, investigation and processing. All documentation presented hereunder must be in form and content satisfactory to the BUILDING COMMISSIONER.

17.4. Conversion to Two-Family or Multi-Family Dwellings.

- 17.4.1. The intent and purpose of this section is to allow for conversions of older single-family dwellings to TWO-FAMILY DWELLINGS or MULTI-FAMILY dwellings of no more than four units, in the zoning districts where these uses are allowed by SPECIAL PERMIT, subject to the standards and procedures set forth herein, in order that a range of housing options be available in the Town. It is also the intent to assure that the single-family character of the neighborhood will be maintained and that the two-family or MULTI-FAMILY building will enhance and not detract from the appearance and amenities in the surrounding neighborhood.
- 17.4.2. Restrictions. The following restrictions apply to conversions of single-family dwellings under this Bylaw:
- 17.4.2.1. Except for egress alterations required to comply with the State Building Code, there shall be no alteration or expansion of the single-family dwelling to be converted, and no change to the exterior. A SPECIAL PERMIT shall not be granted to convert a single-family dwelling that has been expanded by more than 25% of its preexisting floor area within five years of the date of the SPECIAL PERMIT application.
- 17.4.2.2. The BOARD OF APPEALS shall grant no more than four SPECIAL PERMITS in any single calendar year for conversion of a single-family dwelling to two-family or MULTI-FAMILY dwellings under this Bylaw.
- 17.4.2.3. There shall be no more than one two-family dwelling or MULTI-FAMILY building per LOT.
- 17.4.2.4. At least one MULTI-FAMILY unit on a LOT shall be restricted for occupancy by a low- and moderate-income household and meet the requirements of the Local Initiative Program (LIP), 760 CMR 45.00, for inclusion on the Chapter 40B SUBSIDIZED HOUSING INVENTORY, as set forth in "Provision for Affordable Housing" in Section 17.4.11 of this Bylaw.
- 17.4.2.5. Use limitations. There shall be no other living units on the LOT upon

which the two-family or MULTI-FAMILY dwelling is located.

- 17.4.2.6. Disposal of sewage. Adequate provision shall be made for the disposal of sewage, waste and drainage generated by the occupancy of such accessory unit in accordance with the requirements of the Board of Health. Connection to the municipal sewer system is required for property located in a designated sewer service area unless such connection imposes an undue economic hardship on the applicant, as determined by the Sewer Commission. Such determination shall be made prior to the application for a SPECIAL PERMIT, and evidence of same shall be included with such application.
- 17.4.3. Stormwater management. Adequate provision shall be made for the proper management of stormwater runoff from the LOT. Evidence of same shall be included with the above application.
- 17.4.4. Dimensional requirements. Each LOT on which a single-family dwelling will be converted to a TWO-FAMILY DWELLING or MULTI-FAMILY dwelling shall meet the minimum LOT size for a single-family dwelling in the district in which it is located.
- 17.4.5. Ingress, egress, access. Adequate provision, as determined by the BUILDING COMMISSIONER, shall be provided for separate ingress from and egress to the outside of each unit.
- 17.4.6. Documentation. The BOARD OF APPEALS must determine that each conversion of a single-family to a two-family or MULTI-FAMILY dwelling shall meet the SPECIAL PERMIT standards of Article 26 of this Bylaw.
- 17.4.7. Area limitation. Each unit in a TWO-FAMILY DWELLING shall not exceed a maximum of 1,800 square feet in floor area. Each MULTI-FAMILY dwelling shall not exceed 900 square feet in floor area. Such area shall not include attached or detached garages, attics, or BASEMENTS.
- 17.4.8. Parking. Provisions for off-street parking of residents and guests of both units shall be provided in such a manner as is consistent with the character of the neighborhood, as determined by the BOARD OF APPEALS.
- 17.4.9. SPECIAL PERMIT. No building permit shall be issued in accordance with the SPECIAL PERMIT issued under this section until the SPECIAL PERMIT has been recorded in the Registry of Deeds by the applicant and evidence of such recording has been submitted to the BUILDING COMMISSIONER.
- 17.4.10. Separate conveyance. The ownership of each two-family or MULTI-FAMILY dwelling unit may be conveyed or otherwise transferred separately from the other unit. The LOT on which the units are located shall be held in common ownership. Documents describing the proposed form of ownership and maintenance agreements shall be submitted to the Zoning BOARD OF APPEALS for its review and approval with the application.

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17.4.11. Provision for Affordable Housing.

- 17.4.11.1. A SPECIAL PERMIT to convert a single-family dwelling to a MULTI-FAMILY dwelling shall require the inclusion of dwelling units affordable to low- or moderate-income households.
- 17.4.11.2. At least one unit in a single-family dwelling converted to a MULTI-FAMILY dwelling shall be restricted for occupancy by a low- or moderate-income household.
- 17.4.11.3. As a condition of the SPECIAL PERMIT, the BOARD OF APPEALS shall require the applicant to prepare a “Local Initiative Program Units Only” Application for the Board of Selectmen to submit to the Massachusetts Department of Housing and Community Development (DHCD) so that the affordable low- or moderate-income housing unit(s) will be added to the Chapter 40B SUBSIDIZED HOUSING INVENTORY. The affordable units shall be protected by a USE RESTRICTION or regulatory agreement which requires that the unit(s) remain affordable in perpetuity or for the maximum period allowed by law.
- 17.4.11.4. No building permit shall be issued until the Town of Merrimac receives written notice from DHCD that the affordable units meet the requirements for inclusion in the SUBSIDIZED HOUSING INVENTORY as low- or moderate-income housing.
- 17.4.11.5. The BUILDING COMMISSIONER shall not issue an occupancy permit without evidence that an affordable housing USE RESTRICTION or regulatory agreement approved by the Planning Board has been properly completed and recorded at the Registry of Deeds.
- 17.4.11.6. The conversion of a single-family to a two-family dwelling is exempt from the affordable housing provisions of this section.

**ARTICLE 17A. RE-USE OF MUNICIPAL BUILDING OR HAZARDOUS MATERIAL SITE**

**17A.1. Purpose.**

*The purpose of the Reuse of Municipal Building or Remediated Hazardous Material Site bylaw is to provide for a range of multi-family affordable housing types in the Town of Merrimac through the reuse of existing municipal buildings or redevelopment of former hazardous material sites.*

**17A.2. Applicability.**

*This bylaw shall apply to sites containing municipal buildings (or former municipal buildings) designated for reuse by the Town or at remediated sites that have formerly been found to contain hazardous materials as further detailed herein.*



**17A.3 Permit Granting Authority.**

*The Planning Board shall be the special permit granting authority for applications made in accordance with this section and may grant a SPECIAL PERMIT for MULTI-FAMILY DWELLING qualifying as AFFORDABLE HOUSING for LOW- AND MODERATE INCOME HOUSEHOLDS, if at least 25% of the units meet the requirements of 760 CMR 56.00, in existing or former municipal buildings which have been designated for reuse or at remediated sites that have formerly been found to contain hazardous materials subject to EPA Brownfields and Land Revitalization Program or other similar program of the Commonwealth of Massachusetts. DWELLING UNITS may include one-, two-, or three-bedrooms.*

**17A.4. Definitions.**

*Terms used herein shall be as defined in the Zoning Bylaw, unless otherwise defined herein or in the event the context clearly means otherwise.*

*MUNICIPAL USE: A building shall be considered in municipal use if substantially all of that building was actively used for municipal purposes for at least ten (10) continuous years, and it is currently owned by the Town. Buildings associated with public parks and municipal cemeteries are excluded for purposes of this bylaw.*

*HAZARDOUS MATERIAL: A hazardous material, as defined in MGL c.21E, includes but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance(s), constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall also include all those substances which are included under 42 USC Sec. 9601(14), but it is not limited to those substances.*

*REMEDIATED HAZARDOUS MATERIAL SITE: A LOT that has been subject to regulated clean up efforts to remove or mitigate the release of Hazardous Materials to a level at which the land can be re-developed for economically viable uses not otherwise prohibited by law.*

**17A.5 Pre-Submission Meeting.**

*All applicants seeking a SPECIAL PERMIT under Section 17A shall schedule a pre-submission meeting with the Planning Board to review the scope of the project and the LOT for which it is proposed. Whenever possible, the Planning Board shall include other Town boards in the pre-submission meeting. Additional pre-submission meetings may be held by mutual agreement of the Planning Board and the applicant.*

**17A.6. Reuse of Buildings in Municipal Use.**

**17A.6.1.      *Dimensional Regulations for existing or former Buildings in Municipal Use.***

17A.6.1.1. *There shall be no minimum LOT AREA per DWELLING UNIT requirement for the building for which the SPECIAL PERMIT is issued.*

17A.6.1.2. *The Planning Board may, in issuing a SPECIAL PERMIT hereunder, allow structural extensions and alterations to existing or former nonconforming municipal buildings where the Board finds that: (1) the changes are necessary for purposes of public health and safety, access for disabled persons, utilities, mechanical equipment or code compliance concerns and (2) the extensions and alterations shall not be substantially more detrimental than the existing nonconformity to the neighborhood.*

17A.6.2. *Any portion of the LOT on which the municipal building is or formerly was located not dedicated to the development of AFFORDABLE HOUSING, including associated yard areas, parking and circulation must be used in its entirety for other municipal purposes. This requirement shall not prevent the LOT from being divided so as to create separate LOTS, each containing a MULTI-FAMILY DWELLING and a municipal purpose.*

17A.7 *Redevelopment of Remediated Hazardous Material Site.*

17A.7.1. *Dimensional Regulations.*

17A.7.1.1. *Maximum number of units: Up to 24 units per acre at the discretion of the Planning Board. Remediation costs and potential net profits, neighborhood, zoning district and other land use factors, such as capacity of existing utilities, shall be given consideration. The applicant is not entitled to 24 units per acre and the Planning Board's determination shall be conclusive.*

17A.7.1.2. *Dimensional regulations for LOT AREA, FRONTAGE, LOT COVERAGE, and setbacks shall be as specified for the ZONING DISTRICT in which the LOT is located. As part of a SPECIAL PERMIT granted under this section, the Planning Board may vary those requirements.*

17A.7.1.3. *Maximum Building Height (Feet): 40 feet with consideration given to the ZONING DISTRICT.*

17A.7.1.4. *Maximum Building Height (Stories): 3 stories with consideration given to the ZONING DISTRICT.*

17A.8. *New Road Construction.*

*Any new roads that serve affordable housing developments under section 17A shall be constructed in accordance with the standards of the Subdivision Rules and Regulations of the Town with the exception of width, which shall be determined by the Planning Board. Inspection of the roads during construction shall be in accordance with the procedures contained in the Subdivision Rules and Regulations and the inspection process shall be administered by the Planning Board. Such procedure shall include the payment of any fees*

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*or deposits for the inspections as required by the Subdivision Rules and Regulations at the time of site plan submittal.*

*17A.9. Parking.*

*OFF-STREET PARKING shall be provided in accordance with Article 20 of this bylaw. As part of a SPECIAL PERMIT granted under this section, the Planning Board may vary those requirements.*

*17A.10. Signs.*

*SIGNS shall be permitted in accordance with Article 21 of this bylaw.*

*17A.11. Special Permit Criteria.*

*The Planning Board may grant a SPECIAL PERMIT for reuse of Buildings in Municipal Use or Redevelopment of Remediated Hazardous Material Site upon finding that the proposed use is in harmony with the general purpose and intent of this section 17A. In making its decision, the Planning Board shall consider the following criteria:*

*17A.11.1. Consistency with the Merrimac Master Plan.*

*17A.11.2. Consistency with special regulations that apply to the proposed use.*

*17A.11.3. Protection of adjoining LOTS against detrimental or offensive uses on the site, including, but not limited to, landscaping, visual buffers, amenities provided for residents or the public.*

*17A.11.4. The degree to which the proposed use, viewed in its entirety, is of superior design and provides more environmental, social, and/or fiscal benefits to the Town than an alternative use permitted as of right.*

*17A.11.5. Adequacy of space for vehicular access to the site and off-street parking and loading/unloading on the site.*

*17A.11.6. Adequacy of water supplies and distribution for domestic use fire protection.*

*17A.11.7. Adequacy of the methods of:*

*17A.11.7.1. Disposal of sanitary sewage, as determined by the Board of Health or regulations of the Sewer Commission, where applicable. Connection to the municipal sewer system is required for property located in a designated sewer service area.*

*17A.11.7.2. Storage and disposal of refuse and solid wastes resulting from the uses permitted on the site.*

*17A.11.7.3. Drainage and retention of surface water.*

*17A.12. Site Plan Review.*

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*The site plan requirements of Article 19 of this Bylaw shall apply to section. SITE PLAN REVIEW shall be conducted concurrently with the SPECIAL PERMIT application, review, and determination procedures.*

## **ARTICLE 18. WIRELESS COMMUNICATION FACILITIES**

### **18.1. Purpose.**

The purpose of the Wireless Communications Facilities Bylaw is to minimize the adverse impacts of wireless communications facilities on adjacent properties and residential neighborhoods, to minimize the overall number and height of such facilities to only that which is essential and to promote the shared use of existing facilities to reduce the need for new facilities.

### **18.2. General Requirements.**

- 18.2.1. No wireless communications facility shall be erected or installed except in compliance with the provisions of this article. Wireless communications facilities are allowed in all zoning districts. A SPECIAL PERMIT is required from the BOARD OF APPEALS to erect or install a wireless communications facility. Any proposed extension in the height, addition of cells, antenna or panels, or construction of a new or replacement facility, shall require the submission of a new application for a SPECIAL PERMIT.
- 18.2.2. Whenever possible, wireless communications facilities shall be housed in nonresidential zoning districts. Ground support facilities and fencing shall be suitably screened from view.
- 18.2.3. Structures shall be removed within one year of cessation of use. If applicable, annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission (FCC), Federal Aviation Administration (FAA) and the American National Standards Institute and required maintenance shall be filed with the BUILDING COMMISSIONER by the SPECIAL PERMIT holder.

### **18.3. Regulations.**

- 18.3.1. To the extent feasible, all service providers shall collocate on a single facility. To the extent technologically practicable, towers shall be designed to structurally accommodate the maximum number of users. The intent of this requirement is to reduce the number of towers which will be required to be located within the community.
- 18.3.2. New towers shall be considered by the BOARD OF APPEALS only after a determination by the Board that existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower.
- 18.3.3. In no event shall any tower be located closer than two miles to any other tower, except after presentation of evidence of need therefor to the BOARD OF APPEALS and the grant of a VARIANCE by it.

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- 18.3.4. TOWER height shall not be more than 100 feet above the existing grade, except after presentation of evidence of need therefor to the BOARD OF APPEALS and the grant of a VARIANCE by it.
- 18.3.5. A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base. This setback requirement shall not apply to a property line of Interstate Route 495.
- 18.3.6. To the extent feasible, all network interconnections from the communications site shall be via land lines.
- 18.3.7. Existing on-site vegetation shall be preserved to the maximum extent practicable.
- 18.3.8. The tower shall minimize, to the extent feasible, adverse visual effects on the environment. The BOARD OF APPEALS may impose reasonable conditions to ensure this result, including painting and lighting standards.
- 18.3.9. Traffic associated with the tower and accessory facilities and STRUCTURES shall not adversely affect adjacent WAYS.
- 18.3.10. Applicants proposing to erect wireless communications towers, accessory facilities and STRUCTURES on municipally owned land or STRUCTURES shall provide evidence of contractual authorization from the Town of Merrimac to conduct wireless communications services on municipally owned property.
- 18.3.11. The height of antennas located on residential buildings or in the yards of residential STRUCTURES shall not exceed the tree line on the LOT upon which the building or yard is located.
- 18.3.12. Facilities located on nonresidential STRUCTURES shall not exceed 10 feet in height above the roofline of the STRUCTURE. This regulation shall not apply to facilities located within STRUCTURES.
- 18.3.13. An applicant proposing a wireless communications facility in a residential zoning district must demonstrate to the satisfaction of the BOARD OF APPEALS that the visual, economic and aesthetic impacts of the facility on residential abutters will be minimal. The applicant must also demonstrate that the facility must be located at the proposed site due to technical, topographical or other unique circumstances. Further, the tower must be located no less than 500 feet from the nearest existing residential STRUCTURE.

#### 18.4. Design Guidelines.

- 18.4.1. All wireless communications facilities shall be sited in such a manner that the view of the facility from adjacent abutters, residential neighbors and other areas of Town shall be as unobtrusive and limited as possible. All facilities shall be painted or otherwise colored so they will blend in with the landscape or the tower on which they are located. A different color scheme shall be used to blend the STRUCTURE with the landscape below and above the tree or building line, if so required by the

#### BOARD OF APPEALS.

- 18.4.2. Antennas shall be situated on or attached to a STRUCTURE so as to be screened and to be not visible from abutting streets. Freestanding antennas shall be located on the landscape so as to minimize the visibility from abutting streets and residences and to limit the need to remove existing vegetation. All equipment shall be colored, molded and/or installed to blend into the STRUCTURE and/or the landscape.
- 18.4.3. Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the rural and scenic character of the area and of the Town and shall not be constructed of razor wire.
- 18.4.4. There shall be no SIGNS, except for announcement SIGNS, no-trespassing SIGNS and the SIGN required to give a telephone number where the owner can be reached on a twenty-four-hour basis. All SIGNS shall conform with the requirements of the zoning district in which the facility is located.
- 18.4.5. Night lighting of towers shall be prohibited unless required by the FAA or the BOARD OF APPEALS. Lighting shall be limited to that needed for emergencies and/or as required by the FAA or the BOARD OF APPEALS. If necessary, ground lighting for the equipment sheds shall be of minimum standards to satisfy security and safety requirements and shall not spill off the site in any direction.
- 18.4.6. There shall be a minimum of one parking space for each facility, to be used only in connection with the maintenance of the site and not for the permanent storage of vehicles or other equipment.

#### 18.5. Application Procedure.

- 18.5.1. All applications for wireless communications facilities shall be made and filed on the applicable application form in compliance with BOARD OF APPEALS requirements. The BOARD OF APPEALS may develop and adopt a list of required submission materials in addition to those contained in this Bylaw. The following information must be submitted:
  - 18.5.1.1. A locus plan at a scale of one inch equals 1,000 feet which shall show all property lines, the exact location of the proposed STRUCTURE(s), streets, landscape features, residential dwellings and neighborhoods and all buildings within 500 feet of the facility.
  - 18.5.1.2. A color photograph or rendition of the proposed tower with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the tower from the nearest street or streets.
  - 18.5.1.3. The following information prepared by a registered professional engineer:

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- 18.5.1.3.1. A description of the tower and the technical, economic and other reasons for the proposed location, height and design.
- 18.5.1.3.2. Confirmation that the facility complies with all applicable federal and state standards.
- 18.5.1.3.3. A description of the capacity of the facility, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.
- 18.5.1.4. If applicable, a written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the FAA, FCC, Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.
- 18.5.1.5. Applicable fees as established by the BOARD OF APPEALS.
- 18.5.2. After an application is submitted, the BOARD OF APPEALS may require that the applicant perform a balloon test or other test in the field sufficient for it to comprehend the proposed height and location of the facility in relation to the surrounding area.

#### 18.6. Special Permit Granting Criteria.

- 18.6.1. Applications for a SPECIAL PERMIT shall be approved or approved with conditions if the petitioner can fulfill the requirements of these regulations to the satisfaction of the BOARD OF APPEALS. Applications for a SPECIAL PERMIT may be denied if the petitioner cannot fulfill or address the requirements of these regulations to the satisfaction of the BOARD OF APPEALS. The Board shall consider the following factors:
- 18.6.2. The applicant shall have complied with all of the requirements and demonstrated to the Board all of the factors set forth in all of the sections of this article.
- 18.6.3. When considering an application for a wireless communications facility, the Board shall strongly consider the proximity of the facility to and its impact upon residential dwellings.
- 18.6.4. When considering an application to place an antenna on a STRUCTURE, the Board shall strongly consider the visual impact of the unit from the abutting neighborhoods and street(s).

#### 18.7. Exemptions.

- 18.7.1. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC is exempt from the provisions of this article, provided that the tower is not used or licensed for any commercial purpose.

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- 18.7.2. TOWERS used for agriculture, horticulture, floriculture or viticulture or for religious, educational to the extent as set forth in G.L. c. 40A, Section 3, or for municipal purposes. For the purposes of this Bylaw, the providers of wireless communications facilities shall not be considered public service corporations or public utilities. No wireless communications facility shall be erected or constructed unless an application has first been submitted to the BOARD OF APPEALS and the SPECIAL PERMIT referred to herein has been obtained.
- 18.7.3. The provisions of Article 19, SITE PLAN REVIEW, shall not apply to wireless communications facilities.

## **ARTICLE 19. SITE PLAN REVIEW**

### **19.1. Purpose and Intent.**

Developments designed to be used for certain MULTI-FAMILY residential, non-residential, institutional or mixed use activities, together with associated outdoor areas for vehicular movement and parking, accommodate varying degrees of open and continuous use by the general public. Owing to their physical characteristics and the nature of their operations, such developments may affect neighboring properties and adjacent sidewalks and streets. It is in the Town's interest to promote functional and aesthetic design, construction, and maintenance of such developments and to minimize any harmful effects on surrounding areas. The intent of the SITE PLAN REVIEW process is to regulate rather than prohibit uses through reasonable conditions that may be required by the SITE PLAN REVIEW Committee (SPRC) concerning design and location of buildings, SIGNS, open space, landscaping, parking areas, access and egress, drainage, sewage, water supply and fire safety.

### **19.2. Applicability.**

Site Plan Review is required for:

- 19.2.1. All new commercial and industrial construction,
- 19.2.2. All commercial and industrial additions, alterations or reconstruction exceeding 1,000 gross square feet or which would require a total of ten (10) or more parking spaces, considering both existing and new development, or any change of use which would require ten (10) or more additional parking spaces based only on new development,
- 19.2.3. Construction or creation of any new parking lot or the expansion, or redesign of an existing parking lot with ten (10) or more parking spaces, used or to be used for non-residential purposes,
- 19.2.4. All uses requiring a SPECIAL PERMIT.
- 19.2.5. Municipal uses, institutional uses, and other uses identified as requiring site plan review in the regulations of the applicable zoning district.



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### 19.3. Site Plan Approval: When Required

- 19.3.1. No building permit or occupancy permit shall be issued for any activity or use within the scope of this section unless a Site Plan has been approved therefore, and the site is constructed in accordance with the approved Site Plan.
- 19.3.2. No activity within the scope of this section shall be carried out without an approved Site Plan. Any work done in deviation from an approved Site Plan shall be a violation of this Bylaw, unless such deviation is approved in writing by the Planning Board as being of no significant detriment to the achievement of any of the purposes set forth herein.
- 19.3.3. Approval of a Site Plan under this section shall not substitute for the requirement of obtaining a SPECIAL PERMIT or other permits or approvals required by the Zoning Bylaw.

### 19.4. Relationship to Special Permit Process.

When a project requires both a SPECIAL PERMIT and Site Plan Review, the SPRC and the appropriate SPECIAL PERMIT Granting Authority (SPGA) shall hold joint public meetings to expedite the review process and review both aspects of the proposal. Within the prescribed review periods, the SPRC and the appropriate SPGA shall take separate actions relative to the proposal as required by the zoning bylaw.

### 19.5. Relationship to the Building Permit.

The building inspector shall not issue a building permit unless and until a Site Plan review has been completed, and a letter with Site Plan conditions, if any, has been forwarded to the building inspector by the SPRC.

### 19.6. Site Plan Review Committee: Composition

The Site Plan Review Committee (SPRC) shall be comprised of 7 members, including all members of the Planning Board, the Building Inspector, and a Conservation Commission designee. Further, the SPRC may request assistance of architects and engineers and other professionals during its deliberations. Only SPRC members may be party to any vote or binding agreement. A majority vote of the full SPRC shall be required to approve all Site Plans and Site Plan review conditions.

### 19.7. Site Plan Submission Requirements.

- 19.7.1. The applicant shall submit eleven (11) copies of a Site Plan proposal drawn at a scale not to exceed one inch equals 40 feet (1"=40'). The Site Plan review materials shall be submitted to the Town Clerk, whose office shall forward all materials to the Planning Board, acting on behalf of the SRPC, within five working days of the date of Site Plan submission. The Planning Board shall be responsible for distributing copies of the Site Plan to the Building Inspector, the Conservation Commission designee, and to the Police, Fire, Highway and Water Departments, within five working days of receipt of the Site Plan from the Town Clerk.

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- 19.7.2. The Site Plan shall include one or more appropriately scaled maps or drawings of the property, drawn to an engineer's scale, and stamped by a Registered Engineer, Registered Architect, Registered Landscape Architect or Registered Land Surveyor, as appropriate to the work involved, except that the water and sewer portion of the Site Plan must be stamped by a Registered Engineer. At minimum, a Site Plan submission shall include the following applicable:
- 19.7.2.1. Cover letter describing the nature and location of the project and the site, including a legal description of the property, complete dimensions and area, the zoning classification(s) that apply to the property, assessor's map and LOT numbers, and the name and address of the property owner and the applicant, if different from the property owner.
  - 19.7.2.2. Parcel LOT lines for the proposed project and surrounding parcels.
  - 19.7.2.3. Complete parking and traffic circulation plan, if applicable, showing location and dimensions of parking stalls, dividers, bumper stops, required buffer areas and planting beds.
  - 19.7.2.4. Proposed surface treatment of paved areas and the location and design of drainage systems with drainage calculations prepared by a Registered Engineer.
  - 19.7.2.5. Location of existing and proposed buildings and public or private WAYS on the project site.
  - 19.7.2.6. Height and use of all buildings abutting the proposed project, including a building or buildings directly across from the proposed project but separated by a public or private right of way.
  - 19.7.2.7. Estimated average daily traffic and peak hour traffic to be generated by the proposal. Further, a traffic impact plan indicating impacts, if any, to surrounding intersections servicing the project site if the proposed project generates more than 250 vehicular trips per day.
  - 19.7.2.8. Rendering of all façades of proposed buildings, with details sufficient to permit the SRPC to determine consistency with the design standards of each zoning district, where applicable.
  - 19.7.2.9. Foundation lines of the proposed buildings, GROSS FLOOR AREA, and building height.
  - 19.7.2.10. Location of solid waste containers.
  - 19.7.2.11. Existing and proposed topographical contours of the property taken at two-foot (2') contour intervals by a Registered Engineer or Registered Land Surveyor.
  - 19.7.2.12. The location of wetlands, streams, and water bodies on the property or within 100 feet of the perimeter of the site.

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- 19.7.2.13. Areas subject to a 100-year flood, if any.
- 19.7.2.14. Existing and proposed utilities and storage facilities, including sewer connections, septic systems, wells and any storage tanks, noting applicable approvals, if received.
- 19.7.2.15. Lighting plan showing the location, direction, and intensity of existing and proposed external light fixtures.
- 19.7.2.16. A landscaping plan showing the location, name, number and size of plant types, and the locations and elevation and/or height of planting beds, fences, walls, steps and paths.
- 19.7.2.17. Location of all required open space.
- 19.7.2.18. Location and type of all historically significant STRUCTURES or any STRUCTURE that is more than 50 years old, historic walls or similar features, including an indication of their protective status, if any.
- 19.7.2.19. Location of all water resource protection areas if any portion of the size lies within 1,000 feet of a DEP approved or interim groundwater or surface water protection zone.
- 19.7.2.20. Location, material, and size of all SIGNS.
- 19.7.2.21. Additional information may be required by the Planning Board, as reasonably necessary, to make determinations required by this Bylaw.

#### 19.8. Site Plan Review Criteria.

At minimum, the SPRC shall review all Site Plans for the following:

- 19.8.1. Consistency with the design and character of the surrounding area.
- 19.8.2. Consistency with the Site Development Standards of this Bylaw.
- 19.8.3. Consistency with the Design Standards for the zoning district in which the site is located.
- 19.8.4. Consistency with any SIGN or design guidelines, landscaping and buffering requirements issued by the Planning Board.
- 19.8.5. Consistency with the Merrimac Master Plan and with the most recent Open Space and Recreation Plan.
- 19.8.6. Protection and enhancement of important existing site features, natural and man-made.
- 19.8.7. Protection of adjoining premises against detrimental uses by provision of surface water drainage, sound and light barriers, preservation of light and air, and preservation of views when possible.

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- 19.8.8. Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic and/or adjacent streets.
- 19.8.9. Adequacy and arraignment of parking and loading spaces, and the ability of the Site Plan to accommodate parking in areas other than the front of the building.
- 19.8.10. Connection to the Merrimac Municipal Sewer System is the preferred method for disposal of sanitary sewage in areas designed by the Sewer Commission as sewer service areas. Connection to the system will normally be required for all developments in a designated sewer service area where connection to the system is feasible and will not result in an undue economic hardship for the applicant.

#### 19.9. Site Development Standards

- 19.9.1. Applicants must make every reasonable effort to achieve consistency with the following site development standards:
- 19.9.2. Conserve and protect natural features that are of some lasting benefit to the site, its surrounding area and the Town at large.
- 19.9.3. Protect slopes in excess of ten (10%) percent against erosion, runoff, and unstable soil, trees and rocks. Appropriate measures shall be taken to stabilize the land surface from unnecessary disruption. Stabilization measures shall be the responsibility of the property owner.
- 19.9.4. Buildings, STRUCTURES, fences, lighting, and fixtures on each site shall be placed so as to not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
- 19.9.5. All roadway and driveway design shall take into consideration safe sight distances at intersections and along all traveled WAYS, in accordance with appropriate AASHTO requirements. Clear sight distances shall take into account topography, density of dwelling units or intensity of use, and horizontal and vertical alignment.
- 19.9.6. Provide adequate illumination of parking lotS and other areas for vehicular and pedestrian circulation. In a residential district, no freestanding illumination devices shall be installed to a height exceeding fifteen (15') feet. All illumination shall be directed and/or shielded so as not to shine beyond the perimeter of the site or interfere with traffic.
- 19.9.7. All areas designed for vehicular use shall be paved with a minimum of either a three (3") inch bituminous asphalt concrete, a six (6") inch Portland cement concrete pavement, or other surface, such as brick, cobblestone or gravel.
- 19.9.8. All parking spaces shall be arranged and clearly marked in accordance with the Off-Street Parking regulations in Article 20 of this Bylaw.
- 19.9.9. All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground.

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- 19.9.10. All surface water runoff from STRUCTURES and impervious surfaces shall be collected on site, but in no case shall surface water drainage be directed across sidewalks or public or private WAYS. In no case shall surface water runoff be drained directly into wetlands or water bodies. Drainage systems shall be designed using Best Management Practices and Low Impact Development Best Management Practices to minimize the discharge of pollutants by providing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration. Dry wells, leaching pits and other similar drainage STRUCTURES may be used only where other methods are not practicable. Oil, grease, and sediments traps to facilitate removal of contaminants shall precede all such drainage STRUCTURES. All drainage systems shall comply with the most current version of the Massachusetts Department of Environmental Protection Stormwater Management Standards.
- 19.9.11. Parking lots shall comply with the standards and requirements of Article 20 of this Bylaw.
- 19.9.12. All SIGNS shall comply with the standards and requirements of Article 21 of this Bylaw.

#### 19.10. Review Schedule

- 19.10.1. For uses requiring a SPECIAL PERMIT, site plan review shall be conducted as a site plan approval process concurrently with the SPECIAL PERMIT application, review, and decision process.
- 19.10.2. For all other uses requiring site plan review, the SPRC shall hold a public project review meeting with the applicant no later than 30 days after submission of the proposed Site Plan to the Planning Board. Departments of the Town receiving a review copy of the Site Plan shall forward their comments, in writing, to the SPRC no later than the date of the public meeting. The Board shall notify, by regular mail, the abutters on a certified abutters list within 300 feet of the property line of the parcel shown on the plan, indicating the Date, Time and Location of the Site Plan Review Public Meeting at least 10 days prior to that meeting.
  - 19.10.2.1. The SPRC shall hold as many meetings as necessary within a 90-day review period to review the proposal. However, no later than 90 days from the date of the submission, the SPRC shall provide recommendations in writing to the Building Inspector.
  - 19.10.2.2. If no action is taken within 90 days, the application shall be deemed approved as submitted.
  - 19.10.2.3. One copy of the approved Site Plan shall be provided each to the applicant, the Building Inspector, the Highway and Water Departments, Police and Fire Departments, the Conservation Commission and the Board of Health. One (1) copy of the approved Site Plan shall remain in the records of the Planning Board.

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19.11. As-Built Plan.

Upon completion of all work, an As-Built plan and a letter of certification shall be submitted to Building Inspector by a Registered Engineer, Registered Architect, Registered Landscape Architect or Registered Land Surveyor, as appropriate to the work involved, that all work has been done substantially in compliance with the approved Site Plan.

19.12. Performance Guarantee.

- 19.12.1. As a condition of site plan approval, the Planning Board may require that a performance bond, secured by deposit of money or negotiable securities in the form selected by the Planning Board, be posted with the Town to guarantee completion of improvements to be made in compliance with the plans submitted and approved hereunder. The Board may also require that an amount be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or increased by the Board.
- 19.12.2. The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any.

19.13. Duration of Approval.

Site plan approval shall become void two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in G.L. c.40A, Section 17, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for good cause. In such case a request for extension of the date of completion must be submitted to the Planning Board.

19.14. Regulations and Fees.

The Planning Board shall adopt rules and regulations for SITE PLAN REVIEW, including submission and review fees assessed to the owner and/or the applicant. Such fee may include a deposit for engineering, architectural or other review by a consultant selected by the Town.

19.15. Appeals.

Applicants for a site plan review may appeal any and all conditions approved by the SPRC to the Merrimac BOARD OF APPEALS.

**ARTICLE 20. OFF-STREET PARKING**

20.1. General Requirements for Off-Street Parking.

Parking lots shall be designed and located to provide SCREENING from abutting properties, buildings and streets, visual relief and sun and wind interruption within the parking area and to assure safe patterns of internal circulation. Landscaping requirements shall, wherever possible, be met by the retention of existing plants and natural landforms. When the design

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regulations of a zoning district specify requirements for the location of off-street parking, the design regulations shall govern.

20.2. Table of Off-Street Parking Requirements.

Use	Minimum Required Number of Parking Spaces
<u>Residential Uses</u>	
Single-family or two-family dwelling	2 spaces per unit
3 or more units (MULTI-FAMILY)	2 spaces per two or more bedroom units 1.5 spaces per one bedroom 1 space per studio unit
Assisted living	0.5 space per unit 1 space per employee on each shift
Over-55 housing	1.5 spaces per unit
Congregate living residence	1 space per unit
<u>Non-Residential Uses</u>	
Restaurant	1 space per 4 seats 1 space per employee on each shift
Retail, store, personal or business service	4 spaces per 1,000 s/f gross area
Office	3 spaces per 1,000 s/f gross area
Industrial or manufacturing facility	1 space per 1,000 s/f gross

20.3. Dimensional Requirements for Parking Spaces.

Each parking space shall consist of a rectangle of not less than nine feet by 18 feet, except that in parking lotS containing more than 50 parking spaces, 20% of such parking spaces may be for small car use. Small-car parking spaces shall consist of a rectangle not less than nine feet by 16 feet. Said small-car spaces shall be grouped in one or more contiguous areas and shall be identified by SIGNS.

20.4. Dimensional Requirements for Maneuvering Aisles and Access Driveways.

Maneuvering aisles within parking lotS and access driveways from the street to parking lotS shall not be less than 24 feet in width. If the access driveway is one-way, a narrower dimension may be proposed, subject to approval of the Planning Board.

20.5. Construction of Parking Spaces.

As part of site plan review, the Planning Board may allow fewer parking spaces than are required by this Bylaw for a use to be constructed, provided that the spaces to be

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unconstructed shall be delineated on the site plan and indicated as future parking spaces. All or part of said spaces shall be constructed if so required by the Board at a future date or may be constructed by the property owner/tenant at any time without prior Board approval.

#### 20.6. Landscaping and Screening Requirements.

- 20.6.1. Parking lots shall contain a planting area a minimum of five feet wide around the entire perimeter of the LOT. Exceptions may be made in cases where the perimeter of the LOT does not abut adjacent property or where legally enforceable provisions have been made by the property owners to provide shared or common parking and shared driveway access, subject to the approval of the Planning Board.
- 20.6.2. Parking lots shall contain around the perimeter and in the interior at least one tree per eight parking spaces, except where the literal application of this requirement would interfere with shared or common parking arrangements by adjoining property owners.
- 20.6.3. Trees to be planted shall be a minimum of 2 1/2 inches in caliper six feet above grade, be of a species common in Merrimac, tolerant of future site conditions and reach an ultimate height of at least 30 feet.
- 20.6.4. At least 5% of the interior of any parking lot having 25 or more spaces shall be maintained with landscaping, including trees, in planting areas of at least four feet in width.
- 20.6.5. The portion of any parking lot which abuts a residential district or use shall be screened from such residential district or use by plant materials characterized by dense growth, or a combination of such plant materials, natural landforms and trees, which will form an effective year-round screen. SCREENING shall be at least five feet in height. Plant materials when planted may be less than five feet in height but not less than three feet in height if of a species or variety which shall attain the required height and width within three years of planting.
- 20.6.6. The portion of any parking lot which abuts a public way shall be adequately buffered from the public way in accordance with the regulations and design guidelines of the applicable zoning district and Article 19, Site Plan Review.

### **ARTICLE 21. SIGNS**

#### 21.1. Purposes.

The following SIGN regulations are intended to facilitate clear, efficient communication to ensure that people receive the messages they need or want, avoid conflict between SIGNS and the visual qualities of the environment, promote public safety, encourage good relationships between SIGNS and the buildings to which they relate, maintain visual diversity in nonresidential areas by avoiding uniform design requirements, and support business vitality by accomplishing these purposes without imposing burdensome procedures and restrictions.



## 21.2. General Regulations

- 21.2.1. Permits. No SIGN shall be erected, enlarged or structurally altered without a SIGN permit issued by the Building Inspector, unless specifically exempted from the requirements of this Bylaw. Permits shall be issued only for SIGNS in conformance with this Bylaw. Permit applications shall be accompanied by two prints of scale drawings of the SIGN, supporting STRUCTURE and location. A copy of any relevant SPECIAL PERMIT shall also accompany the application. All freestanding or roof SIGNS shall be registered and identified as required by Section 1407.0 of the State Building Code.
- 21.2.2. Maintenance. All SIGNS shall be maintained in a safe and neat condition to the satisfaction of the Building Inspector and in accordance with Sections 1404.0 and 1405.0 of the State Building Code.
- 21.2.3. Nonconformancy. Any nonconforming SIGN legally erected prior to the adoption of this provision, or any amendment hereto, may be continued and maintained, except that all off-premises SIGNS must be in conformance with Section 21.4 of this article.
  - 21.2.3.1. Any SIGN rendered nonconforming through change or termination of activities on the premises shall be removed within 30 days of order by the Building Inspector. No existing SIGN shall be enlarged, reworded, redesigned or altered in any WAY unless it conforms to the provisions contained herein.
  - 21.2.3.2. Any SIGN which has been destroyed or damaged to the extent that the cost of repair or restoration will exceed one-third (1/3) of the replacement value as of the date of destruction shall not be repaired, rebuilt, restored or altered unless in conformity with this Bylaw.

## 21.3. Prohibitions

- 21.3.1. No SIGN shall be lighted except by a steady, stationary light, shielded and directed solely at or internal to the SIGN.
- 21.3.2. No illumination shall be permitted which casts glare onto any residential premises or onto any portion of a WAY so as to create a traffic hazard.
- 21.3.3. No SIGN shall be illuminated in any residential district between the hours of 10:00 p.m. and 7:00 a.m. unless indicating time or temperature or an establishment open to the public during those hours.
- 21.3.4. No SIGN having red or green lights shall be erected within sight of a traffic signal unless approved as nonhazardous by the Chief of Police.
- 21.3.5. No SIGN shall contain the words "Danger" or "Stop" or otherwise present or imply the need or requirement of stopping or caution, or imitate any sign customarily displayed by a public authority.

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- 21.3.6. No animated, revolving or flashing SIGN shall be permitted.
- 21.3.7. No SIGNS shall be attached to motor vehicles, trailers or other movable objects regularly or recurrently located for fixed display.
- 21.3.8. Corner visibility shall not be obstructed.

21.4. Off-premises Signs.

Only SIGNS pertaining exclusively to the premises on which they are located or to products, accommodations, services or activities on the premises shall be allowed, except that an off-premises directional SIGN, designating the route to an establishment not on the street to which the SIGN is oriented, may be erected and maintained within the public right-of-way at any intersection if authorized by the Selectmen, or on private property if granted a SPECIAL PERMIT by the BOARD OF APPEALS. Such SIGNS shall be authorized only upon the authorizing agency's determination that such SIGN will promote the public interest, will not endanger the public safety and will be of such size, location and design as will not be detrimental to the neighborhood. At locations where directions to more than one establishment are to be provided, all such directional information shall be incorporated into a single STRUCTURE. All such directional SIGNS shall be unlighted, and each shall be not over four square feet in area.

21.5. Temporary Signs.

Temporary SIGNS shall be allowed as provided below, provided that they comply with the following:

- 21.5.1. Unless otherwise specified in this by-law, temporary SIGNS must comply with all applicable requirements for permanent SIGNS, including issuance of a SIGN permit.
- 21.5.2. Temporary SIGNS not meeting requirements for permanent SIGNS may, if allowed below, advertise sales, special events or changes in the nature of an operation, but shall not otherwise be used to advertise a continuing or regularly recurring business operation, and shall be removed promptly when the information they display is out of date or no longer relevant.
- 21.5.3. Temporary signs pertaining to a candidate or ballot question appearing on the ballot of an election duly called in the Town of Merrimac shall require no SIGN permit and shall be allowed in all zoning districts. Such Signs permitted by the by-law:
  - 21.5.3.1 Shall only be permitted on private property;
  - 21.5.3.2 Shall be stationary and shall not be illuminated.
- 21.5.4. Unless otherwise specified in this by-law, temporary SIGNS pertaining to other noncommercial issues shall require no SIGN permit and shall be allowed in all zoning districts. Such SIGNS shall be subject to the limitations set forth in Section 21.2 and Section 21.3 above.

## 21.6 Permitted Signs.

21.6.1 Residence districts (VR, SR, AR, LA, RA BM). The following SIGNS are allowed in a residence district as well as in all other districts. In a residence district, no part of any SIGN shall be more than 15 feet above ground level or, unless attached to a building, within 10 feet of any street line.

21.6.1.1 One SIGN, either attached or freestanding, indicating only the name of the owner or occupant, street number and permitted uses or occupations engaged in thereon, not to exceed two square feet in area; requires no SIGN permit.

21.6.1.2 One SIGN oriented to each street on which the premises has access, either attached or freestanding, pertaining to an apartment development or a permitted nonresidential PRINCIPAL USE of the premises, such SIGN not to exceed 10 square feet in area.

21.6.1.3 An off-premises directional SIGN, as provided at Section 21.4 above.

21.6.1.4 Temporary SIGNS of not more than 12 square feet in area, erected for a charitable or religious cause; requires no SIGN permit if to be removed within 30 days of erection.

21.6.1.5 One temporary unlighted real estate SIGN advertising the sale, rental or lease of the premises or subdivision on which it is erected to be not larger than six square feet; requires no SIGN permit if the erecting agent has obtained a one-year permit for erecting such SIGNS.

21.6.1.6 One temporary unlighted SIGN not larger than 25 square feet indicating the name and address of the parties involved in construction on the premises; requires no SIGN permit if not more than 12 square feet in area, to be removed within 30 days of erection.

### 21.6.2 Village Center District:

21.6.2.1 SIGNS as permitted in residence districts, except that temporary real estate SIGNS may be as large as 25 square feet.

21.6.2.2 One attached accessory SIGN per occupant, oriented to each street or parking lot on which the premises has FRONTAGE, either attached flat against the wall or a fixed canopy of a building, or projecting from it. No SIGN, any portion of which projects above the peak of the roofline, shall be allowed. The total area of a single facade wall which may be covered by signage may not exceed 10%. Individual unlighted SIGNS not exceeding two square feet in area in windows, identifying the occupants therein, shall be exempt from the above limitations.

21.6.2.3 Overhanging SIGNS shall not exceed 12 square feet in area.

21.6.2.4 One freestanding SIGN shall be allowed, which shall not exceed 12 square feet in area and the top of which shall not extend more than eight feet above ground level.

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21.6.2.5 For premises having multiple occupants, a single directory SIGN, either attached or freestanding, identifying those occupants.

21.6.2.5.1 The total area of attached SIGNS, including the attached directory SIGN, shall not exceed 10% of the total area of a single facade wall.

21.6.2.5.2 The owner shall submit with a SIGN permit application an overall Signage plan for the building.

21.6.2.6 Larger or taller freestanding directory SIGNS may be allowed by SPECIAL PERMIT from the Zoning BOARD OF APPEALS, but not to exceed 25 square feet in area and not to be more than 10 feet above ground level.

#### 21.6.3 Rural Highway and Highway Service Districts

21.6.3.1 SIGNS as permitted in residence districts, except that temporary real estate SIGNS may be as large as 10 square feet.

21.6.3.2 One SIGN for each street upon which the premises has FRONTAGE, identifying LOTS for development. This SIGN shall be no greater than eight feet in height and no larger than 25 square feet in area unless the Zoning BOARD OF APPEALS grants a SPECIAL PERMIT if a larger SIGN is required for legibility.

21.6.3.3 SIGNS for individual properties or tenants shall be limited to a single SIGN no larger than three square feet per tenant. The BOARD OF APPEALS may grant a SPECIAL PERMIT for an exception for a larger area where this will not impair legibility of other SIGNS or be incongruous with the surroundings, based upon consideration of the number of occupants and SIGNS per building, size of building and integration of SIGN and building design, as well as the considerations of Section 21.7 below.

21.6.3.4 In acting on SPECIAL PERMITS for exceptions the BOARD OF APPEALS shall take into account the character of the proposed SIGN, its relationship with the building and size of the building, the subject matter of the SIGN, the impact of the SIGN upon the roadway and such other factors as it deems appropriate to give assurance that the public interest will be protected.

21.6.3.5 The use of neon or similar gaseous tube SIGNS is prohibited, except for back-lighted SIGNS. Fluorescent illumination may be used only for internal illumination on a lighted SIGN.

#### 21.6.4 Office-Industrial District

21.6.4.1 SIGNS as permitted in residence districts, except that temporary real estate SIGNS may be as large as 25 square feet.

21.6.4.2 One attached accessory SIGN per occupant oriented to each street on which the premises has FRONTAGE, either attached flat against the wall or fixed canopy of a building, or projecting from it. The area of such SIGN erected for any occupant shall not exceed 20% of the portion of that wall area assigned to that occupant,

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and in no case shall an overhanging SIGN exceed 25 square feet in area nor shall any other SIGN exceed 100 square feet in area. Individual unlighted SIGNS not exceeding two square feet in area on windows and identifying the occupants therein shall be excluded from the above limitations.

21.6.4.3 One freestanding SIGN of not more than 25 square feet in area and extending not more than eight feet above ground level. The Zoning BOARD OF APPEALS may allow larger or taller SIGNS by SPECIAL PERMIT upon finding that the particular SIGN will not be incongruous with the Office-Industrial District or injurious to traffic and safety conditions therein. In no case shall an exception allow a SIGN to contain more than 50 square feet or be more than 25 feet above ground level.

21.6.4.4 For premises having multiple occupants, a single SIGN, either attached or freestanding, identifying those occupants. The total area of attached SIGNS, including this one, shall not exceed 20% of wall area, and the area of any freestanding SIGN allowed under this paragraph shall not exceed 25 square feet.

21.6.4.5 Temporary unlighted SIGNS inside windows, occupying not more than 30% of the area of the window; requires no SIGN permit.

21.6.4.6 No SIGN shall project more than five feet over any public right-of-way or other public property. Any SIGN projecting over a public right-of-way shall be covered by appropriate liability insurance as verified by a certificate of insurance filed with the Town Clerk.

## 21.7 Guidelines.

The following are intended to meet the objectives for SIGNS and the purposes of SIGN regulations stated at the beginning of this article. These guidelines are not mandatory, but the degree of compliance with them shall be considered by the Zoning BOARD OF APPEALS in acting upon SPECIAL PERMITS authorized under this section, as shall consistency with the basic SIGN objectives cited above.

### 21.7.1 Efficient communication

21.7.1.1 SIGNS should not display brand names, symbols or slogans of nationally distributed products except in cases where the majority of the floor or LOT area on the premises is devoted to manufacture or sale or other processing of that specific product.

21.7.1.2 Premises chiefly identified by a product brand name (such as a gasoline or auto brand) should devote some part of their permitted SIGN area to also displaying the identity of the local outlet.

21.7.1.3 SIGNS should not contain selling slogans or other advertising which is not an integral part of the name or other identification of the enterprise.

21.7.1.4 SIGN letter size should be related to the reader's distance and speed.

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21.7.1.5 SIGN content normally shouldn't occupy more than 40% of the SIGN background, whether a signboard or a building element.

21.7.1.6 Nonverbal devices ought to be considered, since they can provide rapid and effective communication.

21.7.1.7 SIGNS should be simple, neat and avoid distracting elements, so that contents can be quickly and easily read.

#### 21.7.2 Environmental relationship:

21.7.2.1 SIGN design should take into consideration the scale of the street to which the SIGN is oriented and the size, brightness, style, height and colors of other SIGNS in the vicinity.

21.7.2.2 Overhanging SIGNS should be used only in such circumstances as on side streets where overhanging positioning is necessary for visibility from a major street.

21.7.2.3 SIGN brightness should not be excessive in relation to background lighting levels.

21.7.2.3.1 Front-lighted SIGNS: All front-lighted signs shall be lighted from the top, and aimed and/or shielded so that no more than 100 candelas per 1,000 lamp lumens are emitted above a line that is struck through the lamp center and extends at an angle of 80 degrees relative to nadir after the luminaries are in their finally-focused position.

21.7.2.3.2 Internally- and rear-lighted SIGNS: On signs with a surface area larger than 10 square feet, no surface luminances on or around the signs should exceed 30 footlamberts, and no exposed lamps may be used. On signs that are composed primarily of letter-forms, only the letter-forms should be illuminated: no luminous backgrounds are permitted.

#### 21.7.3 Building relationship:

21.7.3.1 SIGNS should be sized and located so as to not interrupt, obscure or hide the continuity of columns, cornices, roof eaves, sill lines or other elements of building STRUCTURE and, where possible, should reflect and emphasize building structural form.

21.7.3.2 SIGN materials, colors and lettering should be reflective of the character of the building to which the SIGN relates, just as SIGN size should be related to building size.

21.7.3.3 Clutter should be avoided by not using support brackets extending above the SIGN or guy wires and turn buckles.

## **ARTICLE 22. ADULT USES**

### **22.1. Preamble and purpose.**

22.1.1 Whereas, there is documented experience in many other cities including Boston, Massachusetts; Seattle, Washington; Tacoma, Washington; Detroit, Michigan; Minneapolis, Minnesota; and St. Paul, Minnesota among other cities, showing that adult uses are distinguishable from other business uses and that the location of adult uses may degrade or adversely affect the quality of life in the areas of a community where they are located, often with impacts, including but not limited to increased levels of crime, blight, depreciation of property values and late hours of operation resulting in noise and traffic late into the night; and

22.1.1 Whereas, it is the intention of the Town of Merrimac to rely upon and reference the findings of the above municipalities and various detailed studies they have conducted that empirically document the adverse influences and effects of adult uses on surrounding properties; and

22.1.2 Whereas, the Town of Merrimac is predominantly residential in its character and development pattern and, although primarily residential, is composed of a mixture of residential, business, commercial, religious, school, park and open space uses, and such areas of use are, in many instances, located in close proximity to one another with the resulting conflicts in LAND USE; and

22.1.3 Whereas, the Town of Merrimac desires to protect its residential lands from encroachment by commercial adult uses and to ensure and promote the Town's image as a safe, pleasant and attractive place of residence for families with children, and to preserve and promote the peace and quiet enjoyment of these areas for all persons; and

22.1.4 Whereas, it is a desire of the Town of Merrimac to preserve and protect the safety of children and young people in the vicinity of schools and public parks where they may be expected to walk, congregate and play, and furthermore that children and young people not be subjected to confrontation with the existence of adult uses in the vicinity of schools and parks, or in commercial areas where there is significant patronage and presence of children and young people; and

22.1.5 Whereas, the commercial areas of the Town of Merrimac reflect greatly on its image in the region, and it is the desire of the Town of Merrimac to promote a positive business community image, retain and promote safe and attractive business areas, and retain its rural character, free of crime and nuisance; and

22.1.6 Whereas, the Town of Merrimac as an aid to mitigating the above impacts of adult uses desires to physically separate commercial adult uses from residential, religious, school, park and open space uses, so that residents not be subjected to confrontation with the existence of adult uses in the vicinity of their residences, schools, parks and playgrounds and churches and chosen places of worship; and

22.1.7 Whereas, adult uses engaging in the sale, rental or display of sexually explicit materials, including books, magazines, periodicals, pictures, photographs, slides,

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movies and videos, may legitimately be controlled by a municipality, either through concentrating in certain locations or separating from other uses which will be inordinately impacted by the sale, rental or display of sexually explicit materials, and furthermore G.L. c. 40A, ~ 9A, specifically provides for municipal regulation of adult uses through SPECIAL PERMITS and standards related to location and separation of such uses; and

22.1.8 Whereas, the Town of Merrimac does not desire to suppress any speech activities protected by the First Amendment, but rather to enact a content-neutral ordinance concerned with the secondary effects of adult uses on the surrounding community, especially crime and effects upon children and family life, and therefore desires reasonable regulation of the location of adult uses in order to provide for the protection of the image of the community, its property values, and to protect the residents of the community from any adverse effects of such adult LAND USES, while providing to those who desire to patronize adult uses such an opportunity in areas within the Town which are appropriate for location of such uses; and

22.1.9 Whereas, it is the intention of the Town of Merrimac by adoption of this Bylaw to rely upon the decisions of the Supreme Court of the United States and the Supreme Judicial Court of the Commonwealth of Massachusetts pertaining to this subject matter, to regulate and limit the location of adult uses and to promote the Town of Merrimac's great interest in protecting and preserving the quality of its neighborhoods, commercial districts and the quality of life through effective LAND USE planning;

Now, therefore, pursuant to G.L. c. 40A, Section 9A, and G.L. c. 272, Section 31, the following is hereby established as the ADULT USES Bylaw of the Town of Merrimac.

## 22.2 Uses Permitted by Special Permit.

Pursuant to the procedures of G.L. c. 40A, Section 9A, the following uses shall be allowed only upon the grant of a SPECIAL PERMIT by the Zoning BOARD OF APPEALS:

22.2.1 Adult bookstores.

22.2.2 Adult motion-picture theaters.

22.2.3 Adult paraphernalia stores.

22.2.4 Adult video stores.

22.2.5 Requests may be made for permits for more than one of the above uses in one location.

## 22.3 Applicability.

The uses permitted by this article may be allowed only upon the issuance of a SPECIAL PERMIT by the Zoning BOARD OF APPEALS, only within the Office-Industrial District.



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Such uses shall be subject to all of the requirements of this article for those districts and shall be in accordance with the additional requirements specified herein.

#### 22.4 General Requirements.

The uses referred to in this article may be permitted within the above districts, provided that they meet the following requirements:

22.4.1 Such use shall not be conducted within a building in which other uses are located which admit persons under the age of 18.

22.4.2 Such use shall be permitted only when located outside the area circumscribed by a circle which has a radius of 400 feet from the following specified uses or zoning districts:

22.4.2.1 Any residence zoning district.

22.4.2.2 Any church or other religious facility or institution.

22.4.2.3 Any public or private school or a public or private child care or daycare facility.

22.4.2.4 A youth center.

22.4.2.5 An arena or any other building or facility of a similar nature that admits persons under the age of 18.

22.4.2.6 Any library.

22.4.2.7 Any public park.

22.4.2.8 Any establishment which must obtain a SPECIAL PERMIT pursuant to this article.

22.4.2.9 Any establishment which has received a license under the provisions of G.L. c. 138, Section 12.

22.4.3 The radius distance shall be measured by following a straight line, without regard to intervening buildings or STRUCTURES, from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property or the LAND USE district boundary line from which the proposed adult use is to be separated.

22.4.4 The premises and all buildings thereon in which such use occurs must comply in all respects with the requirements of the Merrimac Zoning Bylaw which pertain to the district in which the said premises are located. In addition, the provisions of Article 19, SITE PLAN REVIEW, as well as any design review requirements, shall apply to the premises.

22.4.5 SIGNS shall be permitted subject to the provisions of the requirements set forth in Article 21 of this Bylaw, subject to the following condition: No SIGN may depict or

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represent any sexual conduct or state of sexual excitement as defined in G.L. c. 272, Section 31, nor shall any such representations or depictions be placed upon or within the windows or walls of the premises so as to be visible to the public from the exterior of the premises.

#### 22.5 Application Information.

- 22.5.1 The application for any such SPECIAL PERMIT in accordance with this article must include the following items:
- 22.5.2 The name, address, business address and telephone numbers of the owner or owners of the business which has made the application for such SPECIAL PERMIT.
- 22.5.3 The name, address, business address and telephone numbers of all persons having any equity or other interest, including but not limited to security interest, liens, mortgages or other interest in the said business, as well as the name, address, business address and telephone number of all officers, directors, shareholders and trustees of all persons or entities having any interest in the said business.
- 22.5.4 The name, address, business address and telephone numbers of all managers and all other employees that will work in the premises.
- 22.5.5 The name, address, business address and telephone number of the owner of the property upon which the business is situated and the name and address of any and all lessees and sublessees of the said premises.
- 22.5.6 Such actions and precautions concerning the security of the premises as the applicant intends to take with respect to the premises.
- 22.5.7 The site plan referred to in Article 19, SITE PLAN REVIEW, of this Bylaw.
- 22.5.8 A list of any and all merchandise which is to be offered for sale or distribution, either as salable merchandise or as samples or for other distribution at no cost or in any other manner by the business.
- 22.5.9 Should any change in any of the above items in Subsection 22.5.1 through 22.5.7 occur at any time during the period of possession of a SPECIAL PERMIT hereunder, the permit holder shall forthwith provide the Zoning BOARD OF APPEALS with such new information.

#### 22.6 Hours of Operation.

The hours of operation of the business upon the premises shall be as determined by the Zoning BOARD OF APPEALS in the SPECIAL PERMIT.

#### 22.7 Special Permits.

- 22.7.1 The Zoning BOARD OF APPEALS may, in its discretion, issue a SPECIAL PERMIT for such use in accordance with the procedures of Article 25 of this Bylaw and the conditions, provisions and requirements of said article.

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22.7.2 No person who has been convicted of violating the provisions of G.L. c. 119, Section 63, or G.L. c. 272, Section 28, shall be granted a SPECIAL PERMIT pursuant to this article.

22.7.3 SPECIAL PERMITS to be issued hereunder shall only be issued following public hearings which shall be held within 65 days after the filing of an application with the Zoning BOARD OF APPEALS, a copy of which shall be given forthwith to the Town Clerk by the applicant at the time of filing with the Zoning BOARD OF APPEALS.

22.7.4 Any SPECIAL PERMIT granted under this article shall lapse within one year from the date of issue, which period shall not include the time required to pursue or await determination of an appeal referred to in G.L. c. 40A, Section 17, if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within such period except for good cause.

22.8 Use Violative of Other Laws Prohibited.

Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any other Town bylaw or statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter, or the exhibition or public display thereof.

22.9 Severability.

If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid, unenforceable or unconstitutional by any reviewing agency or by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. It is the intention of the Town of Merrimac that it would have adopted this article and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid, unenforceable or unconstitutional.

**ARTICLE 23. SUPPLEMENTAL REGULATIONS**

23.1. Minimum Lot Frontage and Area.

23.1.1. Any LOT lawfully laid out by a plan or deed duly recorded or registered in the appropriate Registry of Deeds or Land Registry District, that complied with the minimum area and FRONTAGE requirements of this Bylaw in effect at the time of such recording or registering, may be built upon for residential use notwithstanding it may not comply with the minimum LOT area and minimum FRONTAGE requirements of this Bylaw; provided, however, that at the time of building, such LOT has an area of more than 5,000 square feet, a FRONTAGE of 50 feet or more, is in a district zoned for residential use and conforms, except as to area and FRONTAGE requirements, with all other provisions of this Bylaw; and provided, further, that, at the time of adoption or amendment of this Bylaw, said LOT was held in ownership separate from that of adjoining land.

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- 23.1.2. A LOT in common ownership which conforms with the minimum LOT area and minimum LOT FRONTAGE required in this Bylaw shall not be reduced so as to become nonconforming.
- 23.1.3. LOT AREA and width requirements shall not apply to a LOT which at the time of the adoption or amendment of this Bylaw cannot be made to conform to the requirements for the district in which it is located, provided that said LOT has been duly recorded by plan or deed or assessed as a separate parcel before the adoption or amendment of this Bylaw. Any LOT on which more than one house exists at the time may be divided and sold to separate owners.

23.2. Driveways. (Reserved)

23.3. Common Driveway.

The Planning Board may issue a SPECIAL PERMIT to authorize a Common Driveway for single-family dwellings consistent with the following:

- 23.3.1. Purpose and Approval. A Common Driveway will not be permitted unless the Planning Board determines that it will provide a reasonable public benefit that would not otherwise be obtained without use of a Common Driveway. Public benefits or purposes may include a reduction in the number of curb openings or Driveways onto major streets or at unsafe or unsuitable locations, protection of stone walls, protection of significant natural features, preservation of historic landscapes or views, and/or other safety and environmental concerns which can be avoided by provision of common or shared driveways.
- 23.3.2. Number of single-family LOTS. A common or shared driveway may not serve more than three single-family residential LOTS.
- 23.3.3. Number of LOTS other than single-family LOTS. For other than single-family LOTS, the number of LOTS that may be served by a common or shared driveway will be determined on a case-by-case basis. The Planning Board shall consider whether public safety will be adequately protected and commonly employed engineering and planning standards have been met in full.
- 23.3.4. FRONTAGE. The length of a Common Driveway shall never be used to satisfy zoning FRONTAGE requirements. All the proposed building LOTS sharing a Common Driveway must have FRONTAGE on an acceptable WAY as defined in G.L. c.40 §81-L, and each LOT FRONTAGE must also provide the possibility of reasonable practical access from the proposed STRUCTURE or use to the WAY without using a Common Driveway.
- 23.3.5. Point of Access. The location of the Common Driveway and any easement or easement conditions obtained by the property owners over an abutting LOT shall be subject to the approval of the Planning Board.
- 23.3.6. Address. The address of any LOT using a Common Driveway shall be the public or private WAY that provides legal FRONTAGE for the LOT in question, as determined by the Planning Board.

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23.3.7. Covenants. The Planning Board shall require covenant restrictions for the proper maintenance of Common Driveways by all affected property owners. All covenants and deed restrictions shall be recorded.

23.3.8. Construction. Common Driveways shall meet the Town of Merrimac's construction standards for new roadways, except curbing, as set forth in the Subdivision Rules and Regulations of the Planning Board. The paved width of Common Driveways shall not exceed 16 feet.

#### 23.4. Setbacks.

23.4.1. No building need provide a greater setback or front yard than the average provided by the nearest principal buildings on the adjoining side LOTS. In determining such an average, a vacant LOT shall be considered as though it had a building meeting the minimum setback requirements from the street line.

23.4.2. All STRUCTURES must meet the minimum setback requirements from the street line as required in this Bylaw for each street abutting the LOT.

#### 23.5. Yards.

Required side yard and rear yard areas may be varied in the case of an irregular, narrow or shallow LOT, or a LOT unusual in shape or topography, upon the granting of a SPECIAL PERMIT by the BOARD OF APPEALS.

#### 23.6. Maximum Height.

23.6.1. No STRUCTURE shall be erected to a height greater than 40 feet, except that that STRUCTURES used for residential purposes in the VR, SR, LA, AR and BM Districts may not be erected to a height greater than 35 feet. This section shall not apply to height exceptions allowed by special permit in the applicable zoning district.

23.6.2. Chimneys, spikes, towers and other projections not used for human occupancy may be constructed above the foregoing height limitations upon the grant of a SPECIAL PERMIT by the BOARD OF APPEALS; provided, however, that no wireless communications facility shall be erected except in compliance with Article 18, Wireless Communications Facilities.

#### 23.7 EARTH REMOVAL:

23.7.1 Stripping of Topsoil The stripping of topsoil or sod shall be permitted only in the Agricultural Residential (AR) and Office-Light Industrial (OI) zoning districts provided first a SPECIAL PERMIT has been issued by the Planning Board.

23.7.1.1 Except that in any district, topsoil or sod stripped for the purposes of erecting or alteing a building, or constructing a parking lot or similar facility shall be allowed to the extent of the dimension of the necessary excavation so long as topsoil or sod is not removed from the town,.

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23.7.1.2 Except that in the Agricultural Residential (AR) and Office-Light Industrial (OI) zoning districts, topsoil or sod stripped for the purpose of erecting or altering a building, or constructing a parking lot or similar facility may be sold or otherwise removed off premises to the extent of the dimension of the necessary excavation, provided first a SPECIAL PERMIT has been issued by the Planning Board.

23.7.1.2.1 The application for SPECIAL PERMIT for stripping of topsoil or sod to be sold or otherwise removed from premises must be accompanied by a non-refundable fee and is subject to the procedures of Article 26.2 of the By-law and the conditions, provisions and requirements of said article.

23.7.2 Excavation of Clay, Sand, Gravel, or Rock The excavation of clay, sand, gravel, or rock or other natural mineral deposit shall be permitted only in the Agricultural Residential (AR) and Office-Light Industrial (OI) zoning districts, provided first a SPECIAL PERMIT has been issued by the Planning Board.

23.7.2.1 Except that in any district, the excavation of clay, sand, gravel, or rock or other natural mineral deposit for use on the lot, or for grading of said lot not below the level of adjoining streets, or the alteration of a street access, shall be allowed so long as such material is not removed from the town.

23.7.2.2 Except that in the Agricultural Residential (AR) and Office-Light Industrial (OI) zoning districts, excavations of clay, sand, gravel, or rock or other natural mineral deposit may be sold or otherwise removed off premises, provided first a SPECIAL PERMIT has been issued by the Planning Board.

23.7.2.2.1 The application for SPECIAL PERMIT for the excavation of clay, sand, gravel, or rock or other natural mineral deposit to be sold or otherwise removed from the premises must be accompanied by a nonrefundable fee and is subject to the procedures of Article 26.2 of this By-law and the conditions, provisions and requirements of said article.

23.7.3 Removal Standards In all instances, the stripping of topsoil or excavation of clay, sand, gravel or rock or other natural mineral are subject to Article 23.7 EARTH REMOVAL requiring a SPECIAL PERMIT be granted by the Planning Board. Plans and calculation documents necessary with the filing of the application are related to the size and scope of the proposed work and shall include a plan of the existing topography and a plan of proposed final topography, both plans prepared and sealed by a Registered Professional Engineer, accurately drawn to a scale of one inch = forty feet and indicating:

a) Two (4) –foot contour intervals of the entire LOT area with elevations relating to United States Geological Survey (USGS), Mean Sea Level datum;

b) The exact location and size of any existing buildings or STRUCTURES;

c) The proposed area of excavation or soil stripping;

d) The type of material(s) to be moved, removed or excavated, with associated volume calculations;

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- e) Log of soil borings taken to the depth of at least 10 ft. below the proposed excavation;
- f) Proposed location of temporary material stockpile(s) on the lot;
- g) Two (4)-foot contour lines indicating proposed final grades of the entire LOT area with elevations relating to USGS datum;
- h) Location of mapped bordering vegetated WETLANDS, vernal pools, river front areas, natural streams and natural drainage features and all manmade drainage structures;
- i) All public utilities. Location of private well and septic systems;
- j) Driveways and ways on or adjacent to the LOT;
- k) The delineation of any Flood Plain District, or Water Resource Protection District areas located within the LOT, unless the plan includes a statement that: "No part of LOT is within a Flood Plain District or Water Resource Protection District";
- l) Any feature as required in Article 23.7.5 Restoration Standards;
- m) Baseline Total Suspended Solids (TSS) discharge of surface water leaving the existing site.

#### 23.7.4 Operation Standards

23.7.4.1 The active gravel removal operation shall not exceed a total area of two (2) acres at any one time. Natural vegetation shall be left and maintained on the undisturbed land to the maximum extent practicable for purposes of screening and noise reduction. All excavation or stripping work shall be conducted so as not to cause damage to adjacent properties or to the public way, and shall leave no exposed boulders or ledge.

23.7.4.2 Excavation for other than approved building purposes shall not be closer than 200 feet to an existing public way unless specifically permitted by the Planning Board; and no excavation shall approach neighboring lot lines closer than 150 feet where excavation is not allowed.

23.7.4.3 The Hours of Operation shall be between 7:00 AM and 5:00 PM on weekdays and Saturday (excluding legal holidays). Equipment operation on the LOT and trucks entering and leaving the LOT may do so only within the Hours of Operation. No use or idling of any equipment on premises is allowed before or after the Hours of Operation.

23.7.4.4 All access roads leading to public ways shall be treated with stone, or other suitable materials to reduce dust and mud for a distance of 200 feet back from said public way. All loaded vehicles entering or exiting the work site shall be suitably covered to prevent dust and contents from spilling and blowing from the load. Any tracking of mud, gravel and stone caused by trucks exiting the lot onto the public way shall be cleaned at the end of each workday. Only potable water shall be used for dust control during active excavation and trucking of material.

23.7.4.5 All trucking routes, times and methods and proposed truck loads shall be subject to approval of the Merrimac Chief of Police and Department of Public Works (DPW).

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23.7.4.6 Access roads shall be constructed at an angle to the public way or constructed with a curve so as to help SCREEN the operation from public view.

23.7.4.7 Gravel shall not be removed closer than four (4) feet to the estimated seasonal high water table (ESHWT) or any other distance that would preclude its subsequent re-use according to existing public health standards. The estimated seasonal high water table (ESHWT) shall be determined by a Title 5 Licensed Soil Evaluator by logging at least 6 test pits per acre and the level related to a permanent monument on the property. This information shall show on the topographic plan. An alternative to defining the ESHWT could be the installation of at least three observation wells and monitoring water levels throughout the spring, every three weeks. ESHWT can be predicted using the Frimpter Method, by the Registered Professional Engineer preparing the submittal documents.

23.7.4.8 OSHA Trenching rules and regulations as referenced under 29 CFR 1926.650 through 652 shall be followed for excavations exceeding 6 ft. and sloped according to the soil type and consistency. During operations, when an excavation is located closer than 200 feet to a residential area or a public way, and where the excavation will have a depth of more than 6 feet with a slope in excess of one (1) horizontal to one (1) vertical (1:1), if the soils are suitable in accordance with the OSHA Standards, a suitable fence or barrier at least 6 feet high shall be erected to prohibit unauthorized access to this area.

23.7.4.9 No LOT shall be excavated so as to cause accumulation of freestanding water, siltation of existing drainage features or illicit discharge to stormwater management systems. Temporary erosion control measures and permanent drainage shall be provided as needed in accordance with accepted conservation standards and Best Management Practices, in accordance with the Massachusetts Stormwater Handbook. The Stormwater Management Standards including Standards 4, 5, 6, 8 and 9 as contained in the Massachusetts Stormwater Handbook shall be complied with to the maximum extent possible, as dictated by the approving authority. Drainage shall not lead directly into perennial or seasonal streams, ponds, the public way or onto adjacent properties. No excavation shall be allowed closer than 200 feet from a natural stream, or within the buffer zone of a bordering vegetated wetland resource

23.7.4.10 Topsoil and subsoil obtained from the area of excavation for use in restoring the site shall be temporarily stockpiled on the LOT in an approved location with no negative consequence to traffic or to an abutting property.

23.7.4.11 Any temporary shelters or buildings erected on the lot for use by personnel or storage of equipment shall first require a building permit and shall be SCREENED from public view as much as possible

23.7.4.12 The Planning Board or their designated agent(s) shall be free to inspect the premises at any time.

#### 23.7.5 Restoration Standards

23.7.5.1 Excavation shall not be left with embankment slope cut steeper than three (3) horizontal to one (1) vertical (3:1) unless so authorized by the Planning Board.



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23.7.5.2 All debris stumps, boulders, etc. shall be removed from the site and disposed of in an approved location.

23.7.5.3 Upon completion of excavation work and without delay, ground levels and finish grades shall be established as indicated on the approved topographical plan.

23.7.5.4 Retained topsoil shall be spread evenly over the disturbed area to a minimum depth of 4 inches the intent of which is to provide a favorable growth environment for grass and planting of trees or shrubs per the approved landscape plan, and to minimize erosion and promptly recover site vegetation.

23.7.5.5 Upon completion of the operation, the land shall be left so that natural storm drainage leave the property as the original natural storm drainage points and so that the area of drainage to any one point is not increased, and water quality standards, including TSS is not increased above the background, or baseline conditions as measured prior to construction.

23.7.5.6 All equipment, buildings, structures, and unsightly evidence of earth removal and excavation operations shall be removed completely from the premises no later than 30 days after the completion of the work or immediately upon expiration of the SPECIAL PERMIT.

23.7.5.7 Upon the issuance of a SPECIAL PERMIT, the Applicant shall provide a performance bond in the amount of \$30,000.00 per acre to the Planning Board as security for the Town of Merrimac that all work will be completed in accordance with the approved documents.

23.7.5.8 The Planning Board or their designated agent(s) shall enforce the provisions of Article 23.7 Earth Removal Noncompliance with the conditions of the approved SPECIAL PERMIT, or any part thereof, may result in a Violation Notice or Stop Work Order and unmitigated lack of compliance by the holder of the SPECIAL PERMIT shall be reason for revoking said permit and forfeiture of the performance bond.

## **ARTICLE 24. ADMINISTRATION AND ENFORCEMENT**

### **24.1. Enforcement Official.**

This Bylaw shall be enforced by the BUILDING COMMISSIONER.

### **24.2. Investigation; Notice to Desist Violation.**

- 24.2.1. If the BUILDING COMMISSIONER shall be informed or have reason to believe that any provision of this Bylaw or any permit or decision thereunder has been, is being, or is about to be violated, the Commissioner shall make an investigation of the facts, including the inspection of the premises where the violations may exist. Where written complaint is made to the Commissioner, the Commissioner shall take action upon such complaint within 14 days of receipt thereof and shall report

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such action in writing to the complainant.

- 24.2.2. If the Commissioner finds no violation or prospective violation, any person aggrieved by said decision, or any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.
- 24.2.3. If the Commissioner finds a violation or prospective violation, the Commissioner shall give immediate notice in writing to the owner and to the occupant of the premises and shall order the person(s) in lawful control of the premises to cease and desist and refrain from such violation. Any person aggrieved by said decision or, any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.
- 24.2.4. If after such order, such violation continues and no appeal to the Board of Appeals is taken within 30 days, and Board of Selectmen shall, upon notice from the BUILDING COMMISSIONER, forthwith make applications to the Superior Court for an injunction or order restraining the violation and shall take such other action as is necessary to enforce the provision of this Bylaw.
- 24.2.5. If after action by the BUILDING COMMISSIONER, appeal is taken to the Board of Appeals, and after a public hearing, the Board of Appeals finds that there has been a violation or prospective violation, the Commissioner shall issue an order to cease and desist and refrain from such violation unless such order has been previously issued. If such then continues, the Board of Selectmen shall, upon notice from the BUILDING COMMISSIONER, forthwith make application to the Superior Court for an injunction or order restraining the violation and shall take such other action as may be necessary to enforce this Bylaw.
- 24.2.6. Any violation of the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense.

In addition to the procedures for enforcement as described above, the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, may be enforced, by the BUILDING COMMISSIONER, by non-criminal complaint pursuant to the provisions of General Laws, Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be deemed a separate offense.

- 24.2.7. Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of six months after issuance of the permit; additionally, in cases involving construction begun within such six-month period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable.

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**24.3. Penalty.**

Whoever violates any provision of this Bylaw or any of the conditions under which a permit is issued by the BUILDING COMMISSIONER or any decision rendered by the Planning Board or BOARD OF APPEALS under the provisions of this Bylaw shall be liable to a fine of not more than \$100 per day for each violation.

**ARTICLE 25. APPEALS**

**25.1. BOARD OF APPEALS.**

It is hereby provided that there shall be a BOARD OF APPEALS of the Town of Merrimac.

**25.2. Powers.**

The BOARD OF APPEALS shall have the following statutory powers under G.L. c. 40A:

- 25.2.1. Appeals. To hear and decide Appeals by any person aggrieved by any order or decision of the BUILDING COMMISSIONER or other administrative official in violation of any provision of G.L. c.40A or of this Bylaw. (See G.L. c. 40A, Section 8.)
- 25.2.2. SPECIAL PERMITS. Pursuant to G.L. c. 40A, Section 9, to hear and decide applications for SPECIAL PERMITS for which express provision is made in this Bylaw; also, for SPECIAL PERMITS for uses accessory to an activity permitted as a matter of right which is necessary in connection with scientific research or scientific development or related production, whether or not the accessory use is on the same parcel as the permitted use, provided that the Board finds that such accessory use does not substantially derogate from the public good. A SPECIAL PERMIT shall lapse within two years of the grant thereof unless good cause is shown why substantial use thereof, or related construction, has not been begun.
- 25.2.3. SPECIAL PERMITS to extend or alter a nonconforming use or structure, pursuant to G.L. c. 40A, Section 6, and Section 3.3 of this Bylaw.
- 25.2.4. VARIANCES. Pursuant to G.L. c. 40A, Section 14, to hear and decide petitions for use and dimensional VARIANCES as set forth in G.L. c. 40A, Section 10. Use VARIANCES permit a use of land other than a use expressly permitted in a particular district. Dimensional VARIANCES authorize deviations from restrictions dealing with such matters as setbacks, FRONTAGE and LOT size. If the rights authorized by a VARIANCE are not exercised within one year of the date of the grant of such VARIANCE, such rights shall lapse, unless otherwise extended by the BOARD OF APPEALS pursuant to G.L. c. 40A, Section 10.

**25.3. Comprehensive Permits.**

Pursuant to G.L. c.40B, Sections 20-23, the BOARD OF APPEALS may issue comprehensive permits for construction of low- or moderate-income housing by a public agency or limited dividend or nonprofit corporation, upon the Board's determination that such

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construction would be consistent with local needs, whether or not consistent with local zoning, building, health or subdivision requirements.

25.4. Members.

The BOARD OF APPEALS shall consist of five regular members and four associate members. They shall be appointed by the Selectmen for terms of three years each in such manner that the term of one regular member shall expire each year. The Board shall annually elect a Chairman and a Clerk from among its regular members. A member can only be removed for cause by the Selectmen and only after written charges have been made and a public hearing has been held. The Chairman may designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said Board, in which case an associate member may sit as a member of the Board until said vacancy is filled.

25.5. Rules.

The Board shall adopt rules not inconsistent with the General Laws and the provisions of this Bylaw for conducting its business and shall file a copy thereof with the Town Clerk.

25.6. Meetings.

Meetings of the Board shall be held at the call of the Chairman and also when called in such other manner as the Board shall determine in its rules. The Chairman or, in his absence, the Acting Chairman, may administer oaths, summon witnesses and call for the production of papers.

25.7. Filing of Appeals and Repetitive Applications.

- 25.7.1. Appeals under G.L. c.40A, Section 8, must be filed within 30 days after the administrative decision or action from which the appeal is being taken. Initial applications for SPECIAL PERMITS or VARIANCES, where not in the nature of an appeal from an administrative order or decision, may be filed at any time.
- 25.7.2. A repetitive application for a SPECIAL PERMIT or VARIANCE which has been unfavorably acted upon by the BOARD OF APPEALS within the past two years shall not be reconsidered until after a public hearing held by the Planning Board and a vote of consent of four of its members to the resubmittal, and unless four of the members of the BOARD OF APPEALS vote to admit the resubmittal after a finding, described in the record of its proceedings, that there are specific and material changes in the conditions upon which the previous unfavorable action was based.

25.8. Notice of Appeals and Petitions.

Notice of any Appeals, application or petition to the BOARD OF APPEALS shall be filed with the Town Clerk, who shall forthwith transmit copies thereof to the officer or board from whose order or decision the appeal is taken, if any, and to the members of the BOARD OF APPEALS. Such officer or board shall forthwith transmit to the BOARD OF APPEALS all

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documents and papers constituting the record of the case from which the appeal was taken. Any such notice of appeal, application or petition shall specify the grounds thereof.

25.9. Hearings.

Public hearings shall be held pursuant to G.L. c. 40A, Section 11, on all Appeals, applications for SPECIAL PERMITS and applications or petitions for VARIANCE.

25.10. Voting.

A vote of four of the five members of the Board shall be necessary to reverse any order or decision of any administrative official or to decide in favor of this applicant on any matter on which it is required to pass under this Bylaw or to effect any VARIANCE in the application thereof.

25.11. Decisions.

25.11.1. The BOARD OF APPEALS may, in conformity with the General Laws and the provisions of this Bylaw, reverse or affirm, in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.

25.11.2. The decision of the Board shall be made as follows:

25.11.2.1. In the case of SPECIAL PERMITS: within 90 days after the public hearing.

25.11.2.2. In all other cases, within 100 days after the date of filing.

25.11.2.3. Failure of the Board to act within the specified period shall be deemed to be the grant of the relief, application or petition sought.

25.11.3. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and setting forth clearly the reason or reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be public record. Notice of decisions shall be mailed forthwith to parties in interest as designated in G.L. c.40A, Section 11, to the Planning Board and to every person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent.

25.12. Standards for Special Permits.

SPECIAL PERMITS, where granted, must be in harmony with the general purpose and intent of this Bylaw, and they shall be subject to whatever appropriate conditions and safeguards the BOARD OF APPEALS may prescribe. SPECIAL PERMITS granted by the BOARD OF APPEALS shall be consistent with the provisions of Article 26, as applicable.

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25.13. Standards for Variances.

- 25.13.1. A VARIANCE from the terms of this Bylaw may be granted only where the BOARD OF APPEALS specifically finds that:
  - 25.13.1.1. Owing to circumstances relating to the soil conditions, shape or topography (but not size) of such land or STRUCTURES, and especially affecting such land or STRUCTURES (but not affecting generally the zoning district in which it is located), a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner; and
  - 25.13.1.2. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Bylaw.
  - 25.13.1.3. Failure to establish any of the standards shall constitute grounds to deny a petition for a VARIANCE. A VARIANCE may not be granted if the circumstance creating the hardship was self-created. The loss of the protection afforded a NONCONFORMING USE under the provisions of this Bylaw is not a substantial hardship justifying the grant of a VARIANCE.
- 25.13.2. If the Board grants a VARIANCE, it may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular STRUCTURES. The Board may not impose conditions, safeguards or limitations based upon the continued ownership of the land or STRUCTURES by the petitioner or any owner.
- 25.13.3 The Board of Appeals shall not approve any changes in the uses permitted in any zoning district or approve any modification of the requirements of the Zoning By-law that would have the effect of allowing the establishment of a use not otherwise permitted

25.14. Conditions of Approval

In all matters on which it has jurisdiction to act, the BOARD OF APPEALS shall give due consideration to promoting the public health, safety, convenience and welfare, shall encourage the most appropriate use of land and shall permit no building or use injurious, noxious, offensive or detrimental to a neighborhood. To this end, it may prescribe appropriate conditions and safeguards in each case.

**ARTICLE 26. SPECIAL PERMITS**

26.1. Zoning Board of Appeals

- 26.1.1. The Zoning BOARD OF APPEALS shall act as the SPECIAL PERMIT Granting Authority (SPGA) for the following SPECIAL PERMITS:
  - 26.1.1.1. Change or extension of NONCONFORMING USES or

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STRUCTURES in accordance with Section 6 of G.L. c.40A

- 26.1.1.2. Special permitted uses in the Water Resource Protection District
- 26.1.1.3. Special permitted uses in the Flood Plain District
- 26.1.1.4. ACCESSORY DWELLING UNITS and conversions of existing single-family residences
- 26.1.1.5. ADULT USES in the Office-Light Industrial District
- 26.1.1.6. Wireless Telecommunication Facilities
- 26.1.1.7. All other uses not specifically designated elsewhere in this Bylaw.

## 26.2. Planning Board

- 26.2.1. The Planning Board shall act as SPECIAL PERMIT Granting Authority (SPGA) for the following SPECIAL PERMITS:
  - 26.2.1.1. Special permitted uses in the following zoning districts: Village Residential, Suburban Residential, Agricultural Residential, Lake Attitash, the Village Center, Rural Highway and Highway Services Districts, and Rural agricultutral Peservation Overlay District, except for accessory dwelling units and conversions of existing single-family residences; and special permitted uses in the Office-Light Industrial District, except ADULT USES.
  - 26.2.1.2. Open Space-Residential Development
  - 26.2.1.3. ASSISTED LIVING FACILITIES and ELDERLY HOUSING.
  - 26.2.1.4. Earth Removal
- 26.2.2. Application: The Planning Board may adopt rules and regulations for the form and content and general filing instructions of the applications for SPECIAL PERMITS that it is empowered to grant. The form of application and general filing instructions shall be filed with the Town Clerk and the Planning Board.
- 26.2.3. Public Hearing
  - 26.2.3.1. The Planning Board shall hold a public hearing in conformance with the provisions of G.L. c.40A, Section 9, and with the provisions of the Merrimac Zoning Bylaw.
  - 26.2.3.2. The public hearing shall be held within 65 days after the filing of the application.
  - 26.2.3.3. Notice shall be given by publication and posting and by first class mailings to parties of interest as defined in G.L. c. 40A, Section 11.

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26.2.4. Decision

26.2.4.1. The decision of the Planning Board shall be based on:

26.2.4.1.1. The specific standards described in the section of this by-law that correspond to the type of SPECIAL PERMIT sought from the Planning Board.

26.2.4.1.2. The SPECIAL PERMIT criteria stated below in Section 26.3 of this Bylaw, below.

26.2.4.2. The decision of the Planning Board shall be filed with the Board and the Town Clerk within 90 days following the close of the public hearing.

26.2.4.3. Failure of the Board to act within 90 days of the close of the public hearing shall be deemed a grant of the permit applied for.

26.2.4.4. Issuance of the Special Permit shall require a two-thirds vote of the Planning Board if its full membership exceeds five members, a vote of at least four members if its membership is five members, and a unanimous vote if its full membership is three members.

26.2.5. Planning Board Associate Member. To assist in carrying out its duties as a SPECIAL PERMIT granting authority, there shall be one associate member of the Planning Board appointed by the Board of Selectmen under authority of G.L. c. 40A, Section 9. The associate member shall sit on the Planning Board for the purposes of acting at SPECIAL PERMIT application hearings in case of absence, inability to act or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board.

26.3. Special Permit Criteria.

26.3.1. A SPECIAL PERMIT may be granted when the SPGA has found that the proposed use will not be unreasonably detrimental to the established or future character of the neighborhood and Town and that such exception is in harmony with the general purpose and intent of this by-law. In making the foregoing findings, the SPGA shall give due consideration to the specific standards described in other parts of this Bylaw and to the following criteria:

26.3.1.1. The degree to which the proposed use furthers the intent or objectives of the Merrimac Master Plan.

26.3.1.2. The adequacy and accessibility of public highways and municipal utilities.

26.3.1.3. The sufficiency and suitability of off-street parking and loading facilities and SCREENING and landscaping to be provided in connection with the proposed use.



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- 26.3.1.4. The effect on the neighborhood which can be anticipated from the conditions created by the proposed use and operation of the premises.

26.4. Other Requirements.

- 26.4.1. Any grant of a SPECIAL PERMIT hereunder may be subject to such conditions or safeguards, including limitations of time and use, as the SPGA shall deem to be reasonably necessary.
- 26.4.2. SPECIAL PERMITS shall be issued only following public hearings held within 65 days after filing with the SPGA an application, a copy of which shall forthwith be given to the Town Clerk by the applicant.
- 26.4.3. SPECIAL PERMITS shall lapse if a substantial use thereof or construction has not begun, except for good cause, within 24 months of SPECIAL PERMIT approval (exclusive of time required to pursue or await the determination of an appeal referred to in G.L. c.40A, Section 17, from the grant thereof).

**ARTICLE 27. AMENDMENTS**

27.1. Procedure.

- 27.1.1. No change or amendment to this Bylaw shall be adopted until after the Planning Board has held a public hearing thereon as required by G.L. c.40A Section 5, as amended, and has submitted a final report with recommendations to the Town Meeting, or until 21 days shall have elapsed after such hearing without the submission of such a report.
- 27.1.2. After such notice, hearings and report, or lapse of time without report, the Town Meeting by a 2/3 vote may adopt, reject or amend and adopt any such proposal, in accordance with G.L. c.40A, Section 5. No proposed Zoning Bylaw which has been unfavorably acted upon by Town Meeting shall be reconsidered within two years of such action unless its adoption is recommended in the final report of the Planning Board.

27.2. Conformance of Permits to Subsequent Amendments.

Construction or operations under a building or SPECIAL PERMIT shall conform to any subsequent amendment of this section unless the use or construction is commenced within six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as possible.

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## **ARTICLE 28. MISCELLANEOUS PROVISIONS**

### **28.1. Repeal.**

As of the effective date of this Bylaw, the previously existing Zoning Bylaw of the Town of Merrimac is hereby repealed. Any existing bylaws or such parts thereof as may be inconsistent herewith are also hereby repealed.

### **28.2. Conflict of Laws.**

In general, this by-law is supplementary to other by-laws of the Town affecting the use, height, area and location of buildings and STRUCTURES and the use of premises. When this by-law imposes a greater restriction upon the use, height, area and location of buildings and STRUCTURES or the use of land in the Town other than is imposed by such other by-laws, the provisions of this by-law shall control.

### **28.3. Separability.**

The provisions of this Bylaw are hereby declared to be separable, and if any such provision or the application of such provision to any person or circumstances shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions or the application of such provisions to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent of this Bylaw that said remaining sections would have been adopted had such invalid or unconstitutional provisions not been included herein.

### **28.4. Effective Date.**

This Bylaw shall take effect upon satisfaction of the requirements of G.L.c. 40A, Section 5.